

CT-2011-003

**COMPETITION TRIBUNAL**

**IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34, as amended;**

**IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the Competition Act;**

**AND IN THE MATTER OF certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.**

**B E T W E E N :**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE  <b>RECEIVED / REÇU</b> CT-2011-003 August 20, 2012  Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 180

**THE COMMISSIONER OF COMPETITION**

**Applicant**

**AND**

**THE TORONTO REAL ESTATE BOARD**

**Respondent**

**AND**

**THE CANADIAN REAL ESTATE ASSOCIATION and  
REALTYSELLERS REAL ESTATE INC.**

**Intervenors**

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**WITNESS STATEMENT OF DONALD RICHARDSON  
THE TORONTO REAL ESTATE BOARD**

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I, Donald John Richardson, of the Town of Newmarket, in the Regional Municipality of York, Province of Ontario, state as follows:

- I am the Chief Executive Officer of The Toronto Real Estate Board ("TREB"), the Respondent in this Application. My responsibilities as Chief Executive Officer include overseeing the day-to-day operations of TREB, including the services that it provides to its

Members. I am familiar with most aspects of TREB's operations, including its electronic database of property listings and related information.

2. I have been TREB's Chief Executive Officer for approximately 12 years. Before joining TREB as Chief Executive Officer, I worked for approximately 20 years at the Ontario Real Estate Association ("OREA") in a variety of roles. I was OREA's Chief Executive Officer for the last 6 of those 20 years. Prior to joining OREA, I spent approximately 10 years working first as a real estate salesperson in Aurora and then as a real estate broker in Newmarket.

### **THE NATURE AND ROLE OF TREB**

3. TREB is a not-for-profit corporation that was incorporated in 1920. TREB is Canada's largest real estate board and serves more than 35,000 real estate broker and salesperson members ("Members").

4. Some of TREB's corporate objects include: to advance and promote the interests of those engaged in real estate as brokers, agents, valuers, examiners, and experts; to increase public confidence in, and respect for, those engaged in the calling of real estate brokerage; and to institute, promote, and manage listing systems with the object of rendering better service to the public by providing vendors of real estate with a wider potential market.

5. TREB is a Member-based organization, and TREB's focus is to help Members meet the many challenges associated with conducting business in an increasingly complex environment amid economic uncertainty. TREB's core purpose is to advance the continuing success of its Membership. Member feedback is vital to TREB's success.

6. One of TREB's ongoing objectives is to empower its Members by providing cutting edge technological tools. Examples of this include the MLS®, IDX, and VOW programs, all of which are discussed in greater detail below. TREB's Strategic Plan for the 2011/12 year is attached to my witness statement as **Exhibit "A"**.

7. TREB's Membership is principally concentrated in the Greater Toronto Area. However, TREB accepts Members located across Ontario provided that they satisfy TREB's membership

criteria as set out in its By-law. TREB's By-law is attached to my witness statement as **Exhibit "B"**.

8. TREB's By-law establishes various categories of membership in TREB, procedures for those who wish to apply for membership, and various rules and procedures relating to membership. In order to be eligible for membership in TREB (with the exception of Retired Members and Honourary Members), applicants must be licensed by the Real Estate Council of Ontario ("RECO"), which is the licensing and governing body for the real estate industry in Ontario.

9. Some real estate brokers and salespeople that operate in the Greater Toronto Area are not Members of TREB. I do not know the exact numbers of these non-TREB brokers and salespeople.

10. From July 1, 2011 to June 30, 2012, TREB welcomed 3,869 new Members.

11. A new brokerage Member (the business) pays an initiation fee of \$4,960, and a new broker or salesperson Member (the individual) pays an initiation fee of \$460. The initiation fees reflect, in part, the fact that new Members gain immediate access to information that has been built up over years in TREB's MLS® database. This database will be described in more detail below.

12. For the 2012-2013 year, Members that are brokers and salespersons will pay annual membership dues of \$651.80, and Members that are brokers of record (for their brokerage) will pay annual membership dues of \$721.80. TREB uses these Membership dues to fund its operations, including the delivery of services to its Members. TREB has reduced its Membership dues over time, as in 2002, comparative membership fees for salespersons and brokers were close to \$800 and \$900, respectively.

13. Although TREB does count in its membership Franchise-affiliated brokerages, it is important to note that Franchisors themselves are not eligible for TREB Membership. Many of TREB's brokerage Members are small, independently owned businesses.

14. TREB accords equal rights of membership and equivalent levels of service to all of its Members regardless of their business model.

15. TREB provides numerous services for its Members. A few key services include:

- (a) **Education/Professionalism:** TREB offers a variety of educational courses to its Members that are designed to maintain professional standards and to meet the mandatory continuing education requirements imposed on real estate brokers and salespeople working in Ontario by the *Real Estate Business Brokers Act, 2002*;
- (b) **Communications:** TREB works to convey the value of using a REALTOR®<sup>1</sup> to buyers and sellers of real estate, and keeps its Members and the general public apprised of TREB news and industry news;
- (c) **Government Relations:** TREB is active in government relations, lobbying government officials on residential and commercial real estate issues; and
- (d) **Access to Real Estate Data:** as will be described in greater detail later in my witness statement, TREB provides its Members with access to information and data concerning the real estate market, both through TREB's administration of the TREB MLS®, as well as other sources and publications.

16. TREB also provides other services, including arbitration services to resolve disputes between its Members, and TREB hosts conferences, such as RealtorQuest.

17. TREB is a Member of both The Ontario Real Estate Association (OREA) and The Canadian Real Estate Association (CREA).

18. TREB's activities are guided by a 16 Member Board of Directors. Directors are elected by TREB's Members during regularly scheduled elections. All of the Directors are licensed and practising REALTORS®, and undertake their directorial duties on a volunteer basis. As Chief Executive Officer, I report to TREB's Board of Directors.

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<sup>1</sup> TREB's Members are also Members of The Canadian Real Estate Association (CREA). As Members of CREA, TREB's Members are permitted to use CREA's registered trademark "REALTOR®" in describing the services that they provide to the public. Real estate brokers and salespersons that are not Members in CREA may not use the REALTOR® trademark.

19. The Directors are drawn from across the Greater Toronto Area. Of the 16 current Directors, 6 work for (or own) brokerages not affiliated with any Franchise. 10 work for (or own) Franchise affiliated brokerages.

20. The Board of Directors generally meets once per month. In addition to these meetings, the Board of Directors conducts business by way of its various Board Committees and Task Forces. Some of these Committees/Task Forces are perpetual in nature, such as the Finance Committee and the MLS® Committee, while some are created on an “as needed” basis to address a specific issue at a specific point in time, such as the VOW Task Force, the activities of which will be discussed in greater detail below. The Board of Directors ratifies the names of individuals put forward to serve on TREB’s Committees and Task Forces.

21. TREB’s day-to-day operations are overseen by myself and TREB’s executive team, and are implemented by TREB’s executive team and TREB’s staff. TREB’s executive team attends Board of Director meetings, and many Members of the executive team also have responsibilities as liaisons to committees of the Board of Directors and/or Task Forces.

22. TREB is not licensed to trade in real estate, and it does not trade in real estate.

23. TREB has no involvement or influence whatsoever in determining the commission rates charged by its Members to buyers and sellers of real estate. TREB does not set commission rates, and TREB does not give any input or advice to its Members on appropriate commission rates. These matters are of no interest or concern to TREB.

24. TREB does not track commission rates received by its Members. The TREB MLS®, which is described in greater detail below, does record the initial offer of commission from the listing broker to a cooperating broker. However, it is my understanding that this initial offer is just that: an offer. The actual commission paid from the listing broker to the cooperating broker is a matter that is negotiated between the listing broker and the cooperating broker with no involvement from TREB, except that TREB does offer mediation and arbitration services to its Members to resolve disputes surrounding commissions. TREB does not track the ultimate

commission actually received by the cooperating broker. TREB does not track any information with respect to the listing broker's commission (or total commission or compensation).

25. TREB has no financial interest in how competition occurs among its Members. TREB has no vested interest whatsoever in how competition occurs among its Members, so long as real estate services are being provided in a legal, professional, and ethical manner.

## **TREB MLS®**

### **(a) History and Access**

26. To the best of my knowledge, Members have shared information with each other about their property listings in one fashion or another since at least the 1930s. For decades, this process involved printing and circulating paper copies of summaries that were commonly called "listings." My own memory goes back to the 1960s when Members used a system called "Photo Co-Op" in order to circulate and share information among the membership about properties that had been listed for sale.

27. Over the years, as information technology has become more sophisticated, the Multiple Listing Service, or "MLS®" has become an elaborate cooperative system over an intranet that allows Member-to-Member and Board to Member communication about a vast amount of information in a highly efficient way.

28. CREA is the owner of the MLS® trademark in Canada. CREA licenses the MLS® trademark to TREB and to various other real estate boards across Canada.

29. TREB's MLS® is a computerized MLS® system. TREB MLS® is operated by TREB as a service to its Members. TREB MLS® is TREB's most costly undertaking, and is available as part of the membership fee to TREB Members. [REDACTED]

[REDACTED]

[REDACTED] **Exhibit**

**"C".**

30. TREB's MLS® database is a searchable compilation of real estate listings that have been provided to the TREB MLS® by its Members. Individual listings inputted to TREB's MLS® are proprietary to the brokerage uploading the listing. TREB MLS® and the TREB MLS® database are proprietary to TREB (subject to any contracted services).

31. The TREB MLS® *system* is a great deal more comprehensive than the TREB MLS® *database*. The TREB MLS® system involves more than just information about properties. The TREB MLS® system is described below under the heading "Using the TREB MLS® System."

32. Members access TREB's MLS® system by way of a secure log-in intranet website ([www.torontomls.net](http://www.torontomls.net)). This website is not accessible to members of the general public. As I will discuss later in my witness statement, members of the general public can view real estate listing information through a variety of other websites, including CREA's website [www.realtor.ca](http://www.realtor.ca), many other public websites, and through the websites of many real estate brokers and salespersons.

33. In order to obtain access to the TREB MLS®, Members must sign an Authorized User Agreement. Use of the TREB MLS® is governed by the terms of the Authorized User Agreement and TREB's MLS® Rules and Policies.

34. TREB's MLS® Rules and Policies set out the requirements for the orderly, competitive, and efficient operation of TREB's MLS®, including provisions to ensure the accuracy of information displayed on the MLS® database. TREB's MLS® is offered as a tool to TREB's Members. TREB's interest is ensuring a high volume of usage of its MLS® through, among other things, ease of use by Members and the quality and accuracy of its MLS® data. The MLS® Rules and Policies are geared towards this goal. The current version of TREB's MLS® Rules and Policies is attached to my witness statement as **Exhibit "D"**.

35. The Authorized User Agreement contains the following provisions relevant in this Application:

- (a) Members that enter into the Authorized User Agreement acknowledge that the TREB MLS® database, the software that runs the MLS® database, and the

services offered in connection with the TREB MLS® database are proprietary to TREB and protected by intellectual property law (s. 7(a));

- (b) Members that enter into the Authorized User Agreement obtain a limited licence from TREB to use TREB MLS® data only for the purpose of trading in real estate (s. 2, 4(b));
- (c) Members that enter into the Authorized User Agreement agree not to use, copy, reproduce, scrape, or exploit the TREB MLS® database to create, maintain or market, or aid in the creation, maintenance or marketing of any MLS® database or any similar undertaking which is competitive with the TREB MLS® database. (s. 4(d));
- (d) Members that enter into the Authorized User Agreement represent that they have the right to upload all of the data they upload to the TREB MLS® database, and there is no legal impediment to uploading that data (s. 5);
- (e) Members that enter into the Authorized User Agreement agree that all personal information they collect in connection with the TREB MLS® database will be collected, used, disclosed, and maintained strictly in accordance with the requirements of all applicable privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (9a); and
- (f) In the event that a Member breaches the terms of the Authorized User Agreement, and the Member's breach is not cured within 2 weeks after notice from TREB, TREB may terminate the Authorized User Agreement. (s. 12(a)).

36. The current version of the Authorized User Agreement is attached to my witness statement as **Exhibit "E"**.

**(b) Inputting Listings to TREB MLS®**

37. TREB makes available to its Members an MLS® Data Information Form. The current version of this form is attached to my witness statement as **Exhibit "F"**.

38. The MLS® Data Information Form is a fill-in-the-blanks form to be filled out by the listing broker (the selling broker) in consultation with the seller of the property if the seller consents to having that property uploaded to TREB's MLS® database. Prior to uploading a listing to TREB's MLS® database, the Member must obtain express informed consent of the seller to do so.

39. The MLS® Data Information Form has certain fields that are mandatory, such as the street name and number, the list price, and the number of rooms. The form also has other fields that are optional, such as the approximate age of the building, the approximate square footage, and open house dates. The form has a field for “remarks for brokerages.” These remarks often contain information that is private or sensitive in nature such as when the owner will be absent from the property, who might be present in the house at certain times, details about lockbox access, and so on.

40. The MLS® Data Information Form also provides direction to TREB, via the listing brokerage, as to whether the listing brokerage can grant permission to other brokerages to advertise the property, whether the seller is granting permission to distribute the listing to the Internet portals, and whether they consent to having the address of the property displayed on the Internet.

41. The TREB MLS® is set up to allow the listing broker, or office designate, to directly input the listing information into the database, as opposed to requiring TREB to centrally input all new listings into the database. TREB does offer a service for its Members where hard copies of the listing data information can be provided to TREB head office and inputted by TREB staff, but nowadays this method of uploading to the TREB MLS® database is rarely used. Most brokers or salespersons arrange for someone at their office to directly upload listing information into the TREB MLS® database, or they upload the information themselves.

42. Photographs for listings may be taken by the listing broker (or someone hired by the listing broker), or the listing broker can choose to use a photograph from TREB’s existing library of photographs of the front view of homes in the GTA.

43. The accuracy and currency of the information in TREB’s MLS® database is key; TREB’s MLS® Rules and Policies impose obligations on the listing broker to ensure the accuracy of any information uploaded into the database, and to promptly update any changes to the listing into the system. TREB uses proprietary software which checks listings for specific identifiable inaccuracies and inconsistencies, and if any such inaccuracies are located, the listing is flagged for follow-up action by the brokerage. If the listing is not corrected within 2 days,

TREB will proceed with a Professional Standards investigation, subject to jurisdictional review. TREB also offers a service through which Members can anonymously report inaccuracies in TREB MLS® listings to assist in ensuring the integrity of the MLS® data. TREB's Data Integrity Service brochure is attached to my witness statement as **Exhibit "G"**.

44. TREB's MLS® database includes both current active listings, and an archive of inactive listings (expired, withdrawn, suspended, and terminated listings, as well as solds, and pending solds: where an agreement of purchase and sale has been signed but the transaction has not yet closed).

45. When a property is under an agreement of purchase and sale, the listing broker edits the TREB MLS® listing either to "sold" or "sold conditional." If a property is simply sold without conditions, the sale price is entered, as is the sale date and closing date. If a property is sold conditional, the status indicates this, and the sale price is not entered at that time. Once the conditions have been waived or met, the listing broker changes the status to "sold" and enters the sale price.

46. Sales which are not conditional, but have not closed, are referred to as "pending solds." Not all of these transactions close, as sometimes a buyer or seller is unable to close the deal for whatever reason.

47. TREB does not exploit sold data for financial gain in any way (such as data mining or sale to third parties), and endeavours to manage and maintain the database responsibly in the best interest of consumers. TREB respects the serious sensitivity of sold and pending sold data, and acts responsibly with respect to the relevant laws. TREB does provide market analysis for Members and the public and does provide programs through which Members can generate Comparative Market Analyses for clients.

**(c) Using the TREB MLS® System**

48. Members access the TREB MLS® system by going to the website [www.torontomls.net](http://www.torontomls.net), and inputting their unique log-in credentials. Once logged into [www.torontomls.net](http://www.torontomls.net), Members are taken to the TREB intranet homepage. Through the homepage, Members can view industry

news stories, search for information, download standard OREA forms (such as the buyer representation agreement, or the agreement of purchase and sale), access the Teranet and Municipal Property Assessment Company databases, and can search the TREB MLS® database. There are also many additional functions such as Contact Management attached to the system. A screen-shot of TREB's intranet homepage is attached to my witness statement as **Exhibit "H"**.

49. After the Member clicks on the "Search Properties" icon, they are able to conduct a search of the TREB MLS® database. TREB's MLS® database runs on a computer software program that is licensed to TREB by a company called Stratus Data Systems Inc. A Member inputs certain search parameters (such as list price range, neighbourhood, number of rooms, etc), and the Stratus software generates a search report that displays matching results. A screen-shot of the search interface is attached to my witness statement as **Exhibit "I"**.

50. Search results are initially displayed in a list format, with only a limited amount of information displayed for each property. The Member can click on any of the properties in the list to view a more comprehensive report about that property. The default search result displayed to the Member is known as "Broker Full", and this report contains all of the information in the TREB MLS® database about a given listing. A mock-up example of a Broker Full report is attached to my witness statement as **Exhibit "J"**.

51. There are a variety of other types of reports that the TREB MLS® can generate, including "Client Full", which deletes from display some of the more sensitive data fields. A mock-up example of a Client Full report is attached to my witness statement as **Exhibit "K"**.

52. Property Match is another service offered through the TREB MLS® system. Property Match lets Members sign their clients up to automatically receive information about new or changed listings that have been uploaded to the TREB MLS® database that may be of interest to them based on a set of search parameters entered by the Member. Internet links to new properties of interest will be automatically e-mailed to clients by the system on a daily basis. These links remain active for 2 weeks and should the status be changed to a non-available status (such as sold, expired, suspended or withdrawn) the listing will not show up in the link.

53. Property Match reports contain a subset of the listing data similar to Client Full, and personal and private information associated with the listing is not displayed. Property Match was formerly known as "Prospect Match." A mock-up example of a Property Match report is attached to my witness statement as **Exhibit "L"**.

54. The TREB MLS® system also assists Members in creating a Comparative Market Analysis. A Comparative Market Analysis is a report that allows Members to compare one property listed on the TREB MLS® database with other properties that are, or were, listed on the TREB MLS® database. Members can enter specific properties as "comparables" by inputting the property's TREB MLS® number, or they can input certain parameters of the subject house and the system will generate a list of potential comparables. Members can search for sold information for the previous 2 years by doing a "quick search" or select a longer time period using a more specific search. Once the comparable properties have been selected, Members can also generate a report that provides a side-by-side comparison of the subject property with the comparable properties. A mock-up example of a Comparable Summary Report is attached to my witness statement as **Exhibit "M"**.

55. Brokerage Members can also enter into a Data License Agreement with TREB. A Data License Agreement directs TREB to send the brokerage Member's MLS® listing data either to the Member's own website, or to a third party website or service. Through the Data License Agreement with a brokerage, brokerage salespersons or brokers can obtain a data transfer for: their own personal listings, the listings of their office (which could include listings from all salespeople and brokers at the office), or their entire brokerage's listings (listings from all salespeople and brokers at the brokerage, across offices). The scope of listings available to a Member through the Data License Agreement is determined by the Member's Broker of Record/Manager. The Data License process was a precursor to TREB's IDX and VOW offerings, although this process is still available to TREB Members. The current version of the Data License Agreement is attached to my witness statement as **Exhibit "N"**.

56. TREB has a contract with Teranet (which includes access to MPAC data) that allows TREB to provide limited direct Member access to the Teranet and MPAC databases as well as other services to its Members through a "GeoWarehouse" portal. TREB pays for this limited

service. Members have the option of contracting directly with Teranet to upgrade their access level to enhance the amount of data available to the Member, or purchase individual premium reports on specific properties. TREB's contract with Teranet is attached to my witness statement at **Exhibit "O"**. The GeoWarehouse terms and conditions are attached to my witness statement as **Exhibit "P"**.

57. The GeoWarehouse portal is accessible from the TREB intranet homepage. TREB does not receive a data transfer from Teranet or MPAC. Information available from Teranet includes certain property details including the sold price of real estate transfers in Ontario, whether the transaction was processed through an MLS® system or not. Information available from MPAC includes the assessed value of property in Ontario.

58. TREB is always considering how to add services that are of value to the membership as part of the TREB MLS® system, and Member feedback has been critical to the evolution TREB's MLS® service offerings.

**(d) Usage of TREB MLS®**

59. Every month, TREB puts out a publication called Market Watch. Market Watch is available to the public through TREB's website. Market Watch provides statistics about transactions processed through TREB's MLS®. The December 2011 edition of Market Watch is attached to my witness statement as **Exhibit "Q"**.

60. Market Watch includes aggregated statistics on transactions processed through TREB's MLS® for the month, and provides a statistical break-down of sold house prices by type and by neighbourhood. Market Watch is published several days after the end of the month (for example, the December 2011 Market Watch was published on January 5, 2012).

61. Market Watch also contains year-to-date statistics, and year-over-year statistical comparisons. As indicated in the December 2011 edition of Market Watch, 89,347 residential properties were sold through the TREB MLS® in 2011.

62. Not everyone that sells their home in the GTA does so through the TREB MLS®. Homes can be sold by the owner, or by a real estate professional that is not a Member of TREB. For Sale By Owner (“FSBO”) websites exist that help facilitate FSBO transactions. Examples of these include The Property Guys, ComFree, Kijiji, Craigslist, FSBO Network, and many others.

63. In addition, many new homes, especially condos, are sold directly by the developer and are not processed through TREB’s MLS®.

### **REALTOR.CA**

64. REALTOR.ca is a public website that is operated by CREA. Anyone with Internet access can go to the website REALTOR.ca and search for properties that have been listed for sale. It is my understanding that CREA obtains its MLS® information from a variety of local real estate boards, who provide CREA with subsets of their MLS® data.

65. TREB uploads active listing data from the TREB MLS® database to CREA once every 24 hours, pursuant to an agreement between TREB and CREA. The CREA/TREB Content Upload Agreement is attached to my witness statement as **Exhibit “R”**.

66. The active listing data uploaded to CREA is a subset of the information that is contained in the TREB MLS® database. Certain confidential data fields are not provided to CREA for display on REALTOR.ca, such as names of owners, the sold price of a property, the fact that a property has been conditionally sold, and the “remarks for brokerages.” The majority of the listing information inputted in the TREB MLS® database about a listed property is displayed on [www.REALTOR.ca](http://www.REALTOR.ca).

67. Listing information will not be uploaded to CREA for any properties where the owner has indicated that they do not want the listing of the property distributed to the Internet.

68. TREB also provides CREA with sold information on a monthly basis, and CREA uses this information to generate aggregated market activity statistics and other reports, in accordance with the agreement between TREB and CREA.

## INTERNET DATA EXCHANGE

69. An Internet Data Exchange, or “IDX,” is an agreement between separate brokerages (or groups of brokerages) to advertise each other’s listings on each other’s websites.

70. There are many different kinds of IDX agreements, and it is my understanding that many Member brokerages have IDX agreements directly among themselves, completely independently of TREB.

71. TREB began offering its own centralized IDX program on January 5, 2010. Members have the option of whether or not they want to opt in to TREB’s IDX. Members that opt in to TREB’s IDX are able to display on their websites the listings of all other participating Members (except for listings where the home seller indicated in the MLS® Data Information Form that they did not want their listing to be advertised by members of other brokerages, or sent to Internet portals). The listing information available through an IDX is similar to the listing information that would be available through REALTOR.ca. Information about sold and pending sold properties is not available through TREB’s IDX feed. Visitors to a Member’s IDX website do not need to register in order to browse properties that have been advertised for sale.

72. TREB’s original IDX was provided in a “framed” environment. This means that when a member of the public accesses the IDX area of a Member’s website, the functional “IDX” portion of the website takes up the majority of the screen. The IDX portion of the webpage is surrounded, or “framed”, by the Member’s own branding. The actual IDX portion of the screen is hosted by TREB’s servers. In other words, when a member of the public views a Member’s IDX page, the website they are looking at obtains part of the display from the Member (the surrounding “frame”), and part of the display from the TREB system. The Member has no ability to modify the display or content in the framed IDX, as the IDX interface is being provided by the TREB system and the Stratus software.

73. The framed IDX is a low-cost web-based tool for Members, since all of the data manipulation and storage is done by the TREB computer system. Essentially, visitors to the

Member's website are using TREB's computer resources when they use that Member's framed IDX.

74. In November, 2011, at approximately the same time TREB began its VOW datafeed, TREB made available to its Members a downloadable version of its IDX service. With the downloadable IDX service, Members can directly download MLS® listing information in a "raw data" format. This data is stored on the Member's computer system, and the Member can integrate the TREB IDX data into their website as they wish. With the downloadable IDX service, the Member (or website provider) determines how the data is displayed on their website. The downloadable IDX service offers Members more flexibility, and gives Members the ability to add additional features to their IDX display that would not be possible in the framed format.

75. The data available in the downloadable IDX is the same as the data that is available in the framed version of the IDX. TREB currently offers both types of IDX to its Members. Members that subscribe to either form of IDX share listings with all other IDX subscribers. The current version of TREB's IDX Agreement is attached to my witness statement as **Exhibit "S"**.

76. There are currently 431 firms that are part of the IDX program, representing 27,954 Members. Both the downloadable and framed IDX are provided by TREB at no extra cost to its Members. The framed IDX option has been in existence for approximately 2 ½ years, and the downloadable IDX option has been in existence for approximately 8 months. With education and normal evolution, I expect that an even greater number of brokerages will participate and allow their listings to be part of the IDX feed.

## **TREB'S PROTECTION OF THE PRIVACY OF CLIENT INFORMATION**

### **(a) TREB's General Concerns about Privacy**

77. The protection of Member and consumer privacy is a priority for TREB. The success and usefulness of the TREB MLS® system is dependent on the quality and comprehensiveness of the information contained within the MLS® database. The information that populates the MLS® database comes from the personal and confidential information that clients entrust with Members.

78. It is essential that TREB preserves the trust and confidence of both Members and clients by maintaining the privacy and security of sensitive client information. TREB has a number of rules, policies, and safeguards designed to protect the quality, integrity, and confidentiality of client information, and to ensure, to the best of its ability, that the use and disclosure of personal or confidential information is done in accordance with relevant provincial and federal laws.

79. The type of personal and confidential information that is exchanged between a consumer and a Member will depend on whether the consumer is a buyer or a seller, as well as the specific needs of the consumer.

80. Sellers will provide sensitive information such as their name, address, physical property details, information relating to personal financial details (i.e. information about their mortgages, motivation for selling, the price at which the client purchased the home), information about their home, photos or video tours of the home, and instructions relating to open house showings.

81. Buyers will also share sensitive information, including financial information, age, insurance information, assets, employment status, and motivation for buying.

82. Von Palmer is TREB's Chief Privacy Officer. Mr. Palmer is TREB's designated privacy representative as required by the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 (*PIPEDA*). Mr. Palmer helped to establish TREB's privacy policies, which were implemented in January, 2004 in accordance with the *PIPEDA* requirements.

83. TREB maintains comprehensive privacy policies and information security policies which, among other things, govern the collection and use of information from members and consumers. TREB's privacy policy is attached to my witness statement as **Exhibit "T"**, TREB's Ongoing Management (Privacy Review) Policy is attached to my witness statement as **Exhibit "U"**, and TREB's Information Security Policy is attached to my witness statement as **Exhibit "V"**.

84. Part of Mr. Palmer's ongoing duties include dealing with queries from Members and the public about TREB's privacy policies, facilitating privacy education to Members, and ensuring that Members are equipped with the information and tools relating to privacy that they need to effectively provide real estate services to their clients.

85. TREB receives and responds to privacy related complaints and issues, from members on behalf of their clients, and from members of the public directly. While TREB does not always have the authority to deal directly with a complaint involving a breach or an alleged breach of *PIPEDA*, TREB always takes these complaints seriously, conducts investigations when necessary, and intervenes to the extent that the complaint involves the breach of a TREB Rule or Policy.

86. In the past, TREB has received complaints relating to the reporting of conditional sold information, the improper solicitation or use of contact information of a seller after the expiry of a listing, concerns about the privacy of information on a listing, requests for removal of photographs or other information, and complaints about the improper publication of sold data by other members.

**(b) Privacy Education**

87. TREB educates and provides resources and support to its Members on issues of privacy through a variety of methods. TREB's Members are subject to privacy obligations under both *PIPEDA*, and the Code of Ethics (administered by RECO).

88. One of the educational programs offered by TREB is called "Complying with Privacy." Participants in this program receive a "Complying with Privacy" workbook that contains a comprehensive overview of privacy issues in the real estate profession. The "Complying with Privacy" workbook is geared towards assisting Members in meeting their obligations under *PIPEDA*. The workbook explains the concepts of: personal information, what is required to obtain informed consent to disclose personal information, and various other *PIPEDA* compliance issues. A brochure of the information covered in the workbook, including a FAQ on privacy, is generally available to all TREB Members. The Complying with Privacy workbook is attached to my witness statement as **Exhibit "W"**.

89. TREB also addresses privacy issues in a variety of other educational settings including educational seminars at RealtorQuest (a REALTOR® trade show and conference hosted by TREB), and the "Topical Issues Facing REALTORS®" educational program.

90. As a practical tool for its Members, TREB has made available to its Members a document containing “Questions and Answers” on a variety of privacy-related topics, including the distribution of CMAs, the disclosure of sold prices, and the use of expired listings. Regarding CMAs in particular, TREB recommends that a CMA should be treated as a confidential document between the Member and the seller or prospective buyer, and that CMAs should not be released to the general public. One reason that TREB has made this recommendation is that CMAs typically feature the sold (or pending sold) price of comparable properties. This information is highly sensitive to the buyer and seller of the comparable property. It is TREB’s view that this information should not be widely made available, and that if that information was widely distributed by a Member, that Member could run into compliance problems with *PIPEDA* and RECO.

91. TREB’s “Questions and Answers” on privacy issues is available to Members through the TREB intranet website. TREB came up with the “answers” to these privacy questions by consulting with its legal counsel, as well as consulting with CREA and OREA. TREB’s “Questions and Answers” on privacy is attached to my witness statement as **Exhibit “X”**.

92. Because of the uncertainty surrounding the application of *PIPEDA* with respect to the use of certain information, including sold data for the purpose of creating a CMA, TREB wrote to the Privacy Commissioner requesting that the Commissioner review its “Questions and Answers” on privacy issues. TREB also requested that a representative from the Commissioner’s office speak at RealtorQuest in May, 2012. The Commissioner declined the invitation to speak and has not yet commented on the Question and Answers.

93. TREB specifically updates Members about relevant RECO and *PIPEDA* decisions. These decisions are published by TREB as they are released by RECO or the Privacy Commissioner.

94. TREB also maintains for its members a “Privacy Compliance Corner” on the TREB intranet. There, TREB posts updates on decisions of the office of the Privacy Commissioner, the Questions and Answers referenced above, relevant articles on privacy, interpretations and guidance on the appropriate use and disclosure of information, links to privacy-related resources

provided through CREA and OREA as well as guidance as to how to advertise in accordance with the relevant RECO and *PIPEDA* rules.

95. TREB offers its Members a variety of educational and information tools to guide them to treat client information appropriately and to comply with privacy laws and regulatory requirements regarding this information, because Members and their brokerages are subject to these laws. That being said, TREB does not have the practical capacity to police how its Members use the sensitive information that they have obtained from TREB's MLS®.

**(c) Privacy and Consent**

96. TREB's Members collect personal information from their clients, and that information in turn may be posted on the TREB MLS® database. *PIPEDA* imposes obligations on both TREB and its Members in this regard. Informed consent must be obtained before any personal information is posted to the TREB MLS®. Because Members are the ones with direct contact with clients, TREB relies on its Members to obtain the consent of clients prior to uploading of any information to TREB's MLS® database.

97. TREB recommends that Members use OREA's standard form agreements in their real estate practice, including the standard Listing Agreement, and Buyer Representation Agreement. These forms contain consents that permit Members to submit information to the TREB MLS® database, and set out the purposes to which this information can be used. The seller will also sign TREB's MLS® Data Information Form before the listing information is uploaded to the MLS®. Current versions of OREA's Listing Agreement and Buyer Representation Agreement are attached to my witness statement as **Exhibit "Y"**.

**DATA SCRAPING FROM THE TREB MLS®**

98. TREB has real concerns about the misuse of its data and has experienced incidents of data misuse and misappropriation in the past. Because TREB's data is accessed electronically, TREB must be vigilant about the scope of the access it provides to Members, consumers, and third parties, and it must be mindful of the unique problems that arise when data is shared in an electronic environment.

99. One of TREB's biggest concerns is data scraping.

100. Data scraping is a term used to describe the unauthorized taking and misuse of proprietary information. This usually involves the unauthorized bulk downloading of information using various technological tools enabling a party to copy the entire contents of the MLS®. Data scraping not only violates TREB's rules and policies, but also is a violation of *PIPEDA* and RECO's Code of Ethics because it involves the unauthorized download and misuse of personal information.

101. TREB has experienced significant problems with data scraping. In 2007 and in years prior to that, TREB offered a bulk data feed download as part of the MLS® interface it provided to its Members through the TREB intranet. The bulk data feed download button allowed brokers to download a large volume of listing information at one time from the TREB MLS®. The bulk data feed was intended to assist Members with their own neighbourhood analyses.

102. In 2007, Fraser Beach and Bell New Ventures (a brokerage owned by Bell Canada) took advantage of this bulk data offering and scraped the data which Mr. Beach used to create his own online listing database. This misuse of the MLS® listing data was a breach of TREB's Authorized User Agreement, and TREB terminated Beach's access to the MLS®.

103. Several months after Fraser Beach scraped the MLS® database, Stephen Moranis and Realtysellers scraped the MLS® data to create a Realtysellers database. This misuse of the MLS® listing data was a breach of TREB's Authorized User Agreement, and TREB terminated Moranis' access to the MLS®.

104. As a result of the conduct of Beach and Moranis, and in an effort to discourage similar misuse of the MLS® data, TREB disabled the bulk download function. This function remains disabled.

105. Also in 2007, TREB was aware that Mark Enchin was marketing a website service under the name "RealtyInfo" that contained listing data from the GTA. At the time, TREB was concerned that Mr. Enchin was potentially scraping data from TREB's MLS® based on member complaints related to Mr. Enchin's marketing activities. Our counsel arranged for an

investigation of Mr. Enchin's website service, but the results were inconclusive and his MLS® access was not terminated at that time. As Mr. Enchin's witness statement in this proceeding makes clear, he was apparently scraping TREB's MLS® data for use in his website service.

106. As part of its ongoing efforts to maintain the security of the MLS® data, TREB has put in place several security systems such as Strong Authentication. Strong Authentication utilizes technology that includes the concepts of "something you have" and "something you know". Each Member must have an authenticator or key fob device which generates a unique and single use numerical passcode every 60 seconds. This passcode is then entered as part of the Member's credentials when accessing the TREB MLS system. The Member's User ID and PIN form the "something you know," and the authenticator forms the "something you have" component of Strong Authentication.

107. TREB also monitors the MLS® activity of those individuals with higher than normal use or unusual usage patterns in order to try and detect possible misuse.

108. Fraser Beach and Stephen Moranis are the only Member whose MLS® access have been terminated by TREB for data scraping.

#### **HISTORY OF THE VOW TASKFORCE**

109. In very general terms, a Virtual Office Website ("VOW") is a password protected website operated by a real estate brokerage, broker, or salesperson where customers/clients of that brokerage, broker, or salesperson can view certain listing information for properties that are listed for sale. The source of some of the information displayed on a VOW could be an electronic MLS®.

110. The data that is provided to VOW operators is determined by the input supplier (TREB in this case), but the format in which the information is displayed to the consumer is determined by the VOW operator.

111. TREB first became aware of and began monitoring the VOW concept as early as 2002.

112. In 2005, the American Department of Justice commenced anti-trust proceedings against the National Association of Realtors (“NAR”) challenging certain provisions of NAR’s VOW policy. TREB was reluctant to proceed further with the VOW concept while this litigation was ongoing.

**(a) 2008 TREB Task Force and CREA Task Force**

113. In July 2008, in consultation with the Competition Bureau, TREB began the process of establishing a formal VOW Task Force with the objective of determining if and how TREB could develop a VOW policy. TREB asked the Competition Bureau to provide a representative to its Task Force, and it declined.

114. On July 8, 2008 the Board of Directors ratified a proposed list of Member Appointments to the Vow Investigation Task Force. The minutes of the July 8, 2008 meeting of the Board of Directors are attached to my witness statement as **Exhibit “Z”**.

115. TREB believed that this was a national issue, and that the VOW Investigation Task Force would benefit from participation of a CREA representative and CREA’s legal counsel. TREB communicated this to the Competition Bureau and it was understood and acknowledged that CREA should be the organization to take care of creating a VOW policy, because such a policy would have national implications. As a result, the TREB task force of 2008 never got off the ground.

116. The CREA VOW Task Force stalled after reaching a point of impasse with the Competition Bureau in 2009, around the same time that the Competition Commissioner commenced a proceeding against CREA regarding a different matter.

117. During the existence of the CREA VOW Task Force, TREB continued to develop its own web-based tools to offer to its members. In particular, TREB had turned its efforts and focus to establishing the frameable IDX, which was made available in January of 2010. This solution allowed members to share their own listings on their personal website with all of the brokerages who wished to do the same and it remains a popular option among Members today.

**(b) 2010-2011 VOW Task Force**

118. In July, 2010 TREB conducted a strategic planning exercise with its newly elected Board of Directors. At this time, TREB decided to revive the efforts to establish a VOW Task Force. Attached to my witness statement as **Exhibit “AA”** is the TREB’s 2010/2011 Strategic Plan.

119. Names of potential task force members were submitted to the Board of Directors in March, 2011 for ratification.

120. Heather Fuller was a member of the Board during 2010/2011, and she was selected as the chair of the VOW Task Force. The other members of TREB’s Vow Task Force were selected by the Board and Ms. Fuller, on the basis of certain general criteria. Specifically, the Board looked for a balance of experience and also younger “plugged in” innovative individuals, with a good understanding of the Internet and how it could be utilized as a tool for brokers. The Board also aimed to have the Task Force members reflect a broad geographic representation with respect to the cities and neighbourhoods in which they work. The members chosen for the VOW Task Force were brokers or salespeople that worked in and around the GTA, and all were Members of TREB.

121. I acted as the staff liaison to the VOW Task Force, and I attended all meetings of the VOW Task Force. John Di Michele, TREB’s Chief Information Officer, acted as an advisor to the VOW Task Force.

122. The mandate of the VOW Task Force was to investigate and recommend to the Board of Directors the feasibility of TREB adopting a VOW Policy. As part of its mandate, the Vow Task Force was to review the various areas of concern raised by the Competition Bureau with respect to the VOW issue in Canada and to make recommendations in this respect.

123. Before the first meeting of the VOW Task Force, members of the Task Force considered some relevant American documentation. NAR had entered into a settlement with the Department of Justice in 2008 regarding the VOW lawsuit on a “no admission of liability” basis. As part of the settlement, NAR amended its VOW Policy and its MLS Rules. The Task Force committee members were asked to review the NAR documents, and to comment on whether the U.S.

policies would serve as a good starting point, or whether TREB would need to develop its own policies from scratch. My e-mail of March 25, 2011 to the VOW Task Force, including attachments, is attached to my witness statement as **Exhibit “BB”**.

124. The VOW Task Force met for the first time on March 31, 2011. Minutes of this meeting are attached to my witness statement as **Exhibit “CC”**.

125. [REDACTED]

126. [REDACTED]

[REDACTED]

[REDACTED]

127. The Task Force met for the second time on April 21, 2011. Minutes from this meeting are attached to my witness statement as **Exhibit “DD”**.

128. [REDACTED]

[REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

[REDACTED]

130. [REDACTED]

[REDACTED]

[REDACTED]

131. [REDACTED]

[REDACTED]

[REDACTED]

132. [REDACTED]

[REDACTED]

[REDACTED]

133. The third meeting of the Task Force was held on May 12, 2011. Minutes from this meeting are attached to my witness statement as **Exhibit “EE”**.

134. [REDACTED]

[REDACTED]

[REDACTED]

135. [REDACTED]

[REDACTED]

136. [REDACTED]

[REDACTED]

[REDACTED]

137. [REDACTED]

[REDACTED]

[REDACTED] **Exhibit “FF”**.

138. As a result of the meetings held on March 31, 2011, April 21, 2011 and May 12, 2011 the Task Force reached a consensus on a number of issues and a Task Force report was circulated to the Board of Directors on May 18, 2011 for consideration at the next Board meeting. This report was also provided to members of the Task Force.

139. A fourth meeting of the VOW Task Force was held on May 20, 2011. The minutes of this meeting are attached to my witness statement as **Exhibit "GG"**.

140. [REDACTED]

141. [REDACTED]

142. [REDACTED]

143. [REDACTED]

144. [REDACTED]

145. [REDACTED]

146. [REDACTED]

[REDACTED]

147. [REDACTED]

148. [REDACTED]

(c) **Approval Process**

149. On May 26, 2011 the Board of Directors considered the report of the VOW Task Force, and gave initial approval to the VOW Policy and Rules. A Memo summarizing this meeting is attached to my witness statement as **Exhibit “HH”**.

150. The Commissioner of Competition commenced this Application on May 26, 2011, before TREB’s Board of Directors had an opportunity to consider it. The Commissioner was aware of the work of TREB’s VOW Task Force when she did so.

151. Because the VOW Policy and Rules involved changes to the MLS® Rules and Policies, the VOW Policy and Rules had to be reviewed by TREB’s MLS® Committee. On June 1, 2011, the MLS® Committee met to consider the VOW Policy and Rules. I was present at this meeting.

152. [REDACTED]

[REDACTED]

[REDACTED] **Exhibit "II"**.

153. [REDACTED]

154. The VOW Policy and Rules were approved by votes of the Board of Directors on June 9, 2011, and June 23, 2011. Minutes from the June 9, 2011 meeting of the Board of Directors are attached to my witness statement as **Exhibit "JJ"**, and minutes from the June 23, 2011 meeting of the Board of Directors are attached to my witness statement as **Exhibit "KK"**.

155. On June 24, 2011, in accordance with TREB's MLS Rule Change Policy, TREB published the VOW Policy and Rules for a 60-day review period and issued a news release in this regard. TREB received and considered comments from its Members during this 60 day review period. TREB's MLS Rule Change Policy is attached to my witness statement as **Exhibit "LL"**. TREB's June 24, 2011 press release, along with other VOW policy documents published for member review are attached to my witness statement as **Exhibit "MM"**.

156. On August 25, 2011, after the expiry of the 60 day review period, the Board of Directors approved the VOW Policy and Rules and commenced the process of developing the technological infrastructure to implement the VOW datafeed. Minutes from the August 25, 2011 meeting of the Board of Directors are attached to my witness statement as **Exhibit "NN"**.

157. The VOW datafeed went live on November 15, 2011. The VOW Rules and Policies are attached to my witness statement as **Exhibit "OO"**.

**TREB'S VOW DATAFEED****(a) Terms of Access**

158. In order to have access to TREB's VOW datafeed, Members (and also Affiliated VOW Partners ("AVP"),<sup>2</sup> where applicable) must sign the TREB VOW Datafeed Agreement. This agreement is attached to my witness statement as **Exhibit "PP"**.

159. Use of the TREB VOW datafeed by Members and AVPs is governed by the terms of the TREB VOW Datafeed Agreement and TREB'S MLS® Rules and Policies (including the VOW Policy and Rules).

160. Some key provisions of TREB's VOW Policy and Rules include the following:

- (a) a member of the public may only access TREB MLS® information on a Members VOW if: the Member has first established a broker-consumer relationship, the Member obtains the name and a valid e-mail for a consumer, the consumer has agreed to prescribed "terms of use," and the consumer creates a user name and password for the Member's VOW (R 800, 805);
- (b) the right of a Member's VOW to display listing information in response to consumer searches is limited to the display of MLS® data supplied to the VOW by TREB (R 802);
- (c) a Member's VOW may provide other features, information, or functions in addition to the display of TREB MLS® information; (R 803)
- (d) a Member's VOW may display an automated estimate of the market value of a given listing in immediate conjunction with the listing, unless the seller of that listing requests that such a feature be disabled for their listing. If such a request is made, the Member may display that the feature has been disabled at the request of the seller (R 815)
- (e) the VOW's "terms of use" must contain an acknowledgement of TREB's ownership of, and the validity of, TREB's proprietary rights and copyright in

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<sup>2</sup> TREB's VOW Policy and Rules allow a brokerage to operate and manage a VOW in-house using the IT resources of the brokerage, or alternatively through a third party Affiliated VOW Partner ("AVP"). The AVP option allows brokerages to operate a VOW even where they have limited IT resources available to them in-house. AVPs do not have independent participation rights in the TREB MLS®, and AVPs have the right to use TREB MLS® listing information only in connection with operating a VOW for a TREB Member. An AVP may operate a Member's VOW only under the supervision of the Member (R 800, 822)

TREB's MLS® database, TREB'S MLS® system, the listing information displayed on the VOW, and any other related information (R 808vi)

- (f) A Member, whether through their VOW or by any other means, may not make available for search by, or display to, consumers the following TREB MLS® data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:
- (i) Expired, withdrawn, suspended, or terminated listings, and pending solds or leases, including listings where sellers and buyers have entered into an agreement that has not yet closed;
  - (ii) The compensation offered to other Members;
  - (iii) The seller's name and contact information, unless otherwise directed by the seller to do so;
  - (iv) Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property; and
  - (v) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws (collectively, the Confidential Data) (R 823)

161. The VOW terms of use must include an acknowledgement that the consumer will not directly or indirectly display, post, disseminate, distribute, publish, broadcast, transfer, sell, or sublicense any listing information to another individual or entity. The VOW terms of use must also include an acknowledgement that the consumer will not collect, store, re-organize, summarize, or manipulate any listing information or related data through, without limitation, "scraping" or "data mining" (R 809).

162. The TREB VOW Datafeed Agreement provides that access to the VOW datafeed may be suspended or terminated if a Member or AVP breaches the TREB VOW Datafeed Agreement or TREB'S MLS® Rules and Policies.<sup>3</sup>

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<sup>3</sup> Arts 12.2 and 12.3. Article 12.3 sets out other grounds for termination of the VOW datafeed, including a Member ceasing to maintain its status with TREB, an AVP no longer being designated by the Member to operate the Member's VOW, or a Member or AVP using the VOW datafeed in an unauthorized manner.

163. Article 7.1 of the TREB VOW Datafeed Agreement provides for the preservation of TREB's intellectual property rights. This Article contains an acknowledgment by the Member (and AVP, if applicable) that TREB's MLS® data, TREB's MLS® database, TREB MLS® system, the listing information contained in the TREB MLS® system, and the VOW datafeed are proprietary to TREB and/or TREB's licensors, and these items are:

protected by copyright, trademark, patent, and other intellectual property laws of Canada and international treaties and conventions and by any other applicable laws. (Art 7.1)

164. The information that is not included in the VOW datafeed is available to VOW operators, just as it is to all of its Members, through the TREB MLS®, which is accessible to Members through TREB's intranet website.

**(b) How the VOW datafeed works**

165. The VOW datafeed is an electronic connection over the Internet between a Member's VOW and the TREB MLS® third party database. A diagram of the architecture of how the VOW datafeed works is attached to my witness statement as **Exhibit "QQ"**, and a description of the VOW datafeed process follows in the paragraphs below.

166. TREB's MLS® consists of the main database (which is the database that Members access through [www.torontomls.net](http://www.torontomls.net)), and a separate "mirrored" third party database. This third party database is a copy of the main MLS® listing database, and the third party database gets automatically updated whenever the main MLS® database is updated. It is from this third party database that TREB transmits data to third parties pursuant to various agreements, including CREA (for use on REALTOR.ca), the participants in TREB's IDX feed, and the VOW datafeed.

167. Data transmitted from the third party database to a third party is filtered by software, which sets permissions on the data that the third party is entitled to receive. In other words, the VOW datafeed only transmits the listings and data fields that are supposed to be included in the VOW datafeed.

168. The VOW datafeed contains all non-confidential TREB MLS® data except for listings where the seller has elected to withhold the listing from the Internet (Policy 17).

169. A VOW downloads the TREB MLS® data to its own website server through the VOW datafeed. The TREB MLS® data is transmitted to the VOW in a raw data format. This means that the data is received by the VOW in an unformatted fashion, and the VOW can present the data to the consumer in whatever manner the Member (or AVP) chooses, subject to certain restrictions.<sup>4</sup>

170. Visitors to a VOW are not searching MLS® data directly from TREB's MLS® database. Such a set-up would create issues with data security for the additional source MLS® data, and it would be expensive to implement, since it would add technological strain to TREB's MLS® system. Instead of 35,000 Members accessing the MLS® database, there could be hundreds of thousands, or even millions of users accessing the MLS® database.

171. VOW operators are required to refresh the VOW datafeed once every 24 hours. (Rule 817). This ensures that the listings on the VOW are accurate and current, and it ensures that withdrawn, expired, suspended, or terminated listings, and pending solds are purged from the Member's VOW.

172. TREB MLS® data may be displayed in conjunction with other third party information that the Member wishes to provide for a given listing (including such things as local school ratings, crime statistics, etc), so long as the source of the information is stated on the VOW.

173. TREB's VOW Datafeed Agreement grants a Member (or a Member's AVP if applicable) a limited license to display TREB MLS® listing data for the sole purpose of use by consumers that have a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the Member's VOW (art 4.1).

174. The VOW datafeed is provided to Members without additional charge.

175. A single VOW datafeed can cover one brokerage with multiple offices and a number of sales persons, but each brokerage requires its own VOW datafeed.

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<sup>4</sup> For example, the number of listings that a consumer may view or retrieve from a VOW in response to an inquiry is limited to 100 listings (Art 6.3(b)), and the VOW may not change the content of any information transmitted through the VOW datafeed.

176. As of July 25, 2012, 93 brokerages have signed up to receive the VOW datafeed. 61 of these brokerages are using the services of an AVP. A list of these brokerages and AVPs is attached to my witness statement as **Exhibit "RR"**. The vast majority of the brokerages that have signed up for the VOW feed are brokerages that have been operating over several years, and not new entrants to the GTA market.

## **THE VOW DATAFEED GOING FORWARD**

### **(a) Privacy issues are still a concern**

177. By providing its Members with the VOW feed in its current form, TREB is providing its Members with an additional tool they can use in their business. TREB wants to make sure that the VOW feed is being provided in a way that does not create any legal liability problems for it or its Members.

178. One of the challenges that the Task Force faced, and that the real estate industry faces in general, is that all that the industry has for guidance on the subject of privacy are statements and rulings that are issued by RECO and the Privacy Commissioner's office. It is incredibly difficult to get definitive statements from RECO or *PIPEDA* on some issues.

179. The industry has tried to be proactive about soliciting input from RECO and the Privacy Commissioner on various interpretation issues throughout the years. TREB's efforts to get some feedback from the Privacy Commissioner on TREB's privacy "Questions and Answers" is a perfect example.

180. In coming up with TREB's VOW Policy, TREB has done its best to try and interpret the existing rulings and policies that have come from the Privacy Commissioner and RECO, and TREB is trying to operate in accordance with the applicable laws. The VOW Policy was drafted in such a way that both TREB and its members should be operating in accordance with RECO and *PIPEDA*.

181. The content of the VOW feed is not set in stone. If RECO or the Privacy Commissioner provides new clarity or rulings on some of the issues that I have discussed above, then the feed

may change. I believe that TREB has taken a proper, reasonable, and responsible position in moving forward with the VOW issue.

**(b) TREB is open to feedback from its Members**

182. The VOW Task Force has continued to exist even after the implementation of the VOW Rules and Policies in November 15, 2011 in order to consider any comments and criticisms about the VOW Rules and Policies, including the content of the VOW datafeed.

183. TREB has not received any complaints about the content of its VOW datafeed other than from the witnesses put forward by the Commissioner of Competition in this Application

184. The Commissioner's witnesses have raised several complaints about the content of the VOW datafeed. I will provide TREB's response to these complaints.

185. **Sold and pending sold information:** as already discussed, these pieces of information raise legal and privacy issues. A comprehensive database of sold information is available to VOW operators through other sources such as Teranet and MPAC, and VOW operators are free to negotiate service agreements with these vendors for use in a VOW if they believe that *PIPEDA* and RECO permit the display of sold data. In addition, a brokerage will have access to its database of sold properties. Franchises will have access to a database of properties sold by its franchisees. For example, Century 21's website appears to contain a database of sold properties from its affiliated brokerages across Canada.

186. **Offer of cooperating broker commission:** this exclusion was part of NAR's VOW Policy that it negotiated with the US Department of Justice. The exclusion was incorporated into TREB's VOW Policy without much discussion or consideration. [REDACTED]

187. **Withdrawn, expired, suspended, or terminated listings:** this exclusion was part of NAR's VOW Policy that it negotiated with the US Department of Justice. The disclosure of this information raises legal and privacy issues.

188. **Lack of virtual tours and open house information:** TREB is currently considering how to include this information in the VOW datafeed.

189. **Geomapping:** TREB operates its Geomapping software on licence [REDACTED]  
[REDACTED] Mapping is a complex issue, and TREB will continue to try to find any solution to maximize accuracy of mapping on VOWs.

190. **Price change information:** TREB is examining how to include price change information in the VOW feed.

191. **Number of days on market:** Days on market is currently part of the VOW datafeed.

192. The VOW datafeed has been in existence for 8 months. This service is still in its infancy. TREB will continue to listen to the feedback of its Members in shaping the VOW Rules and Policies as it goes forward.

SIGNED THIS, this 27th day of July, 2012.

  
\_\_\_\_\_  
DONALD RICHARDSON  
THE TORONTO REAL ESTATE BOARD

# **EXHIBIT**

# **A**



# TORONTO REAL ESTATE BOARD

## 2011 / 2012 Strategic Plan



Confirming our strategic framework and 2011-2012 leadership priorities

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## 1. INTRODUCTION

As TREB begins its 2011/2012 term, we do so with an unwavering focus on serving the changing needs of our diverse membership.

The updated vision for TREB as outlined in this Strategic Plan is a result of a strategic planning process that involved the Board of Directors and the Senior Management Team in July 2011.

Recognizing that TREB is a Member-based association, our focus is to help Members meet the many challenges associated with conducting business in an increasingly complex environment amid economic uncertainty. In doing so, we strive to enhance the value that our association offers to all Members.

In order to achieve TREB's goals we will engage in existing strategies where appropriate and pursue a number of new directions that include:

- Encouraging Members to recognize and embrace their association's professional development opportunities by providing easy access to quality offerings.
- Expanding Brokerages' access to a variety of Outreach programs.
- Seeking increased TREB representation on all OREA and CREA Committees.
- Strengthening regional representation on the Government Relations Committee.
- Communicating the value of TREB membership and fostering Member participation in all aspects of TREB's activities.
- Recognizing the diversity of the membership and the clients they serve particularly in the communication process.
- Enhancing public perception of Members as trusted subject matter experts.
- Providing enhanced layers of information to assist the public in property selection.
- Developing a Board of Directors composition that better reflects the Membership's demographics and experience.
- Developing a leadership that is comprised of an optimal mix of new and experienced Members.

Member feedback and participation throughout the course of all initiatives is vital to the success of this plan. Together we can build on our achievements in advancing the continuing success of all Members.

## 2. CONFIRMING OUR MISSION STATEMENT

Our mission statement is a declaration of our core purpose and is intended to inspire and guide decision-making.

### **Our Core Purpose**

*Advancing the continuing success of our Membership*

### **Our Mission**

*To be a primary professional resource providing, protecting and promoting the continuing real estate success of all Members.*

## 3. A COMMITMENT TO OUR CORE VALUES

Over the years, TREB has evolved to meet the changing needs of its Members. At every decision-point, our flexibility has been grounded in our fundamental commitment to our core values. This unwavering commitment continues to inform our current focus.

### **TREB's Core Values**

***Integrity:*** Principled, fair and honest actions, sensible and responsible business and fiscal policies.

***Leadership:*** Visionary, progressive and innovative decisions; forward thinking, flexible and informed judgements.

***Professionalism:*** High standards that advance the industry and ensure well organized, high quality association services.

***Responsiveness:*** Member focused and Member friendly; effective communication, respect for the individuality of our Members and accountable to them.

***Value:*** Provide Member value/return on investment (ROI) in a productive and fiscally responsible manner.

***Environment:*** In planning all future activities TREB takes into consideration the welfare of our environment and future generations.

## 4. STRATEGIC FOCUS 2011-2012

Any organization's success is typically proportional to its ability to focus. Accordingly, in this plan we focus on strategies within three guiding commitments consistent with our Mission: *To provide, protect and promote our Members' continuing real estate success.* Furthermore, these strategies have been inspired by our updated Vision for TREB as well as by the key issues we currently face. The strategies we will undertake are provided below in no particular order: Each is important; furthermore, it is the interrelationship among and between them that will promote greater effectiveness as an Association.

The CEO will develop an operational plan to support the implementation of these goals. He, and his management team, will report at each 6 month interval on efforts to achieve these goals. Furthermore, an annual review will be completed and additional strategies developed as these strategies are achieved.

**Our Commitment to Members - "To PROVIDE"**

TREB Members and Brokerages will have convenient access to a reliable resource of essential information as well as educational products and services available in a variety of face-to-face, outreach and virtual formats.

TREB Members will be able to access useful knowledge, expert advice, and effective technology solutions to respond to current and anticipated needs.

TREB Members will understand and embrace the value of Professional Development opportunities offered by the Board, and choose to make TREB their preferred provider.

**OBJECTIVES:**

1. Members have easy access to all quality Professional Development (Programs & Services)
2. Ample opportunities are available to Members for two-way communication.
3. Members fully utilize the Professional Developments tools and services available.
4. Firm Members have the ability to charge e-commerce/REALTOR® Store purchase to Broker account.
5. Ensure Members are receiving relevant information in a timely manner.

**STRATEGIES FOR 2011-2012**

1. **Access to Information and Education**
  - a. Member Orientation content to be made available to New Members in advance of attending the Mandatory classroom session.
  - b. Brokers of Record/Managers to use the orientation tools to refresh the knowledge base of experienced sales people in their office.
  - c. Managers promote TREB's Training Courses.
  - d. Offer Professional Development catalogue to other jurisdictions.
  - e. Provide the explanation of plain language forms in other languages.
  - f. Explore the accessibility of courses for professional designations.
  - g. Use Social Media to "Ask the Coach"
  - h. Develop the "It's all at your fingertips" Campaign.
  - i. Create Multilingual Member Communications
2. **MLS® System Tools and Statistics**
  - a. Consider how to add new services to TorontoMLS on a continuous and planned basis.
  - b. Empower our Members by providing cutting edge tools (e.g. MLS®, IDX Download, VOWs, Syndication)
  - c. Provide Members with localized statistics for a system of revised logical trading districts in easily understood format for Members, consumers and the media; provide more readily available statistics.

3. **Member Communication and Feedback**
  - a. Incorporate Webinars (CE & non-CE credit) live video announcements.
  - b. Broker and Member webinars held electronically in addition to Broker Breakfasts.
  - c. Explore the viability of developing a library of online courses (CE and non-CE credit content).
  - d. Provide online information sessions (webinars) for Broker/Managers and Administrators.
  - e. Administrators receive e-blasts with updates to TREB operations and the reasons/benefits for changes.
  - f. Weekly updates on most frequent calls to the help desk to aid in Member communication/training.
  - g. Broker/Manager approves which administrator has access to e-REALTOR® Store.

**Our commitment to Members - To “PROTECT”**

TREB Members will enjoy regulatory and consumer confidence in the REALTORS® specialized knowledge, high professional standards, technological sophistication, productivity, and contribution to the community's economy and culture.

**OBJECTIVES:**

1. A commitment to strategic use of Member and consumer marketing research (including focus groups, interviews, written and web surveys, participation tracking, Broker Breakfasts, Member Forums, brain storming sessions, etc.).
2. Effective and coordinated communication and collaboration on issues of interest to TREB with RECO, OREA and CREA where appropriate.
3. Effective communication with GTA municipal politicians and staff and associated stakeholders, e.g. Building Industry and Land Development.(BILD).
4. Strong relationships with key media provide regular, high-quality and positive coverage of real-estate issues and topics that is based on accurate statistics and reliable information.
5. The value of a REALTOR® is clear to all such that Members maintain a key position in real estate transactions.

**STRATEGIES FOR 2011-2012**

1. **Strengthen TREB's relationships within organized real estate**
  - a. We need to enhance our relationships with OREA, CREA and RECO and seek to clarify our respective roles within organized real estate in order to avoid overlap of services and mandates.
  - b. Increase advocacy role with RECO and encourage Members to be more involved.

2. Seek as of right TREB representation on all OREA and CREA Committees.
  - a. Formal communication with OREA/CREA
  
3. **Strengthen GRC regional representation.**
  - a. East, West, Central & North local subcommittees reporting to GRC
  - b. Develop database of TREB Members and political contacts.
  - c. Establish regional focus groups to determine REALTOR® issues.
  - d. Contact local municipalities for schedules of Meetings/Board Appointments and seek REALTOR® representation.
  
4. **Strengthen our effectiveness in Advocacy and Lobbying**
  - a. Enhance/increase lobbying efforts on issues that directly affect/impact TREB Members, e.g. lawyers, trading, incorporation, environmental issues etc.
  - b. Lobby the province on an ongoing basis on the Act and/or RECO rules.  
Furthermore, we need to lobby all levels of government to facilitate the home buying process (e.g. CMHC inclusion of commission in buyer mortgage loan qualification).
  - b. Restructure GRC to develop and strengthen relationships with local politicians at all levels, in all TREB municipalities.
  - c. Continue to nurture the system of regional PAC representation and activity for the benefit of TREB Members in “905” areas and promote participation in OREA’s RPAC and TREB’s GR communication network on TorontoMLS.
  - d. Continue to implement a new municipal election strategy and political outreach plan.

Our commitment to Members -To “PROMOTE”

TREB will be an inclusive organization offering a valuable and enjoyable individual Membership experience and professional community with attractive benefits for current, past and future Members.

**OBJECTIVES:**

1. Members understand and appreciate our value package and choose to engage at all levels of Board activity.
2. Provide more opportunities where Member interaction promotes networking and the development of business relationships.
3. TREB communicates with Members in various languages
4. Encourage REALTOR® involvement in community causes such as homeless programs, charities, REALTORS Care Foundation, environmental issues, and quality of life.
5. Enhance public perception of Members as trusted subject matter experts.
6. Assist the public in listing searches by providing an enhanced layer of info.
7. The Board’s composition better reflects the Membership’s demographics and experience.
8. Leadership is comprised of an optimal mix of new and experienced Members.

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**STRATEGIES FOR 2011-2012**

1. **INTERNAL Communications**
  - a. Members receive information through multiple sources (APPs, e-mail, navigation bar, RSS feeds) (opt – in, opt-out)
  - b. Members can select to have front page information pushed to them in the format that they wish to see it. (e.g. like prospect match for info)
  - c. Managers identify Knowledge Officers within the Brokerage to receive all TREB information.
  - d. Members provide the Board with current contact information, Touchbase, email), languages spoken, past experience and skill set.
  - e. Member profiles to be searchable by all Members to share knowledge and skills (e.g. languages, other skills etc.)
  - f. Members to have access to help desk through online live chat or “Ask the Expert”.
  - g. Members to have access to all information using downloadable applications (e.g. iPhone, iPad, Blackberry etc. Apps.)
  
1. **EXTERNAL or Public Communication Plan**
  - a. TREB promotes Member good works through President’s Message, TREB public website, etc.
  - b. TREB provides valuable information on homeownership on its public site. (e.g. Houselogic)
  - c. TREB partners with the R/E Shows and Media to inform the public about local real estate topics each week (e.g. utilize YouTube)
  - d. TREB investigates renaming itself as a REALTOR<sup>®</sup> Association
  
2. **Create a heightened awareness of TREB lobbying activities and community involvement.**
  - a. Better Civic Night (review format)
  - b. Publicize Member involvement in local charities and organizations
  - c. More recognition awards for community involvement (Member/Non-Members)
  - d. Invite media to all TREB events
  
3. **Governance**
  - a. Consider specialty Divisions, each of which is represented on the Board. (e.g. YPN, Condo, Tech, Commercial). Criteria for each Division to be defined.
    - i. Members of the Division will be elected by the Membership.
    - ii. Chair will be elected by the Members of that Division.
    - iii. Chair will be appointed to the Board.
  - b. Reconfigure 8 Geographic Regions, each of which are represented by a Director on the Board.
    - i. Eliminate “Directors-at-Large”.
  - c. President-Elect elected by Board of Directors.
  - d. Appoint a “Consumer Advocate”.
  - e. The Leadership Development Committee finds new talent for Task Forces, Focus Groups, Committees, Board of Directors and Community Boards.
  - f. Set term limits for the Board of Directors.
  - g. Examine recognition to acknowledge and thank members of the Board of Directors for their contributions.
  - h. Invite subject matter experts to participate – when required.

- i. Provide recognition to Task Force, Committee, Division and Board participants based on adherence to attendance policy.
4. Consumers recognize and appreciate that TREB Members have a high level of professionalism.
    - a. TREB promotes a “Professionalism Topic of the Month” to focus Members attention on elevating their professional standards.
    - b. TREB develops video role-play presentations.
    - c. TREB provides translation APPs for TREB information (non-legal)
  5. REALTOR® QUEST
    - a. Maintain REALTOR® QUEST as a complimentary benefit for Membership. Improve logistics regarding delivery of food (ticketed). Provide larger education venues.

## CONCLUSION

Successful organizations recognize and celebrate their past achievements while striving to innovate based on a view of future strength and success. We are proud of TREB's history and of the many significant accomplishments we have achieved. Our successes in the past are the foundation on which we will build a strong future. We have ambitious plans for the year ahead and every confidence that we will achieve the goals we have collectively set for ourselves.

# **EXHIBIT**

# **B**

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# The Toronto Real Estate Board

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## By-Law

The following is TREB's By-Law ratified by  
the Annual General Membership October 20, 2011.

Effective October 20, 2011

This copy of the By-Law is for reference only.

The official copy is maintained at the TREB offices.

Future amendments to this By-Law will be posted on Toronto MLS.

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## ARTICLE 1

Interpretation and Corporate Matters

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## SECTION 1 - Name

1.01 The name of the Corporation shall be The Toronto Real Estate Board, hereinafter referred to as TREB.

## SECTION 2 - Definitions and Interpretations

2.01 For purposes of this By-Law, the term:

- (a) “**Act**” means the Real Estate and Business Brokers Act, RSO 2002, chapter 30, Schedule “C”, as amended, and any successor legislation;
- (b) “**Affected Members**” has the meaning set out in Article 4, Section 2.02;
- (c) “**Arbitration Act**” means the Arbitration Act, 1991, SO 1991, c. 17, as amended, and any successor legislation;
- (d) “**Banking Institution**” means a bank as defined by Schedule I of the Bank Act, 1991, c. 46, as amended, and any successor legislation;
- (e) “**Board of Directors**” means the Board of Directors of The Toronto Real Estate Board, as further described in Article 6, Section 1.02 hereof; “**Director**” means a person who is a member of the Board of Directors; and “**Directors**” means the Board of Directors, unless the context indicates otherwise;
- (f) “**Branch Office**” means any office of a Brokerage Member other than the main office, which is registered in accordance with the Act, and at which the public is invited to deal;
- (g) “**Broker of Record**” means a person registered as a broker under the Act, who is a director, officer, and shareholder, in the case of a corporate Brokerage Member, the sole proprietor in the case of a sole proprietorship Brokerage Member, or partner in the case of a partnership Brokerage Member, and who is or has been designated as the Broker of Record of the Brokerage Member for the purposes of the Act, this By-Law or the relationship between the Brokerage Member and TREB;
- (h) “**Brokerage**” includes a person, a partnership or a corporation registered under the Act as a broker and which is a Member of TREB;
- (i) “**By-Law**” means this By-Law, and all Schedules, Forms, additions or amendments hereto, as may be approved by the Board of Directors and confirmed in accordance with the provisions of Article 12 hereof, and includes any rule or regulation in force as approved by the Board of Directors from time to time, including rules and policies governing the Multiple Listing Service® of TREB and the Code of Ethics and Standards of Business Practice of TREB;
- (j) “**Chief Executive Officer**” shall mean the chief staff person responsible for the general operation of TREB under the direction of the Board of Directors;
- (k) “**Chief Returning Officer**” shall mean the chief person responsible for the conduct of an election;

## ARTICLE 1

**Interpretation and Corporate Matters**

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- (l) “**Committee**” means any Committee described in this By-Law and includes any Committee established by the Directors;
- (m) “**Corporations Act**” means the Corporations Act, RSO 1990, c. C-38, as amended, and any successor legislation;
- (n) “**Councillor**” has the meaning set out in Article 8, Section 3.01;
- (o) “**CREA**” means The Canadian Real Estate Association, or any successor organization;
- (p) “**CREA Code**” means the CREA Code of Ethics and Standards of Business Practice adopted or amended from time to time by CREA;
- (q) “**Defaulting Member**” has the meaning set out in Article 4, Section 2.01;
- (r) “**Deficit**” has the meaning set out in Article 6, Section 17.02;
- (s) “**Director-at-Large**” shall mean a Director elected by Voting Members from all four Regions;
- (t) “**Division**” means the Commercial Division of TREB;
- (u) “**Electronic Ballot**” means a form of electronic proxy issued by a Voting Member solely for the election of Directors that is completed and submitted in the manner set out in Article 5, Section 2.07;
- (v) “**Employed**” shall mean employed, appointed or authorized, whether by an employment contract (either oral or written) or by any other contract and, without limiting the generality of the foregoing, shall include an independent contractor relationship; and “employ”, “employs”, “employment” and “employee” shall have such similar expanded definitions;
- (w) “**Member**” includes Members of all types;
- (x) “**Membership Fee**” has the meaning set out in Article 4, Section 1.01;
- (y) “**MLS®**” shall mean the Multiple Listing Service® of TREB;
- (z) “**MLS® Notice Page**” means the page of notices published by TREB with the MLS® Listings;
- (aa) “**Office**” means a business office maintained by a Brokerage Member, and used for the Real Estate Business in compliance with all local zoning By-Laws and requirements and available to serve the public on a regular and consistent basis;
- (bb) “**OREA**” shall mean the Ontario Real Estate Association or any successor organization;
- (cc) “**OREA By-Law**” means the By-Law enacted by OREA, as may be amended from time to time by OREA;

## ARTICLE 1

**Interpretation and Corporate Matters**

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- (dd) **“Paper Proxy”** means a proxy in writing in the form prescribed by the Corporation, and attached as Forms “C” “D” & “F” as applicable, signed by a Voting Member or someone authorized by him, under power of attorney, to sign the proxy on behalf of that Voting Member;
- (ee) **“Past President”** means the person who has most recently served as President and who is willing and able to serve as Past President;
- (ff) **“President”** means the person who has most recently served as President-Elect and who is willing to serve as President;
- (gg) **“President-Elect”** means the person who has most recently been elected by Members in accordance with Article 5 to serve as President-Elect;
- (hh) **“Real Estate Business”** includes the business of acting for compensation as agent or consultant in the buying, selling, exchanging, renting, managing or appraising of real property or the buying, selling, exchanging or appraising of businesses, together with any other activity for which registration is required under the Act, and specifically including without limiting the generality of the foregoing, mortgage brokerage, insurance brokerage, real estate financing and syndication, real estate development and the teaching of courses for TREB, CREA, OREA and real estate institutes;
- (ii) **“RECO”** means the Real Estate Council of Ontario, or its successors, from time to time;
- (jj) **“RECO Code”** means the Code of Ethics and Standards of Practice adopted or amended from time to time by RECO;
- (kk) **“Region”** means each of the four MLS® Districts; North, East, West and Central as identified by TREB from time to time; and “Regional” shall mean with reference to a Region;
- (ll) **“Registrar”** means the Registrar of Real Estate and Business Brokers appointed pursuant to the Act;
- (mm) **“Regulations”** means the current Regulations under the Act;
- (nn) **“Signing Officers”** has the meaning set out in Article 6, Section 10.02;
- (oo) **“Term Limit”** means the maximum number of consecutive terms of office for which a Director may hold office and which is further described in Article 6, Section 1.03(b);
- (pp) **“TREB”** means The Toronto Real Estate Board;
- (qq) **“Trust Company”** means a brokerage that is registered in the Loan and Trust Corporations Act (Ontario);
- (rr) **“Voting List”** has the meaning set out in Article 5, Section 13.06;
- (ss) **“Voting Member”** means a Broker Member, Salesperson Member or other Member entitled to maintain the right to vote under this By-Law, who is in good standing with TREB at the time of the meeting of Members and who is therefore entitled to vote at the

## ARTICLE 1

**Interpretation and Corporate Matters**

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meeting of Members pursuant to the provisions of this By-Law; and “Voting Members” means those Broker Members, Salesperson Members and those other Members entitled to maintain the right to vote under this By-Law who are in good standing with TREB at the time of the meeting of Members and are therefore entitled to vote thereat.

- 2.02 In this By-Law, unless the context otherwise requires:
- (a) words importing the singular shall include the plural, and vice versa;
  - (b) words importing the masculine gender shall include the feminine gender, and vice versa;
  - (c) “may” is construed as permissive; and
  - (d) “shall” is construed as imperative.
- 2.03 Where there is any reference made in the By-Law and any special resolutions of TREB, to any Statute or any part of it, such a reference shall also be deemed to include any amendment, re-enactment or successor legislation of that Statute as the case may be.
- 2.04 Where reference is made by number to provisions of this By-Law, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference.
- 2.05 Any word or term defined by the Act or by the Regulations shall have the meaning given to it in the Act or Regulations.
- 2.06 Except where expressly provided, the division of this By-Law into Articles, sections and sub-sections, and the insertion of headings, subheadings, marginal notes and table of contents or index (if any) are for convenience of reference only and shall not affect the construction or interpretation of this By-Law.
- 2.07 Any and all Schedules and Forms to this By-Law are expressly incorporated into and form part of this By-Law.

**SECTION 3 - Purpose**

- 3.01 The purposes and objects of TREB shall be those as set out in its Letters Patent as amended by its Supplementary Letters Patent from time to time.
- 3.02 If there is any conflict between what is stated in this By-Law, and the Letters Patent and Supplementary Letters Patent the provisions of the Letters Patent and Supplementary Letters Patent shall govern.

**SECTION 4 - Jurisdictional Area**

- 4.01 The jurisdictional area of TREB shall be as described in Schedule “A” attached to this By-Law.

**SECTION 5 - Head Office**

- 5.01 Head Office - The Head Office of TREB shall be at such place in the City of Toronto in the Province of Ontario as the Directors may determine from time to time.

## ARTICLE 1

**Interpretation and Corporate Matters**

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**SECTION 6 - Seal**

6.01 The seal, an impression of which is stamped hereunder, shall be the Corporate Seal of TREB.

**SECTION 7 - Fiscal Year**

7.01 Fiscal Year - The fiscal year of TREB shall be from July 1st to June 30th or on such other dates as the Directors may by resolution determine.

**SECTION 8 - Dissolution of TREB**

8.01 Dissolution - On dissolution of TREB its assets may be distributed, after payment of all debts and liabilities, only to charitable, not-for-profit or educational organizations for the purposes of social welfare, including affordable not-for-profit housing charity, education or civic improvement. The organizations to receive any such distribution shall be determined by resolution of the Members.

## ARTICLE 2

Membership**SECTION 1 - Categories of Membership**

1.01 The categories of Members in TREB are:

- (a) Broker;
- (b) Brokerage;
- (c) Honourary;
- (d) Honourary Life;
- (e) Non-Active Sustaining;
- (f) Retired;
- (g) Retired Honourary Life Member;
- (h) Salesperson;
- (i) Twenty-Five Year.

TREB will accept as Members persons, corporations or partnerships who comply with all requirements of TREB whether they are from within the Jurisdictional Area of TREB or not.

**SECTION 2 - Broker Member**

2.01 Any person shall be eligible for membership as a Broker Member who;

- (a) is registered as a broker under the Act with a Brokerage Member;
- (b) has completed a course or courses of education, as determined by the Board of Directors from time to time;
- (c) submits a completed application form within thirty (30) days from the date of registration as a broker under the Act together with the appropriate fees as set out in Schedule "B" to this By-Law;
- (d) is not in default of any financial obligation to TREB; and
- (e) has not been expelled or terminated by another Real Estate Board or Association for non-compliance of that Board's or Association's By-Law, Rules and Regulations, Code of Ethics and Standards of Business Practice, provided TREB receives evidence satisfactory to TREB that the expulsion or termination was not anti-competitive.

## ARTICLE 2

**Membership**

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**SECTION 3 - Brokerage Member**

- 3.01 Any Brokerage shall be eligible as a Brokerage Member:
- (a) which is registered as a brokerage under the Act;
  - (b) which carries on a Real Estate Business in the Province of Ontario;
  - (c) which has not previously filed an application for membership which was not accepted during the immediately preceding six-month (6) period;
  - (d) whose Broker of Record of the Brokerage has completed a course or courses of education as determined by the Board of Directors from time to time;
  - (e) which submits a completed application form together with the appropriate fees as set out in Schedule "B" to this By-Law;
  - (f) which is approved by the Board of Directors or its delegate;
  - (g) which Brokerage and whose Broker of Record is not in default of any financial obligation to TREB; and
  - (h) which Brokerage and whose Broker of Record has not been expelled or terminated by another Real Estate Board or Association for non-compliance with that Board's or Association's By-Law, Rules and Regulations, Code of Ethics and Standards of Business Practice, provided TREB receives evidence satisfactory to TREB that the expulsion or termination was not anti-competitive.

**SECTION 4 - Honourary Member**

- 4.01 The Board of Directors may elect any person as an Honourary Member for a period of time, as they may determine; such election to be determined by the Board of Directors by a unanimous vote.
- 4.02 An Honourary Member shall not be entitled to vote, to hold office or receive services.

**SECTION 5 - Honourary Life Member**

- 5.01 The Board of Directors may elect any person who is a Brokerage Member, a Broker Member or a Salesperson Member as an Honourary Life Member on approval by the Board of Directors by at least a three-quarters (3/4) majority vote.
- 5.02 A Broker Member or Salesperson Member in good standing who has been a Member of TREB for fifty (50) years shall be automatically granted Honourary Life Membership.
- 5.03 A Past President shall, upon the completion of the term of such office, become an Honourary Life Member without any election being required.

## ARTICLE 2

**Membership**

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- 5.04 An Honourary Life Member shall be entitled to all the rights and privileges of Brokerage, Broker or Salesperson membership held prior to the time of approval as an Honourary Life Member. Such rights and privileges do not include the payment by TREB of life insurance premiums.

**SECTION 6 - Non-Active Sustaining Members**

- 6.01 Any Brokerage Member, Broker Member or Salesperson Member who is prevented from carrying on a Real Estate Business due to a disability or other causes beyond his/her control or for reasons of maternity and/or parental leave, may obtain the status of Non-Active Sustaining Member in accordance with requirements established by the Board of Directors from time to time.
- 6.02 A Member's Non-Active Sustaining Member status shall be reviewed no less frequently than every twelve (12) months from the date the member attained such status.
- 6.03 On returning to an active Real Estate Business, a Non-Active Sustaining Member may be reinstated as a Brokerage Member, Broker Member or Salesperson Member, as applicable, in accordance with requirements established by Board of Directors from time to time.
- 6.04 A Non-Active Sustaining Member shall not be entitled to vote, to hold office or receive services and must continue to be registered under the Act.

**SECTION 7 - Retired Member**

- 7.01 A Brokerage Member, Broker Member or Salesperson Member who has been a Member of TREB for twenty-five (25) years is eligible to become a Retired Member in accordance with the requirements established by the Board of Directors from time to time.
- 7.02 A Retired Member shall not be entitled to vote, to hold office or receive services.

**SECTION 8 - Retired Honourary Life Members**

- 8.01 An Honourary Life Member who no longer carries on any Real Estate Business is eligible to become a Retired Honourary Life Member in accordance with requirements established by the Board of Directors from time to time.
- 8.02 A Retired Honourary Life Member shall not be entitled to vote or to hold office.
- 8.03 A Retired Honourary Life Member may subscribe and pay for standard individual life and accidental death and dismemberment insurance at the applicable rates available under TREB's group insurance policies. A Retired Honourary Life Member shall not be obligated to be a member of OREA or CREA to obtain or pay for MLS ® Access services.

**SECTION 9 - Salesperson Member**

- 9.01 Any person shall be eligible for membership as a Salesperson Member who:
- (a) is registered as a salesperson with a Brokerage Member under the Act;

## ARTICLE 2

**Membership**

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- (b) has completed a course or courses of education as may be determined by the Board of Directors from time to time;
- (c) submits a completed application form within thirty (30) days from the date of registration as a salesperson under the Act, together with the appropriate fees as set out in Schedule "B" to this By-Law;
- (d) is not in default of any financial obligation to TREB; and
- (e) has not been expelled or terminated by another real estate board or association for non-compliance of that board's or Association's By-Law, Rules and Regulations, Code of Ethics and Standards of Business Practice, provided TREB receives evidence satisfactory to TREB that the expulsion or termination was not anti-competitive.

**SECTION 10 - Twenty-Five Year Member**

- 10.01 A Broker Member or Salesperson Member in good standing who is not a retired Member and has twenty-five (25) years of Membership in TREB is eligible to become a Twenty-Five Year Member in accordance with the requirements established by the Board of Directors from time to time.
- 10.02 A Twenty-Five Year Member shall be entitled to all the rights and privileges of the type of Membership held prior to the time of approval as a Twenty-Five Year Member, provided as long as the Twenty-Five Year Member continues to be registered under the Act.

**SECTION 11 - Applications for Membership**

- 11.01 All applications for membership shall be in writing in such form and with supporting documentation as determined by the Board of Directors from time to time.
- 11.02 A former Brokerage Member or Broker Member in good standing who is terminated and who has applied for continuation under Article 3, shall be entitled to receive services of TREB from the time the completed application for continuation has been received by the Membership Department, and until such time as it is dealt with by the Board of Directors on the following basis:
- (a) the former Member shall pay for all such services as currently set by TREB;
  - (b) the services to be included shall be determined by the Board of Directors from time to time and shall be subject to other terms and conditions as the Board of Directors may impose; and
  - (c) the former Member shall be bound by the By-Laws, rules and Regulations of TREB.
- 11.03 An applicant shall pay the difference between entrance fees in effect at the time he/she first became a Member and those in effect at the time of reinstatement for the same type of Membership for which he/she is applying.

## ARTICLE 2

Membership

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**SECTION 12 - Members Generally**

- 12.01 (a) All Members, shall be deemed to have received and to have read the By-Law of TREB, MLS® Rules and Policies, Code of Ethics and Standards of Business Practice of TREB as approved by the Board of Directors and amended by it from time to time and the RECO Code, and have agreed to abide by them. Any breach of the By-Law of TREB, MLS® Rules and Policies, Code of Ethics and Standards of Business Practice by any Member, may be dealt with by the Arbitration and Professional Standards Steering Committee as provided for in this By-Law, including forwarding the matter to RECO, as provided for in this By-Law.
- (b) All Brokerage Members are responsible for Members registered with that Brokerage Member. Accordingly, any act or omission by any Member of Section 12.01(a) may likewise be a breach of that provision by the Brokerage Member with whom the Member is registered and in addition, depending on the facts and circumstances of the particular case, a Brokerage Member may be in breach of any other specific provisions of which a Member is charged. For purposes of clarity, it is hereby confirmed that each Member shall at all times be responsible for himself, notwithstanding that each Brokerage Member is additionally responsible for Members registered with that Brokerage Member.
- 12.02 Should a Member resign during an Arbitration hearing provided for in Schedule "C", and as a result of that resignation, such proceeding cannot continue since that person is no longer a Member, the Arbitration and Professional Standards Steering Committee may keep open the file on such proceeding and such proceeding may be restarted or continued, as appropriate, if and when such person again becomes a Member of TREB.
- 12.03 By this section, TREB draws to the attention of any past Members who wish to reapply as Members, the provisions of Article 4, Section 2.07 and the additional pre-conditions to approval of membership contained therein.

## ARTICLE 3

**Obligations and Reporting**

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**SECTION 1 - Obligations of Partnerships and Corporations**

- 1.01 Where a Brokerage Member of TREB is a partnership, every partner registered under the Act shall be a Broker Member. Membership Fees payable by each partner shall be as a Broker Member.
- 1.02 Where a Brokerage Member is a corporation, each of its Broker of Record registered under the Act and trading in real estate within TREB's jurisdictional area, shall become a Broker Member. Membership Fees payable by each such Broker of Record and director shall be as a Broker Member.
- 1.03 Partnerships and corporations, upon making application for admission as Brokerage Members, shall simultaneously provide TREB with the Brokerage's complete legal name, and if registered under the Act in a different name, the name in which the Brokerage Member is registered the names and addresses of their partners, officers, directors and shareholders, as the case may be. Such partnerships and corporations shall also, upon making application as Brokerage Members, simultaneously provide TREB with the name and address of the person(s) designated as the Broker of Record who is responsible for the Brokerage Member's activities and whom TREB may contact as that Brokerage Member's representative in relation to TREB.
- 1.04 The provisions of Sections 1.02 and 1.03 shall not apply to a Trust Company registered as a broker under the Act.

**SECTION 2 - Change of Ownership or Control**

- 2.01 Each Brokerage Member shall immediately notify the Chief Executive Officer, in writing, of:
- (a) any change in ownership, if it is a sole-proprietor;
  - (b) any change in partners, or any change in the ownership interests of any of the partners, if it is a partnership;
  - (c) any change in its officers or directors, if it is a corporation;
  - (d) any change in the number of shares held by any shareholder if the change results in any one shareholder or any associated shareholders, acquiring or accumulating beneficial ownership or control of 10% or more of the total number of all issued and outstanding shares of the corporation or the addition or deletion of any shareholder, if it is a corporation; or
  - (e) any change in the Broker(s) of Record.
- 2.02 In addition to the requirements in Section 2.01 above, every Brokerage Member shall report in writing to the Chief Executive Officer any of the following, within thirty (30) days from the date of its registration or the registration of such changes under the Act:
- (a) if the Brokerage Member is a corporation, the names and addresses of its officers and directors, the number of shares held by any shareholder of the Brokerage Member and any change of any of the addresses pertaining thereto;

## ARTICLE 3

**Obligations and Reporting**

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- (b) if the Brokerage Member is a partnership, the names and addresses of the partners, and any change of any of the addresses, and if any partner is a corporation, the information required by Sub-section (a) above;
  - (c) a Broker Member or Salesperson Member being registered or ceasing to be registered with such Brokerage Member (or any Broker Member of such Brokerage Member);
  - (d) a Salesperson Member employed by a Brokerage Member (or any of its Broker Members) becoming a Broker registered with the Brokerage Member, and vice-versa; or
  - (e) the names and addresses of all Brokers of Record and all branch managers designated pursuant to the Act, and any changes thereto.
- 2.03 The provisions of Sub-sections 2.01(c) and (d) and Sub-section 2.02(a) of this Article shall not apply to a Trust Company registered as a broker under the Act.
- 2.04 In the event of any such change as described in Section 2.01 of this Article, the membership of the Brokerage Member and of all Members employed by it may, by resolution of the Board of Directors, be deemed terminated, provided that should the Directors so decide, the individuals affected may re-apply for membership in the appropriate category. In the event of such termination, reasons are to be specified and notice of the termination and reasons therefore shall be provided to CREA within thirty (30) days of providing such notice. If the Brokerage Member is a partnership, a change in the membership of the partnership shall be deemed to create a new partnership.
- 2.05 Where an applicant is re-applying for membership because his membership was terminated under the provisions of Section 2.04 above, the Directors may, at their sole discretion, reduce the amount of the membership fee to be paid as prescribed in Article 4, section 1.01 of this By-Law.
- 2.06 If the membership of a Brokerage Member is subject to termination due to the happening of an event referred to in Section 2 herein, the Brokerage Member may make application for continuation of the membership in accordance with Article 2, section 11.03.

**SECTION 3 - Furthering the Objects of TREB, Compliance with By-Law**

- 3.01 All Members shall use their best efforts in furthering the objects of TREB. All Members shall comply with the By-Law.

**SECTION 4 - Termination of Membership**

- 4.01 Membership in TREB, in any category, is non-transferable.
- 4.02 Membership ceases to exist:
- (a) upon the death of an individual Member;
  - (b) upon the dissolution, bankruptcy or insolvency of a Brokerage Member;
  - (c) upon the suspension or termination of the Member's registration under the Act;

## ARTICLE 3

**Obligations and Reporting**

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- (d) upon the Chief Executive Officer receiving written notification of the Member's resignation, which shall be effective when the Chief Executive Officer receives it; or
  - (e) upon the occurrence of some other event in accordance with this By-Law, including, but not limited to the provisions of Section 2 above, the provisions of Article 2, the provisions of Article 4, and the provisions of Schedule "D".
- 4.03 Any Member may at any time resign as a Member of TREB. The resignation shall be in writing delivered to the Chief Executive Officer of TREB and shall be effective the date of receipt by the Chief Executive Officer. Where a Membership ceases to exist, the member shall immediately return to the Chief Executive Officer all membership cards or certificates or other documents relating to his membership and such Member shall immediately lose all rights of Membership including, but not limited to voting rights. The cessation of membership for whatever reason shall not relieve a Member from any of his/its monetary or other obligations arising while a Member.
- 4.04 Where membership of any Brokerage Member has been terminated under any of the provisions of Section 4.02 of this Article any individual Member may apply to the Directors who may, at their sole discretion, waive the provision of Section 4.01 of this Article and permit the affected individual Member to transfer membership to another Brokerage Member, or who may, at their sole discretion, waive all or a portion of the fees or dues payable to reapply for membership.
- 4.05 Any Salesperson Member or Broker Member who ceases to be registered with a Brokerage Member is thereby terminated as a Member of TREB unless reinstated by transfer to and registration with another Brokerage Member within ninety (90) days thereof upon submission of an application for transfer and payment of transfer fee. No such fee shall be payable if the registration of the Broker Member or Salesperson Member ceased because the Brokerage Member with which the Broker Member or Salesperson Member was registered ceased to be a Brokerage Member. Any transfer not effected within ninety (90) days shall require a new application under Article 2 provided that Article 2, Section 11 shall not be applicable.

**SECTION 5 - Members with Offices Within Jurisdictional Area**

- 5.01 Every Brokerage Member shall ensure that all Brokers and Salespersons registered with the Brokerage Member and working in or from an office in the Jurisdictional Area of TREB, become Members of TREB within thirty (30) days from the date of their registration with the Brokerage Member under the Act.

**SECTION 6 - Members with Offices Outside Jurisdictional Area**

- 6.01 No Brokerage Member having an office outside the Jurisdictional Area of TREB shall allow any salesperson or broker working in or from such office to receive or use the services of TREB unless all Salespersons and Brokers of that office are Members of TREB. All Salespersons and Brokers of a Member office must become Members of TREB within thirty (30) days from the date of their registration with the Brokerage under the Act.

## ARTICLE 4

Membership Fees

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**SECTION 1 - Payment of Membership Fees**

- 1.01 Except as otherwise provided, Members shall pay the fees as set out in Schedule "B" to this By-Law. (Such fees for which a specific amount or a NIL amount are specified in Schedule "B" being hereafter called "**Membership Fee**"). There shall be no changes to the Membership fees without the approval of a majority of the Board of Directors and approval of the Members.
- 1.02 Upon admission of a Brokerage Member, one (1) Broker Member registered with the Brokerage may be admitted without payment of both an Entrance Fee and, if in good standing, other Membership Fees as set out in Schedule "B". No Entrance Fee is required for persons who are Brokerage Members operating as sole proprietors or as partners in a partnership who incorporate their Real Estate businesses, provided the same persons are the only Brokers registered with the newly incorporated company.
- 1.03 Upon application for continuation under Article 3, Section 2.06, the Board of Directors may relieve the applicant Member from the payment of entrance fees to the extent the Board of Directors considers proper.
- 1.04 Except as otherwise stated, all Membership Fees payable by Members of TREB are due as stated on the invoice.
- 1.05 Annual Membership Fees including insurance, delivery charges and applicable taxes shall be for a period of twelve (12) months commencing July 1st of each year and payable in advance on the 30th day of June in each year. If payment is not received by the due date, the membership shall not be renewed and shall be deemed to have ceased to exist without notice effective the due date.
- 1.06 Any new Member joining TREB shall pay full Membership Fees including insurance, delivery charges and applicable taxes for a period of twelve (12) months commencing July 1st of each year, calculated on a per diem basis with admission to membership being the date of registration under the Act with a Brokerage Member for a Broker Member or Salesperson Member; and the date of approval by the Board of Directors for other types of membership. The date on the Certificate of Registration under the Act shall be conclusive evidence of date of registration hereunder.
- 1.07 Membership Fees, insurance, delivery charges and applicable taxes are not refundable.
- 1.08 Any Member reinstating his/her membership with TREB shall pay the full current year's Membership Fees, insurance, delivery charges and applicable taxes, and a Reinstatement Fee, as stipulated in Schedule "B". Notwithstanding the foregoing any Member reinstating his/her membership more than 12 months after termination thereof shall pay full current year Membership Fees, insurance delivery charges and applicable taxes calculated on a per diem basis from date of reinstatement.
- 1.09 All Members, shall at all times subscribe and pay for standard individual life and accidental death and dismemberment insurance at the applicable rates available under TREB's group insurance policies.
- 1.10 TREB shall bill all Members directly for Membership Fees, insurance, delivery charges and applicable taxes. Non-payment by a Member shall not be considered a breach of this By-Law by

## ARTICLE 4

## Membership Fees

the Brokerage Member with whom the Member is registered (provided the non-payment is not by a Brokerage Member).

**SECTION 2 - Non-Payment of Amounts Owed to TREB**

- 2.01 If a Member owes money to TREB for any reason whatsoever, (other than annual Membership Fees) and does not pay the amount when due (for the purposes of this Article, such Member shall hereinafter be called the “**Defaulting Member**”), the Chief Executive Officer, provided that the President agrees, may send that Defaulting Member a letter by registered mail or personal delivery (or by courier), requiring that the money be paid to TREB by the date stipulated in the letter, and advising that if it is not paid by such date the Defaulting Member shall lose all membership privileges and his membership in TREB shall be terminated. If payment is not received by the due date, the Defaulting Member shall lose all membership privileges and his/her membership in TREB shall be terminated on the due date without further notice. The Defaulting Member may dispute the amount owing as provided in section 2.03.
- 2.02 If the Defaulting Member is a Brokerage Member, the Chief Executive Officer may, if so directed by the President, send a copy of such letter to all Members (the “**Affected Members**”) shown in the records of TREB to be employed by the Defaulting Member. The provisions of this Sub-section and the sending of copies of the letter to those Affected Members is for information purposes only and does not in any way change the provisions or the affect of any other section of this Article 4, including, but not limited to Sections 3.01 and 3.02.
- 2.03 Where a Defaulting Member delivers a notice of dispute, disputing the amount owing, the dispute shall be reviewed by a Professional Standards Review Panel made up of members of the Professional Standards Review Roster, following the procedures set out in Schedule “D” of this By-Law, save and except that the right to Appeal (as defined in Schedule “D”) shall not apply to such a dispute.
- 2.04 The Professional Standards Review Panel shall not have authority to deal with a dispute by a Defaulting Member as provided for in this Section 2, unless the Defaulting Member has first complied with the payment requirement; provided however, if the Defaulting Member is successful in his dispute, any amount paid to TREB which was found not to be owing shall be returned to him.
- 2.05 In such a dispute, the onus shall be on the Defaulting Member to prove that such amount was not owing to TREB.
- 2.06 The Professional Standards Hearing Panel shall have the jurisdiction to make a decision in relation to a dispute by a Defaulting Member which is final and binding upon the Defaulting member including applying such penalties as are prescribed in Schedule “D”.
- 2.07 (a) If a Defaulting Member is suspended or terminated for failure to pay to TREB any amount owing, or if any Member is terminated, suspended, or resigns from TREB, any amount owing by such Member or Defaulting Member shall remain a debt owing to TREB until paid, notwithstanding the suspension or termination of services or membership, and upon reapplication the applicant shall repay such debt as a condition precedent to such application being approved by the Board of Directors.

## ARTICLE 4

**Membership Fees**

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- (b) If a Brokerage Member is terminated or suspended, whether for failure to pay to TREB any amount owing or for any other reason, or if such Brokerage Member resigns from TREB, any amount owing to TREB shall remain a debt owing to TREB until paid, notwithstanding the suspension or termination of services or membership, and upon reapplication by the Brokerage Member, or by any officer or director of such Brokerage Member as a Member in any membership category, the applicant shall repay such debt as a condition precedent to such application being approved by the Board of Directors.

**SECTION 3 - Payment and Collection of Fees**

- 3.01 All Members who are or who become Broker(s) of Record, officers or directors of a Brokerage Member, agree that they shall be personally responsible to TREB for any amounts owing by the Brokerage Member, which amounts were incurred from the time they occupied such position.
- 3.02 All Members who are or who become a partner of a Brokerage Member which is a partnership, agree that they shall be personally responsible to TREB for any amounts owing by the Brokerage Member, which amounts were incurred from the time they occupied such position.
- 3.03 Where a Member fails to pay such amounts as determined in Sections 3.01 and 3.02, such failure may be dealt with in accordance with Section 2 of this Article.

**SECTION 4 - Publication and Release**

- 4.01 Upon suspension of services or termination of membership of any Member in accordance with this Article, the name of the Member shall be published in an appropriate manner sufficient to inform all Members.
- 4.02 Should another real estate board or association request in writing to TREB information on a Member suspension or termination, in pursuance of a membership application to such board or association, the Chief Executive Officer may provide such information provided the requesting board or association has comparable rules and regulations regarding custody and confidentiality of such information.

## ARTICLE 5

Voting and Meetings of Members

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**SECTION 1 - Voting Rights**

- 1.01 Each Voting Member shall be entitled to receive notice of all meetings of Members and to attend and vote at such meetings, either in person or by proxy.
- 1.02 (a) Each Voting Member is entitled to one vote if present at the meeting either in person or by proxy.
- (b) Where a Voting Member is not able to attend and vote at a meeting of Members, the Voting Member may vote by proxy. Such proxy must be appointed by the Voting Member, and need not be a Member.
- 1.03 (a) Only Voting Members shall be entitled to notice of and to vote at any meeting of Members. Where, in this By-Law or by the Corporations Act, any matter is required to be approved by the Members, this shall mean the Voting Members attending the meeting and using voting procedures set out in this Article.
- (b) The Board of Directors, the Chief Executive Officer or his designate, plus other TREB staff as is necessary, the TREB appointed auditor and his representative(s), shall also be entitled to attend any meeting of Members.

**SECTION 2 - Voting - Proxies and Electronic Ballots**

- 2.01 At every meeting, the Voting Members who are entitled to vote and be present, either in person or by proxy, shall have one vote on a show of hands or on a vote using coloured cards or ballots or such other means as approved by the Board of Directors and as permitted by law. If a poll is taken, each such Voting Member who is entitled to vote and who is present either in person or by proxy shall have one vote. Such votes shall be exercised either by the Voting Members or by the proxies on behalf of the Voting Members.
- 2.02 A proxy shall be in writing, and it must be signed by the Voting Member or someone authorized by him, under power of attorney, to sign the proxy on behalf of the Voting Member.
- 2.03 Subject to Article 5, Sections 13.02 and 13.03, a Voting Member may, exclusively with respect to an election meeting (and not for any other meeting), vote by Electronic Ballot, provided that the Electronic Ballot is completed in the manner set out in Article 5, Section 2.08.
- 2.04 A person shall not hold or vote more than one (1) proxy. No one, other than the Chief Returning Officer, may hold or vote an Electronic Ballot for an election meeting. In the case of Electronic Ballots for an election meeting that designate the Chief Returning Officer as the holder of the ballot, the Chief Returning Officer is not limited in respect of the number of such ballots that he/she may hold and vote.
- 2.05 Unless revoked earlier, a proxy and an Electronic Ballot shall expire upon the termination of the meeting in respect of which they are provided. In addition to revocation in any other manner permitted by law, a proxy may be revoked by an instrument in writing signed in the same manner as a proxy and deposited with the Corporate Secretary at TREB's offices at any time up to and including the last day (excluding Saturdays, Sundays and holidays) preceding the date of the

## ARTICLE 5

Voting and Meetings of Members

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meeting or any adjournment thereof at which the proxy is to be used, or with the Chair of such meeting or any adjournment thereof before the time of voting.

- 2.06 (a) Proxies: The Directors may specify in the notice calling a meeting of Members, a time, not exceeding 48 hours (excluding Saturdays, Sundays and holidays) preceding the meeting or any adjournment thereof, before which written proxies must be deposited with the Corporate Secretary, at the offices of TREB. A written proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Corporate Secretary; at the place so designated; or, where no such time is specified in such notice, if it has been received by the Chair of the meeting.
- (b) Electronic Ballots for Election Meetings: The Directors may specify in the notice calling a meeting of Members, a time, not exceeding 48 hours (excluding Saturdays, Sundays and holidays) preceding the meeting or any adjournment thereof, before which Electronic Ballots for election meetings must be deposited at the electronic address that is given in accordance with the instructions for the electronic submission of same. An Electronic Ballot for an election meeting shall be acted on only if, prior to the time so specified, it has been submitted in accordance with the provisions of Article 5, Section 2.07.
- 2.07 All notices of meetings of Members shall include reference to the provisions of Section 2.05 of this Article and shall include a blank written proxy form or notice of where one may be obtained electronically. All notices of election meetings shall include reference to the provisions of Section 2.05 of this Article and shall include a blank written proxy and a blank sample Electronic Ballot form or notice of where these forms may be obtained electronically.
- 2.08 The following requirements shall apply to all Electronic Ballots that are permitted for use solely for an election meeting:
- (a) they shall be required to be submitted with or by means of one or more personal identifier codes or numbers that are unique to that Voting Member, which shall be deemed by TREB to be the signature of the Voting Member;
  - (b) they shall designate as the holder of the ballot proxy no person other than the Chief Returning Officer for that election meeting;
  - (c) they shall expire upon the termination of the election meeting for which it is completed;
  - (d) they must be completed in a manner that no matter on which the Voting Member is entitled to vote can be left uncompleted or such Electronic Ballot will be deemed spoiled and will not be accepted, voted or counted;
  - (e) they are final and cannot be revoked in any manner; and
  - (f) they shall be submitted in the form attached hereto as Form "B" with adjustments as appropriate for the names of the particular candidates and Director terms; and similar particulars applicable to the particular Region or group of Members voting (and the similar form attached hereto as Form "E" for the election of the Chair and Councillors of the Executive Council of the Commercial Division).

## ARTICLE 5

Voting and Meetings of Members

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**SECTION 3 - Annual General Meeting**

- 3.01 The Annual General Meeting shall be held in October of each fiscal year, the date, place and hour to be designated by the Board of Directors. Such Annual General Meeting shall be held at a place within the City of Toronto and the Regional Municipalities of Halton, Peel, York and Durham as the Board of Directors determines.
- 3.02 At the Annual General Meeting, the Directors shall present to the Members a report dealing with the affairs of TREB for the previous year, financial and other statements of TREB, the auditors report, and such other information as the Board of Directors may determine.
- 3.03 The Members shall, at the Annual General Meeting, appoint an auditor who will hold office until the next Annual General Meeting, and if no such appointment is made, the auditor in office shall continue in office until his successor is appointed.
- 3.04 The Board of Directors shall determine the remuneration of the auditor.

**SECTION 4 - Notice Requirements**

- 4.01 Unless otherwise provided for in this By-Law, a notice, in writing, or, by means of electronic mail or other electronic means of transmitted or recorded communication, setting out the time, place and date of any meeting, and which must include an indication of the general nature of the business to be dealt with at the meeting, shall be sent to each Voting Member entitled to receive notice of the meeting at least seventeen (17) clear days (the seventeen (17) days do not include the date of mailing or the date of the meeting) prior to the date of the meeting as set out in the notice.
- 4.02 With respect to any meeting of the Members, a notice shall be sent to the auditor at least twenty-one (21) clear days prior to the day of the meeting (the twenty-one (21) days do not include the date of mailing or the date of the meeting).
- 4.03 The accidental failure to give notice of any meeting or the non-receipt of any notice by a Voting Member(s) or by the auditor of TREB shall not invalidate any resolution passed or any proceedings taken at any meeting of Members.

**SECTION 5 - General Provisions Relating to Meetings of Members**

- 5.01 Unless otherwise specifically provided for in this Article 5, the provisions of this Section 5 shall govern all meetings of Members.
- 5.02 Meetings of the Members may be held at any place within the City of Toronto, and the Regional Municipalities of Halton, Peel, York and Durham, as the Board of Directors may decide and as set out in the notice of the meeting.
- 5.03 There shall be one (1) General Meeting of the Members of TREB, to be held in the Spring in each fiscal year. Additional General Meetings of the Members shall be at the call of the Board of Directors, or as otherwise provided in the By-Law.
- 5.04 At least fifty (50) Voting Members who are entitled to vote and registered with at least twenty-five (25) Brokerage Members, must be present either in person or by proxy, in order to establish

## ARTICLE 5

**Voting and Meetings of Members**

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a quorum, and no business shall be conducted at the meeting unless the required quorum is present at the beginning of and throughout the meeting.

- 5.05 The President shall chair all meetings of Members. In the absence of the President, the President-Elect shall chair the meeting of Members. In the absence of both the President and President-Elect, the Past President shall chair the meeting of Members. If the President, President-Elect and Past President are absent, a Director as selected by the President shall preside.
- 5.06 Where no Director is present or if all Directors present decline to act as Chair of the meeting, the Voting Members present at the meeting and entitled to vote either in person or by proxy may choose any Voting Member present at the meeting to act as the Chair.
- 5.07 If there is a quorum, the Chair of a meeting may, with the agreement of a majority of the Voting Members present at the meeting either in person or by proxy, declare the meeting adjourned. If there is no quorum, the Chair of a meeting shall declare the meeting adjourned.

**SECTION 6 - Voting Procedure at Meetings**

- 6.01 Except as provided in Article 12, Section 2.01 elsewhere in this By-Law, and if required pursuant to the Corporations Act, all matters proposed for consideration and approval of the Members shall be decided by a majority of the votes cast by Voting Members present either in person or by proxy or Electronic Ballot, as the case may be.
- 6.02 The Chair of the meeting shall be allowed to vote where there is a tie-vote and his vote is needed to break that tie, and such vote shall be in addition to the vote he may have as a Voting Member entitled to vote at the meeting.
- 6.03 If at any meeting a ballot vote is demanded on any issue, including the election of Directors, the ballot vote shall be held in the manner and at a time during the meeting as the Chair shall direct, and the results of the ballot vote shall be deemed to be the decision of the meeting.
- 6.04 Where after a show of hands or a holding up of differently coloured cards, a ballot vote is demanded, the Chair may refuse to conduct same if, in his opinion, it appears that such a procedure would not serve any useful purpose in reaching a clear decision on the resolution being voted on.
- 6.05 No person other than the scrutineers shall have the right to inspect ballots used in connection with the ballot vote and only where a proxy contains restrictions, limitations or instructions shall the scrutineers inspect a ballot in conjunction with the authorizing proxy.

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Voting and Meetings of Members

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**SECTION 7 - Election Meeting**

- 7.01 The election meeting shall be held annually:
- (a) for the purpose of electing the President-Elect, two (2) Directors at Large, two (2) Regional Brokerage Directors and two (2) Regional Non-Brokerage Directors;
  - (b) between the 1st and 15th of June; and
  - (c) on a date and at a time and place determined by the Directors;
  - (d) The Persons elected as Directors shall take office on July 1st following their election.
- 7.02 Voting at the Election Meeting shall be:
- (a) conducted by secret ballot; and
  - (b) no person other than the Chief Returning Officer and the scrutineers shall have the right to inspect ballots used in connection with the poll and only where a proxy or Electronic Ballot contains restrictions, limitations or instructions shall the Chief Returning Officer or the scrutineers inspect a ballot in conjunction with the authorizing proxy.
- 7.03 All Voting Members are entitled to one (1) vote either in person or by proxy or Electronic Ballot at an Election meeting. However, in the case of Regional Brokerage Director and Regional Non-Brokerage Director only Voting Members who are registered at an office within that Region, according to the records of TREB, shall be entitled to vote for such positions in that Region.

**SECTION 8 - Nominating Committee**

- 8.01 If there are insufficient nominations of Members to be elected at an election meeting as President-Elect and Directors by the time period established under Section 11.01(c), a Nominating Committee shall be appointed for the purpose of nominating persons. Members of the Nominating Committee shall not be eligible for nomination.
- 8.02 The Nominating Committee shall consist of:
- (a) the Past President and the most recent Past President who is willing and able to serve;
  - (b) the President or, if the President is unable or declines to act, a nominee appointed by the Directors; and
  - (c) six (6) persons appointed by Directors, who shall be Voting Members and who shall include, wherever possible, one (1) person from each Region, one (1) person from a Brokerage Member which has fifty (50) or more Members registered with the Brokerage and one (1) person from a Brokerage Member which has ten (10) or fewer Members registered with the Brokerage Member.

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Voting and Meetings of Members

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**SECTION 9 - Eligibility for Nomination**

- 9.01 Any Voting Member is eligible to run for Director with the following restrictions:
- (a) in the case of the four (4) Regional Brokerage Directors, the nominees shall be Brokers of Records within that Region, according to the records of TREB.
  - (b) in the case of the four (4) Regional Non-Brokerage Directors, the nominees shall be Members, other than Brokers of Records, within that Region, according to the records of TREB.
- 9.02 Any Member who has served as a Director in at least twenty-four (24) months of the immediately preceding thirty-six (36) months prior to the commencement of the term of office is eligible to be nominated and to hold the office of President-Elect.
- 9.03 The President shall not be eligible to be nominated for the position of President-Elect until sixty (60) months after completion of his term as President.

**SECTION 10 - Running for Office Mid-Term**

- 10.01 A Director, if qualified, may seek election as President-Elect, prior to the completion of his term of office provided that his nomination is submitted within five (5) working days of the call for nominations and is accompanied by a letter of resignation as Director effective the next installation date. The Corporate Secretary of TREB shall inform the Members of the additional position to be elected and shall accept nominations for the balance of that term in the same manner as for the other positions.

**SECTION 11 - Nominations**

- 11.01 Nominations for President-Elect and Directors to be elected shall be made as follows:
- (a) all candidates must be nominated in order to stand for election.
  - (b) all nominations shall be in writing and shall be signed by any two (2) Voting Members for the election meeting, together with the written consent of the nominee. In the case of Regional Brokerage Directors and Regional Non-Brokerage Directors, only Voting Members for such positions may act as nominators.
  - (c) all nominations and written consents with original signatures must be delivered to the Chief Returning Officer of TREB, and receipt acknowledged in writing no later than thirty (30) days before the date of the election meeting.
  - (d) no Member may nominate more than one (1) person for each of President-Elect, Director-at-Large, Regional Brokerage Director, Regional Non-Brokerage Director, in each year.
  - (e) no person may be nominated in accordance with this Section if two people registered with the person's Brokerage Member have been previously nominated for the current election meeting or sit as a continuing Director. In any event, one of the two people, either nominated for the current election meeting or sitting as a continuing Director, must be nominated for or sitting as a Director-at-Large.

## ARTICLE 5

Voting and Meetings of Members

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- (f) Voting Members may only be nominated for one position in any given election.
  - (g) nominations, once submitted, may be withdrawn but may not be altered or re-submitted for a different position.
  - (h) no person may be nominated until the second election meeting after having achieved the Term Limit as a Director as defined in Article 6, Section 1.03(b).
- 11.02 Notice of all nominations shall be given, in alphabetical order, to Voting Members as soon as possible after close of nominations but not fewer than twenty (20) days prior to the election meeting.

**SECTION 12 - Biographical Data**

- 12.01 Nominees may, at their option, submit a photograph and biographical sketch stating their qualifications. Any photograph and biographical sketch submitted for printing purposes must be delivered to the Chief Returning Officer at least thirty (30) days prior to the election meeting.

**SECTION 13 - Election Procedures**

- 13.01 The election shall be conducted by a Chief Returning Officer who shall be a representative of TREB's auditors, or such other person as the Board of Directors deems appropriate.
- 13.02 A Voting Member shall be entitled to vote at an election meeting by an Electronic Ballot that is completed and submitted in accordance with the provisions of Section 2.08 of this Article, unless at an Annual General Meeting prior to that election meeting, the Voting Members have passed a resolution terminating the right of Voting Members to vote at an election meeting by such Electronic Ballots (or, in the case of the Commercial Division, if the Members of that Division have so voted with respect to the elections for the Executive Council Commercial Division to be held pursuant to Section 9 of Article 8).
- 13.03 If the Voting Members have passed a resolution terminating the right to vote at election meetings by Electronic Ballots, pursuant to Section 13.02 of this Article, the Board of Directors shall require the Chief Returning Officer to hold one (1) or more advance polls in two (2) different districts within each Region on different days at which voting may take place prior to the election meeting unless voting is conducted by mail-in ballot or by electronic means for the election of Directors. The location of such advance polls shall be approved by the Board of Directors prior to notice being given of the election meeting. Notice of the times and places of the advance polls as determined by the Chief Returning Officer shall be given with the notice calling the election meeting.

The Chief Returning Officer shall report on the poll to the Chair of the election meeting. If the Members of the Commercial Division pass a resolution terminating the right to vote at election meetings by Electronic Ballots, pursuant to Section 13.02 of this Article, voting for the Chair and Councillors of the Executive Council of the Commercial Division shall be done by mail-in ballot.

- 13.04 There shall be an election only for those positions to be elected at an election meeting for which there are more persons nominated for such positions than to be elected.

## ARTICLE 5

**Voting and Meetings of Members**

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- 13.05 If an election is not required, the Chair at the election meeting shall declare by acclamation the person nominated as elected.
- 13.06 A list of Members entitled to vote, the “**Voting List**”, shall be prepared as at the close of business on the 1st day of April in the year of the election meeting. The Voting List shall immediately be delivered to the Chief Returning Officer.
- 13.07 A ballot, to be a valid ballot, must be in favour of:
- (a) one (1) person for President-Elect; or
  - (b) no more than the number of vacancies to be filled for Director-at-Large; or
  - (c) no more than one (1) Regional Brokerage Director by eligible voters within that Region; or
  - (d) no more than one (1) Regional Non-Brokerage Director by eligible voters within that Region; or
  - (e) any combination of the foregoing.

Votes shall be counted for each section of the ballot only where the votes are properly cast.

- 13.08 Notwithstanding anything else contained herein, the forms to be used at an election meeting including the ballot, the identification form, the ballot envelope and the return envelope, whether such forms are separate or in combination, and the procedures to be followed to cast a valid ballot shall be determined by the Chief Returning Officer as the CRO may determine appropriate so that such form or forms, the procedures to be used and the instructions concerning the use of such form or forms preserve the confidentiality of any vote.
- 13.09 Ballots, Electronic Ballots, identification forms, and proxies used in connection with the election meeting shall be retained in the custody of the Chief Returning Officer for thirty (30) days following the election meeting after which they shall be destroyed, except in the event of a dispute, in which case the ballots will be retained until the later of resolution of the dispute or one (1) year.
- 13.10 Notwithstanding Article 5, Section 2, a proxy to be used in connection with the election meeting shall be considered deposited only when actually received by the Chief Returning Officer or the Chair of the Meeting.

**SECTION 14 - Other Meetings of Members**

- 14.01 Any other meetings of Members shall be called by the President upon written request of five (5) or more Directors, or upon written request of a minimum of twenty-five (25) Voting Members from each region representing at least twenty-five (25) Brokerage Members in aggregate from the four regions. Such meeting of Members shall be held within no more than 30 days from the receipt of the request.

## ARTICLE 6

Board of Directors

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**SECTION 1 - Board of Directors**

1.01 The affairs of TREB shall be managed by the Board of Directors.

Without limiting the generality of the foregoing, the Board of Directors:

- (a) shall have the exclusive management of the finances of TREB, subject to the limitations of Section 17 hereof;
- (b) may pass, adopt, amend, repeal or otherwise deal with the MLS® Rules and Policies;
- (c) may pass, adopt, amend, repeal or otherwise deal with the Code of Ethics or Standards of Business Practice, except that any such Code and/or Standards shall not be inconsistent with the requirements of CREA;
- (d) any proposal by the Board of Directors to amend the TREB Policy must be determined by a recorded vote and further, such vote shall be published to the Membership prior to the next meeting.

1.02 The Board of Directors shall be comprised of sixteen (16) Members, seven (7) of whom shall be elected annually by the members in accordance with the provisions of Article 5, and three (3) of whom shall be ex officio members.

The elected Board shall be comprised of:

- (a) The President-Elect;
- (b) Four (4) Directors at Large;
- (c) Four (4) Regional Brokerage Directors;
- (d) Four (4) Regional Non-Brokerage Directors.

The ex officio members of the Board of Directors shall be:

- (a) The President;
- (b) The Past President;
- (c) The Division Chair of the Executive Council Commercial Division;
- (d) The President shall be the only "ex officio" non-voting member of all Committees with the right but not obligation, to participate in the proceedings of all committees.

1.03 (a) All Directors, other than ex officio Directors and the President-Elect, shall hold office for two (2) years or until their successors have been elected or until their tenure of office shall have otherwise been terminated in accordance with this By-Law. The term for the office of President-Elect shall be for one (1) year or until his successor has been elected or his term of office shall have otherwise been terminated in accordance with this By-Law. The President and Past President shall hold office for one (1) year, as of right, in

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Board of Directors

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the year immediately following the year in which they hold the offices of President-Elect and President, respectively. The Division Chair of the Executive Council Commercial Division shall hold office for two (2) years or until his successor has been elected by the Commercial Division or his term of office shall have otherwise been terminated in accordance with this By-Law.

- (b) Except for the President-Elect, all Directors shall only be elected for a maximum of eight (8) consecutive years, hereinafter known as the “**Term Limit**”, and shall not be nominated until the second election meeting after having achieved the Term Limit as a Director. Notwithstanding the forgoing, a Member serving as President-Elect, President, and Past President shall be permitted to hold office irrespective of having served the Term Limit.

**SECTION 2 - Qualifications of Directors**

- 2.01 Every Director must be a Member of TREB in good standing, and be at least eighteen years of age.

**SECTION 3 - Vacancies on the Board of Directors**

- 3.01 A Director shall be deemed to have resigned and a vacancy created on the Board of Directors if:

- (a) he becomes bankrupt or insolvent;
- (b) he becomes legally incompetent;
- (c) he resigns, by notice in writing to the President or the Chief Executive Officer;
- (d) he becomes a Retired Member;
- (e) he resigns as a Member, or where such membership is suspended or terminated; or
- (f) his registration under the Act has been suspended or terminated.

- 3.02 (a) In the event a vacancy occurs on the Board of Directors for any reason mid-term, the Directors may at a regularly scheduled Directors meeting, appoint any Member who is qualified to fill the vacancy. Such an appointed Director shall be in office only until the next scheduled annual election meeting of Directors.

- (b) If the vacancy is that of President, the President-Elect shall assume the office of President for the balance of the term of the President and then shall continue in office as President for a term.

- (c) If the vacancy is that of President-Elect, the Directors shall, from among themselves, elect one (1) of their number to fill the position for the remainder of the term of the President-Elect and at the next election there shall be an election for the office of President and President-Elect. No election for the office of President shall be necessary at the next election if the vacancy in the office of President-Elect is as a result of circumstances outlined in Section 3.02(b) hereof.

## ARTICLE 6

Board of Directors

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- (d) If the vacancy is that of Past President, the most recent Past President willing to serve shall become Past President for the remainder of the term of the Past President.
- (e) The Board of Directors shall only be permitted to fill a vacancy in the manner prescribed if there is a quorum then in office. If no quorum is in office, the Board of Directors shall call a meeting of Members to fill the vacancies.

**SECTION 4 - Removal of Directors**

- 4.01 (a) Any member of the Board of Directors to whom Sub-section (b) applies, may be removed from office at any meeting of the Board of Directors by a notice of motion being filed at least ten (10) days in advance of such meeting of the Board of Directors and approved by at least two-thirds of the Directors present at a meeting called for such purpose.
- (b) A Director may be removed from office in the aforesaid manner if he:
- (i) is or it is discovered that he has been convicted of any criminal offence;
  - (ii) has been absent from four (4) consecutive meetings of the Board of Directors; or
  - (iii) refuses to take the oath of office, or for any other reason does not take the oath of office.

In the event that a Director is removed from office by the Board of Directors, such removal is only effective until the next meeting of Members, unless such removal is approved at such meeting of the Members in accordance with Article 6, Section 4.02.

- 4.02 Provided that the meeting has been properly called and notice of such a resolution and meeting has properly been given in accordance with Article 5, the Voting Members of TREB, may by resolution at a meeting duly called for that purpose, provided it is approved by at least two-thirds (2/3's) of the votes cast by Voting Members present either in person or by proxy, remove any Director from office before the expiry of his term. At such a meeting, the Voting Members may also, by majority of the votes cast by Voting Members present either in person or by proxy elect any qualified Member of TREB to fill the unexpired portion of the term of the Director who was removed. In the case of a resolution to remove or elect, as the case may be, a Regional Brokerage Director or Regional Non-Brokerage Director for a particular Region, only Voting Members entitled to vote for the election of such Director for such positions are entitled to vote in person or by proxy for his removal.

**SECTION 5 - Remuneration of Directors**

- 5.01 Unless otherwise provided in this By-Law, no Director shall be paid for his services as a Director and no Director shall be allowed to profit directly or indirectly from his position as a Director, provided that he may be paid reasonable expenses that may be incurred in the performance of his duties as a Director.
- 5.02 Where a Director or officer of TREB is employed by TREB to perform some service for it, or where he is employed by or is an officer, director or shareholder of a Brokerage employed by

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**Board of Directors**

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TREB to perform some service, the fact that he is a Director or officer of TREB shall not disentitle him or such a Brokerage from being paid for the service.

- 5.03 An honourarium of forty-two thousand dollars (\$42,000), annually in cash or in kind, shall be paid to a President in recognition of service to TREB. The honourarium shall be paid in four installments of \$10,500 each and shall be payable at the conclusion of each quarter year during the President's term of office.

**SECTION 6 - Executive Committee**

- 6.01 The Board of Directors shall elect from among themselves an Executive Committee which shall serve until the Board of Directors determines otherwise.
- 6.02 (a) The Executive Committee shall consist of four (4) Directors, each of whom shall have served on the Board of Directors for at least one (1) year. In addition, the President, the President-Elect and the Past President shall serve as ex officio members of the Executive Committee with full voting privileges.
- (b) All Members of the Board of Directors shall receive notice of and be entitled to attend Executive Committee meetings as observers only.
- 6.03 The Executive Committee shall have the power to:
- (a) decide emergency matters not involving changes to this By-Law or financial expenditures beyond a limit to be established by the Board of Directors from time to time and subject to the limitations imposed by Section 17 hereof;
- (b) approve, with the assistance of the Chief Executive Officer, overall adjustments in aggregate to the annual salary compensation budget and any other adjustments in salary compensation not specifically provided for in the budget;
- (c) function as a policy advisory committee to research, discuss and recommend new policies or amendments to existing policies to the Board of Directors;
- (d) decide any other matter within the powers and responsibilities that may, from time to time, be delegated to the Executive Committee by the Board of Directors.
- 6.04 A majority of the Executive Committee present at a meeting of the Committee constitutes a quorum for the transaction of business at all meetings of the Executive Committee.
- 6.05 The President shall preside at all meetings of the Executive Committee. In the absence of the President, the President-Elect shall perform the duties of the President. In the absence of the President and the President-Elect, a temporary Chair shall be appointed by the Executive Committee to preside at such meetings.
- 6.06 Whenever a vacancy exists on the Executive Committee, the remaining members may exercise all powers of the Executive Committee so long as a quorum remains in office.

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- 6.07 The Executive Committee shall keep minutes of its meetings in which shall be recorded all actions taken by it and which shall be submitted as soon as possible following the meetings to the Board of Directors.
- 6.08 At any meeting of the Executive Committee, the Chair shall not have a vote, except in the case of a tie.

**SECTION 7 - Meetings of the Directors**

- 7.01 The Directors shall meet at such time and place as the President, or in his absence the President-Elect acting in his place, may decide, provided, that the Directors shall meet at least once in every calendar month except in July, August and December.
- 7.02 No less than five (5) days' notice must be given in writing to each Director with respect to any meeting of Directors. The notice shall be considered to have been sufficiently given by mailing it by prepaid ordinary mail to each Director at his latest known address as shown in the records of TREB or upon consent of such Director, by electronic means when sent.
- 7.03 No notice of a meeting of Directors shall be necessary if all the Directors are present and consent to the holding of the meeting or if those absent have, in writing, signified their consent to the meeting being held in their absence.
- 7.04 The President, or in his absence the President-Elect acting in his place, shall call a meeting of Directors upon the written request of any five (5) Directors, notice of the meeting to be given within seven (7) days after the delivery of the request and to be held within 30 days from the written request.
- 7.05 A majority of Directors present at any properly constituted meeting of Directors constitute a quorum for the transaction of business.
- 7.06 The President shall preside at all meetings of the Board of Directors. In the absence of the President, the President-Elect shall perform the duties of the President. In the absence of the President and the President-Elect, a temporary Chair shall be appointed by the Board of Directors to preside at such meetings.
- 7.07 At any meeting of Directors of TREB, the Chair shall not have a vote, except in the case of a tie.

**SECTION 8 - Officers of TREB**

- 8.01 Elected Officers - The elected officers of TREB shall consist of the President and President-Elect.
- 8.02 The President shall preside at all meetings of Members and serve as Chair of both the Board of Directors and Executive Committee. In general, the President shall perform all duties incidental to the office of President and such other duties as may be prescribed by the Board of Directors from time to time. The President shall succeed to the office of the Past President upon completion of his elective year.

The President shall, subject to the direction of the Board of Directors, have general management of and provide direction for the general business affairs of TREB and shall act as spokesperson

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Board of Directors

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- for TREB. The President may appoint Chairs to task forces and Members to such task forces, subject to the Board of Directors ratifying these appointments.
- 8.03 The President-Elect shall, in the absence of the President, perform the duties of the President and shall succeed to the office of President in the event of the death, disability, removal from office or resignation of the President. The President-Elect shall succeed to the office of the President upon the completion of his elective year unless he has succeeded to the office of President through the failure of the President to fill his term of office for any reason; in such case he shall fill the balance of the term of the President and in addition shall then succeed to the office of the President for a term.
- 8.04 (a) The Executive Committee shall engage a Chief Executive Officer from time to time who shall be an officer of TREB and who shall be the senior staff person at TREB responsible for the overall operation of TREB.
- (b) The Chief Executive Officer shall manage and direct the activities of TREB in accordance with the policies established by the Board of Directors. The Chief Executive Officer shall employ and terminate the employment of members of the staff necessary to carry on the work of TREB and determine their compensation within the approved budget. The Chief Executive Officer shall define the duties of the staff, supervise their performance, establish their titles and delegate those responsibilities of management as shall be in the best interests of TREB. The Chief Executive Officer shall have the right to receive notice of and to be present at any meeting of the Executive Committee and Board of Directors and such right to attend shall only be limited by a majority vote of the Executive Committee or Board of Directors, as the case may be, and only applicable to the meeting at which the vote took place.
- 8.05 (a) The Executive Committee shall, on the recommendation of the Chief Executive Officer, engage a Corporate Secretary from time to time, who shall be an officer of TREB.
- (b) The Corporate Secretary shall serve as parliamentarian to advise the President, Board of Directors, Executive Committee and meetings of Members on parliamentary matters and procedures. The Corporate Secretary shall keep or cause to be kept the minutes of meetings in one or more books provided for that purpose, issue or cause to be issued all notices in accordance with the provision of this By-Law or as required by law, be custodian of TREB records and of the seal of TREB and in general perform all duties incidental to the office of Corporate Secretary and such other matters as from time to time may be assigned by the President or by the Board of Directors.
- 8.06 (a) The Board of Directors shall engage a Treasurer from time to time who shall be an officer of TREB.
- (b) The Treasurer shall have the custody of the funds and securities of TREB and shall keep full and accurate accounts of all assets, liabilities and receipts and disbursements of TREB in the books belonging to TREB; and shall deposit all monies, securities and other valuable effects in the name and to the credit of TREB, in such banking institution, or, in the case of securities, in such registered dealer in securities as may be designated by the Board of Directors from time to time. The Treasurer shall disburse the funds of TREB as may be directed by proper authority taking proper vouchers for such disbursements, and

## ARTICLE 6

Board of Directors

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shall render to the Board of Directors at all regular meetings of the Board of Directors, or whenever it may require, an accounting of all the transactions and a statement of financial position of TREB. The Treasurer shall also perform such other duties as may from time to time be directed by the Board of Directors.

**SECTION 9 - Committee Secretaries**

- 9.01 The Chief Executive Officer, with the approval of the Board of Directors, shall appoint the Secretary of the Arbitration and Professional Standards Steering Committee.
- 9.02 Committee Secretaries shall perform the duties as are outlined in this By-Law or as may be assigned by the Board of Directors from time to time. If the office of Secretary of a Committee is vacant or if the Secretary of a Committee is unable to act for whatever reason, the duties shall be performed by the Corporate Secretary.

**SECTION 10 - Banking**

- 10.01 The Board of Directors shall determine by resolution in which banking institution the funds of TREB shall be deposited, and all funds shall be deposited in the name of TREB.
- 10.02 The signing officers of TREB (the “**Signing Officers**”) shall be any one (1) of the President, the President-Elect, or any other member of the Executive Committee, as designated by the President from time to time, together with any one (1) of the Chief Executive Officer, the Corporate Secretary or the Treasurer.

**SECTION 11 - Indemnity**

- 11.01 Every person including each Director, who is required to undertake any liability on behalf of TREB, and their heirs, executors, administrators, assigns and estate and effects shall at all times be indemnified and saved harmless, out of the funds of TREB, from and against:
- (a) all costs, expenses and charges which such person sustains or incurs as a result of any legal action because of what he did or caused to be done in fulfilling the duties required of him; and
  - (b) all other costs, expenses or charges he may sustain or incur in relation to the fulfillment of his duties to TREB, except where these costs, expenses and charges are the result of his own willful neglect or default.

**SECTION 12 - Execution of Contracts, Etc.**

- 12.01 Where the term “document” is used in this Section 12, it shall mean to include anything set out in writing that affects TREB in any manner, and includes anything in writing pertaining to any property or securities owned by TREB and/or any financial or other obligations into which TREB has entered.
- 12.02 Any documents requiring the signature of TREB once approved by the Board of Directors shall be signed by any two Signing Officers (as defined in Section 10.02), and once signed, the documents shall be binding on TREB.

## ARTICLE 6

Board of Directors

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- 12.03 Where necessary, the Corporate Seal may be placed on any document by a person authorized to sign same on behalf of TREB.

**SECTION 13 - Respecting the Borrowing of Money, Etc.**

- 13.01 The Board of Directors may, by resolution, as they deem necessary borrow money in whatever amount they deem appropriate in the interests of TREB and its Members.
- 13.02 Where the borrowing of money requires that the property or other securities of TREB be mortgaged or otherwise pledged as collateral, the Board of Directors shall first obtain approval of the Members before mortgaging or otherwise pledging the property or securities as collateral.

**SECTION 14 - Voting Shares and Securities in Other Companies**

- 14.01 Any voting rights TREB may have in any company because it holds shares or other securities in that company may be voted at any meeting of that company where so allowed, in such a manner and by such person(s) as the Board of Directors shall by resolution determine.

**SECTION 15 - Rules and Policies**

- 15.01 The Board of Directors may pass rules and policies relating to the business and affairs of TREB including, but not limited to, rules and policies governing the Multiple Listing Service of TREB and the Code of Ethics and Standards of Business Practice of TREB, provided that such are not inconsistent with this By-Law. Such rules and policies, as well as any amendments the Board of Directors may make to the existing rules and policies, provided such amendments are also not inconsistent with this By-Law, shall come into force five (5) days following notification to Members, or at such time as the Board of Directors may specify, and apply to TREB and all Members.

**SECTION 16 - Hearing Committees**

- 16.01 Where the Board of Directors is required by this By-Law or grants a hearing to any interested party or parties, before the Board of Directors makes any decision, it may appoint a Committee of three (3) TREB Directors to hear such interested party or parties in place of the Board of Directors.
- 16.02 The following procedures shall be followed with respect to any hearing held in accordance with Section 16.01:
- (a) notice of the hearing by the Committee shall be given to the party or parties by the Chief Executive Officer at least ten (10) days prior to the date of the hearing;
  - (b) the Committee shall, as soon as possible, following the conclusion of the hearing, make a written report to the Board of Directors summarizing the issue, detailing the findings of fact made by the Committee and listing the recommendations, if any, of the Committee together with the reasons for the recommendations;
  - (c) after considering the report of the Committee, the Board of Directors may make any decision in respect of such matter that it might have made as if it conducted the hearing itself;

## ARTICLE 6

Board of Directors

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- (d) following a decision by the Board of Directors, the Chief Executive Officer shall upon written request deliver to all interested parties a copy of the written report together with an extract of the minutes of the Board of Directors meeting setting out the decision.

**SECTION 17 - Financial Expenditure Approval Limitations**

- 17.01 Except in an emergency, where the Board of Directors has approved a financial commitment/expenditure in excess of \$500,000 or approved a commitment/expenditure that has a contractual term exceeding two years, and which has an aggregate financial impact of more than \$100,000 without the concurrence of the Finance Committee, the Board of Directors shall refer the matter to a meeting of Members for approval prior to the making of any contractual commitments or implementation thereof.
- 17.02 If any budget for a fiscal year that is approved by the Board of Directors project the spending by TREB for that year of more than the amount of TREB's revenues for that year (any such excess of spending being called a "**Deficit**"), such budget shall require approval by a majority of votes cast by Voting Members present in person and by proxy at a meeting of the Members, which shall be held not later than the end of four calendar months from the commencement of that fiscal year and prior to the making of any significant expenditure that would result in a Deficit being actually incurred for that year.

## ARTICLE 7

## Committees

**SECTION 1 - Committees**

- 1.01 The Board of Directors shall appoint the Arbitration and Professional Standards Steering, Communications, Education, Finance, Government Relations, MLS®, Committees each year. The Board of Directors may as it deems necessary appoint any other task force or committee.
- 1.02 Unless otherwise provided in this By-Law, each Committee shall consist of at least six (6) persons who are Members. The Committee Chair shall be appointed by the President, subject to ratification by the Executive Committee. The Committee Chair or at least one Member of each Committee shall be a Director of TREB. Only persons who are Voting Members shall be eligible to serve on any Committee.
- 1.03 Unless otherwise provided in this By-Law, a majority of Committee Members being present shall constitute a quorum for the transaction of business.
- 1.04 If the Chair of the Committee is present he shall serve as Chair of the meeting. In the absence of the Chair or Vice-Chair the meeting shall appoint a Chair from those present.
- 1.05 At any Committee of TREB, the Chair shall not have a vote except in the case of a tie.
- 1.06 Any meeting of Committees may be adjourned at any time and from time to time and business may be continued at the adjourned meeting as might have been continued at the original meeting from which the adjournment took place. An adjournment may be made whether or not a quorum is present.

**SECTION 2 - Arbitration and Professional Standards Steering Committee**

- 2.01 The Arbitration and Professional Standards Steering Committee shall deal with Claims arising between Brokerage Members in the manner described in Schedule "C" and with professional standards complaints in the manner described in Schedule "D".

**SECTION 3 - Member Communications Committee**

- 3.01 The duties of the Member Communications Committee are but shall not be limited to the following:
- (a) to develop and implement a program of publication of information relative and helpful to TREB affairs and TREB Members with the approval of the President and/or Board of Directors; and
  - (b) to consider and prepare printed and pictorial material for use by the Members in promoting the sale of real estate, with the approval of the President and/or Board of Directors.

**SECTION 4 - Education Committee**

- 4.01 The duties of the Education Committee are as follows:
- (a) to provide REALTOR® specific direction and input to the Education Department;

## ARTICLE 7

## Committees

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- (b) to approve the type of content required, for a program of education and training for the professional development of the Membership; and
  - (c) to make recommendations to the Board of Directors on matters of professional development for the Membership.

**SECTION 5 - Finance Committee**

5.01 The Finance Committee shall be comprised of at least one representative of each of the following: the Broker of Record of Brokerage Members, Broker Members, Salesperson Members and Commercial Division Members. The duties of the Finance Committee are as follows:

- (a) to review and make appropriate modifications to the budget for the ensuing year for submission to the Board of Directors;
- (b) to review all expenditures and, if considered appropriate, approve for submission to the Board of Directors. The provisions of this Section in no way limit the power of the Board of Directors to initiate, approve and make expenditures apart from those approved and recommended by the Finance Committee;
- (c) to review the financial statements prepared for TREB;
- (d) to review the structure of membership dues and service fees and to make appropriate recommendations to the Board of Directors; and
- (e) to monitor the financial performance of TREB and make recommendations to the Board of Directors, and to prepare quarterly financial reports to the Board of Directors, in a form suitable for publication to the Membership.

**SECTION 6 - Government Relations Committee**

6.01 The duties of the Government Relations Committee are as follows:

- (a) to protect and promote the interests of TREB and of the Real Estate Business before legislative bodies in consultation with OREA and CREA on provincial and federal issues;
- (b) to perform other duties pertaining to public policy as may be referred to it by the Board of Directors; and
- (c) with the prior approval of the Board of Directors, to make submissions to legislative and other public bodies in consultation with OREA and CREA on provincial and federal issues.

## ARTICLE 7

Committees

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**SECTION 7 - MLS® Committee**

7.01 The duties of the MLS® Committee are as follows:

- (a) to examine and report to the Board of Directors on any suggested amendments to the MLS® Rules and Policies and to suggest amendments for the benefit of TREB;
- (b) to review and consider the operation generally of the MLS® system and to make recommendations in respect to it to the Board of Directors; and
- (c) to perform other duties pertaining to the MLS® system as may be referred to it by the Board of Directors.

## ARTICLE 8

Commercial Division

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**SECTION 1 - Division**

- 1.01 There shall be a Commercial Division composed of all Members who apply and qualify for membership in the Commercial Division in accordance with the membership criteria established by the Executive Council Commercial Division and as approved by the Board of Directors from time to time.

**SECTION 2 - Executive Council Commercial Division**

- 2.01 The affairs of the Division shall be managed by an Executive Council.

**SECTION 3 - Executive Council – Composition**

- 3.01 The Executive Council shall be composed of fifteen (15) councillors (individually, a “Councillor”) as follows:
- (a) the immediate Past Division Chair or if the immediate Past Division Chair is not available to serve then the most recent Past Division Chair who is available to serve in his place;
  - (b) the Division Chair; and
  - (c) thirteen (13) other members of the Division; one of whom shall be elected from among the members of the Executive Council, by the members of the Executive Council, to serve as Division Vice-Chair.

**SECTION 4 - Term**

- 4.01 The Division Chair, Vice-Chair and members of the Executive Council shall be elected and shall hold office for a two (2) year term or until their successors have been elected or until their tenure of office shall have been otherwise terminated in accordance with this By-Law. The Past Division Chair shall hold office as of right for two (2) years or until his tenure of office shall have been otherwise terminated in accordance with this By-Law and shall succeed to office in the year immediately following the year in which the Past Division Chair served as Division Chair. If the most immediate Past Division Chair is not available to serve, then the most recent Past Division Chair who is available shall serve in his place for a term of two (2) years or until his tenure of office has been otherwise terminated in accordance with this By-Law.

**SECTION 5 - Vacancies**

- 5.01 Any vacancy in the Executive Council shall be filled by the Councillors, from members of the Division and the member so appointed shall hold office for the remainder of the term of the Councillor in whose place such member is appointed. In the event that the vacancy is that of Division Chair, the Division Vice-Chair shall assume the office of Division Chair. In the event that the vacancy is that of Division Vice-Chair, the members of the Executive Council shall, amongst themselves, elect one (1) of their number to fill the position and a member of the Division shall be selected by the Executive Council to act as Councillor to fill the vacancy so created.

## ARTICLE 8

Commercial Division

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**SECTION 6 - Executive Council Meetings**

- 6.01 The Executive Council shall meet not less than four (4) times annually at a time and place as the Division Chair or, in his absence, the Division Vice-Chair may decide, provided such meeting shall be held within the Jurisdictional Area of TREB.
- 6.02 At least five (5) days' notice of an Executive Council meeting shall be given to each Councillor. A Councillor may, before or after a meeting of the Executive Council, waive notice of a meeting or consent to the reduction of the period of notice convening the meeting.
- 6.03 A majority of Members of the Executive Council present at any properly constituted meeting of the Executive Council shall constitute a quorum for the transaction of business.
- 6.04 The Division Chair of the Executive Council shall not have a vote except in the case of an equality of votes. In such an instance, the Division Chair shall cast the deciding vote.
- 6.05 Any meeting of the Executive Council may be adjourned at any time and from time to time and any business may be continued at the adjourned meeting as might have been continued at the original meeting from which the adjournment took place. An adjournment may be made whether or not a quorum is present.

**SECTION 7 - Conditions Upon Which Councillors Shall Cease to Hold Office**

- 7.01 A Councillor shall be deemed to have resigned and a vacancy created on the Executive Council if:
- (a) he becomes bankrupt or insolvent;
  - (b) he becomes legally incompetent;
  - (c) he resigns, by notice in writing to the Division Chair;
  - (d) he becomes a Retired Member;
  - (e) he resigns as a Member, or where such membership is suspended or terminated; or
  - (f) his registration under the Act has been suspended or terminated.
- 7.02 (a) Any member of the Executive Council to whom Sub-section (b) applies, may be removed from office at any meeting of the Executive Council by a notice of motion being filed at least ten (10) days in advance of such meeting of the Executive Council and approved by at least two-thirds of the Councillors present at a meeting called for such purpose.
- (b) A Councillor may be removed from office in the aforesaid manner if he:
- (i) is or it is discovered that he has been convicted of any criminal offence;
  - (ii) has been absent from four (4) consecutive meetings of the Executive Council; or

## ARTICLE 8

## Commercial Division

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- (iii) refuses to take the oath of office, or for any other reason does not take the oath of office.

**SECTION 8 - Division Meetings**

- 8.01 Any meeting of members of the Division shall be held at such time and place within the Jurisdictional Area of TREB as the Executive Council determines from time to time.
- 8.02 (a) Notice stating the day, hour and place of any meeting of Members of the Division and the general nature of the business to be transacted shall be given to each Member of the Division in a form and delivered in a manner deemed sufficient by the Executive Council to notify all Members at least twenty-one (21) days before the date of such meeting.
- (b) The accidental failure to give notice of any meeting or the non-receipt of any notice by any member shall not invalidate any resolution passed or any proceedings taken at any meeting of Members of the Division.
- 8.03 Fifteen (15) Members of the Division present in person at a properly constituted meeting of the Division constitutes a quorum for the transaction of business.
- 8.04 Each member of the Division as defined in Section 1 hereof shall be entitled to one (1) vote at all meetings of the Commercial Division.
- 8.05 (a) At any meeting of Members, a Member entitled to vote may vote by proxy, executed in writing by the Member.
- (b) The form of any proxy shall be determined by the Board of Directors and in the form used by all Members of TREB.
- (c) A person shall not hold more than one (1) proxy.
- (d) The Board of Directors may fix a time not exceeding forty-eight (48) hours, excluding Saturdays, Sundays and statutory holidays, prior to any meeting or adjourned meeting of Members before which time proxies must be deposited with the Executive Council and any such period of time established shall be specified in the notice calling the meeting. If no time is established, proxies may be deposited up to the closing of a poll. A proxy shall be considered deposited only when actually received by the Secretary of the Executive Council.
- 8.06 (a) All Members of the Division are eligible to vote at a meeting of Members except Honourary Members, Retired Members and Non-Active Sustaining Members.
- (b) Every question submitted to any meeting of Members of the Division shall be decided in the first instance on a show of hands.
- (c) The chair of the meeting of Members of the Division shall not have a vote, except in the case of an equality of votes. In such an instance, the chair shall, both on a show of hands and at a poll, cast the deciding vote.

## ARTICLE 8

## Commercial Division

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- (d) At any meeting unless a poll is demanded, a declaration by the chair that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.
  - (e) A Member may vote by proxy at a meeting of Members of the Division.
  - (f) Every person present either in person or by proxy and entitled to vote shall have one (1) vote.
- 8.07 The Division Chair of the Executive Council shall chair all meetings of Members of the Division. In the absence of the Division Chair, the Division Vice-Chair shall chair the meeting of Members of the Division. If both the Division Chair and Division Vice-Chair are absent, a Member as selected by the meeting shall preside.
- 8.08 Any meetings of the Division may be adjourned at any time and from time to time and any business may be continued at the adjourned meeting as might have been continued at the original meeting from which the adjournment took place. An adjournment may be made whether or not a quorum is present.

**SECTION 9 - Election of Councillors – Commercial Division**

- 9.01 An election of Councillors shall be held annually and shall take place between the 1st and the 15th of June except where there are insufficient candidates for election in which case the Division Chair shall declare by acclamation those candidates nominated as elected.
- 9.02 Each Member of the Commercial Division who desires to be considered as a candidate for election to the Executive Council Commercial Division may submit a nomination form. The Executive Council, by a two-thirds (2/3) vote may nominate qualified candidates where an insufficient number of candidates has been nominated to fill positions to be elected to the Executive Council. The form shall be filed with the Corporate Secretary by no later than thirty (30) days before the date of the Election Meeting. No Member may be nominated for election to the Board of Directors and the Executive Council Commercial Division in the same year.
- 9.03
- (a) Any Member of the Division in good standing with TREB shall be eligible for election to the Executive Council and may be nominated by any other member in good standing.
  - (b) Not more than two (2) members registered with the same Brokerage Member may be nominated for election or serve as Councillor at the same time. However, if during the course of his term in office, a Councillor becomes registered with a Brokerage Member which already has two persons currently serving as Councillors, the Executive Council may at its sole discretion and by majority vote permit such Councillor to finish his term of office.
  - (c) Honourary Members, Retired Members and Non-Active Sustaining Members shall not be eligible for election to or to become a member of the Executive Council.
- 9.04
- (a) To be eligible for nomination for Division Chair, a member of the Division must be a current member of the Executive Council, have served at least thirty-six (36) months on

## ARTICLE 8

## Commercial Division

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the Executive Council of the Division and served as Division Vice-Chair within the immediately preceding twenty-four (24) months.

- (b) To be eligible for nomination for Division Vice-Chair, a member of the Division must be a current member of the Executive Council and have served at least twenty-four (24) months on the Executive Council of the Division within the immediately preceding thirty-six (36) months.
- 9.05 Notwithstanding Sections 4 and 5 hereof, if an individual transfers to another Brokerage Member after nomination and prior to the Annual Election such that he would have been ineligible for nomination if the transfer had taken place before a nomination then that individual shall be disqualified from being a member of the Executive Council and:
- (a) the candidate obtaining the next greatest number of votes for the election to the office shall be declared elected to office;
- (b) if the individual was declared elected to an office as a member of the Executive Council, the office shall be considered to be vacant for the purposes of this Article.
- 9.06 Notwithstanding Section 5 hereof, the Division Chair and Division Vice-Chair of the Executive Council Commercial Division shall not be registered with the same Brokerage Member. However, if a disqualification occurs by reason of a transfer of one (1) of them then that person shall be permitted to remain as Division Chair or Division Vice-Chair for the remainder of the term.
- 9.07 The election shall be conducted by a Chief Returning Officer who shall be a representative of TREB's auditors, or such other person as the Board of Directors deems appropriate.
- 9.08 Any Member entitled to vote for a Director, who is a member of the Division, shall be entitled to vote in an annual election of the Commercial Division.
- 9.09 Voting, voting list, tie votes, forms and procedures and retention of documents shall be consistent with the applicable provisions of Article 5 relating to the election of Directors.

## ARTICLE 9

**Symbols, Crests and Certificates**

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**SECTION 1 - Use of Symbols**

- 1.01 The Board of Directors may from time to time endorse any mark, symbol, design, device or crest for use by TREB or any of its Members.
- 1.02 Upon endorsement by the Board of Directors, any Member may use such mark, symbol, design, device or crest on stationery or advertising material subject to any rules or regulations the Board of Directors may impose regarding the use of same.
- 1.03 The REALTOR® logo of CREA is hereby adopted and endorsed as a logo of TREB, and terms of reference for its use are the same as those adopted by CREA, which by this reference are deemed to be included in this By-Law.
- 1.04 A Membership Card is the property of TREB and is subject to recall and cancellation of the membership by TREB on termination of the Member for any cause.

## ARTICLE 10

**Order of Procedure**

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**SECTION 1 - Order of Procedure at Meetings**

- 1.01 Unless specifically provided for in this By-Law to the contrary, all meetings of the Members of TREB, the Board of Directors and all meetings of Committees or task forces of TREB shall be subject to the procedures, rules and regulations as set out in the latest edition of "Roberts Rules of Order" by General Henry M. Roberts.

## ARTICLE 11

**OREA and CREA Membership**

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**SECTION 1 - Membership in OREA**

- 1.01 TREB shall be a member of OREA and by virtue of this membership all Members of TREB are deemed to be members of OREA and shall be subject to the OREA By-Law and OREA's rules and regulations.

**SECTION 2 - Membership in CREA**

- 2.01 TREB shall be a member of CREA and by virtue of this membership all Members of TREB are deemed to be members of CREA and shall be subject to the CREA By-Law and CREA's rules and regulations.

**SECTION 3 - Termination of Membership**

- 3.01 Where the membership of any Member of TREB in either OREA or CREA is terminated by either of these Associations, the membership of that Member in TREB is deemed to be automatically terminated.

## ARTICLE 12

**By-Law Amendments**

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**SECTION 1 - By-Law Amendments**

- 1.01 The provisions of this By-Law may be enacted, amended or repealed at any properly constituted meeting of the Board of Directors, requiring at least a two-thirds (2/3) majority of votes cast.
- 1.02 The contents of notice of meeting called for the purposes referred to in Section 1.01 hereof, may be amended at any meeting of the Board of Directors where it is to be dealt with, provided that all Directors present at the meeting consent, in writing, to such an amendment.
- 1.03 Any proposal by the Board of Directors to amend the TREB By-Law must be determined by recorded vote and further, such vote shall be published to the Membership prior to the next Board of Directors meeting.

**SECTION 2 - Approval of By-Law Amendments**

- 2.01 Any enactment, amendment or repeal of this By-Law as approved by the Board of Directors is not enforceable until confirmed by not less than two-thirds (2/3) of the votes cast by Voting Members present either in person or by proxy, at a duly called meeting of the Members of TREB.
- 2.02 Even though, by definition, "By-Law" includes rules and regulations, Section 2.01 hereof does not apply to the creation, amendment or revocation of rules and regulations of TREB which are in the discretion of the Board of Directors pursuant to the provisions of Article 6, Section 15.01.

**SECTION 3 - Effect of Amendments**

- 3.01 Unless stated otherwise, no amendment or repeal shall extinguish any debt or obligation of any Member to TREB or to any other Member arising or existing under any By-Law or part of a By-Law as it existed prior to the amendment or repeal.

## ARTICLE 13

## Notices

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**SECTION 1 - Notices**

- 1.01 Unless otherwise specified in this By-Law, any letter, notice, document or any other material (hereinafter collectively referred to as "Notices") required or permitted to be given or forwarded by TREB or its officers, Directors, employees, representatives, Committees, Committee members, representatives of its Committees or Committee Members, hearing or appeal panels, or representatives of its hearing or appeal panels, may be:
- (a) mailed by regular or registered mail;
  - (b) delivered personally (or by courier); or
  - (c) sent by facsimile or by other electronic means which may include a posting on the MLS® System;
- to such Member at its/his latest address as recorded with TREB.
- 1.02
- (a) Notices which are sent by facsimile or by other electronic means shall be deemed to have been received by the addressee on the next day.
  - (b) Notices which are sent by regular mail shall be deemed to have been received by the addressee on the fifth day (not including the day of mailing) after mailing. If receipt of notice would occur on a weekend or statutory holiday, then receipt shall be deemed to be the next business day in the province of Ontario.
  - (c) Notices which are mailed by registered mail, shall be deemed to have been received on the day they are actually received by the addressee according to the records of Canada Post.
  - (d) Notices delivered personally or by courier, shall be deemed to have been received when delivery is made to the latest address of the Member as recorded with TREB.
- 1.03 If Notices are mailed, sent by facsimile or by other electronic means or delivered to a Member and have been returned on three consecutive occasions because such Member cannot be found, TREB need not send any further Notices to such Member until it/he informs TREB in writing of its/his new address.

PASSED THIS 20TH DAY OF OCTOBER, 2011.

WITNESS THE CORPORATE SEAL OF TREB.



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Richard Silver, President



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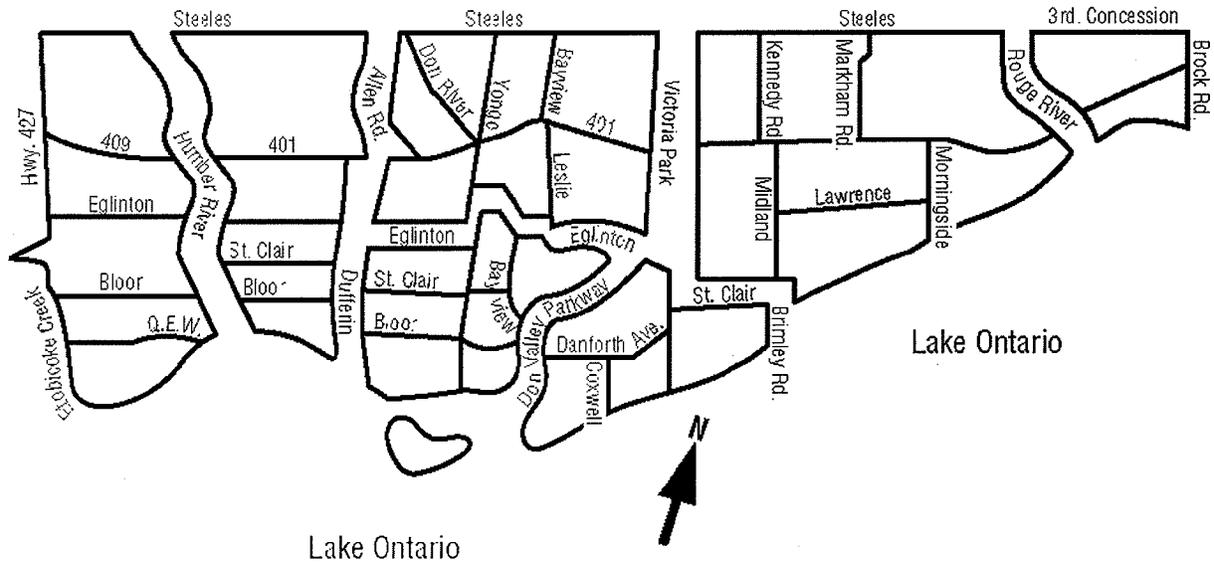
Don Richardson, Chief Executive Officer

Schedule "A"

THIS IS SCHEDULE "A" TO THE BY-LAWS OF THE TORONTO REAL ESTATE BOARD

JURISDICTIONAL AREA OF TREB.

City of Toronto and that portion of Pickering Township lying south of the easterly extension of the northern limit of the City of Toronto and lying west of that portion of the Brock Road between Lake Ontario and the easterly extension of the northern limit of the Municipality of Metropolitan Toronto.



Schedule "B"

Enacted the 4th Day of May, 2011

**ENTRANCE FEES \***

Brokerage .....	\$4,960.00
Broker/Salesperson .....	460.00
(effective November 1, 1996)	

**TRANSFER FEES \***

Broker/Salesperson .....	25.00
(effective November 1, 1996)	

**MEMBERSHIP FEES\***

Membership Fees for any Member shall be the amount set opposite the reference to the type of Member set out below. Membership Fees in all instances are for a period of twelve (12) months commencing July 1st of each year.

Brokerage .....	\$721.80
Broker/Salesperson .....	\$651.80
Brokerage (Twenty-Five Year Status) .....	\$618.78
Broker/Salespersons (Twenty-Five Year Status) .....	\$559.28
Non-Active Sustaining .....	\$30.00
Honourary .....	NIL
Honourary Life .....	NIL
Retired .....	NIL

**REINSTATEMENT FEES**

Brokerage .....	\$100.00
Broker/Salesperson .....	\$100.00

*\*Membership Fees do not include applicable taxes and premiums for life and accidental death and dismemberment insurance.*

## Schedule "C"

## Arbitration

## SECTION 1 - Definitions

- 1.01 (a) "**Appeal**" means the request for review of an Award to the OREA Appeal Panel, as filed in the prescribed form or in the form attached as Schedule "A";
- (b) "**Appeal Reply**" or "**Reply**" means the Appeal Respondent's written reply to the Appeal as further described in Section 25 hereof;
- (c) "**Appeal Respondent**" means the other party to an Award which is the subject of an Appeal to the OREA Appeal Panel;
- (d) "**Appellant**" means the party who files an Appeal;
- (e) "**Arbitration**" means the proceedings prescribed by this Schedule;
- (f) "**Arbitration Chair**" means the Chair of the Arbitration Roster;
- (g) "**Arbitration Roster**" is further described in Section 2 hereof;
- (h) "**Arbitrator**" means a member of the Arbitration Roster or such other person appointed by the Panel Chair to hear a Claim and who presides as a panelist on a particular Hearing Panel;
- (i) "**Award**" means the decision of the Hearing Panel;
- (j) "**Claim**" means a dispute between Brokerage Members regarding real estate business relating to the division, distribution or disposition of commission paid or to be paid in respect of a transaction, or in connection with any listing on TREB's MLS® On-Line System, and shall also mean the written notice of such Claim as submitted by the Claimant and further described in Section 6 hereof;
- (k) "**Claimant**" means the Brokerage Member who files a Claim against another Brokerage Member who shall be represented by the Broker of Record or such other person as the Broker of Record may authorize in writing;
- (l) "**Committee**" means the Arbitration and Professional Standards Steering Committee;
- (m) "**Hearing Panel**" means a panel chosen to hear a Claim as further described in Section 12 hereof;
- (n) "**Mediation**" means a voluntary process in which a neutral third party assists the parties in dispute to negotiate their own resolution to the dispute;
- (o) "**Mediator**" means a person who acts as a neutral third party and who shall be a TREB Member;
- (p) "**MLS® On-Line System**" means the computer system as operated by TREB from time to time for the MLS® System, which is the multiple listing service owned or operated by or on behalf of TREB;
- (q) "**OREA**" means the Ontario Real Estate Association;

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- (f) "**OREA Appeal Panel**" means the persons appointed by the Chief Executive Officer of OREA to hear and deal with an Appeal to OREA, as provided for herein and in the By-Law of OREA;
  - (s) "**Panel Secretary**" shall mean the person appointed by TREB to administer the work of the Arbitration Roster; such work may be performed by certain members of the TREB staff, as directed by the Panel Secretary;
  - (t) "**Parties**" means the Claimant and the Respondent in the case of an Arbitration, and the Appellant and the Appeal Respondent in the case of an Appeal;
  - (u) "**Preliminary Motion**" means a written submission to the Arbitration Chair regarding objections to jurisdiction of the Arbitration Roster or such other matter which may be raised and is accepted by the Arbitration Chair;
  - (v) "**Respondent**" means the Brokerage Member against whom a Claimant has filed a Claim, who shall be represented by the Broker of Record or such other person as the Broker of Record may authorize in writing;
  - (w) "**Response**" means the Respondent's written reply to the Claim as further described in Section 7 hereof.

**SECTION 2 - Arbitration Roster – Composition and Powers**

- 2.01 The Committee shall appoint an Arbitration Roster. The Arbitration Roster shall consist of not less than twenty-five (25) Members of TREB, composed of Brokerage Members, Broker Members and Salesperson Members, a majority of whom shall be Brokerage Members and Broker Members, and none of whom shall be members of the Professional Standards Review Roster, the Professional Standards Hearing Roster or the Professional Standards Hearing Appeal Roster. In order to qualify to be a member of the Arbitration Roster, all Roster Members must have a minimum of three (3) years of membership in TREB. The Chair of the Committee may appoint such other persons as Arbitrators as he deems appropriate. Members of the Arbitration Roster shall hold office for staggered rotating terms of two (2) years or until their successors have been appointed or until their tenure of office shall have otherwise been terminated in accordance with this By-Law.
- 2.02 The Arbitration Roster shall have the jurisdiction and power to hear or settle all Claims.
- 2.03 The Arbitration Chair shall have the power to delegate to the Panel Secretary the powers described in Subsections 3.02 and 4.03, Section 9, Section 12 and Subsection 17.01 hereof.
- 2.04 Notwithstanding any other provision of this By-Law, where TREB is party to an agreement, in writing or otherwise, with another real estate board or organization authorized by the Board of Directors, which agreement requires submission and settlement of arbitration Claims as set out in that agreement (the "**Arbitration Procedure**"), all Members of TREB shall adhere and submit to the Arbitration Procedure in a complete and timely fashion. Any Arbitration Procedure agreed to by TREB, as amended or varied, shall be published by TREB from time to time.
- 2.05 The Committee shall keep a roster of qualified Arbitrators and Mediators.

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**SECTION 3 - Custody of Files and Documents**

- 3.01 The Arbitration Roster shall have custody of all documents, information and all other materials in all Claims arbitrated. All such files and information are confidential and are to be disclosed only to the Committee, the Arbitration Roster, the Hearing Panel under Section 3.02, the Parties involved in matters that proceed before a panel, a Mediator appointed under Section 9.02, the OREA Appeal Panel and Chief Executive Officer of OREA (where an Award has been appealed under Section 24 hereof) and to another real estate board or association in pursuance of a membership application before that board provided that board has comparable confidentiality and custody rules. Subject to a use permitted under Section 3.02, all such confidential information and files so disclosed are solely for use by the recipient therefore in considering the matter before the applicable panel, for resolution of the dispute, or considering the membership application in respect of which the disclosure has been made and not for any other purpose whatsoever.
- 3.02 In circumstances where any matter is to be referred by the Hearing Panel to the Professional Standards Review Roster, the Arbitration Chair may make the files and records available to the Professional Standards Review Roster on a confidential basis for the purposes of carrying out the process set out in Schedule "D".

**SECTION 4 - Submission to Arbitration**

- 4.01 Subject to Subsection 4.07 below, all Members of TREB agree with TREB and every other Member of TREB to submit all Claims with any other Member to Arbitration as provided in this Schedule.
- 4.02 Subject to Subsection 4.07 below, no legal action or other proceeding shall be taken by any Member with respect to the subject matter of a Claim and no court shall intervene in matters governed hereunder.
- 4.03 Upon the filing of a Claim with TREB, the Arbitration Chair may decline to proceed:
- (a) if there is no jurisdiction for a Claim with TREB;
  - (b) if the time period provided by Section 6 hereof, as may have been extended pursuant thereto, expired before the Claim was filed.
- 4.04 In the event that the Arbitration Chair has refused to proceed, the Panel Secretary shall notify the Claimant that the file has been closed.
- 4.05 Any Claimant to whom notice is given under Section 4.04 hereof shall be notified of the right to disagree with the determination of the Arbitration Chair and require the issue of jurisdiction raised thereby to be heard by the Arbitration Chair or such other person as the Arbitration Chair deems appropriate to hear the matter as a preliminary motion under Section 4.06 hereof. Notice must be given to TREB in writing by a disagreeing Claimant within fourteen (14) days of the date of the Panel Secretary's notice given under Section 4.04, failing which the Arbitration Chair's decision shall be final and binding, and not subject to appeal.
- 4.06 At any time prior to a hearing, a party to a Claim may bring a Preliminary Motion to be heard by written submission regarding objections to jurisdiction of the Arbitration Roster, or such other matters which may be raised and is accepted by the Arbitration Chair or such other person

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designated by the Panel Chair to hear the matter, whose decision is conclusive and binding on the parties, and not subject to appeal.

- 4.07 At any time prior to a hearing, the parties may in writing agree to have the matters addressed in the Claim determined by a court of competent jurisdiction. Once such an agreement has been entered into, the matters set out in such Claim shall not be subject to Arbitration and such agreement and the determination of such court shall be final and binding on the parties thereto and not subject to appeal.

**SECTION 5 - Successor Brokerage Member Liable**

- 5.01 In the event that a Brokerage Member, in this section the "Successor", acquires sufficient assets and the goodwill of another Brokerage Member, in this section the "Seller", by purchase, merger or other form of transaction of reorganization such that the Seller ceases to be a Member of TREB and if a Claim is or has been submitted to Arbitration under Section 6 hereof involving the Seller, the Successor shall replace the Seller as a party to such Arbitration and be bound by all the provisions of this Schedule.
- 5.02 The Arbitrators in delivering an Award may not require the Successor to pay the Claimant any part of a commission in dispute if the Arbitrators in their Award conclude:
- (a) that the Seller deliberately or fraudulently failed to disclose to the Successor the liability or potential liability of the Seller under this Schedule; and
  - (b) that the Successor made reasonable inquiries of the Seller and a reasonable examination of the records of the Seller to determine whether the Seller had any liability or potential liability under this Schedule; or
  - (c) that, in all circumstances, an Award against the Successor would be unfair and inequitable.

**SECTION 6 - Filing of Claim**

- 6.01 The Arbitration Roster shall not have jurisdiction to process or otherwise deal with a Claim unless:
- (a) it is in writing, signed by or on behalf of the Claimant and delivered to the Panel Secretary;
  - (b) it is delivered to the Panel Secretary not later than ninety (90) days from the date when the commission in dispute was paid or ought to have been paid or within a further period as the Arbitration Chair may allow; and
  - (c) the Claim is accompanied by a filing fee, in cash or cheque, in an amount equivalent to five percent (5%) of the amount of commission in dispute, or the sum of five hundred dollars (\$500.00), whichever is the greater, provided that in no event shall the filing fee exceed one thousand five hundred dollars (\$1,500.00) plus applicable taxes. Such amount of filing fee may be set from time to time by the Board of Directors.
- 6.02 The Claim shall contain a brief and concise statement of the reasons in support of the Claim and the amount being claimed as well as a statement that the Claimant will abide by the Award.

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- 6.03 The Claimant shall attach to the Claim such documents, records and other writings as are in the Claimant's possession upon which the Claimant intends to rely, and such documents, records and other writings shall be deemed to become part of the Claim.
- 6.04 The filing fee referred to in Section 6.01(c) hereof shall be refunded to the Claimant or retained by TREB, as the case may be, based on the following:
- (a) if the Claim is settled in whole before the commencement of an Arbitration hearing, TREB shall refund the Claimant 100% of the filing fee;
  - (b) if the Claim proceeds to an Arbitration hearing, TREB may, in its discretion, retain or return the filing fee. However, if the Claimant substantiates the Claim, in whole or in part, the Respondent shall reimburse the Claimant for the filing fee in whole or in part.

**SECTION 7 - Filing a Response**

- 7.01 When a Claim is received, the Panel Secretary shall forthwith forward a copy of the Claim to the Respondent.
- 7.02 In a notice or letter accompanying the Claim, the Panel Secretary shall advise in writing that the Respondent has fourteen (14) days from the sending of the notice or letter in which to file a Response.
- 7.03 The Response shall:
- (a) be in writing, addressed to the Arbitration Chair and delivered to the Panel Secretary;
  - (b) contain a brief and concise statement of the position of the Respondent with respect to the Claim and the reasons therefor;
  - (c) have attached to it such records, documents and other writings as are in the Respondent's possession and upon which the Respondent intends to rely, and such documents, records and other writings shall be deemed to become part of the Response; and
  - (d) state that the Respondent shall abide by the Award of the Arbitrators.
- 7.04 The Panel Secretary shall forthwith, upon receipt, forward a copy of the Response to the Claimant.
- 7.05 If the Respondent fails to deliver a Response within the required fourteen (14) days, or fails or refuses to appear at a hearing, the Arbitrators (a) may still proceed with the Arbitration and issue an Award based on the Claim and the evidence presented at the Arbitration; and (b) may order the Respondent to pay an amount to the Claimant as compensation for such failure to file or refusal to appear in accordance with Section 20.02 hereof.

**SECTION 8 - Notice of Hearing**

- 8.01 After the time period prescribed for delivery of the Response, the Arbitration Chair shall establish a fixed time and place for the hearing and notice of the hearing shall be mailed to the parties by the Panel Secretary at least twenty-one (21) days in advance of the Arbitration hearing date.

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**SECTION 9 - Mediation**

- 9.01 After the Response has been received and before setting a date for the Arbitration hearing, the Arbitration Chair may request that the Claimant and Respondent meet with a Mediator or the parties may on their own initiative request to meet with a Mediator.
- 9.02 A Mediator shall be appointed by the Arbitration Chair.
- 9.03 The purpose of meeting with the Mediator shall be to attempt to resolve the Claim without the necessity of having a hearing.
- 9.04 Where the Claimant and Respondent agree to a resolution of the Claim, the Mediator shall prepare a settlement agreement setting out the terms agreed upon and the Claimant and Respondent shall sign the agreement showing that they agree to be bound by the agreement.
- 9.05 Such an agreement, once signed by the Claimant and Respondent, shall be deemed to be an Award for the purposes of Sections 19 and 35 hereof, except that there is no right to appeal such an Award.
- 9.06 A copy of such a settlement agreement shall be given to the Panel Secretary as well as to the Claimant and Respondent.
- 9.07 Where a meeting with the Mediator does not lead to a resolution of the Claim, the Mediator shall advise the Panel Secretary in writing that the Claim could not be resolved. The Mediator shall not discuss with anyone any of the matters discussed, statements made or positions taken by either the Claimant or Respondent at any meeting with the Mediator.
- 9.08 Where a meeting with the Mediator does not lead to a resolution of the Claim, the Claim shall proceed in accordance with this Schedule.
- 9.09 If the Mediation is unsuccessful in resolving the Claim, and the matter proceeds to an Arbitration hearing, the Mediator shall not be allowed to participate in any manner at such Arbitration hearing and the Claimant and Respondent may not enter into evidence any matters discussed or statements made or positions taken by either the Claimant or Respondent at any meeting with the Mediator, as such discussions shall be deemed to have taken place on a "without prejudice" basis.

**SECTION 10 - Powers of Arbitrators**

- 10.01 Arbitrators appointed pursuant to this Schedule possess all powers necessary and proper to the performance of their functions and duties prescribed by and consistent with this Schedule; without in any way limiting the generality so conferred, the Arbitrators may:
- (a) adjourn any hearing from time to time;
  - (b) proceed in such manner as it deems proper and without being bound by the rules of evidence or legal rules, provided that it shall consider the best evidence available;
  - (c) receive evidence under oath or affirmation or otherwise; and

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- (d) use any acceptable method of recording the Arbitration hearing including, but not limited to, audio or videotape, recording secretary or stenographer.

**SECTION 11 - Qualifications of Arbitrators and Mediators**

- 11.01 No person shall serve as an Arbitrator or Mediator in any Claim where:
- (a) the Arbitrator or Mediator has, either directly or indirectly, any personal or financial interest in the Claim;
  - (b) the Arbitrator or Mediator is related by either blood or marriage to either the Claimant or the Respondent or any officer, director, shareholder, partner or employee of either the Claimant or Respondent; or
  - (c) there is any other reasonable basis for an apprehension of bias.

**SECTION 12 - Selection of Arbitrators**

- 12.01 Where an Arbitration hearing is required, the Arbitration Chair shall appoint a Hearing Panel, comprised of four (4) members of the Arbitration Roster to hear and determine the Claim, one of whom shall be appointed as Hearing Panel Chair. Quorum for the conduct of an Arbitration hearing shall be three (3) members of the Hearing Panel present, one of which shall be the Hearing Panel Chair.
- 12.02 Where there are not at least three (3) members of the Arbitration Roster who would qualify as Arbitrators because of the provisions of Section 11 of this Schedule, then the Arbitration Chair may appoint any other Broker Member or Brokerage Member who qualifies to act as an Arbitrator to sit on the Hearing Panel.
- 12.03 The Hearing Panel Chair shall preside at the Arbitration hearing.
- 12.04 Where a Claim involves a commercial listing, the Arbitration Chair shall select members of the Arbitration Roster who are members of the Commercial Division to hear and determine the Claim.

**SECTION 13 - Original Documents and Evidence**

- 13.01 The Claimant and Respondent shall be entitled to submit documentary evidence to the Hearing Panel. Copies of all documents may be submitted with the Claim or Response, but both the Claimant and Respondent shall bring originals of all documents to the hearing and be prepared to produce same for inspection if so requested by the Hearing Panel.
- 13.02 A document or written statement or an audio or visual record must have been submitted to the Hearing Panel and the other party to the proceedings at least fourteen (14) days before the date of the Arbitration hearing to be received in evidence, unless the Hearing Panel Chair, in its discretion, determines otherwise at the Arbitration hearing. The Hearing Panel Chair may also order such party to pay an amount in compensation to the other party for such delay or failure to file pursuant to Section 20.02 hereof.

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## Arbitration

**SECTION 14 - Recording of Hearings**

- 14.01 The Arbitration hearing shall be recorded as directed by the Hearing Panel under Section 10.01(d) hereof. The parties to any Arbitration hearing or Mediation shall not be entitled to record any proceedings at any Arbitration hearing or Mediation, except for the taking of handwritten notes.

**SECTION 15 - Witnesses**

- 15.01 The Claimant and Respondent each shall have the right to call, as a witness, anyone who has knowledge of facts concerning the Claim, whether or not that person is a Member of TREB.
- 15.02 Where a Claimant or Respondent intends to call one or more witnesses at an Arbitration hearing or Mediation, it shall so notify, in writing, the Panel Secretary, who shall in turn notify the other party to the proceeding. Such notice is to be received by the Panel Secretary at least fourteen (14) days prior to the date of the Arbitration hearing or Mediation and shall contain the full legal name, address and telephone number of the witness, unless the Hearing Panel Chair or the Mediator, as the case may be, in its discretion, determines otherwise at the Arbitration hearing or Mediation. Pursuant to Section 20.02 hereof, the Hearing Panel Chair may also order such party to pay an amount in compensation to the other party for any delay in providing such notice.

**SECTION 16 - Legal Counsel or Other Representative**

- 16.01 At an Arbitration hearing or Mediation, the Claimant and Respondent may each be represented by legal counsel or by a Brokerage Member, Broker Member or Salesperson Member of TREB, as long as such Brokerage Member, Broker Member or Salesperson Member of TREB is not a member of the Arbitration Roster or a member of the Board of Directors, unless that member is a member of the same Brokerage as the Respondent or the Claimant, or the Mediator appointed to try to settle that particular Claim. The Hearing Panel may retain legal counsel to sit at the hearing and advise the Hearing Panel on any and all matters of law or procedure, but such legal counsel shall not take part in the deliberation or decision of the Hearing Panel.
- 16.02 Where a Claimant or Respondent is to be represented by legal counsel, it shall so notify, in writing, the Panel Secretary. Such notice is to be received by the Panel Secretary at least fourteen (14) days prior to the date of the Arbitration hearing unless the Hearing Panel Chair, in its discretion, determines otherwise at the Arbitration hearing. Pursuant to Section 20.02 hereof, the Hearing Panel Chair may also order such party to pay an amount in compensation to the other party for any delay in providing such notice.

**SECTION 17 - Postponements and Adjournments**

- 17.01 Postponements and adjournments will not be routinely granted. In determining whether to adjourn the hearing the Arbitration Chair or Hearing Panel Chair, as applicable, may consider any relevant factors, including:
- (a) the reason for the request and any relevant documentation in support thereof provided within fourteen (14) days following receipt of the notice setting out the date of the Arbitration hearing;
  - (b) the consent of other parties;

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- (c) previous delays incurred, including the number and length of previous adjournments or postponements; and
- (d) the parties' consent to conditions which might be imposed if the adjournment or postponement is granted.

17.02 In granting the adjournment or postponement, the Hearing Panel Chair or Arbitration Chair, as applicable, may impose such conditions as it considers appropriate, including an imposition of costs against the party requesting the adjournment or postponement to a maximum amount of \$500.00 to the other party.

**SECTION 18 - Award of Arbitrators**

- 18.01 In the event that the Claim is heard by a Hearing Panel consisting of three (3) members of the Arbitration Roster, the Hearing Panel Chair shall be entitled to vote on the Award. However, in the event that the Claim is heard by a Hearing Panel of four (4) members of the Arbitration Roster, the Hearing Panel Chair shall not be entitled to vote on the Award. The Award of the Arbitrators shall be decided by a majority of the votes cast by the panel members entitled to vote.
- 18.02 The Award shall be in writing, shall contain the reasons for the Award, shall be signed by the Hearing Panel Chair and shall be forwarded to the Panel Secretary.
- 18.03 The Hearing Panel, by their Award, may:
- (a) dismiss the Claim; or
  - (b) direct the disposition of the commission in dispute as they consider proper; and
  - (c) refer the matter for Professional Standards review; and
  - (d) require payment by the Respondent to Claimant of any fee paid by the Claimant under Section 6 of this Schedule.
- 18.04 At the time of the granting of the Award, the Hearing Panel may make such order as to costs and/or compensation permitted under this Schedule as it deems appropriate.
- 18.05 Recognizing that the facts presented in connection with each Claim are almost always unique, under no circumstances shall the Award in any given case set a precedent and no Award shall be cited in connection with any future Claim. Each Claim shall be decided upon its merits and upon the circumstances attendant thereto.

**SECTION 19 - Award Binding**

- 19.01 Subject to the Appeal rights provided for in this Schedule "C", the Award of the Arbitrators is conclusive, final and binding upon any and all parties to the Claim and all parties shall act in compliance with the Award.

**SECTION 20 - Costs and Penalty**

- 20.01 The Hearing Panel may award a successful party an amount not exceeding \$500.00 for preparation and filing of pleadings.

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20.02 If the Hearing Panel is satisfied that a party has unduly complicated or prolonged a Claim or Arbitration hearing or has otherwise acted unreasonably (including any failure to file documents or notices in accordance with Sections 7.05, 13.02, 15.02 and 16.02 above), the Hearing Panel may order the party to pay an amount not exceeding \$500.00 as compensation to another party.

**SECTION 21 - Interest on Award**

21.01 Money owing under an Award bears pre-award interest thereon from the date of the closing of the subject transaction to the date of the Award at the Bank of Canada rate in effect at the date of the closing of the subject transaction.

21.02 Money owing under an Award bears post-award interest at the Bank of Canada rate in effect at the date of the Award. Post-award interest will only start to accrue if the Award is not paid within twenty-one (21) days of the date of the Award. However, if the Award is not paid within twenty-one (21) days of the date of the Award, interest will be calculated from the Award date.

21.03 Notwithstanding the foregoing, the Hearing Panel may, in its discretion, in respect of the whole or any part of the amount of interest which is payable under Section 22.01:

- (a) disallow interest on the Award;
- (b) allow interest at a rate higher or lower than is provided in either Section 21.01 or 21.02;
- (c) allow interest for a period other than that provided for in the applicable Section.

21.04 for the purpose of exercising its discretion in Section 21.03, the Hearing Panel may take into account:

- (a) the circumstances of the case;
- (b) the amount claimed and the amount recovered in the proceeding;
- (c) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding; and
- (d) any other relevant consideration.

21.05 For the purposes of this Section, the "**Bank of Canada rate**" means the Bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule 1 of the *Bank Act* (Canada).

**SECTION 22 - Notice of Award**

22.01 Notice of the Award shall be given by the Panel Secretary to the parties to the Claim within seven (7) days following delivery of the Award to the Panel Secretary, and shall attach a copy of the Award signed by the Hearing Panel Chair hearing the Claim.

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**SECTION 23 - Appeal to OREA**

- 23.01 Subject to Section 9.05 hereof, a Claimant or Respondent may appeal an Award to OREA, in accordance with the following provisions.
- 23.02 An Appeal shall only be with respect to the question of whether or not the Hearing Panel had the jurisdiction to make the Award or whether or not there was a denial of natural justice.
- 23.03 Where an Appeal is filed, the Award shall, subject to the provisions of Section 23.05, be suspended pending discontinuance or disposition of the Appeal. Notwithstanding such suspension, interest shall continue to accrue on the Award in accordance with Section 21 of this Schedule.
- 23.04 Until:
- (a) the period to file an Appeal has elapsed and no Appeal has been filed;
  - (b) an Appeal has been commenced and has either been completed or discontinued; or
  - (c) the Appeal rights have been extinguished as provided for in Section 23.05.

Neither party to the Arbitration hearing may ask a Court to enforce the Award, and it is agreed by all Members that there will not exist any valid basis for such Court action until either or both parties have complied with the appropriate provisions of this By-Law.

- 23.05 If a party to the Arbitration hearing, for any reason, resigns his membership in TREB, either during the period of time during which he may file an Appeal in accordance with Section 23.01 or at any time during the Appeal process described in this Schedule and/or in the By-Law of OREA, that party shall be deemed to have waived all his rights of Appeal provided for in this Schedule and/or in the By-Law of OREA and all such rights of Appeal shall automatically be extinguished upon such party's resignation or membership in TREB. Upon the extinguishing of the Appeal rights, any filing fee paid by the resigning Appellant, relating only to the Appeal, shall be refunded by OREA to such resigning Appellant. The extinguished Appeal rights and Appeal process cannot be reopened upon such party rejoining TREB.

**SECTION 24 - Filing the Appeal**

- 24.01 The OREA Appeal Panel does not have jurisdiction to process, hear or otherwise deal with an Appeal:
- (a) unless the Appellant files the Appeal in Form "A" within thirty (30) days of the Appellant receiving the Award;
  - (b) unless the duly completed Form "A" is received by the Chief Executive Officer of OREA within such thirty (30) day period;
  - (c) unless the Appellant pays to OREA, at the time of filing the Appeal, the filing fee as established by the OREA board of directors as same may be amended by the OREA board of directors from time to time.

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- (d) if the Appellant, for any reason, resigns its membership in TREB either during the period of time during which it may file an Appeal in accordance with Section 23.01(a) or at any time during the Appeal process described in this Schedule and/or in the By-Law of OREA.

24.02 Once an Appeal has been filed, TREB will order a transcript of original proceedings to be included in the record of the Arbitration hearing, as described in Section 27.01. The Appellant shall be responsible for paying the costs of such transcripts, as invoiced by TREB.

**SECTION 25 - Reply to Appeal**

- 25.01 Upon receipt of the Appeal, the Chief Executive Officer of OREA shall forward a copy of it to the Appeal Respondent.
- 25.02 The Appeal Respondent shall file with the Chief Executive Officer of OREA a Reply to the Appeal that responds to the matters raised in the Appeal (the "Reply"). The Reply shall be filed on or before a date set out in the notice from the Chief Executive Officer of OREA, provided that such date shall not be less than fifteen (15) days from the date the notice from the Chief Executive Officer of OREA was sent to the Respondent.
- 25.03 When the Chief Executive Officer of OREA receives the Reply he shall immediately forward a copy of the same to the Appellant.
- 25.04 If the Appeal Respondent fails to deliver a Reply within the prescribed time period, or fails or refuses to appear at an Appeal hearing, the OREA Appeal Panel may proceed to hear and determine the matter only upon the Appellant's attendance at the Appeal hearing and/or upon Form A filed by the Appellant and the Reply, if any, filed by the Appeal Respondent.

**SECTION 26 - Notice of Appeal**

- 26.01 The Chief Executive Officer of OREA shall notify the Hearing Panel Chair that the Award is being appealed, and upon receiving such notification the Hearing Panel Chair shall send the record of the Arbitration hearing, as described in Section 27.01, to the Chief Executive Officer of OREA.

**SECTION 27 - Record of Arbitration Hearing**

- 27.01 For purposes of Section 26 of this Schedule, the record of the Arbitration hearing shall include the following as it relates to the particular Arbitration hearing being appealed:
- (a) the Claim;
  - (b) the Response;
  - (c) all notices sent to the Claimant and Respondent by the Arbitration Chair or Panel Secretary;
  - (d) any transcript or other summary of the Arbitration hearing, including any tape recordings;
  - (e) all exhibits entered in evidence at the Arbitration hearing; and

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- (f) the Award.

**SECTION 28 - Notice of Appeal Hearing**

- 28.01 The Chief Executive Officer of OREA shall notify the Appellant and Appeal Respondent, in writing, of the date, time and place that the Appeal is to be heard, it being agreed that such a date may not be sooner than thirty (30) days from the date that the Chief Executive Officer of OREA first received an Appeal as set out in Section 24 of this Schedule.

**SECTION 29 - Legal Counsel**

- 29.01 At an Appeal, the Appellant and Appeal Respondent may each be represented by a lawyer or by a Broker or Salesperson Member of TREB. The OREA Appeal Panel may retain legal counsel to attend at the Appeal Hearing and advise the OREA Appeal Panel on any and all matters of law, but such legal counsel shall not take part in the deliberation or decision of the OREA Appeal Panel.
- 29.02 Where an Appellant or Appeal Respondent is to be represented by a lawyer that Party shall so notify, in writing, the other Party and the Chief Executive Officer of OREA, such notice to be received by the Chief Executive Officer of OREA and the other Party at least five (5) days prior to the date set for the Appeal Hearing.

**SECTION 30 - Selection of OREA Appeal Panel**

- 30.01 There shall be an OREA Appeal Panel of at least twenty (20) members of OREA.
- 30.02 The Chief Executive Officer of OREA shall have full authority to appoint members to the OREA Appeal Panel and may fill any vacancies as they may occur.
- 30.03 Where the Chief Executive Officer of OREA receives an Appeal as set out in Section 24 of this Schedule, he shall appoint three (3) members of the OREA Appeal Panel under the By-Law of OREA to hear, process, decide and otherwise dispose of the Appeal.

**SECTION 31 - Nature of Appeal Hearing**

- 31.01 The Appellant and the Appeal Respondent shall be given full opportunity to present both oral and written arguments at the Appeal Hearing.
- 31.02 At an Appeal Hearing neither the Appellant nor the Appeal Respondent shall be allowed to present any new evidence since the Appeal is to be decided solely on the evidence as set out in the record of the Arbitration hearing as described in Section 27 of this Schedule.

## Schedule "C"

## Arbitration

**SECTION 32 - Powers of OREA Appeal Panel**

32.01 Subject to the provisions of Section 31 of this Schedule, the OREA Appeal Panel of three (3) members appointed as per Section 30 of this Schedule shall possess all of the powers of arbitrators under the *Arbitration Act, 1991* (Ontario).

**SECTION 33 - Qualifications of OREA Appeal Panel**

33.01 No person may serve on the OREA Appeal Panel where that person:

- (a) has, either directly or indirectly, any personal or financial interest in either of the parties to the Appeal;
- (b) is related by either blood or marriage to the Appellant or the Appeal Respondent or to any officer, director, shareholder, partner or employee of either the Appellant or the Appeal Respondent; or
- (c) there is any other reasonable basis for an apprehension of bias.

**SECTION 34 - Appeal Panel Award**

34.01 The OREA Appeal Panel appointed under Section 28.03 of this Schedule may:

- (a) dismiss the Appeal;
- (b) grant the Appeal;
- (c)
  - (i) order that the filing fee paid to OREA or any portion of it be retained by OREA to cover its costs in handling the Appeal;
  - (ii) order that all or part of the filing fee paid to OREA be returned to the Appellant; and/or
  - (iii) order that the Appeal Respondent reimburse the Appellant in an amount equal to all or any part of the filing fee paid by the Appellant to OREA;
- (d) amend the Award as the OREA Appeal Panel deems appropriate; and/or
- (e) remit the subject matter of the Appeal back to the Arbitration Roster for a new Arbitration hearing in whole or in part, and at the OREA Appeal Panel's discretion by a differently constituted Hearing Panel.

34.02 The OREA Appeal Panel award shall be in writing, contain the reasons for the OREA Appeal Panel award, be signed by the members of the OREA Appeal Panel or the Chair, and shall be forwarded to the Chief Executive Officer.

34.03 The Chief Executive Officer of OREA shall forward a copy of the OREA Appeal Panel award to the Appellant and the Appeal Respondent immediately after receiving it.

## Schedule "C"

## Arbitration

**SECTION 35 - Failure to Comply with Submission or Award**

- 35.01 Subject to Subsection 4.01, if any Member fails to submit a Claim to Arbitration under this Schedule and instead proceeds to any action or proceeding at law or equity, such failure may be dealt with under the provisions of Schedule "D" as a breach of this By-Law.
- 35.02 If any Member fails to comply with any Award within twenty-one (21) days after notice has been given under Section 18 hereof, or where there has been an Appeal to OREA, within twenty-one (21) days after notice has been given under Section 34.03 hereof, the Board of Directors may, at any subsequent meeting of the Board of Directors, and without further proceedings, expel the non-complying party from membership in TREB or suspend the membership of such non-complying party from membership in TREB for such period as the Board of Directors may in its sole discretion determine. The Panel Secretary shall advise CREA and OREA of any such termination of membership within fourteen (14) days of such termination.

**SECTION 36 - Notices**

- 36.01 Any notice and any other material required to be sent to any person under this Schedule is considered conclusively to have been received five (5) days after it is mailed to that person by regular mail, courier or prepaid registered mail addressed to the last known address of the party on the records of TREB.

**SECTION 37 - No Action at Law or Equity**

- 37.01 No action or proceeding, either at law or equity, shall be brought by any Member of TREB against any other Member or any servant or agent of TREB, acting in good faith, for or by reason of, any act, matter or thing done or omitted to be done in pursuance, or purporting to be in pursuance, of this Schedule.

**SECTION 38 - Exclusion of the Arbitration Act, 1991, S.O. 1991, c.17**

- 38.01 TREB, its Members and all parties to a Claim hereby agree to exclude application of the provisions of the *Arbitration Act, 1991* (Ontario) (as amended from time to time) from Arbitrations conducted by TREB pursuant to this Schedule, save those provisions thereof (Subsection 5(4) and Sections 19, 39, 46, 48, 50) from which, pursuant to Section 3 of the *Arbitration Act, 1991* (Ontario) (as may be amended from time to time), contracting out is expressly prohibited. All Members of TREB acknowledge that this provision does not apply to OREA Appeals.

## Schedule "D"

## Professional Standards

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**SECTION 1 - Definitions**

- 1.01 (a) "**Allegation Statement**" shall mean a written statement containing the specific allegations of misconduct of the Respondent, as prepared by the Panel Secretary under the supervision of the Chief Executive Officer;
- (b) "**Appeal**" is further described in Section 21 of this Schedule;
- (c) "**Appeal Decision**" is further described in Sections 26 and 27 of this Schedule;
- (d) "**Appeal Panel**" is further described in Section 23 of this Schedule;
- (e) "**Appellant**" shall mean a Respondent who has filed an Appeal of the decision of the Professional Standards Hearing Roster;
- (f) "**Case Presenter**" shall mean a person appointed by TREB to present the evidence determined by TREB in support of specific misconduct or omission which the Respondent is alleged to have done or failed to do;
- (g) "**Chair**" means the Professional Standards Chair, appointed by the Committee, who shall be a member of either the Professional Standards Review Roster, the Professional Standards Hearing Roster or the Professional Standards Hearing Appeal Roster;
- (h) "**Chief Executive Officer**" means the Chief Executive Officer of TREB;
- (i) "**Committee**" means Arbitration and Professional Standards Steering Committee;
- (j) "**Complainant**" shall mean any person having a Complaint against any Member;
- (k) "**Complaint**" means a written complaint concerning the alleged breach of this By-Law, the sections of the CREA Code of Ethics within the jurisdiction of TREB and not within the jurisdiction of RECO, the Standards of Business Practice, the MLS® Rules and Policies, other rules and regulations passed by the Board of Directors and proclaimed in force, or some other alleged misconduct by a Member;
- (l) "**MLS® On-Line System**" means the computer system as operated by TREB from time to time for the MLS® System, which is the multiple listing service owned or operated by or on behalf of TREB;
- (m) "**Panel Secretary**" shall mean the person appointed by TREB as the secretary to administer the work of all of the Panels and Rosters described under this Schedule. Such work may be performed by certain members of TREB staff, as directed by the Panel Secretary;
- (n) "**Parties**" shall mean TREB and the Respondent;
- (o) "**Professional Standards Hearing**" means a hearing conducted by a Professional Standards Hearing Panel;
- (p) "**Professional Standards Hearing Appeal Roster**" is further described in Section 22 of this Schedule;

## Schedule "D"

**Professional Standards**

- (q) **"Professional Standards Hearing Panel"** is further described in Section 14 of this Schedule;
- (r) **"Professional Standards Hearing Panel Decision Compliance Date"** is further described in Section 21 of this Schedule.;
- (s) **"Professional Standards Hearing Roster"** is further described in Section 12 of this Schedule;
- (t) **"Professional Standards Review Panel"** is further described in Section 4 of this Schedule;
- (u) **"Professional Standards Review Roster"** is further described in Section 4 of this Schedule;
- (v) **"RECO"** shall mean the Real Estate Council of Ontario;
- (w) **"RECO Code"** shall mean the RECO Code of Ethics as adopted and amended from time to time;
- (x) **"Researcher"** shall mean a member of TREB staff or other person appointed to carry out research concerning the Complaint of misconduct by a Member;
- (y) **"Respondent"** shall mean the Member of TREB against whom a Complaint has been made;
- (z) **"Response"** shall mean the written statement of a Member responding to a Complaint;
- (aa) **"Special Administrative Fee"** is further described in Section 11 of this Schedule.

**SECTION 2 - Application of Schedule and Power**

- 2.01 The provisions of this Schedule apply to all Members of TREB.
- 2.02 The Chief Executive Officer may upon receipt of a written Complaint from any source whatsoever, and after a jurisdictional review has been conducted in accordance with the provisions of Section 6 of this Schedule, proceed to review the conduct of any Member of TREB.
- 2.03 Notwithstanding the provisions of this Schedule, the Committee shall have jurisdiction and power to hear Complaints with respect to any listing on TREB's MLS® Online System.
- 2.04 At any time after having received a Complaint, the Chief Executive Officer may in its sole and absolute discretion decide that no further action should be taken in respect of the matter under review and such decision shall not be subject to review or appeal.
- 2.05 The panel chairs shall have the power to delegate to the Panel Secretary the powers described in Subsection 4.02, Subsection 8.05, Subsections 14.01 and 14.07 and Section 23.
- 2.06 The Chair may be appointed as a member of any Panel described in this Schedule.

## Schedule "D"

## Professional Standards

**SECTION 3 - Resignation of Member**

- 3.01 If a Member against whom a Complaint has been made resigns his membership in TREB or his membership is terminated by TREB, for any reason, at any time before a decision is rendered by a Professional Standards Hearing Panel, the Professional Standards Review Panel may, in its sole, unfettered discretion, either:
- (a) hold the Complaint and the professional standards review and hearing process in abeyance until such time as the Member rejoins TREB, at which time the Professional Standards Review Panel may re-start the process from the point when the Member left TREB; or
  - (b) forward the Complaint to any other real estate board or association which the Member joins after leaving TREB, and such other real estate board or association may process the Complaint, starting at the beginning of the professional standards review and hearing process.

**SECTION 4 - Composition of Professional Standards Review Roster and Professional Standards Review Panel**

- 4.01 The Committee shall appoint a Professional Standards Review Roster. The Professional Standards Review Roster shall comprise of not less than twenty-five (25) Members of TREB and consist of Brokerage Members, Broker Members and Salesperson Members, none of whom shall be members of either the Arbitration Roster, Professional Standards Hearing Appeal Roster or Professional Standards Hearing Roster and all of whom shall have been Members of TREB for at least three (3) years. Members of the Professional Standards Review Roster shall hold office for staggered rotating terms of two (2) years or until their successors have been appointed or until their tenure of office shall have otherwise been terminated in accordance with this By-Law.
- 4.02 The Chair shall appoint a Professional Standards Review Panel consisting of four (4) members of the Professional Standards Review Roster, one of whom shall serve as Professional Standards Review Panel Chair, to review and consider any Complaint so assigned to it by the Chair. Quorum for a Professional Standards Review Panel shall be three (3) members of the Professional Standards Review Panel present, including the Professional Standards Review Panel Chair. Wherever possible, the Chair shall select members of the Professional Standards Review Panel from the same membership category and professional area of practice as that of the Member against whom a Complaint has been made. Where the Complaint involves a commercial listing, the Chair shall, wherever possible, select a majority of members of the Professional Standards Review Panel who are Members of the Commercial Division.

**SECTION 5 - Qualifications of Members Of All Professional Panels**

- 5.01 No person shall serve on any panel described in this Schedule where that person:
- (a) has, either directly or indirectly, any personal or financial interest in the outcome of the Complaint;
  - (b) is related by either blood or marriage to the Respondent or the Complainant or any officer, director, shareholder, partner or employee of either the Respondent or the Complainant; or

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## Professional Standards

- (c) there is any other reasonable basis for an apprehension of bias.

**SECTION 6 - Jurisdictional Review**

- 6.01 Where the Panel Secretary receives a written Complaint, or if TREB has a self-initiated Complaint alleging a breach or misconduct by a Member, such Complaint shall first be forwarded to the attention of the Chief Executive Officer. The Chief Executive Officer or his delegate under the supervision of the Chair, shall review the Complaint for timeliness and jurisdiction.
- 6.02 Complaints are to be made in writing within sixty (60) days of the alleged occurrence or conduct giving rise to the Complaint. The Chief Executive Officer or his delegate, under the supervision of the Chair, may decide that no further action should be taken in respect of any Complaint where the occurrence or conduct giving rise to the Complaint occurred more than sixty (60) days before the written Complaint was received by TREB, or where the conduct complained of has been rectified to the satisfaction of the Chief Executive Officer or his delegate, under the supervision of the Chair.
- 6.03 The Chief Executive Officer or his delegate, as the case may be, under the supervision of the Chair shall determine the issue of jurisdiction with respect to the matter complained of and decide whether:
- (a) the Complaint will be dealt with in its entirety in accordance with this Schedule;
  - (b) the Complaint will be returned to the Complainant for referral to RECO;
  - (c) the Complaint will be dealt with in part in accordance with this Schedule and in part returned to the Complainant for referral to RECO; or
  - (d) no further action will be taken with respect to the Complaint.
- 6.04 The Chief Executive Officer or his delegate, as the case may be, under the supervision of the Chair, shall, in his or its sole and absolute discretion, make the decision required by Section 6.03 based upon a review of the Complaint, a comparison of the RECO Code, the CREA Code of Ethics and Standards of Business Practice, the MLS® Rules and Policies, and a review of this By-Law. Such decision shall be final and not subject to review or appeal. Whenever the Complaint appears to involve conduct which may be a breach of the RECO Code, even if such conduct is alleged to have occurred more than sixty (60) days before the Complaint was received by TREB, it shall be returned to the Complainant for referral to RECO.
- 6.05 Once the decision required by Section 6.03 has been made, the Complainant, except where the Complainant is TREB, shall be so advised if it is determined that all or a portion of the Complaint should be dealt with in accordance with this Schedule. The Complainant shall not be further notified of the status or outcome of the review of the Complaint, except in accordance with Section 18.03 of this Schedule.
- 6.06 Where RECO has assumed jurisdiction over a Complaint or any portion of a Complaint, the Committee, Professional Standards Review Roster, the Professional Standards Hearing Roster and the Professional Standards Hearing Appeal Roster shall have no further jurisdiction to deal with that matter. The Committee, the Professional Standards Review Roster, the Professional

## Schedule "D"

**Professional Standards**

Standards Hearing Roster and the Professional Standards Hearing Appeal Roster shall continue to have jurisdiction over any Complaint or portion of Complaint not so referred to RECO.

- 6.07 If RECO requests in writing that TREB defer or suspend its professional standards review process, TREB will do so. In such case the Complainant and Respondent shall be so advised within fourteen (14) days of receipt of such an order and any materials gathered in connection with the professional standards review of the Complaint shall be forwarded to RECO upon an order in writing from RECO. Having acted upon such an order by RECO, and while RECO is dealing with the matter, TREB shall have no further jurisdiction to deal with the Complaint.

**SECTION 7 - TREB Complaint Review**

- 7.01 Where a decision has been made pursuant to Section 6.03 that all or a portion of a Complaint should be dealt with in accordance with this Schedule, the Chief Executive Officer or his delegate, under the supervision of the Chair, shall determine in its sole and absolute discretion whether to:
- (a) take no further action in respect of the Complaint;
  - (b) appoint a Researcher to research the Complaint in accordance with Section 8 of this Schedule and, where the Researcher prepares a written report under Section 8.05 of this Schedule, either because (i) the Respondent has failed to rectify the Complaint in accordance with Section 8.03 of this Schedule; or (ii) the Researcher has determined the Complaint is not capable of rectification, prepare an Allegation Statement, attaching the Researcher's report, and proceed in accordance with Section 9 of this Schedule; or
  - (c) prepare an Allegation Statement and proceed in accordance with Section 9 of this Schedule.

The decision of the Chief Executive Officer under this Section shall not be subject to review or appeal under this By-Law or to a court of competent jurisdiction.

**SECTION 8 - Powers and Responsibilities of Researcher**

- 8.01 Any Researcher appointed to research a Complaint shall have the power to require any Member to produce, and the Member shall produce, all records, documents and writings or other things within the possession or control of the Member that may be required as part of the research and to answer any question related thereto, subject to proper objection.
- 8.02 Where a Member improperly fails or refuses to produce the documents and records requested by the Researcher, such failure or refusal shall be considered a breach of this By-Law and shall be dealt with by the Professional Standards Review Panel in accordance with the provisions of this Schedule.
- 8.03 Upon completion of the research of the Complaint, and if the Researcher under the supervision of the Chair has determined the Complaint is capable of rectification, the Researcher shall contact the Respondent and provide the Member with two (2) days, or such longer period as the Researcher may determine reasonable or necessary in the circumstances, to rectify the Complaint.

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**Professional Standards**

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- 8.04 Where the Complaint is rectified by the Respondent within the time required in Section 8.03, then no further action will be taken by the Committee, the Professional Standards Review Roster, the Professional Standards Review Panel, the Professional Standards Hearing Roster or the Professional Standards Hearing Appeal Roster in respect of the Complaint. No such decision shall be subject to review or appeal under this By-Law or to a court of competent jurisdiction.
- 8.05 Where the Respondent fails to rectify the Complaint in accordance with Section 8.03 or where the Researcher under the supervision of the Chair has determined the matter is not capable of rectification, the Researcher shall prepare and file a written report of his findings under Section 8.06.
- 8.06 The Researcher's written report of the Complaint shall be filed with the Panel Secretary and attached thereto shall be copies of all records, documents or writings obtained in the course of the research. Unless otherwise authorized by this By-Law, the report is confidential and shall only be available to Members participating in the review of such Complaint.

**SECTION 9 - Allegation Statement and Response**

Where a Researcher has been appointed and has prepared a report pursuant to Subsection 7.01(b), an Allegation Statement must be prepared, or where the Chief Executive Officer has decided to prepare an Allegation Statement in accordance with Subsection 7.01(c), the following applies.

- 9.01 The Allegation Statement shall set out in writing the specific misconduct or omission which the Respondent is alleged to have done or failed to do, specifying the particular Section of the By-Law, MLS Rules and Policies, or the particular paragraph of the CREA Code of Ethics or Article of the Standards of Business Practice which the Respondent is alleged to have violated or with which the Respondent has not complied.
- 9.02 In a written notice or letter, the Panel Secretary shall forward to the Respondent a copy of the Allegation Statement and the Researcher's Report, if any. The Respondent shall have fourteen (14) days from the date of the notice or letter in which to file a Response with the Panel Secretary.
- 9.03 The Response shall:
- (a) be in writing, addressed and delivered to the Panel Secretary;
  - (b) contain a brief and concise statement of the position of the Respondent with respect to the Complaint and the reasons therefore; and
  - (c) have attached to it such records, documents and other writings as are in the Respondent's possession and upon which the Respondent intends to rely, and such documents, records and other writings shall be deemed to become part of the Response.
- 9.04 The Allegation Statement, attaching the Researcher's report, if any, and Response, if any, shall be forwarded to the Professional Standards Review Panel appointed by the Chair to review the Complaint described in the Allegation Statement.

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## Professional Standards

**SECTION 10 - Professional Standards Review Panel Complaint Review**

- 10.01 Where an Allegation Statement has been sent to the Respondent in accordance with Sections 7 and 9, a Professional Standards Review Panel shall be appointed consisting of a chair and three other persons chosen in accordance with Section 4.02. This Professional Standards Review Panel shall conduct a review of the Allegation Statement, the Researcher's report, if any, and the Response, if any, and shall determine in its sole and absolute discretion whether to:
- (a) find that the Respondent has not engaged in the conduct set out in the Allegation Statement and no further action should be taken;
  - (b) determine a Special Administrative Fee should be levied in accordance with Section 11;
  - (c) require the Respondent to take such corrective action as may be determined by the Professional Standards Review Panel to rectify the conduct that gave rise to the Allegation Statement and was the subject matter of the Complaint. Confirmation that the corrective action has been completed and/or the conduct has been rectified in accordance with the decision made by the Professional Standards Review Panel shall be delivered by the Respondent to the Panel Secretary within thirty (30) days of the decision being issued or within a longer period of time as the Professional Standards Review Panel may prescribe;
  - (d) impose both (b) and (c);
  - (e) proceed to a Professional Standards Hearing; or
  - (f) failing compliance with any of (b), (c) or (d), proceed to a Professional Standards Hearing.
- 10.02 In the event that the Allegation Statement is reviewed by a Professional Standards Review Panel consisting of three (3) panel members, the Professional Standards Review Panel Chair shall be entitled to vote in determining the appropriate decision under Section 10.01 above. However, in the event that the Allegation Statement is reviewed by a Professional Standards Review Panel of four (4) panel members, the Professional Standards Review Panel Chair shall not be entitled to vote. The decision of the Professional Standards Review Panel shall be determined by a majority of the votes cast by the panel members entitled to vote. No such decision shall be subject to review or appeal under this By-Law or to a court.
- 10.03 In determining which of the options under Section 10.02 above is appropriate, the Professional Standards Review Panel may take into account any prior findings occurring within a period of two (2) years of violation for any breaches of this By-Law, the CREA Code of Ethics and Standards of Business Practice or Rules and Guidelines of TREB. The Respondent shall be advised by the Panel Secretary of such decision in writing.

**SECTION 11 - Special Administrative Fee**

- 11.01 The Committee shall recommend for approval by the Board of Directors from time to time the provisions of this By-Law, the CREA Code of Ethics and Standards of Business Practice, the MLS® Rules and Policies or other rule, regulation or policy of TREB to which a Special Administrative Fee may apply. The amount of the Special Administrative Fee shall be set from time to time and reviewed not less than annually by the Board of Directors.

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- 11.02 Where the Respondent has been notified that a Special Administrative Fee is applicable pursuant to Section 10, the Respondent may choose to pay the Special Administrative Fee. If the Respondent chooses to pay the Special Administrative Fee, payment of the fee must be received by TREB in full within fourteen (14) days of the mailing of the notice of the decision of the Professional Standards Review Panel under Section 10 or within such further time as the Professional Standards Review Panel may allow.
- 11.03 Where the Respondent has been notified of the application of a Special Administrative Fee, and pays the applicable fee in accordance with Subsection 11.02, a violation shall be recorded in respect of the Complaint and the matter shall not be referred to the Professional Standards Hearing Roster nor shall it form the basis of the subject of a Professional Standards Hearing or an Appeal as set out in this Schedule.
- 11.04 Where the Respondent has been notified that both corrective action and a Special Administrative Fee are applicable pursuant to Section 10, the Respondent must rectify the Complaint and pay the Special Administration Fee in accordance with Subsection 11.02. Otherwise, the matter will be referred to the Professional Standards Hearing Roster.

**SECTION 12 - Composition of Professional Standards Hearing Roster**

- 12.01 The Committee shall appoint a Professional Standards Hearing Roster. The Professional Standards Hearing Roster shall consist of not less than twenty-five (25) Members of TREB and consist of Brokerage Members, Broker Members and Salesperson Members, none of whom shall be members of any of the Arbitration Roster, the Professional Standards Review Roster or the Professional Standards Hearing Appeal Roster and all of whom shall have been members of TREB for at least three (3) years. Members of the Professional Standards Hearing Roster shall hold office for staggered rotating terms of two (2) years or their successors have been appointed or until their tenure of office shall have otherwise been terminated in accordance with this By-Law.

**SECTION 13 - Jurisdiction of the Professional Standards Hearing Roster**

- 13.01 The Professional Standards Hearing Roster shall:
- (a) upon referral of a matter by the Professional Standards Review Panel, hold a hearing in accordance with this Schedule to determine if the Respondent has engaged in the conduct as set out in the Allegation Statement; and
  - (b) upon determining that the Respondent has engaged in conduct set out in the Allegation Statement, impose such penalties against the Respondent as are hereinafter provided.

**SECTION 14 - Composition of Professional Standards Hearing Panel and Other Procedural Matters**

- 14.01 Where a Professional Standards Hearing is required, the Chair shall appoint a Professional Standards Hearing Panel consisting of four (4) members of the Professional Standards Hearing Roster, one of whom shall be appointed as the Professional Standards Hearing Panel Chair. Quorum for a Professional Standards Hearing Panel shall be three (3) members of the Professional Standards Hearing Panel present including the Professional Standards Hearing Panel Chair. Wherever possible, the Chair shall select members of the Professional Standards

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- Hearing Panel from the same membership category and professional area of practice as that of the Respondent. Where the Complaint involves a commercial listing, the Chair shall, wherever possible, select a majority of members of the Professional Standards Hearing Panel who are Members of the Commercial Division. Where the Complaint is against a Broker of Record, Chair shall, wherever possible, select only Brokers of Record as members of the Professional Standards Hearing Panel.
- 14.02 The Panel Secretary shall determine a date for the Professional Standards Hearing and notify the Parties, in writing, of the date set for the Professional Standards Hearing. Such hearing shall be conducted on an anonymous basis upon the initiative of TREB and without involvement of the Complainant except as the Case Presenter may require as a witness. Such notice shall be forwarded to the Parties at least twenty-one (21) days prior to the date of the Professional Standards Hearing.
- 14.03 At the Professional Standards Hearing, a Case Presenter shall present the facts which support the Complaint on behalf of TREB as described in the Allegation Statement and the Parties may be represented by legal counsel or a Member of TREB, provided that the Respondent may not be represented by a Member who is a Member of the Professional Standards Review Roster, Professional Standards Review Panel, the Professional Standards Hearing Roster, the Professional Standards Hearing Panel, the Professional Standards Hearing Appeal Roster or the Professional Standards Hearing Appeal Panel, or a Member of the Board of Directors unless that Member is a member of the same Brokerage as the Respondent; and further provided that if either party is to be represented by legal counsel, the Panel Secretary shall be notified in writing. Such notice is to be received by the Panel Secretary at least fourteen (14) days before the date set for the Professional Standards Hearing. The Professional Standards Hearing Panel may retain legal counsel to sit at the Professional Standards Hearing and advise the Professional Standards Hearing Panel on any and all matters of law or procedure, but such legal counsel shall not take part in any deliberation or decision of the Professional Standards Hearing Panel.
- 14.04 On the date set for the Professional Standards Hearing, the Professional Standards Hearing Panel shall proceed to hear and determine the matters contained in the Allegation Statement, and the failure of the Respondent to attend the Professional Standards Hearing shall not prevent the Professional Standards Hearing Panel from proceeding to make a determination.
- 14.05 The Professional Standards Hearing Panel may:
- (a) adjourn any Professional Standards Hearing from time to time as set out in Section 15 below;
  - (b) proceed in such manner as it deems appropriate and without being bound by the rules of evidence or legal rules, provided that it shall consider the best evidence available;
  - (c) receive evidence under oath or by affirmation, or otherwise;
  - (d) use any acceptable method of recording the Professional Standards Hearing, including but not limited to audio or video tape, recording secretary or stenographer.
- 14.06 The Respondent shall be entitled to submit documentary evidence to the Professional Standards Hearing Panel. Copies of all documents may be submitted with the Response, but the Respondent shall bring originals of all documents to the Professional Standards Hearing and be

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**Professional Standards**

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prepared to produce same for inspection if so requested by the Professional Standards Hearing Panel.

- 14.07 A document or written statement or an audio or visual record must have been submitted to the Professional Standards Hearing Panel at least fourteen (14) days before the date of the Professional Standards Hearing to be received in evidence, unless the Professional Standards Hearing Panel Chair, in its sole and absolute discretion, determines otherwise.
- 14.08 The Case Presenter and the Respondent shall have the right to call, as a witness, anyone who may have knowledge of the facts concerning the matter in question, whether or not that person is a Member of TREB.
- 14.09 Where the Case Presenter or Respondent intends to call one or more witnesses at the Professional Standards Hearing, it shall so notify, in writing, the Panel Secretary, who shall in turn notify the other party to the proceeding. Such notice is to be received by the Panel Secretary at least fourteen (14) days prior to the date of the Professional Standards Hearing, unless the Professional Standards Hearing Panel Chair determines otherwise at the Professional Standards Hearing, and the notice shall contain the full legal name, address and telephone number of the witness.
- 14.10 If the Respondent is found in violation, the Professional Standards Hearing Panel shall determine an appropriate penalty pursuant to the provisions of Section 17.01(b). In doing so, the Professional Standards Hearing Panel may take into account any prior findings occurring within a period of two (2) years of violation for any breaches of this By-Law, the CREA Code of Ethics and Standards of Business Practice or Rules and Guidelines of TREB. The Respondent shall be advised by the Panel Secretary of such decision in writing.

**SECTION 15 - Postponements and Adjournments**

- 15.01 Postponements and adjournments of the Professional Standards Hearing will not be routinely granted. In determining whether to adjourn the Professional Standards Hearing, the Professional Standards Hearing Panel Chair or the Appeal Panel Chair, as applicable, may consider relevant factors, including:
- (a) the reason for the request and any relevant documentation in support thereof provided within fourteen (14) days following the receipt of the notice setting out the date of the hearing or Appeal;
  - (b) the consent of the other Party;
  - (c) previous delays incurred, including the number and length of previous adjournments or postponements; and
  - (d) the Parties' consent to conditions which might be imposed if the adjournment or postponement is granted.
- 15.02 In granting the adjournment or postponement, the Professional Standards Hearing Panel Chair or the Appeal Panel Chair, as applicable, may impose such conditions as it considers appropriate, including an imposition of costs against the Party requesting the adjournment or postponement, to a maximum amount of \$500.00, which maximum may be established from time to time by the Board of Directors.

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**SECTION 16 - Decision of the Professional Standards Hearing Panel**

16.01 In the event that the Complaint is heard by a Professional Standards Hearing Panel consisting of three (3) panel members, the Professional Standards Hearing Panel Chair shall be entitled to vote in determining the decision of the Professional Standards Hearing Panel. However, in the event that the Complaint is heard by a Professional Standards Hearing Panel of four (4) panel members, the Professional Standards Hearing Panel Chair shall not be entitled to vote. The decision of the Professional Standards Hearing Panel shall be determined by a majority of the votes cast by the panel members entitled to vote. The decision of the Professional Standards Hearing Panel shall:

- (a) be in writing and shall contain the reasons for the decision;
- (b) be signed by the Professional Standards Hearing Panel Chair; and
- (c) specify, if any, the penalty imposed.

**SECTION 17 - Decision and Penalties**

17.01 The Professional Standards Hearing Panel in its decision may:

- (a) find that the Respondent has not engaged in the conduct set out in the Allegation Statement;
- (b) upon finding that the Respondent has engaged in the conduct set out in the Allegation Statement, impose on the Respondent one or more of the following penalties:
  - (i) a reprimand;
  - (ii) recommend to the Board of Directors a suspension of TREB membership privileges as defined by the Professional Standards Hearing Panel in its decision for such period as the Professional Standards Hearing Panel deems appropriate;
  - (iii) a fine of not less than one hundred dollars (\$100.00) and not more than ten thousand dollars (\$10,000.00), as such amounts may be amended from time to time by the Board of Directors;
  - (iv) require the Respondent to pay to TREB the costs of the Professional Standards Hearing as incurred by TREB;
  - (v) direct the Respondent to attend and successfully complete a specified educational course from an accredited institution as stipulated by TREB, provided that confirmation of such successful completion is delivered to the Panel Secretary within ninety (90) days of the decision being issued;
  - (vi) recommend to the Board of Directors expulsion from membership in TREB; and/or
  - (vii) require the Respondent to take such corrective action as may be determined by the Professional Standards Hearing Panel to rectify the conduct that gave rise to the Allegation Statement and was the subject matter of hearing before the

## Schedule "D"

**Professional Standards**

Professional Standards Hearing Panel. Confirmation that the corrective action has been completed and/or the conduct has been rectified in accordance with the decision made by the Professional Standards Hearing Panel shall be delivered by the Respondent to the Panel Secretary within thirty (30) days of the decision being issued or within a longer period of time as the Professional Standards Hearing Panel may prescribe.

- 17.02 Recognizing that the facts presented in connection with each Complaint are almost always unique, under no circumstances shall the Professional Standards Hearing Panel's decision in any given case set a precedent and no decision shall be cited in connection with any future Complaint. Each Complaint shall be decided upon its merits and upon the circumstances attendant thereto.

**SECTION 18 - Notice of Decision**

- 18.01 A copy of the Professional Standards Hearing Panel decision shall immediately be given to the Panel Secretary who shall forward a copy to the Parties to the Professional Standards Hearing within twenty-one (21) days of receipt of same.
- 18.02 Where an Appeal is not filed as hereinafter set out, the decision of the Professional Standards Hearing Panel may be communicated to all Members of TREB, without revealing the name or any other information which may reveal the identity of the Respondent except in the case of expulsion from or suspension of membership, in which case TREB may note in its communications to its Members that the Respondent has been expelled or suspended from membership for a certain period of time.
- 18.03 Provided the Complainant has requested in writing that TREB advise such Complainant of the outcome of the review of the Complaint, TREB shall do so only after the applicable appeal periods have expired without an Appeal being commenced, when appeal rights have been extinguished, or when the applicable Appeals have either been completed or discontinued.

**SECTION 19 - Effective Date of Decision**

- 19.01 Subject to the Appeal provisions set out in the remainder of this Schedule, the decision of the Professional Standards Hearing Panel shall be final and binding upon the Parties thereto and shall be considered effective as of the date of the decision, unless otherwise provided in the decision.

**SECTION 20 - Professional Standards Hearing Panel Decision Compliance Date**

- 20.01 For the purpose of this Schedule, the "Professional Standards Hearing Panel Decision Compliance Date" for each Professional Standards Hearing shall be determined as follows:
- (a) If no Appeal is commenced in accordance with the terms of this Schedule, or if an Appeal is commenced but the Respondent discontinues the Appeal or resigns membership in TREB, the Professional Standards Hearing Panel Decision Compliance Date is the date that is the earlier of:
- (i) the date upon which the penalty is to be paid or performed according to the decision of the Professional Standards Hearing Panel; or

## Schedule "D"

**Professional Standards**

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- (ii) if the Professional Standards Hearing Panel does not set a specific date for the payment or performance of the penalty in its decision, fourteen (14) days from the date upon which the Professional Standards Hearing Panel decision is delivered to the Respondent.
- (b) If an Appeal is commenced and continued in accordance with the terms of this Schedule, the Professional Standards Hearing Panel Decision Compliance Date is the date that is the earlier of:
  - (i) the date upon which the penalty is to be paid or performed according to the Appeal Decision (which may be an amendment or confirmation of the date for penalty set by the Professional Standards Hearing Panel or a new date set by the Appeal Panel); or
  - (ii) if the Appeal Panel does not set a specific date for the payment or performance of the penalty in its decision, fourteen (14) days from the date upon which such Appeal Decision is delivered to the Respondent.

**SECTION 21 - Appeal of Professional Standards Hearing Panel Decision**

- 21.01 An Appeal of the decision of the Professional Standards Hearing Panel may be filed by the Respondent within fourteen (14) days from the date the Professional Standards Hearing Panel decision is mailed to the Respondent. The Appeal is to be in writing and addressed to the Chair and delivered to the Panel Secretary.
- 21.02 The Appeal may be from a finding that the Respondent (the "Appellant") engaged in the conduct set out in the Allegation Statement or from the penalty imposed, or both.
- 21.03 The Appeal shall be accompanied by a filing fee of \$250.00 plus applicable taxes, in cash or by cheque, as set and approved by the Board of Directors from time to time and published by TREB on its web pages. Upon the disposition of the Appeal, the filing fee shall be returned to the Appellant where the appeal is granted in whole.
- 21.04 The Appeal shall contain a concise statement of the grounds for Appeal (the "Appellant's Statement").
- 21.05 The Appeal shall not be processed, dealt with or heard if the Appellant's Statement is not filed within the fourteen (14) day period as set out in Section 21.01 hereof, if the filing fee is not delivered within the same fourteen (14) day period, or if the Appellant does not pay to TREB the costs of the transcript or other summary of the evidence of the proceedings of the Professional Standards Hearing Panel.

**SECTION 22 - Composition Of Professional Standards Hearing Appeal Roster**

- 22.01 The Committee shall appoint a Professional Standards Hearing Appeal Roster. The Professional Standards Hearing Appeal Roster shall consist of not less than fifteen (15) Members of TREB composed of Brokerage Members, Broker Members and Salesperson Members, none of whom shall be members of either the Arbitration Roster, the Professional Standards Review Roster or Professional Standards Hearing Roster and all of whom have been Members of TREB for at least three (3) years. Members of the Professional Standards Hearing Appeal Roster shall hold office

## Schedule "D"

**Professional Standards**

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for staggered rotating terms of two (2) years or until their successors have been appointed or until their tenure of office shall have otherwise been terminated in accordance with this By-Law.

**SECTION 23 - Composition of Appeal Panel**

23.01 Where an Appeal has been filed, the Chair shall appoint an Appeal Panel. The Appeal Panel shall consist of four (4) members of the Professional Standards Hearing Appeal Roster, one of whom shall be appointed as the Appeal Panel Chair. Quorum for the conduct of an Appeal Hearing shall be three (3) members of the Appeal Panel present, including the Appeal Panel Chair. Wherever possible, the Chair shall select members of the Appeal Panel from the same membership category and professional area of practice as that of the Appellant. Where the Complaint involves a commercial listing, the Chair shall, wherever possible, select a majority of members of the Appeal Panel who are members of the Commercial Division.

**SECTION 24 - Record of The Professional Standards Hearing**

24.01 For the purposes of this Schedule, the record of the Professional Standards Hearing shall include the following:

- (a) the written Allegation Statement;
- (b) the written Response, if any;
- (c) the Researcher's report, if any;
- (d) all notices sent to the parties in connection with the Professional Standards Hearing;
- (e) any transcript or other summary of the evidence of the proceedings of the Professional Standards Hearing Panel;
- (f) all exhibits entered into evidence at the Professional Standards Hearing; and/or
- (g) the decision of the Professional Standards Hearing Panel.

**SECTION 25 - Appeal**

25.01 The Panel Secretary shall determine a date for the Appeal and shall notify the Appellant in writing of the time and place set for the Appeal. Such notice shall be forwarded to the Appellant at least twenty-one (21) days prior to the date of the Appeal.

25.02 No new evidence shall be called at the Appeal, unless such new evidence was not available at the first instance, since the Appeal is to be decided solely upon the evidence as contained in the record of the Professional Standards Hearing as described in Section 24 of this Schedule.

25.03 Where the Appellant fails to appear at the Appeal, the Appeal shall be dismissed and, subject to the discretion of the Chair or the Board of Directors to order a new Appeal, there shall be no further rights to Appeal pursuant to this Schedule.

25.04 At the Appeal Hearing, the Appellant may be represented by legal counsel or a member of TREB, provided that the Appellant may not be represented by a Member who is a Member of the Arbitration Roster, the Professional Standards Review Roster, the Professional Standards

## Schedule "D"

**Professional Standards**

Hearing Roster, or the Professional Standards Hearing Appeal Roster or a member of the Board of Directors, unless that Member is a Member of the same Brokerage as the Appellant and further provided that if either Party is to be represented by legal counsel they shall so notify, in writing, the Panel Secretary. Such notice is to be received by the Panel Secretary at least fourteen (14) days before the date set for the Appeal. The Appeal Panel may retain legal counsel to sit at the Appeal and advise the Appeal Panel on any and all matters of law or procedure, but such legal counsel shall not take part in any deliberation or decision of the Appeal Panel.

**SECTION 26 - Disposition of Appeal**

26.01 The Appeal Panel by its decision may:

- (a) dismiss the Appeal;
- (b) overturn the decision of the Professional Standards Hearing Panel;
- (c) amend the decision of the Professional Standards Hearing Panel as the Appeal Panel deems appropriate;
- (d) remit the matter back to the Professional Standards Hearing Roster for a new Professional Standards Hearing, in whole or in part, and by a differently constituted Professional Standards Hearing Panel; and/or
- (e) impose any of the penalties as set out in Section 17.01 of this Schedule.

**SECTION 27 - Appeal Decision**

27.01 In the event that the Appeal is heard by an Appeal Panel consisting of three (3) panel members, the Appeal Panel Chair shall be entitled to vote in determining the Appeal Decision. However, in the event that the Appeal is heard by an Appeal Panel of four (4) panel members, the Appeal Panel Chair shall not be entitled to vote. The Appeal Decision shall be decided by a majority of the votes cast by the panel members entitled to vote. The Appeal Decision shall:

- (a) be in writing and shall contain reasons for the decision;
- (b) be signed by the Appeal Panel Chair; and
- (c) set out the disposition of the Appeal.

27.02 The Appeal Decision shall be final and binding.

**SECTION 28 - Notification of Decision**

28.01 A copy of the Appeal Decision shall be delivered to the Appellant by the Panel Secretary within twenty-one (21) days of receipt of the decision by the Panel Secretary.

28.02 The Appeal Decision may be communicated to all members of TREB, without revealing the name or any other information which may reveal the identity of the Appellant except in the case of expulsion from or suspension of membership. In which case TREB may note in its communications to its Members, that the Appellant has been expelled or suspended from membership for a certain period of time.

## Schedule "D"

**Professional Standards**

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- 28.03 The Complainant may be notified of the outcome of the review of the Complaint, but only in accordance with Section 18.03 of this Schedule.

**SECTION 29 - Failure to Comply**

- 29.01 If the Respondent fails to comply with a Professional Standards Hearing Panel decision or the Appeal Decision by the Professional Standards Hearing Panel Decision Compliance Date, the Board of Directors may, at any subsequent meeting of the Board of Directors and without further proceedings, expel the Respondent from membership in TREB or suspend the Respondent's membership in TREB for such period as the Board of Directors may in its sole discretion determine. The Panel Secretary shall advise CREA and OREA of such termination or suspension of membership within fourteen (14) days of such termination or suspension.

**SECTION 30 - Confidentiality of Documents**

- 30.01 All files, documents, correspondence, reports and records pertaining to a Complaint to and/or investigation by the Professional Standards Review Panel shall be in the custody, care and control of the Panel Secretary on behalf of the Professional Standards Review Panel and shall be considered confidential and not subject to access by any persons except that those files, documents, correspondence, reports and records may be disclosed by the Professional Standards Review Panel in relation to a Professional Standards Hearing and subsequent Appeal, if any, or if requested by RECO, or as otherwise may be required by this By-Law.
- 30.02 The Panel Secretary shall cause all documents, files, correspondence, reports and records that have been introduced as evidence at a Professional Standards Hearing, to be kept in the custody of the Professional Standards Hearing Panel until any Appeal from a decision of the Professional Standards Hearing Panel has been disposed of. All evidence, tapes and records pertaining to a Professional Standards Hearing or a subsequent Appeal shall be in the custody, care and control of the Panel Secretary on behalf of the Professional Standards Hearing Roster and shall be considered confidential and not subject to access by any person except as those documents, files reports, correspondence and records may be disclosed in relation to the Professional Standards Hearing and subsequent Appeals, if any, or if requested by RECO, or as otherwise may be required by this By-Law.

**SECTION 31 - No Action in Law or in Equity**

- 31.01 No action or proceeding, either at law or in equity, shall be brought by any Member of TREB against any other Member or any servant or agent of TREB, acting in good faith, for, or by reason of, any act, matter or thing done or omitted to be done in pursuance, or purporting to be in pursuance, of this Schedule.

Form "A"

FORM A  
(For the Purposes of Appeals Described in Schedule "C")

NOTICE OF APPEAL

BETWEEN:

(APPELLANT)

- and -

(APPEAL RESPONDENT)

1. The Appellant hereby Appeals the Award of the Arbitrators of the \_\_\_\_\_ Real Estate Board or Association dated the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.
2. The Hearing Chair was \_\_\_\_\_
3. The address of the Appellant is \_\_\_\_\_
4. The address of the Appeal Respondent is \_\_\_\_\_
5. The Appellant is a Member of the following Real Estate Board(s) or Association(s):

6. The Appellant Appeals the award for the following reasons:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Note: If more space is required, attach additional sheets. According to Schedule "C", Sections 24, 25 and 27, the Record of the Arbitration hearing, this Notice of Appeal, and the Appeal Respondent's Reply will be the only documents submitted to the OREA Appeal Panel. Please ensure that your reasons for Appeal are complete and detailed. Please see Schedule "C", Section 23.02 which sets out the grounds for Appeal.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

[Brokerage Name]

Per: \_\_\_\_\_  
Signature

## Form "B"

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**TREB Electronic Ballot For Use For  
Board of Directors Election Meetings Only**

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**Voting Instructions**

1. (a) Mark an X in the box beside the Candidate(s) you wish to vote for in each of the Sections.
- (b) If you are not voting for the full number of candidates for whom you are eligible to vote, as indicated in Section for each vote, you must mark an X in the box indicating that you are declining to vote the maximum number of candidates for whom you are eligible to vote.
2. Your entire ballot will be rejected if, in any Section, both of the following apply:
  - (a) You have not voted for the full number of candidates that you are entitled to vote for in that Section; and
  - (b) You have not completed the box indicating that you are declining to vote the maximum number of candidates for whom you are eligible to vote.

Date Ballot Completed: \_\_\_\_\_ [Date must be inserted] (dd/mm/yy)

For use at Election Meeting to be held on: \_\_\_\_\_ (the "**Specified Election Meeting**") [Election date to be inserted by TREB]

The Voting Member submitting this electronic ballot hereby exclusively appoints the Chief Returning Officer of TREB for the Specified Election Meeting as his/her proxy to submit the votes for the candidates for the Board of Directors of TREB indicated below, and with the same powers to submit such votes as if the Voting Member submitting this electronic ballot was present at the Specified Election Meeting.

*All Directors, other than ex officio Directors and the President Elect, shall hold office for two (2) years.*

*The Term for President Elect shall be for one (1) year.*

*All qualified Members may vote for the President Elect and Director-at-Large positions.*

Form "B"

**President-Elect  
(Vote for max. of (1) one)**

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

I am declining to vote for any candidate.

**Director-at-Large  
(Vote for max. of (2) two) or (3) three (as appropriate)**

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

I am declining to vote for the maximum number of candidates in this category.

**Regional Non-Brokerage Director  
(Vote for max. of (1) one)**

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

I am declining to vote for any candidate.

**Regional Brokerage Director  
(Vote for max. of (1) one)**

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

I am declining to vote for any candidate.

Form "C"

THE TORONTO REAL ESTATE BOARD  
ELECTION PROXY FORM

ALL FIELDS MUST BE COMPLETED FOR PROXY TO BE ACCEPTED

The undersigned Voting Member of The Toronto Real Estate Board hereby appoints:

Last Name

Given Name

(Print name of Proxy Holder, i.e. Proxy Receiver. Name should correspond with name on photo identification to be presented by Proxy Receiver when voting).

As proxy, with power to attend, act and vote for and on behalf of the undersigned Voting Member of TREB at the (insert year) Election Meeting of Members ONLY to be held on the (insert day, month, year) and adjournments thereof, in the same manner as the undersigned could do if personally present thereat. The undersigned hereby revokes all proxies previously given.

Special Instructions (if any): Are there any? YES  NO

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

(Print Name of Member giving {signing} proxy)

(Personal 7 digit TREB Membership Number of Member giving the proxy)

(print Brokerage Name of Member giving proxy)

Voting Member's Original Signature (no faxed signatures) – This is the proxy Giver

Proxies must be deposited with the Chief Returning Officer or designated representative at TREB, **no later than noon, (insert day, month, year).** (Article 5, Section 2.04) Please note that no person can hold more than one proxy at any one meeting. **In order to assist in the verification of proxies, those giving a proxy are requested to attach a photocopy of his/her TREB membership card showing his/her signature.**

**Ballots cast by proxies containing voting instructions will be examined by the Chief Returning Officer's representative before acceptance of the ballot for compliance with the instructions.**

Form "D"

GENERAL MEETING  
PROXY FORM

ALL FIELDS MUST BE COMPLETED FOR PROXY TO BE ACCEPTED

The undersigned Voting Member of The Toronto Real Estate Board hereby appoints:

Last Name	Given Name
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(print name of proxy holder, i.e. Proxy Receiver)

(Print name of Proxy Holder, i.e. Proxy Receiver. Name should correspond with name on photo identification to be presented by Proxy Receiver when voting).

as proxy, with power to attend, act and vote for and on behalf of the undersigned Voting Member of TREB at the **General Meeting of Members only** to be held on the *(insert day, month, year)* and adjournments thereof, in the same manner as the undersigned could do if personally present thereat. The undersigned hereby revokes all proxies previously given.

Instructions (if any): Are there any? YES  NO

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
(Print Name of Member giving {signing} proxy)

<input type="text"/>						
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(Personal 7 digit TREB Membership Number of Member giving the proxy)

\_\_\_\_\_  
(print Brokerage Name of Member giving proxy)

\_\_\_\_\_  
Voting Member's Original Signature (no faxed signatures) – This is the Proxy Giver

**Any Member may vote by proxy.** Any Member wishing to vote by proxy must ensure that a properly completed proxy form is deposited with the Corporate Secretary at TREB, **no later than 12:00 noon, *(insert day, month, year)*** (Article 5, Section 2.04) **Please note that no person can hold more than one proxy at any one meeting.**

## Form "E"

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**TREB Electronic Ballot For Use For  
Executive Council Commercial Division Election Meetings Only**

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**Voting Instructions**

1. (a) Mark an X in the box beside the Candidate(s) you wish to vote for in each of the Sections.
- (b) If you are not voting for the full number of candidates for which you are eligible to vote, as indicated in the Section for each vote, you must mark an X in the box indicating that you are declining to vote for the maximum number of candidates for whom you are eligible to vote.
2. Your entire ballot will be rejected if, in any Section, both of the following apply:
  - (a) You have not voted for the full number of candidates that you are entitled to vote for in that Section; and
  - (b) You have not completed the box indicating that you are declining to vote for the maximum number of candidates for whom you are eligible to vote.

Date Ballot Completed: \_\_\_\_\_ [Date must be inserted] (dd/mm/yy)

For use at Election Meeting to be held on: \_\_\_\_\_ (the "**Specified Election Meeting**") [Election date to be inserted by TREB].

The Voting Member submitting this ballot proxy hereby exclusively appoints the Chief Returning Officer of TREB for the Specified Election Meeting as his/her proxy to submit the votes for the candidates for the TREB Executive Council, Commercial Division indicated below, and with the same powers to submit such votes as if the Voting Member submitting this ballot proxy was present at the Specified Election Meeting.

*All Councillors and the Chairman shall hold office for two (2) years.*

Form "E"

**TREB Electronic Ballot for Use For  
Executive Council Commercial Division Election Meetings Only**

**Chairman**

**(Vote for max. of (1) one)**

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

[Name of Candidate to be inserted, as appropriate]

**I am declining to vote for any candidate.**

**Councillors**

**(Vote for max. of (8) Eight)**

[Name of Candidate to be inserted, as appropriate]

**I am declining to vote for the maximum number of candidates in this category.**

Form "F"

The Toronto Real Estate Board  
COMMERCIAL DIVISION – PROXY FORM

ALL FIELDS MUST BE COMPLETED FOR PROXY TO BE ACCEPTED

The undersigned Voting Member of The Toronto Real Estate Board hereby appoints:

Last Name

Given Names

(Print name of Proxy Holder, i.e. Proxy Receiver. Name should correspond with name on photo identification to be presented by Proxy Receiver when voting).

As proxy, with power to attend, act and vote for and on behalf of the undersigned Voting Member of TREB at (insert year) Election Meeting of Commercial Division Members ONLY to be held on the (insert day, month, year) and adjournments thereof, in the same manner as the undersigned could do if personally present thereat. The undersigned hereby revokes all proxies previously given.

Special Instructions (if any): Are there any? YES  NO

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
(Print Name of Commercial Division Member giving {signing} proxy)

(Personal 7 digit TREB Membership Number of Member giving the proxy)

\_\_\_\_\_  
(print Brokerage Name of Commercial Division Member giving proxy)

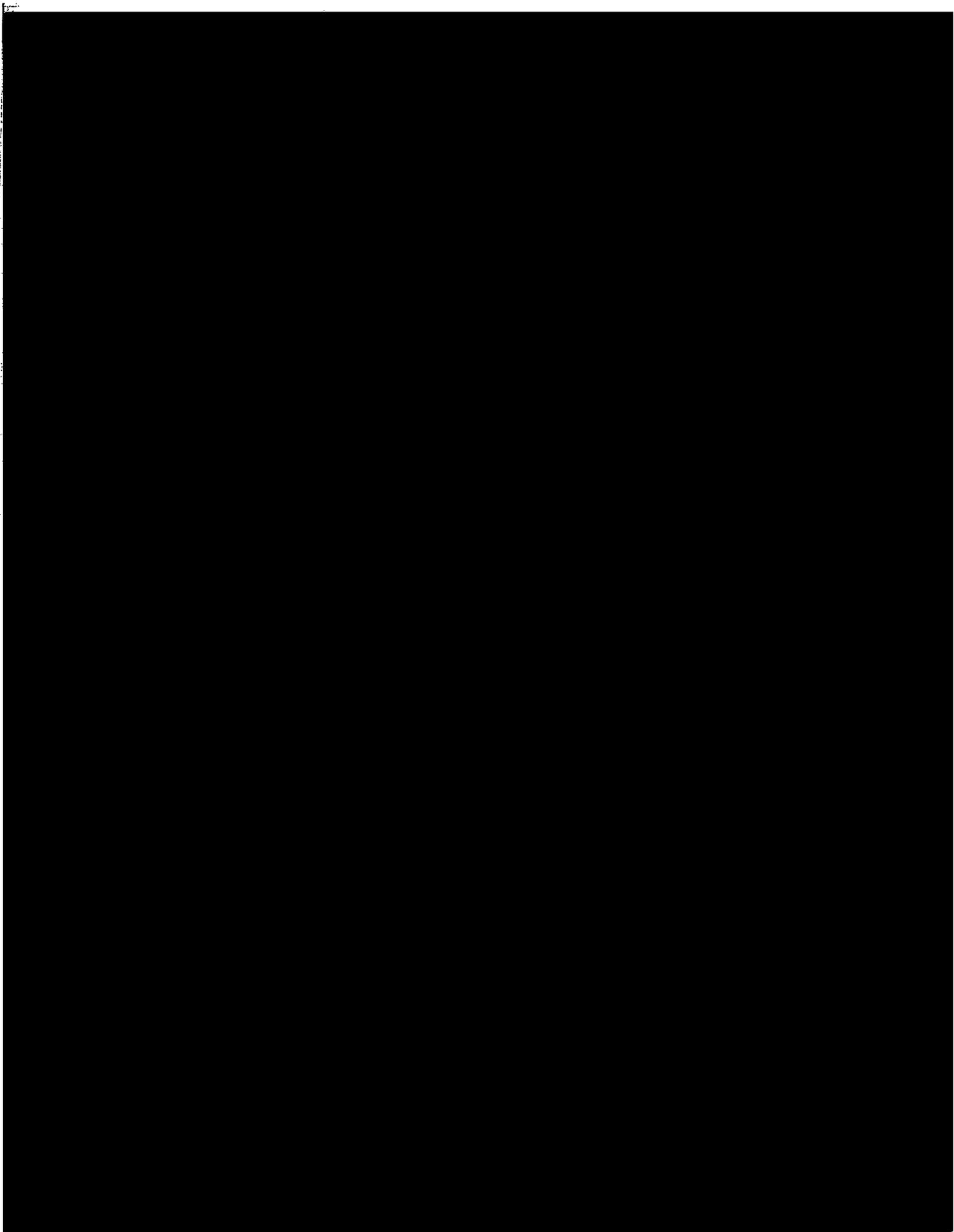
**Commercial Division Voting Member's Original Signature (no faxed signatures) – This is the Proxy Giver**

Proxies must be deposited with the Chief Returning Officer or designated representative at TREB, **no later than noon, (insert day, month, year).** (Article 5, Section 2.04) Please note that no person can hold more than one proxy at any one meeting. **In order to assist in the verification of proxies, those giving a proxy are requested to attach a photocopy of his/her TREB membership card showing his/her signature.**

**Ballots cast by proxies containing voting instructions will be examined by the Chief Returning Officer or designated representative before acceptance of the ballot for compliance with the instructions.**

# **EXHIBIT**

# **C**



# **EXHIBIT**

# **D**

- *Section R 100 - General*
- *Section R 200 - Forms*
- *Section R 300 - MLS® Listings*
- *Section R 400 - Advertising*
- *Section R 500 - Appointments, Showings, Lock Boxes*
- *Section R 600 - Reporting of Transactions*
- *Section R 700 - Commissions re: Transactions*
- *Section R 800 - Virtual Office Websites (VOWs)*

*As a former REALTOR®, Brenda Gwilliams brings a wealth of experience in her current capacity as Manager, MLS® Services at TREB. Brenda is well known throughout the Brokerage community as a result of her many office presentations including MLS® Rules, An Overview of Standard & Commercial Forms, How REBBA Affects You Every Day, Best Practices When Dealing With Clients And Customers, Topical Issues of the Real Estate Industry and The Real Estate Industry: What You Need To Know. In addition, Brenda is a frequent speaker at TREB General Meetings and REALTOR® Quest.*

## **A COMPREHENSIVE REVIEW OF MLS® RULES**

**EFFECTIVE JANUARY 1, 2006 AND AMENDED EFFECTIVE  
MAY 12, 2011 AND ALL PRIOR MLS® RULES AND POLICIES ARE THEREFORE REVOKED**

**VIRTUAL OFFICE WEBSITE (VOW) RULES AND Policies  
EFFECTIVE NOVEMBER 15, 2011**

**THE MLS® RULES AND POLICIES ARE PUBLISHED ALONGSIDE CREA RULE 17 AND  
RECO CODE OF ETHICS FOR ALL MEMBERS OF THE TORONTO REAL ESTATE BOARD**

## INTRODUCTION

The purpose of TREB MLS<sup>®</sup> Rules and Policies (the "MLS<sup>®</sup> Rules and Policies") is to set out the requirements for the orderly, competitive and efficient operation of TREB's MLS<sup>®</sup> System.

They are designed to reflect a high standard of practice and all Members are expected to understand and abide by the RECO Rules, the CREA Rules, the MLS<sup>®</sup> Rules and Policies, and by all applicable laws and regulatory requirements.

The authority of the Board and the requirement for all Members to comply is contained in the TREB By-law. Any breach of the MLS<sup>®</sup> Rules and Policies is a breach of the TREB By-law.

Breach of an MLS<sup>®</sup> "Rule" by a Member may result in the conduct being reported to the Professional Standards Committee.

The "Policies" section is intended to assist Members in their understanding of the processes to be followed in the administration and operation of TREB's MLS<sup>®</sup> System. The "Policies" section was previously referred to as the "Regulations". From and after the effective date of these MLS<sup>®</sup> Rules and Policies, any reference to "Regulations" in any TREB form or publication will be read as a reference to "Policies".

The "Glossary" defines certain words or phrases as an aid to interpretation of these MLS<sup>®</sup> Rules and Policies in addition to any terms defined elsewhere in these MLS<sup>®</sup> Rules and Policies.

Words importing the singular number or the masculine gender shall include the plural number or feminine gender and vice versa.

*(Effective May 12, 2011)*



**R 100 - GENERAL****R-100**

The MLS<sup>®</sup> Rules and Policies shall be interpreted in accordance with RECO Rules, the CREA Rules, and all applicable laws and regulatory requirements.

If any MLS<sup>®</sup> Rules or Policies or CREA Rules conflict with the RECO Rules or any applicable laws or regulatory requirements, the conflicting MLS<sup>®</sup> Rules or Policies or CREA Rules will be considered inoperative to the extent of such conflict.

*(Effective May 12, 2011)*

**17.1.1.3:****Compensation to Co-operating Broker**

The listing REALTOR<sup>®</sup> agrees to pay to the co-operating (i.e. selling) REALTOR<sup>®</sup> compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.

**R-101**

Use of TREB's MLS<sup>®</sup> System is subject to the provisions of the Authorized User Agreement as amended, restated or replaced from time to time.

**R-105**

Information published on TREB's MLS<sup>®</sup> System shall relate directly to the listed real estate and the MLS<sup>®</sup> Listing Agreement, and accordingly shall not include any information that promotes goods and services, provided that the Brokerage Remarks field may include the name, address, telephone and/or facsimile number and/or e-mail address (but not a link to that e-mail address) of Member(s) to be contacted for more information concerning the property.

**R-106**

Information published on TREB's MLS<sup>®</sup> System and Virtual Tour shall contain information pertaining to the property to which the MLS<sup>®</sup> Listing Agreement pertains and shall not include:

- (a) any internet links, e-mail links or references to any internet links; or
- (b) any information that promotes goods or services.

Furthermore, a Virtual Tour on TREB's MLS<sup>®</sup> System shall not include any information regarding any identification of the Listing Brokerage, the Listing Broker/Salesperson or the Virtual Tour Company.

*(Effective November 1, 2007)*

*Notes*

R-108

All Members shall abide by the RECO Rules, the CREA Rules, the MLS<sup>®</sup> Rules and Policies, and by all applicable laws and regulatory requirements. No Member shall act in a manner so as to attempt to deliberately avoid or circumvent TREB's MLS<sup>®</sup> System, the RECO Rules, the CREA Rules or these MLS<sup>®</sup> Rules and Policies, or any applicable laws or regulatory requirements.

*(Effective May 12, 2011)*

**R 200 - MLS<sup>®</sup> FORMS**

R-205

Current approved TREB or TREB/OREA MLS<sup>®</sup> Data Information Forms are required for all MLS<sup>®</sup> Listings.

R-206

No Member shall use any MLS<sup>®</sup> Listing Form after TREB has issued a specific date for discontinuance to Members.

R-210

Any changes to approved TREB/OREA forms shall be clearly identified and initialled by all parties to the transaction. (For permitted changes to the MLS<sup>®</sup> Listing Agreement refer to Rule R-340).

**R 300 - MLS<sup>®</sup> LISTINGS**

R-301

The Listing Brokerage is responsible for the accuracy of all information submitted by the Listing Brokerage to TREB's MLS<sup>®</sup> System. TREB is not obligated to or responsible for reviewing the accuracy or propriety of any MLS<sup>®</sup> Data Information Form, MLS<sup>®</sup> Listing Agreement or Document Attachments. It is the Listing Brokerage's responsibility to verify the accuracy of the photograph, information and documentation and to correct any inaccuracy or notify TREB of any inaccuracy immediately if same as may be necessary in the circumstances.

R-302

By submitting an MLS<sup>®</sup> Listing to TREB's MLS<sup>®</sup> System, the Listing Brokerage represents and warrants to TREB and to all Members that a valid, complete and accurate MLS<sup>®</sup> Listing Agreement and Document Attachments that comply with the applicable requirements of the MLS<sup>®</sup> Rules and Policies is in effect between the Seller and the Listing Brokerage. The submission of a listing to TREB's MLS<sup>®</sup> System that otherwise complies with the MLS<sup>®</sup> Rules and Policies shall not affect the Listing Brokerage's ownership rights in the Listing Brokerage's MLS<sup>®</sup> Listing Agreement and Document Attachments with the Seller including the Listing Brokerage's right to market the property in accordance with the MLS<sup>®</sup> Listing Agreement and Document Attachments.

R-303

Should a change to Mandatory Fields be required on an MLS® Listing, the Listing Brokerage is required to process a Re-run by the date specified in the notification to the Member provided by TREB.

R-304

(a) No Member shall submit an MLS® Listing to TREB's MLS® System that contravenes the TREB MLS® Rules or Policies and/or the TREB By-Law. TREB may, in its sole discretion, deem any such MLS® Listing to be invalid and either remove it from TREB's MLS® System or refuse to publish such MLS® Listing.

(b) Without limiting the generality of the foregoing and the other provisions of the MLS® Rules or Policies, any such MLS® Listing shall not be accepted by TREB as an MLS® Listing:

- (i) if it excludes any Members from showing the property;
- (ii) if it excludes any Members from acting as a Co-operating Brokerage;
- (iii) if all Mandatory Fields have not been completed;

(c) If a submitted MLS® Listing is deemed invalid as hereinbefore provided, TREB shall send notice to the Listing Brokerage who shall, within two (2) TREB business days, remedy the information through a Re-run; or process a cancellation. On an "Incomplete" MLS® Listing that requires changes to Mandatory Fields, the Listing Brokerage is required to process a Re-run by the date specified in the notification to the Member provided by TREB.

*(Effective May 12, 2011)*

R-305

When requested in writing by TREB, the Listing Brokerage shall forward to TREB a copy of any documentation pertaining to an MLS® Listing Agreement within ten (10) days.

R-306

A Member submitting an MLS® Listing or cancellation or a suspension of an MLS® Listing to TREB's MLS® System represents and warrants to TREB that the Member had been so authorized by the person legally entitled to sell the property and agrees to indemnify and hold TREB harmless from all claims of third parties if this is not the case.

R-307

The information relating to an MLS® Listing which has commenced but has yet to be processed or published by TREB shall be given by the Listing Brokerage to any Co-operating Brokerage, upon request.

R-310

All property to be traded separately shall be listed separately. A Listing Brokerage may publish a property as both residential and commercial types.

R-312

Only one MLS<sup>®</sup> Listing for any one Trade function signed by the same Seller may be placed on TREB's MLS<sup>®</sup> System at any one time.

R-315

(a) A Member shall not solicit a listing which is currently listed exclusively (hereinafter "exclusively listed" or "Exclusive Agreement" refers to an Exclusive Listing and MLS<sup>®</sup> Exclusive Listing) with another Brokerage. However, if the Listing Brokerage, when asked by a Member, refuses to disclose the expiration date and the nature of such listing (i.e. an exclusive right to sell, an exclusive relationship, an open listing or other form of contractual Agreement between the Listing Brokerage and the Client), the Member may contact the owner to secure such information and may discuss the terms upon which the Member might take a future listing.

(b) A Member shall not solicit Buyer/tenant representation agreements from Buyer/tenants who are subject to exclusive Buyer/tenant Representation Agreements. However, if a Buyer/tenant Representative, when asked by a Member, refuses to disclose the expiration date of the exclusive Buyer/tenant Representation Agreement, the Member may contact the Buyer/tenant to secure such information and may discuss the terms upon which the Member might enter into a future Buyer/tenant Representation Agreement.

(c) The fact that an Agreement has been entered into with a Member shall not preclude or inhibit any other Member from entering into a similar Agreement after expiration of the prior Agreement.

(d) When Members are contacted by the Client of another Member regarding the creation of a relationship to provide the same type of service, and Members have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future Agreement.

(e) The above-mentioned rules do not preclude Members from making general announcements, messages or advertisements (hereinafter referred to as "general announcements" or "announcement") to prospective Clients describing their services and the terms of their availability even though some recipients may have entered into Representation Agreements with another Member, provided such general announcements include a clear, prominent and emphasized statement that the announcement is not intended to cause or induce breach of any existing Representation Agreement. A general canvass, general mailing or distribution addressed to all prospective Clients in a given geographical area or in a given profession, business, club or organization, or other classification or group, is deemed "general" for the purposes of this rule if it is a mass-produced announcement in identical form to the general public, or an identifiable group of the public, whether communicated by radio, television, newspaper, flyers, form letters (even though personally addressed) or computerized telephone messages.

(f) This rule recognizes as prohibited practices two basic types of solicitations: (a) a telephone and/or personal solicitations of property owners who have been identified by a real estate sign or information on a real estate data base service operated under the MLS<sup>®</sup> or associated trademarks, or other information, as having exclusively listed their property with another Member; and (b) mail or other forms of written solicitations of prospective Clients whose properties are exclusively listed with another Member (whether listed under an "Exclusive" or "MLS<sup>®</sup>" Agreement) when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings under MLS<sup>®</sup> or identified by "for sale" or "for rent" signs or other sources of information.

(g) Members, prior to entering into a Representation Agreement, have an affirmative obligation to make reasonable efforts to determine whether the Client is subject to a current, valid Exclusive Agreement to provide the same type of real estate service.

(h) This rule does not preclude Members from contacting the Client of another Brokerage for the purpose of offering to provide, or entering into a listing arrangement where the original and current listing office has negotiated a cancellation clause with the Seller, and the Seller has not otherwise indicated he/she does not wish to be solicited during the term of that contract.

(i) This rule does not preclude Members from contacting the Client of another Brokerage for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g. property management as opposed to brokerage). However, real estate data base information received through MLS<sup>®</sup> may not be used to target Clients of other Members to whom such offers to provide services may be made.

R-320

An MLS<sup>®</sup> Listing shall show the name of all Brokerage Members that are party to the MLS<sup>®</sup> Listing Agreement.

R-325

An MLS<sup>®</sup> Listing Agreement shall run for a period of not less than sixty (60) days from the commencement date.

R-330

The term of an MLS<sup>®</sup> Listing shall not be reduced to fewer than sixty (60) days, calculated from the commencement date.

R-340

Any exclusion shall be in writing and shall not be binding on a Co-operating Brokerage unless notice of the existence of the exclusion is published on TREB's MLS<sup>®</sup> System. An MLS<sup>®</sup> Listing Agreement and Document Attachments that includes an exclusion that has the effect of limiting a Listing Brokerage's obligations that otherwise would exist under the MLS<sup>®</sup> Rules or Policies shall be subject to refusal or removal from TREB's MLS<sup>®</sup> System.

The provisions of the MLS<sup>®</sup> Listing Agreement set out under the headings:

- (a) Warranties;
- (b) Family Law Act;
- (c) Verification of Information;
- (d) Use and Distribution of Information;
- (e) Successors and Assigns; and
- (f) Conflict or Discrepancy

are necessary for the orderly operation of TREB's MLS<sup>®</sup> System and notwithstanding any other provisions of the MLS<sup>®</sup> Rules or Policies shall not be amended or deleted.

R-345

MLS<sup>®</sup> Listings appearing on TREB's MLS<sup>®</sup> System shall be immediately available (subject to applicable legislation, the rights of and reasonable accommodation to the occupancy) for showings, inspections and registration of Offers.

In the event an existing listing becomes unavailable for showings, inspections or registration of Offers, the listing shall be suspended.

While under suspension a record of all requests by Co-operating Brokerages for showings, inspections and registration of Offers shall be kept by the Listing Brokerage.

Upon the Seller rescinding the suspension, the Listing Brokerage shall immediately notify all Co-operating Brokerages who have requested showings, inspections or registration of Offers.

*(Effective May 12, 2008)*

R-360

MLS<sup>®</sup> Listings on TREB's MLS<sup>®</sup> System shall contain all information necessary for preparing an Offer for Sale, Lease or Sub-Lease.

R-365

In all instances when an MLS<sup>®</sup> Listing Agreement commences, the Listing Brokerage shall process the MLS<sup>®</sup> Listing through TREB's MLS<sup>®</sup> System within two (2) TREB business days following the commencement date of the MLS<sup>®</sup> Listing Agreement.

R-370

Where an MLS® Listing is designated as an "Office" listing in the Listing Salesperson field, the Broker of Record/Manager's name or the name of a Member who is familiar with the property shall also appear after the word "Office".

R-375

If the Seller directs that the Co-operating Brokerage not be in attendance during an Offer presentation, the Listing Brokerage shall indicate such requirement as an exclusion on TREB's MLS® System and provide written direction from the Seller upon request of the Co-operating Brokerage.

R-380

Where the lot size of a residential property is irregular, the Listing Brokerage shall report the frontage and the smaller dimension of the depth, and include the words "lot size irregular" on TREB's MLS® System.

R-381

The Listing Brokerage shall update TREB's MLS® System within two (2) TREB business days following cancellation or suspension of an MLS® Listing Agreement.

R-385

Photographs or other graphic images of a property, with wording or other embellishments not related to the property, shall not be accepted for an MLS® Listing to be serviced through TREB's MLS® System.

R-390

Where realty taxes are required to appear on TREB's MLS® System, the amount to be shown shall be the current year's annual taxes or if not available the prior year's annual taxes.

#### R 400 - ADVERTISING

R-410

The Listing Brokerage shall ensure that any sign placed on property listed through TREB's MLS® System shall, subject to the terms of the MLS® Listing Agreement, be the Listing Brokerage's sign and shall have MLS® identification attached to it during the currency of the MLS® Listing Agreement. If such real estate is situated outside MLS® Districts N, W, C, E, then the MLS® identification shall also indicate that the property is listed through TREB's MLS® System.

*(Effective May 12, 2011)*

R-411

No Member's MLS® sign shall be placed on the property until the commencement date of the Member's MLS® Listing Agreement.

R-415

On expiry, suspension or Cancellation of an MLS<sup>®</sup> Listing Agreement, the Listing Brokerage shall remove any MLS<sup>®</sup> sign placed on the property by the Listing Brokerage immediately.

*(Effective May 12, 2011)*

R-420

No "Sold" sign other than that of the Listing Brokerage shall be placed on real estate listed through TREB's MLS<sup>®</sup> System prior to closing, without the written permission of the Listing Brokerage.

R-421

When a property with an MLS<sup>®</sup> sign has been Reported sold firm, a Member shall, within two (2) TREB business days, place a "sold" sign on the property or remove the "for sale" sign.

R-425

A Member shall promptly remove his sign from property that becomes listed by another Member for the same Trade function.

R-430

Members other than the Listing Brokerage may advertise an MLS<sup>®</sup> Listing only when an MLS<sup>®</sup> Listing Agreement so indicates and Members have received specific written permission from the Listing Brokerage prior to each occasion of advertising.

R-431

Members shall not use any marketing materials prepared by or created for another Member, including but not limited to, photographs, floor plans, virtual tours, personal marketing materials or feature sheets without the written consent of that Member who created or purchased the material.

R-435

No Member shall advertise or represent an MLS<sup>®</sup> Listing for any use other than as permitted by law.

## **R 500 - APPOINTMENTS, SHOWINGS, KEYS AND LOCK BOXES**

R-501

Under no circumstances shall TREB be responsible for any loss suffered by any person arising out of the use of a lock box, key or security card. A Member utilizing a lock box, key or security card thereby indemnifies and saves TREB harmless from any loss suffered by TREB arising out of any claim by any person(s) arising from the use of a lock box, key or security card.

## R-505

Subject to the terms of the MLS® Listing Agreement, all appointments with the Seller to show or inspect an MLS® Listing shall be made through the Listing Brokerage, provided however that a Seller may confirm an appointment with a Member directly.

*(Effective May 12, 2011)*

## R-510

Subject to the terms of the MLS® Listing Agreement, the Listing Brokerage shall (i) make appointments and confirm them without delay; and (ii) if an appointment cannot be made, the Listing Brokerage shall immediately advise the Co-operating Brokerage requesting the appointment and continue to attempt to arrange an appointment for a time suitable to all parties if requested.

*(Effective May 12, 2011)*

## R-515

Subject to the terms of the MLS® Listing Agreement, a Member, who is unable to keep an appointment to show or inspect an MLS® Listing, shall immediately advise the Listing Brokerage prior to the appointment, who shall in turn immediately advise the Seller or occupant.

*(Effective May 12, 2011)*

## R-520

The Co-operating Brokerage or Broker or a Salesperson of the Co-operating Brokerage shall be in continuous attendance during any showing of the property, Buyer visits or inspections necessary to fulfill conditions.

## R-530

Keys and security cards obtained from a Listing Brokerage shall only be used by Members for the purposes of inspecting or showing property to prospective Buyers. Unauthorized use of keys/security cards shall include but not be limited to:

- (a) the duplication of a key/security card;
- (b) failure to return a key/security card to the office where it was picked up immediately after an inspection or showing or within an agreed upon time; or
- (c) giving out a key/security card to an unauthorized party

## R-535

When a Listing Brokerage utilizes a Courtesy Office to hold keys or security cards, the Listing Brokerage remains responsible for all keys and security cards provided to the Courtesy Office.

R-540

Subject to the terms of the MLS® Listing Agreement, Members shall not use lock boxes or keys to access any property without first obtaining permission from the Listing Brokerage to access the property on each occasion.

*(Effective May 12, 2011)*

R-545

A Member shall not interfere or tamper with a lock box of another Member.

R-550

A Member who is in receipt of a lock box combination shall not disclose the combination to any other person without the consent of the Seller.

R-551

Keys shall be re-deposited in a lock box immediately upon exiting the property and the lock box shall be properly secured.

R-555

The Member conducting the showing or inspection is solely responsible to ensure that all security precautions are taken prior to departing the property.

#### **R 600 - REPORTING OF TRANSACTIONS**

R-605

When an MLS® Listing is processed as both a residential and commercial MLS® Listing on TREB's MLS® System, the trade shall be reported for both MLS® Listing numbers.

R-610

The sale, lease or sub-lease of a residential or commercial MLS® Listing shall be Reported by the Listing Brokerage through TREB's MLS® System, whether conditional or firm, to TREB within two (2) TREB business days following acceptance of an Offer.

Reporting by the Listing Brokerage of a commercial sale/lease price shall contain the unit of measurement in which the original listing was posted. All changes in the status of a previously Reported conditional sale shall be Reported to TREB within two (2) TREB business days of the change.

(a) The residential sale price shall be Reported to TREB within two (2) TREB business days of either:

- (i) Reporting of a firm transaction; or
- (ii) removal of all condition(s)

(b) A commercial sale price shall be Reported either:

- (i) at the time of Reporting a firm transaction; or
- (ii) at the same time as Reporting a firm transaction, and request that the price be suppressed until after closing; or
- (iii) within five (5) TREB business days of closing of the transaction.

R-614

All changes to the status of a previously Reported conditional sale, lease or sub-lease shall be Reported to TREB within two (2) TREB business days of the change.

R-615

Any sale during the holdover period shall be Reported to TREB within two (2) TREB business days.

R-616

If a firm sale falls through, or a conditional Offer does not become a firm sale, the Listing Brokerage shall Report such event to TREB within two (2) TREB business days of the happening of the event.

#### R 700 - COMMISSIONS

R-705

The commission offered by the Listing Brokerage to a Co-operating Brokerage including any exclusions, incentives and/or adjustments shall be disclosed on TREB's MLS<sup>®</sup> System and be clearly and fully stated in the "Commission to Co-operating Brokerage" field. Where necessary these remarks may be continued in the "Remarks for Brokerage" field.

R-706

The Listing Brokerage shall ensure that the commission offered to the Co-operating Brokerage on TREB's MLS<sup>®</sup> System, including any incentive and/or adjustment is in accordance with the MLS<sup>®</sup> Listing Agreement.

R-710

The publication of an MLS<sup>®</sup> Listing on TREB's MLS<sup>®</sup> System constitutes an offer by the Listing Brokerage to any Co-operating Brokerage that upon obtaining an Offer that is accepted for the MLS<sup>®</sup> Listing the Co-operating Brokerage shall be entitled to earn the commission on TREB's MLS<sup>®</sup> System, subject to the arbitration provisions of the TREB By-law and MLS<sup>®</sup> Rules or Policies. Publication does not constitute an offer by such Listing Brokerage to pay commission as principal except as set out in Rules R-711, R-712 and R-713.

R-711

A Member who has a Co-brokerage Agreement with a non-Member to place a listing on TREB's MLS<sup>®</sup> System shall be acting as principal and shall, notwithstanding Rule R-710, be deemed to be making an offer as principal regarding commission to all Members.

## R-712

When an MLS<sup>®</sup> Listing Agreement is taken for real estate located outside the Province of Ontario, the Listing Brokerage shall be acting as principal and shall, notwithstanding Rule R-710, be deemed to be making an Offer as principal regarding commission to all Members.

## R-713

Where an MLS<sup>®</sup> Listing is taken for real estate in which a Member has an interest, the Member, notwithstanding Rule R-710, shall be deemed to be making an offer as principal regarding commission to all Members.

## R-715

HST shall be in addition to the amount of commission payable unless otherwise noted in the "Commission to Co-operating Brokerage" field.

*(Effective May 12, 2011)*

## R-720

If HST applies to a sale then commission to the Co-operating Brokerage shall be based on the sale price less HST, unless otherwise stated on TREB's MLS<sup>®</sup> System.

*(Effective May 12, 2011)*

## R-725

For a commercial lease or sub-lease transaction, the commission offered to the Co-operating Brokerage shall indicate whether commission is calculated on gross, semi-gross or net basis, and whether based on usable or rentable area.

## R-730

If a Member is unwilling to accept the commission offered on TREB's MLS<sup>®</sup> System, such Member may request a change before an Offer is signed, and shall not use the terms of an Offer or an Agreement of Purchase and Sale to include or modify such commission. Any agreed upon change shall be separate and in writing. A Listing Brokerage may unilaterally refuse to change such commission.

## R-740

Commission offered to a Co-operating Brokerage on TREB's MLS<sup>®</sup> System shall not be altered between the time of registration of an Offer and final acceptance of that Offer.

## R-745

If a full commission otherwise earned by a Member is not received within ten (10) days of the completion of the transaction, and where the deposit holder is a Member, the deposit shall be disbursed proportionately, forthwith unless otherwise agreed to in writing by the Co-operating Brokerage. At the time of such payment the Listing Brokerage shall fully disclose in writing to the Co-operating Brokerage the total commission provided for in the Listing Agreement and all facts and circumstances relating to non-payment of the full commission.

## R-750

The commission earned by a Co-operating Brokerage is due and payable within ten (10) days of receipt of funds by a Listing Brokerage.

## R-755

Unless a Co-operating Brokerage is pursuing a Claim as defined in Rule R-760, a Co-operating Brokerage shall not, subject to the terms of the MLS<sup>®</sup> Listing Agreement, communicate directly or indirectly with the Seller or the Seller's solicitor with respect to collecting a commission without the written permission of the Listing Brokerage.

*(Effective May 12, 2011)*

## R-760

When the full commission is not paid to the Listing Brokerage in accordance with the amount stated on the MLS<sup>®</sup> Listing Agreement (or as amended, if applicable), the Listing Brokerage and the Co-operating Brokerage shall decide whether to pursue legal or other action against the Seller and/or others in connection with the collection of the balance of the commission. If they agree to pursue a claim they will share costs of the claim on a basis proportionate to the sharing of commission unless they otherwise agree in writing.

If the Listing Brokerage does not agree to pursue a claim as provided in the immediately preceding paragraph, the Co-operating Brokerage may, within thirty (30) days of the closing of the transaction, by written notice (the "Notice") to the Listing Brokerage requiring the Listing Brokerage to either (a) make immediate payment to the Co-operating Brokerage of the full amount of the commission payable to the Co-operating Brokerage indicated on TREB's MLS<sup>®</sup> System (the "Co-operating Brokerage's Commission") or (b) take such steps as are necessary for the Co-operating Brokerage to pursue a claim (a "Claim") for the commission provided for in the MLS<sup>®</sup> Listing Agreement (the "Full Commission").

The Listing Brokerage shall, within ten (10) days following receipt of the Notice (the "Notice Period") (a) either pay the Co-operating Brokerage's Commission or (b) take the necessary steps in writing in all circumstances for the Co-operating Brokerage to pursue a Claim. Such steps may include but shall not necessarily be limited to permitting the Co-operating Brokerage to sue in the name of the Listing Brokerage and/or an assignment for nominal consideration by the Listing Brokerage to the Co-operating Brokerage of the debt represented by the unpaid commission provided for in TREB's MLS<sup>®</sup> Listing Agreement.

If the Listing Brokerage fails to respond to the Notice within the Notice Period or if the Listing Brokerage elects to take steps to enable the Co-operating Brokerage to pursue a Claim but thereafter fails to take all steps reasonably necessary to facilitate the Claim, the Listing Brokerage shall be deemed to have elected to pay the Co-operating Brokerage's Commission to Co-operating Brokerage and shall forthwith make such payment.

If Co-operating Brokerage pursues a Claim, it shall have sole carriage of the Claim, including, without limitation, the right to select and instruct counsel, to accept any settlement and compromise of the claim and to discontinue the claim at any time. All costs incurred by Co-operating Brokerage in connection with pursuing a Claim shall be solely for the account of the Co-operating Brokerage. Any costs incurred by the Listing Brokerage in facilitating the Claim will be solely for the account of the Listing Brokerage.

All amounts actually received by the Co-operating Brokerage as result of pursuing a Claim shall be applied to the extent available first to the Co-operating Brokerage's costs of pursuing the Claim, second to the satisfaction of the Co-operating Brokerage's Commission (including any HST thereon) with any amount remaining thereafter to be shared 50% to the Co-operating Brokerage as compensation for having carriage of the claim and 50% to the Listing Brokerage.

*(Effective October 2008)*

#### R-765

If the holdover clause in an MLS<sup>®</sup> Listing Agreement is enforced and commission is paid, such commission, after deduction of legal and collection costs, shall be divided between the Brokerages involved in the transaction on a basis proportionate to the sharing of commission unless they otherwise agree in writing.

R 800 – VIRTUAL OFFICE WEBSITES (*Effective November 15, 2011*)

## R-801

Unless defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Glossary contained in the MLS<sup>®</sup> Rules and Policies.

A “Virtual Office Website” or “VOW” is a Member’s secure password-protected internet website, or a feature of a Member’s internet website, through which the Member is capable of providing real estate brokerage services to consumers with whom the Member has first established a broker-consumer relationship (as may be designated by provincial and/or federal law) where the consumer has the opportunity to search Listing Information, subject to the Member’s oversight, supervision, and accountability. A broker or salesperson registered with a Member may, with his broker of record’s consent, operate a VOW. Any VOW of a broker or salesperson is subject to the Member’s oversight, supervision, and accountability.

“Member” shall have the meaning designated in Article 2 of the By-laws and shall also include a Member’s brokers and salespersons (with the exception of references to “Member’s consent”, and “Member’s oversight, supervision, and accountability”). References to “VOW” and “VOWs” include all VOWs, whether operated by a Member, by a Member’s broker or salesperson, or by an AVP on behalf of a Member.

“Affiliated VOW Partner” or “AVP” refers to an entity or person designated by a Member to operate a VOW on behalf of the Member, subject to the Member’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the TREB MLS<sup>®</sup> by virtue of its right to receive information on behalf of a Member. No AVP has the right to use Listing Information except in connection with operation of a VOW on behalf of one or more Members. Access by an AVP to Listing Information is derivative of the rights of the Member on whose behalf the AVP operates a VOW.

## R-802

The right of a Member’s VOW to display Listing Information in response to Consumer searches is limited to the display of MLS<sup>®</sup> data supplied by TREB, in accordance with the VOW Policy and VOW Rules, and in which MLS<sup>®</sup> data the Member has member rights. However, a Member with offices participating in different real estate boards or associations may operate a master website with links to the VOWs of its other offices.

## R-803

Subject to the provisions of the VOW Policy and these VOW Rules, a Member’s VOW, including any VOW operated on behalf of a Member by an AVP, may provide other features, information, or functions in addition to VOWs including the Internet Data Exchange (“IDX”) function.

R-804

Except as otherwise provided in the VOW Policy or in these VOW Rules, a Member need not obtain separate permission from other TREB Members whose Listings will be displayed on the Member's VOW.

R-805

Before permitting any Consumer to search for or retrieve any Listing Information on a Member's VOW, the Member must take each of the following steps:

(i) The Member must first establish with that Consumer a lawful broker-consumer relationship (as may be designated by provincial and/or federal law), including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers ("Consumer" or "Consumers"). Such actions may include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

(ii) The Member must obtain the name of, and a valid email address for, each Consumer. The Member must send an email to the address provided by the Consumer confirming that the Consumer has agreed to the Terms of Use (described in Rule 809 below). The Member must verify that the email address provided by the Consumer is valid and that the Consumer has agreed to the Terms of Use.

(iii) The Member must require each Consumer to have a username and a password, the combination of which is different from those of all other Consumers on the VOW. The Member may, at the Member's option, supply the username and password or may allow Consumers to establish their username and password. The Member must also assure that any email address is associated with only one username and password.

R-806

The Member must ensure that each Consumer's password is valid for no more than 90 days but may provide for renewal of the password. The Member must, at all times, maintain a record of the name, email address, username, and current password of each Consumer. The Member must keep such records for not less than 180 days after the expiration of the validity of the Consumer's password.

R-807

A Member's VOW shall include any copyright notice as may be provided by TREB from time to time regarding TREB's copyright in MLS® data.

## R-808

If TREB has reason to believe that a Member's VOW has been the cause of, or permitted a breach in, the security of Listing Information or a violation of MLS<sup>®</sup> Rules and Policies (including the VOW Rules), the Member shall, upon request of TREB, provide the name, email address, username, and current password, of any Consumer suspected of involvement in the breach or violation. The Member shall also, if requested by TREB, provide an audit trail of activity by any such Consumer.

## R-809

The Member shall require each Consumer to review, and to affirmatively express agreement (by mouse click or otherwise) to, a "Terms of Use" agreement that provides at least the following:

- (i) That the Consumer acknowledges entering into a lawful broker-consumer relationship with the Member.
- (ii) That all Listing Information obtained by the Consumer from the VOW is intended only for the Consumer's personal, non-commercial use.
- (iii) That the Consumer has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW.
- (iv) That the Consumer will not copy, redistribute, retransmit, or otherwise use any of the data or Listing Information provided, except in connection with the Consumer's consideration of the purchase or sale of an individual property.
- (v) That the Consumer will not, directly or indirectly, display, post, disseminate, distribute, publish, broadcast, transfer, sell or sublicense any Listing Information to another individual or entity. The prohibited uses expressly include "scraping" (including "screen scraping" and "database scraping"), "data mining" or any other activity intended to collect, store, reorganize, summarize or manipulate any Listing Information or any related data.
- (vi) That the Consumer acknowledges TREB's ownership of, and the validity of TREB's proprietary rights and copyright in, the MLS<sup>®</sup> database, TREB's MLS<sup>®</sup> System, Listing Information and any related information.

## R-810

The Terms of Use agreement may not impose a financial obligation on the Consumer or create any representation agreement between the Consumer and the Member. Any agreement entered into at any time between the Member and Consumer imposing a financial obligation on the Consumer or creating representation of the Consumer by the Member must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

## R-811

The Terms of Use agreement shall also expressly authorize TREB, and other Members of TREB or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS<sup>®</sup> Rules and Policies (including the VOW Rules) and monitoring the display of Members' Listings by the VOW. The Terms of Use agreement may also include such other provisions as may be agreed to between the Member and the Consumer.

## R-812

A Member's VOW must prominently display an email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a Consumer can contact the Member to ask questions, or get more information, about any property displayed on the VOW. The Member, or a broker or salesperson registered with the Member, must be willing and able to respond knowledgeably to inquiries from Consumers about Listings within the market area served by that Member and displayed on the VOW.

## R-813

A Member's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", "data mining" and other unauthorized, access, reproduction, or use of Listing Information, the MLS<sup>®</sup> database, MLS<sup>®</sup> data and any related information. A Member's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by TREB; and shall maintain an audit trail of Consumers' activity on the VOW and make that information available to TREB if TREB has reason to believe that any VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).

## R-814

(a) A Member's VOW shall not display Listings or property addresses of any seller who has affirmatively directed the listing brokerage to withhold the seller's Listing or property address from display on the internet. The listing brokerage shall communicate to TREB that the seller has elected not to permit display of the Listing or property address on the internet. Notwithstanding the foregoing, a Member who operates a VOW may provide to Consumers via other delivery mechanisms, such as email, fax, or otherwise, the Listings of sellers who have determined not to have the Listing for their property displayed on the internet.

(b) A Member who lists a property for a seller who has elected not to have the Listing or the property address displayed on the internet shall cause the seller to execute a document that so indicates.

(c) The Member shall retain such documents for at least one year from the date they are signed, or one year from the date the Listing expires or is terminated, whichever is later.

R-815

(a) Subject to subsections (b) and (c), a Member's VOW may allow third parties to: (i) write comments or reviews about particular Listings or display a hyperlink to such comments or reviews in immediate conjunction with particular Listings, or (ii) display an automated estimate of the market value of the Listing (or hyperlink to such estimate) in immediate conjunction with the Listing.

(b) Notwithstanding the foregoing, at the request of a seller, the Member shall disable or discontinue either or both of those features described in subsection (a) as to any Listing of the seller. The listing brokerage or salesperson shall communicate to TREB that the seller has elected to have one or both of these features disabled or discontinued on all Members' websites. Subject to the foregoing and to Rule 816, a Member's VOW may communicate the Member's professional judgment concerning any Listing. A Member's VOW may notify its Consumers that a particular feature has been disabled "at the request of the seller."

(c) In the event that a Member's VOW allows third parties to post comments or reviews on its VOW, or to display a hyperlink to such comments or reviews, the Member's Terms of Use shall include the following:

i) that the Consumer agrees not to assert any ownership rights of any kind in Listing Information or any related data;

ii) that TREB shall not be responsible or liable, directly or indirectly, in any way, for any loss or damage of any kind incurred as a result of, or in connection with a Consumer's use of, or reliance on Listing Information, any related data, and/or posted or hyperlinked comments or reviews; and

iii) that TREB does not endorse any posted or hyperlinked comments or reviews.

R-816

A Member's VOW shall maintain a means (e.g., email address, telephone number) to receive comments from the listing brokerage about the accuracy of any information that is added by or on behalf of the Member beyond that supplied by TREB and that relates to a specific property displayed on the VOW. The Member shall correct or remove any untrue, deceptive or misleading information relating to a specific property within 48 hours following receipt of a communication from TREB or the listing brokerage explaining why the data or information is untrue, deceptive or misleading. The Member shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

R-817

A Member shall cause the Listing Information available on its VOW to be refreshed at least once every 24 hours.

R-818

Except as provided in these VOW Rules, the VOW Policy, or any other applicable MLS<sup>®</sup> Rules and Policies, no Member shall distribute, provide, or make accessible any portion of the MLS<sup>®</sup> database or Listing Information to any person or entity.

R-819

A Member's VOW must display the Member's privacy policy boldly informing Consumers of, and obtaining Consumers' consent to, all of the ways in which Personal Information that they provide may be collected, used, or disclosed including the fact that Personal Information may be shared with TREB for auditing and/or legal purposes.

R-820

A Member's VOW may exclude Listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price and type of property.

R-821

A Member who intends to operate a VOW to display Listing Information must notify TREB in writing of its intention to establish a VOW and must make the VOW readily accessible to TREB and to all TREB Members for purposes of verifying compliance with these VOW Rules, the VOW Policy, and any other applicable MLS<sup>®</sup> Rules and Policies.

R-822

A Member may operate more than one VOW himself or herself or through an AVP. A Member that operates its own VOW may contract with an AVP to have the AVP operate other VOWs on its behalf. However, any VOW operated on behalf of a Member by an AVP is subject to the Member's oversight, supervision, accountability and the terms of the VOW Policy.

## R-823

A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumers the following MLS<sup>®</sup> data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:

- (a) Expired, withdrawn, suspended or terminated Listings, and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;
- (b) The compensation offered to other Members;
- (c) The seller's name and contact information, unless otherwise directed by the seller to do so;
- (d) Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property; and
- (e) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws.

## R-824

A Member shall not change the content of any Listing Information that is displayed on a VOW from the content as it is provided in TREB's MLS<sup>®</sup> System. The Member may, however, augment Listing Information with additional information not otherwise prohibited from display by these VOW Rules or by other applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules) as long as the source of such other information is clearly identified. This rule does not restrict the format of display of Listing Information on VOWs or the display on VOWs of fewer than all of the Listings or fewer than all of the authorized information fields

## R-825

A Member shall cause to be placed on the Member's VOW a notice indicating that the Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by TREB. A Member's VOW shall include other appropriate disclaimers necessary to protect the Member and/or TREB from liability.

## R-826

A Member shall cause any Listing that is displayed on the Member's VOW to identify the name of the listing brokerage or salesperson in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the typeface used in the display of Listing Information.

R-827

A Member shall limit the number of Listings that a Consumer may view or retrieve, to not more than 100 Listings in response to any inquiry.

R-828

A Member shall cause any listing displayed on the Member's VOW that is obtained from other sources to identify the source of the Listing.

R-829

A Member shall cause any listing displayed on the Member's VOW obtained from other sources to be searched separately from Listings in the MLS<sup>®</sup> database.

R-830

Members and the AVPs operating VOWs on their behalf must execute the license agreement required by TREB.

R-831

Where a seller affirmatively directs their listing brokerage to withhold either the seller's Listing or the address of the seller's Listing from display on the internet, a copy of the seller's affirmative direction shall be provided to TREB upon request, within 48 hours.

R-832

In the event of any conflict between any VOW Rule/VOW Policy and any other MLS<sup>®</sup> Rules or Policies, the VOW Rule/VOW Policy shall govern, subject to applicable laws, regulations, and the RECO Rules.

**POLICIES****P 100 - GENERAL**

## P-102

MLS® Listing information will not be deleted from TREB's MLS® Online System unless TREB is notified in writing that the address shown on the MLS® Listing Agreement is incorrect and/or the MLS® Listing is invalid.

## P-103

Following the Reported date of closing, any inaccurate information that appeared in the MLS® Listing will be changed upon request.

Before any changes occur a written direction under the signature of the signing authority (Broker of Record/Manager) of the Listing Brokerage must be received with a specific request and reasons for the change. The request will be date stamped, assigned a document number by the TREB offices and signed off by the CEO or Staff Director responsible for the Department.

On the basis of the signed authority, and under the authorized TREB signature, staff will edit the data. The edits will be very distinctive and indicate the changed item on the historical listing data. In addition, a distinction shall be permanently displayed on the listing itemizing the edit and date of the edit (e.g. "price was changed from \$144,000 to \$184,000 on May 14, 2005") and a reference to the numbered document authorizing the edit which will be kept on file at TREB for no less than seven (7) years. The distinctions made will be in consultation with an MLS® provider as to what is feasible.

No other changes will be made in the historical data

**P 200 - MLS® FORMS**

## P-201

Notice shall be given of any change in or addition to the standard forms by publication in the MLS® Notice Pages. A Sample Standard Forms Binder will also be provided to each Member Office.

**P 300 - MLS® LISTINGS**

## P-301

Errors made by TREB in Boardloading an MLS® Listing will be corrected and re-run in the MLS® Daily Listings at no charge.

## P-303

Boardload MLS® Listings may be extended to a new expiry date provided that before the original expiry date, the Board has received a copy of the extension on the form provided for the purpose by the Board, duly signed by the person who signed the MLS® Listing, or by his/her/their lawfully authorized representatives.

P-304

TREB will not delay or cancel the processing of an MLS® Listing Agreement, re-run or extension at the request of a Member once the MLS® Data Information Form has been received by TREB and/or the information has been entered into TREB's MLS® Online System.

P-305

Any special edits to be done by TREB to TREB's data information for Brokerage loaded MLS® Listings must be submitted in writing to MLS® processing with an explanation and authorization from the Broker of Record/Manager.

#### P 400 - PHOTOGRAPHS

P-401

Where available, a photo will be provided from TREB's photo library. Members may accept this selection or:

(a) request a new photo be taken provided the property is within the TREB photo service area. The photo will be taken the next business day and a fee will be applied;

(b) supply their own photo(s) or sketch;

(c) select "No Photo For This Listing".

P-402

Photos will only be re-taken free of charge if the property has undergone exterior renovations or if the wrong property has been photographed or if the wrong photo appears on MLS®.

P-403

All photographs of the property are taken "as is" when the photographer arrives at the property.

(a) The photographer may not be instructed to do any of the following:

(i) photograph at a particular time of day;

(ii) adjust garage doors, move garbage cans, wait for cars to be moved, etc;

(iii) take interior photos of shopping malls.

(b) Photographers are not allowed to enter onto private property except for the purpose of taking split photos;

(c) split photographs will be taken if requested, unless:

- (i) the gate is locked;
- (ii) there is excess rain, ice or snow in the back yard;
- (iii) there are unattended animals within the yard;
- (iv) there is a ravine (photographer's discretion)

(d) Vertical photographs or specific angles may be requested, but will be taken only at the photographer's discretion.

P-404

If a Seller stops the photographer from taking a photo, the MLS® Listing will be published with the notation "Photo Not Available".

P-406

Extra colour prints may be ordered through TorontoMLS® or by submitting a Print Order Form (Form 294) and Photographer's Slip (Form 293).

P-407

TREB photographers will only take a virtual tour of a listed property when:

- (a) The Listing Brokerage, Broker, Salesperson of the Listing Brokerage, Representative of the Listing Brokerage or the Sellers are present; or
- (b) If the property is completely vacant of all contents and a lock box is located on the subject property, the photographer will enter the property provided the Listing Brokerage, Broker, Salesperson of the Listing Brokerage or Representative of the Listing Brokerage supplies a combination of the lock box to the photographer.

#### **P 500 - TREB COMPUTER SYSTEM**

P-501

Any Member wishing to obtain access to any MLS® data (whether for office use or individual use by a Broker or Salesperson registered with a Brokerage) shall enter into an MLS® Access Agreement, or such other agreement as TREB may require from time to time.

P-502

One user name and password and use of an Authenticator is issued for each Member accessing TREB's MLS® Online System.

*(Effective October 2008)*

P-503

The Broker of Record/Manager of a Brokerage may be issued one or more administrative user names for use by office administrators or support staff to a maximum of one (1) administrative password for every ten (10) salespersons or part thereof, based on the registered Members in that office to a maximum of ten (10) passwords. Upon receipt by TREB of a properly completed application, the Brokerage shall pay a one-time fee, as determined by the Board of Directors from time to time, for each administrative user name that is issued.

P-504

The password associated with an administrative user name may be changed only by the Broker of Record/Manager of the Brokerage to which it is issued. Access to TREB's MLS<sup>®</sup> System through an administrative user name and/or through the use of an Authenticator shall be restricted, and may be terminated by TREB at any time without notice if, in the sole opinion of TREB, such change is necessary to protect the integrity of TREB's MLS<sup>®</sup> System.

*(Effective October 2008)*

P-505

Every password shall be changed from time to time as determined by TREB.

P-506

A Member may also elect to change his or her password at any time directly on TREB's MLS<sup>®</sup> Online System.

P-507

Absolutely no double logons to TREB's MLS<sup>®</sup> Online System will be permitted.

P-508

TREB in its sole discretion may terminate or suspend a Member's user name and Password code and/or authorized use of an Authenticator in the event of any unauthorized or improper use of TREB's MLS<sup>®</sup> Online system. *(Effective October 2008)*

P-509

When transferring to another Brokerage, a Member may retain the same user name and password.

# **EXHIBIT**

# **E**

LAST UPDATE: FEBRUARY 2008

**AUTHORIZED USER AGREEMENT**  
**TERMS AND CONDITIONS**  
**IMPORTANT PLEASE READ CAREFULLY**

This **Authorized User Agreement** along with all materials referenced herein ("Agreement") is a legal agreement between YOU (being designated in this Agreement as the "Authorized User") and **Toronto Real Estate Board**, a corporation incorporated pursuant to the laws of the Province of Ontario with offices at 1400 Don Mills Road, Don Mills, Ontario M3B 3N1 (hereinafter referred to as "TREB").

The Services, MLS Database and BRS Database to which this Agreement relates are owned and operated by or on behalf of TREB and made available to Authorized User only under the terms and conditions of this Agreement.

The Software and Documentation developed by or on behalf of TREB and owned by or licensed to TREB support the provision of the Services and access to the MLS Database and the BRS Database.

This Agreement combined with the TREB Requirements together with any amendments and updates that may be published by TREB or posted by it on the TREB Website from time to time collectively comprise the entire agreement between the Parties and supersede all prior agreements relating to the subject matter of this Agreement.

The rights granted to Authorized User under this Agreement are personal to the Authorized User.

Authorized User may not sell, assign, or otherwise transfer or agree to transfer all or any portion of those rights without the prior written consent of TREB, which consent may be withheld in the absolute discretion of TREB.

**AUTHORIZED USER MUST READ THIS AGREEMENT CAREFULLY BEFORE INDICATING ACCEPTANCE AT THE END BY CLICKING THE "I ACCEPT" BUTTON FOR ELECTRONIC ACCEPTANCE OR SIGNING THE PAPER VERSION IN THE SIGNING BLOCK INDICATED AT THE END OF THIS AGREEMENT. IF AUTHORIZED USER DOES NOT AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, CLICK ON THE "I DO NOT ACCEPT" BUTTON AT THE END OF THIS AGREEMENT OR, IN THE CASE OF THE PAPER VERSION, RETURN THE UNSIGNED AGREEMENT TO TREB AND AUTHORIZED USER WILL NOT BE PERMITTED TO ACCESS AND USE THE SERVICES.**

THE SERVICES, MLS DATABASE AND BRS DATABASE MAY CONTAIN LINKS TO THIRD PARTY WEBSITES. TREB DOES NOT ENDORSE THE CONTENT CONTAINED IN ANY THIRD PARTY WEBSITE. TREB DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY OF ANY KIND REGARDING ANY THIRD PARTY WEBSITE, INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING THE LEGALITY, ACCURACY, RELIABILITY, QUALITY, COMPLETENESS, TIMELINESS, NON INFRINGEMENT, SECURITY, OR SUITABILITY OF ANY CONTENT ON A THIRD PARTY WEBSITE OR WHETHER OR NOT ANY NECESSARY CONSENTS REQUIRED UNDER APPLICABLE PRIVACY LAWS FOR ANY ASPECT OF ANY THIRD PARTY WEBSITE HAVE BEEN PROPERLY OBTAINED. TREB DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT, GOODS OR SERVICES ON OR MADE AVAILABLE THROUGH ANY THIRD PARTY WEBSITES. NOR DOES TREB MAKE ANY REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY THAT THE OPERATION OF ANY THIRD PARTY WEBSITE WILL BE UNINTERRUPTED, FREE OF ERROR, VIRUSES OR ANY OTHER HARMFUL COMPONENTS. THE CONTENT, GOODS AND/OR SERVICES AVAILABLE ON OR THROUGH ANY THIRD PARTY WEBSITE ARE NOT UNDER TREB CONTROL AND IF YOU CHOOSE TO ACCESS ANY THIRD PARTY WEBSITE, YOU DO SO ENTIRELY AT YOUR OWN RISK.

1. **DEFINITIONS:**

In this Agreement:

- (a) "**Application**" means any TREB then-current properly completed "Application for Membership", "Data Access Application" or other form or written application or agreement provided by Authorized User to TREB in support of its requirement to access and use the Services and MLS Database under the provisions of this Agreement.
- (b) "**Authenticator**" means any handheld random password generator(s) that may be provided by TREB to YOU from time to time.
- (c) "**Authorized User**" means YOU as the party having agreed to be contractually bound to TREB under each and every one of the terms and conditions of this Agreement.

- (d) "**Acceptable Use Policy**" means TREB's established rules and prohibitions, as modified from time to time, that define acceptable use of the Services and MLS Database and any associated features. Unacceptable use is prohibited, and is grounds for loss of privileges, termination of the Agreement, as well as discipline or legal sanctions for violating any applicable laws.
- (e) "**Agreement**" means this Authorized User Agreement and any amendments thereto. Unless otherwise stated, all references to a Section shall refer to a Section of this Authorized User Agreement.
- (f) "**BRS Database**" means the aggregation of all Content as well as its or their selections, assembly and arrangement, that from time to time comprise the Internet based service currently known as the Buyer Registry Service (BRS), and any successor or replacement service thereto owned and operated by or on behalf of TREB.
- (g) "**Business**" or "**business**" as referenced in Sections 2, 3(b), 4, and 8(c), means the business of trading in real estate as set out or otherwise utilized in the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time.
- (h) "**Content**" means all information, comments, opinions, statements, advice, descriptions, services, offers, data, files, links, ideas, software, images, graphics, audio clips, video clips, icons, or any other form of content or information.
- (i) "**Copies**" means hard copy print outs and electronic versions of the reports, results, and other information or materials generated from Authorized User's access and use of the Services and MLS Database.
- (j) "**Documentation**" means the applicable online or hardcopy user documentation providing guidance and instruction for accessing and using the Services and MLS Database.
- (k) "**Intellectual Property**" means all applicable copyrights, patents, trademarks, trade secrets, and associated international laws, treaties, and conventions.
- (l) "**License**" means the restricted license rights granted by TREB to Authorized User under Section 2 and elsewhere in this Agreement.
- (m) "**Member**" means a fully paid-up member in good standing of TREB.
- (n) "**MLS Database**" means the aggregation of all Content as well as its or their selection, assembly, and arrangement, that from time to time comprises the Internet based service currently known as the Multiple Listing Service (MLS), and any successor or replacement service thereto owned and operated by or on behalf of TREB.
- (o) "**Party**" or "**Parties**" means if used in the singular, either Authorized User or TREB, and if used in the plural, both Authorized User and TREB.
- (p) "**PIPEDA**" and "**Personal Information**" shall have the meaning attributed to such term within the provisions of PART 1 of the *Personal Information and Electronic Documents Act of Canada* ("PIPEDA") and any successor legislation and any legislation of similar effect in the Province of Ontario.
- (q) "**Real Estate**" or "**real estate**", as referenced in Sections 4 and 9 shall have the same meaning as set out or otherwise utilized in the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time.
- (r) "**Services**" means TREB's proprietary Internet-based system and associated technology that provides web-enabled display, search, retrieval, and uploading capabilities through the TREB Website to its MLS Database and BRS Database and other related capabilities including, without limitation, customer information services.
- (s) "**Software**" means TREB's proprietary backbone software applications that enable TREB to provide TREB Website access to and use of the Services, MLS Database and BRS Database.
- (t) "**Support**" means any diagnosis of errors and corrections or workarounds, guidance to remedy a user problem, and any implementation by TREB of updates, adjustments, additions or modifications to the Services as TREB may prescribe from time to time.
- (u) "**Third Party Website**" means any site other than a TREB Website.
- (v) "**Trade in Real Estate**" or "**Trading in Real Estate**" shall have the same meaning as set out or otherwise utilized in the *Real Estate and Business Brokers Act* R.S.O. 1990, as amended under the *Real Estate and Business Brokers Act*, 2002, when proclaimed in force, and as may be further amended from time to time.
- (w) "**TREB Members**" means members of TREB in good standing from time to time in accordance with TREB's Bylaws.
- (x) "**TREB Requirements**" means any single or combination, as the case may be, of TREB's:  
(i) "**MLS Policies**", or its successor document if any, which are in force from time to time;  
(ii) "**MLS Rules**", or its successor document if any, which are in force from time to time;  
(iii) "**Bylaws**" means the TREB By-Laws, as amended from time to time; and  
(iv) "**Standards**" means the document created from time to time by the Board of Directors of TREB, relating to the technology needed to access the MLS Database, the BRS Database and Software.
- (y) "**TREB Website**" means the following web address through which Authorized User's may obtain logon access to the Services, MLS Database and BRS Database through TREB issued Authenticator, "User ID" and "Password" and Authorized User controlled "Password" - [www.torontomls.net](http://www.torontomls.net) and any other associated or linked sites operated by or on behalf of TREB.

**2. LICENSE GRANT:**

Subject to the terms of this Agreement, TREB grants authorized user a non-exclusive, non-transferable license, without right to sublicense, to access and use the Services, MLS Database and BRS Database in accordance with this Agreement and in compliance with all applicable TREB requirements ("License") solely for the purpose of and directly related to the Authorized User's ordinary carrying on of its business. Authorized User unconditionally agrees to access and use the Services, MLS Database and BRS Database only in the manner and for the purposes expressly specified in this Agreement and for the exclusive and internal use by Authorized User and by other Authorized Users that have a valid Authorized User Agreement in effect with TREB which has not been terminated or suspended. Any updates, modifications, enhancements to the Services, the underlying Software, Documentation, MLS Database or BRS Database made available to authorized user by TREB, shall be subject to all of the terms and conditions contained in this Agreement. TREB may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature of the Services, MLS Database and BRS Database without notice to Authorized User or any liability to TREB or any third party; however, TREB agrees to make commercially reasonable efforts to provide Authorized User with prior posted notice by means of notice posted to Authorized Users. No part of this Agreement may be assigned or transferred in any manner without the prior written consent of TREB nor may the Authorized User rent, distribute, assign, sub-license or otherwise transfer any of the Authorized User's rights, duties or obligations under this Agreement without the prior written consent of TREB.

Authorized User shall maintain in confidence all provisions of this Agreement and shall not disclose any of same (including any of TREB's pricing) to any third party or parties.

**3. DOCUMENTATION AND COPIES:**

Under the License, Authorized User may

- (a) Use the Documentation in support of Authorized User's use of the Services, MLS Database and BRS Database; and
- (b) Make Copies solely for the purpose of Business.

**4. RESTRICTIONS ON USE:**

Authorized User acknowledges that the MLS Database and BRS Database as formatted by TREB have substantial monetary value, has a special value due to access only by TREB Members and users authorized by TREB, and is considered the confidential property of TREB and that TREB retains ownership of all rights, title and interest to the Services, the Software, the MLS Database and the BRS Database. Except as expressly authorized in this Agreement, Authorized User shall not:

- (a) use either the MLS Database, the BRS Database or the Services in any manner not directly related to the business of real estate as defined in the *Real Estate and Business Brokers Act* R.S.O. 1990, as amended under the *Real Estate and Business Brokers Act, 2002*, when proclaimed in force, and as may be further amended from time to time;
- (b) use either the MLS Database, the BRS Database or the Services for the benefit of anyone except directly related to the real estate business as defined in the *Real Estate and Business Brokers Act* R.S.O. 1990, as amended under the *Real Estate and Business Brokers Act, 2002* when proclaimed in force, and as may be further amended from time to time;
- (c) circulate or copy either the MLS Database, the BRS Database or the Services in any manner except to authorized users who have a valid Authorized User Agreement which they have signed and delivered to TREB which agreement has not been terminated or is suspended, and except to persons or entities who desire or may desire to acquire or dispose of certain of their rights respecting real estate;
- (d) use, copy, reproduce or exploit either the MLS Database, the BRS Database or the Services for creating, maintaining or marketing, or aiding in the creation, maintenance or marketing, of any MLS Database or BRS Database which is competitive with the MLS Database or the BRS Database or which is contrary to the By-Laws, the MLS Rules and MLS Policies, or the *Real Estate and Business Brokers Act* R.S.O. 1990, as amended under the *Real Estate and Business Brokers Act, 2002* when proclaimed in force, and as may be further amended from time to time.

The provisions of this Section shall not apply to that part of the MLS Database, as formatted by TREB, which is publicly available without breach of any obligation by Authorized User hereunder; or is lawfully obtained by Authorized User from a third party who has a legal right to disclose it.

**5. CONTENT SUBMISSION AND LICENSE:**

All Content submitted by Authorized User to TREB for inclusion in the MLS Database or the BRS Database is accepted on the understanding that it is the right of the contributing Authorized User to make the submission and that there are no legal restrictions preventing its submission or publication online or in any other media that TREB may utilize. Authorized User agrees to grant TREB a

perpetual, worldwide, royalty-free, non-exclusive, sub-licensable and transferable right and license ("Content License") including all related Intellectual Property rights:

- (a) To use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, play, and exercise all rights with respect to Authorized User's Content contribution and to incorporate Authorized User's Content contribution in other works in any media now known or later developed as required and at TREB's discretion without further rights negotiation. If Authorized User does not want to grant to TREB the rights set out above, Authorized User agrees that it shall not submit its contribution to TREB; and
- (b) To fully exploit such Content and to allow others to do so.

Authorized User warrants, represents and agrees that it will not contribute any Content that is infringing, libelous, defamatory, obscene, pornographic, abusive, or offensive or otherwise violates any law or right of any third party. TREB reserves the right to remove any Content from the TREB Website at any time, for any reason including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if TREB is concerned that Authorized User may have breached the immediately preceding sentence.

#### 6. CHARGES:

As a condition of the rights granted in this Agreement, Authorized User shall pay to TREB the charges as set forth and as amended by TREB from time to time. Payment of charges is due as set forth in the Bylaws and MLS Rules and Policies. If TREB does not receive payment when due, interest shall be charged in accordance with the Bylaws and MLS Rules and MLS Policies until such charges, together with all applicable interest, is received by TREB.

#### 7. INTELLECTUAL PROPERTY:

- (a) The Services, MLS Database, BRS Database, Software and Documentation are proprietary and confidential to TREB, are protected by the Intellectual Property laws of Canada and international treaties and conventions, and shall remain the sole property of TREB. Notwithstanding anything in this Agreement to the contrary, TREB shall have sole and exclusive ownership of all right, title and interest in and to the Services and MLS Database, BRS Database, Software and Documentation including all derivative works and all modifications and enhancements thereof and derivative works regardless of the form or media in or on which the original and other copies may exist. No provision or clause in this Agreement shall be interpreted as an assignment or grant to Authorized User of any right, title, or interest in or to Intellectual Property, all privileges pertaining thereto remaining the exclusive property of TREB (or in some cases, of its subcontractors).
- (b) Authorized User shall not obtain any rights in connection with any trade-marks or service marks of TREB. Authorized User shall not remove or alter any trade-mark, logo, copyright or other proprietary notices, legends, symbols or labels in the MLS Database Content, BRS Database Content or in the Documentation and shall ensure that the MLS Database Content, BRS Database Content, Copies and Documentation and each copy must contain all of the original proprietary notices.
- (c) Authorized User shall
  - (i) reproduce and display all Notices on Copies Authorized User makes, in accordance with this Agreement;
  - (ii) not de-compile, reverse engineer, disassemble, modify, analyze or otherwise examine or otherwise reduce the Software to human readable form or create derivative works of the Software, MLS Database and or the BRS Database;
  - (iii) not delete or in any manner alter any notices, disclaimers or other legends contained in the Software, Services, MLS Database or the BRS Database appearing on any screens, documents, reports, numeric results or other materials obtained by Authorized User through use of the Software and Services ("Notices"); and
  - (iv) Not provide service bureau facilities or commercial time-sharing services to any third party or supporting operations for any third party through the access and/or use of the Software and/or Services.
- (d) Authorized User shall not, at any time or times, during or after the term of this Agreement question or dispute any of TREB's right, title, ownership, license, Intellectual Property, and/or other interests in the Software, the Documentation, the Services, MLS Database or BRS Database nor commit any act or omission which negates, reduces, or impairs any of TREB's rights or interests in any of same; nor file any patent, copyright, and/or other intellectual property application and/or registration relating to any portion of the Software copyright, and/or other Intellectual Property application and/or registration relating to any portion of the Documentation.
- (e) Authorized User shall promptly notify TREB if Authorized User becomes aware of any (i) error, bug, or security breach in the Services or Software; (ii) unauthorized use, reproduction, or distribution of Content, the MLS Database, the BRS Database, the Software or Documentation; and (iii) breach of the terms of this Agreement. Authorized User shall maintain all such information in confidence, shall only disclose the same to TREB, and shall not publicize, publicly distribute, or publicly display any such information.
- (f) Authorized User recognizes the validity of TREB's copyrights and trade secrets. Authorized User will cooperate in good faith to secure and preserve TREB's right and title to the copyrights and trade secrets for the Software and of all derivative works, as if said products were their own products. Authorized User

acknowledges and agrees that the Software is, in all respects confidential information subject to the terms of this Subsection.

- (g) Authorized User agrees upon termination of this Agreement to continue to protect TREB's copyrights and trade secrets.

8. **CONFIDENTIAL INFORMATION:**

- (a) "**Confidential Information**" means all confidential and/or trade secret information, knowledge, and/or data of every kind disclosed by one party to this Agreement ("Disclosing Party") to the other party ("Recipient Party") pursuant hereto.
- (b) Confidential Information shall not include any information, knowledge, and/or data disclosed pursuant to this Agreement to the extent same: (i) is or hereinafter becomes part of the public domain through no wrongful act of the Recipient Party, or (ii) is known to the Recipient Party free of any obligation of confidentiality at the time of first disclosure hereunder; or (iii) is lawfully obtained by the Recipient Party from a third party without obligation of confidentiality, without breach of any obligation of confidentiality to the Disclosing Party, and without breach of this Agreement; or (iv) is disclosed pursuant to a court order provided that the Recipient Party provides a copy of such court order to the Disclosing Party prior to such disclosure and Recipient Party takes all reasonable steps, consistent with such order, to maintain the confidentiality of same.
- (c) Each Recipient Party shall: (i) receive and maintain all Confidential Information received hereunder in confidence; (ii) use Confidential Information received hereunder solely for the purposes of such Recipient Party lawfully exercising its rights and/or performing its obligations hereunder and for no other purpose whatsoever; (iii) use the same degree of care to protect Confidential Information received hereunder as such Recipient Party itself uses to protect its own confidential information from unauthorized use, copying, and/or disclosure which standard shall be no less than reasonable care; and (iv) disclose Confidential Information received hereunder only to those of its directors, officers, employees, who have a direct need to know same for the purpose stated above and who are bound by written confidentiality obligations at least as restrictive as those contained herein.
- (d) All ownership, license, Intellectual Property, moral, and other rights to Confidential Information disclosed hereunder shall remain with the Disclosing Party and/or with such Disclosing Party's licensors.
- (e) Each Recipient Party shall promptly cease all use of all Confidential Information received hereunder upon any termination or expiry of this Agreement and shall promptly return all such Confidential Information to the Disclosing Party by a secure means without delay.

9. **PRIVACY:**

- (a) **Compliance with Personal Information Protection and Electronic Documents Act.** Authorized User shall at all times comply with all applicable laws and regulations. Without limiting the generality of the foregoing, Authorized User shall ensure that all Personal Information that may be collected by or on behalf of Authorized User in connection with the MLS Database, the BRS Database and/or the Services will be collected, used, disclosed and maintained strictly in accordance with the requirements of all applicable privacy legislation including, without limitation, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA") of Canada and any successor of similar effect in the Province of Ontario as though that legislation were fully in force and fully applicable to the Authorized User.
- (b) **Currency of Information and Listings.** Subject to Section 9(a) above, Authorized User shall promptly, and in any event within 60 calendar days, destroy, erase or make anonymous Authorized User's records and file copies of all of Authorized User's customer and client personal information that is no longer required to fulfill the identified purpose. Authorized User will, upon request from TREB, provide a written certification attesting to such destruction or erasure and will provide TREB with a copy of Authorized User's guidelines governing the destruction of personal information.
- (c) **Consent.** Authorized User consents to and authorizes TREB to collect, retain, use and disclose all information provided to TREB relating to the MLS Database, the BRS Database and the Services (including, in each case, personally identifiable information) for all purposes relating to the sale of real estate in Ontario and in the course of providing support for Members of TREB to carry on their real estate businesses in Ontario including, without limitation, collection, use and retention of Authorized Users' personally identifiable information for TREB's own administrative purposes, collection, retention, use and disclosure of Authorized Users' personally identifiable information in the form of a TREB membership roster that is compiled and disclosed to TREB's Members from time to time in paper and/or electronic formats and collection, retention and disclosure of all information submitted through the Services and in the form of listings to the MLS Database or information in the BRS Database including, without limitation, Authorized Users' name and relationship to particular real estate transactions, all financial particulars of such transactions and disclosure of such information to all users of the MLS Database or the BRS Database in any form whatsoever, and all calendar, contact or other information collected, used, disclosed or maintained as part of the authorized User's use of the Services. For purposes of this Section 9 (c) "personally identifiable information" shall include, but not be limited to, Authorized User's and its client's names, phone numbers, business and home addresses and employers.

- (d) **Cessation of Use.** Subject to the provisions of this Agreement, Authorized User shall cease all use of all Personal Information received pursuant to this Agreement upon any termination or expiry of this Agreement.

10. **CONDITIONS AND RESTRICTIONS ON USE:**

- (a) **Access.** TREB shall assign Passwords, as well as an Authenticator, to Authorized Users to enable Authorized Users to access the Services, MLS Database, BRS Database and Software. Authorized User agrees to be fully responsible for all activities that occur under Authorized User's Password or account and to not permit any person other than the Authorized user to access the Authorized User's Password or account or use the Authorized User's Authenticator. In the event Authorized User discovers unauthorized access to or use of Authorized User's account, Password, or Authenticator, Authorized User must notify TREB's Director of Member Services or Chief Information Officer immediately. TREB reserves the right from time to time to change the Passwords by notice to Authorized User, or to require Authorized User to change its Password or Authenticator. Authorized User must change its Password within one (1) day after notification of the requirement to change the Password in order to continue to be entitled to access the Data Base and Software.
- (b) **Technical Standards.** The Standards list the minimal computer and software configuration together with associated technological criteria to enable Authorized User to access, communicate with and use the Services, MLS Database, and BRS Database. Authorized User is solely responsible for acquiring, servicing, maintaining, and updating all equipment, computers, software and communications services (such as long distance phone charges) not owned or operated by or on behalf of TREB, that allow Authorized User to access and use the Software and Services, and for all expenses relating thereto (plus any applicable taxes). Authorized User agrees to access and use the Software and Services in accordance with any and all operating instructions or procedures that may be issued by TREB, and amended by TREB from time to time.
- (c) **Performance.** Authorized User understands and agrees that the operation and availability of the systems used for accessing and interacting with the Software and Services, including, the public telephone, computer networks and the Internet or to transmit information, whether or not supplied by Authorized User or TREB, can be unpredictable and may, from time to time, interfere with or prevent the access to and/or the use or operation of the Software and Services. TREB shall not in any way be responsible for any such interference with or prevention of Authorized User's access and/or use of the Software and Services.
- (d) **Compliance with TREB Requirements** Authorized User must comply with all provisions in the TREB Requirements. In order to continuously improve and update the quality of the Services that it provides, TREB reserves the right to change or modify the TREB Requirements from time to time. Such changes shall become effective
- (i) In the case of the Standards, six months; and
  - (ii) In the case of TREB's MLS Policies and MLS Rules, five days

after TREB has either, in writing, notified Authorized User of such change, which writing may consist of, among other things, publishing the document known as the "Notice Page" on the TREB Website or otherwise, or included notice of such change in the MLS Database and/or BRS Database. If Authorized User does not comply with the applicable TREB Requirements, or does not comply with a change to any such applicable TREB Requirements after a change becomes effective, Authorized User may not be able to access the Services, MLS Database or BRS Database and will furthermore be in breach of this Agreement. Changes to any of the Standards, TREB's MLS Policies, or TREB's MLS Rules shall be available for review at any time on reasonable notice during normal business hours at the offices of TREB. As well, any changes to the Standards shall be available electronically upon Authorized User accessing the MLS Database or BRS Database. **Authorized User accepts complete responsibility to ensure that it has the most current version of the Standards, TREB's MLS Policies, and TREB's MLS Rules at all times.**

- (e) **Non-Interference.** Authorized User shall not attempt to access any systems, programs or data of TREB that is not licensed under this Agreement, or otherwise made available by TREB for public use;
- (f) **Suspension.** The License rights granted to Authorized User under Section 2 shall be suspended immediately upon the Authorized User's brokerage delivering to TREB, in TREB's then currently authorized form, a signed Notice of Transfer which Notice states or provides that Authorized User's license with the brokerage has been surrendered or terminated ("Suspension"). The License rights may be reinstated as if such Suspension had not occurred if at any time during or following such Suspension, the Board of Directors of TREB permits Authorized User a period of time to relocate with a new brokerage that is Member of TREB and that Broker of Record signs and delivers to TREB and in TREB's then currently authorized form, either
- (i) A validly executed and current Guarantee and Indemnity (available as part of TREB's Application for Membership and Agreement form in support of Authorized User, or
  - (ii) A Notice of Transfer relating to the Authorized User.

11. **IMITATION OF LIABILITY:**

- (a) **THE SERVICES, SOFTWARE, MLS DATABASE AND BRS DATABASE ARE PROVIDED "AS IS" WITHOUT ANY GUARANTEE, REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EITHER EXPRESSED, IMPLIED OR STATUTORY, USAGE OF TRADE OR COURSE OF DEALING INCLUDING,**

BUT NOT LIMITED TO, THE IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TREB MAKES NO WARRANTIES AND ASSUMES NO LIABILITY WHATSOEVER REGARDING THE TRUTH OR ACCURACY, CURRENCY, OR COMPLETENESS OF THE SERVICES, SOFTWARE, MLS DATABASE OR BRS DATABASE. AUTHORIZED USER AGREES THAT ANY USE OF THE MLS DATABASE, BRS DATABASE AND/OR SOFTWARE BY OR ON BEHALF OF AUTHORIZED USER OR ANY PERSON OR ENTITY WHO ACQUIRES THE RIGHT OF SUCH USE, DIRECTLY OR INDIRECTLY BY OR THROUGH AUTHORIZED USER, IS DONE AT AUTHORIZED USER'S SOLE RISK.

- (b) Authorized User acknowledges that neither TREB nor its directors, officers, employees or agents will assume any responsibility with respect to the use, copying or in any manner relating to how Authorized User, any of their employees, agents or any other person uses or relates to the TREB Website, Services, Software, MLS Database, BRS Database or any Third Party Website or the results of any act or omission related thereto in any manner. TREB, its directors, officers, employees and agents, will not be liable to Authorized User or to Authorized User's clients or customers, any of their employees, agents or to any other party for any direct, indirect, special, consequential, incidental, contingent, punitive or exemplary damages, or damages of any nature including without limitation lost profits, howsoever caused, arising in contract, tort (including negligence), fundamental breach, breach of a fundamental term, or otherwise, or out of or in connection with this Agreement and/or the supply, use, performance or non-performance of the MLS Database, the BRS Database, the Software or any Third Party Website or relating to the assistance provided by TREB, even if TREB or its employees or agents have been advised of the possibility of such damages, regardless of the form of action and whether or not such damages are foreseeable.
- (c) Authorized User shall indemnify, defend and save harmless TREB, its partners and its and their respective directors, officers, employees and agents from and against all damages, costs and expenses relating in any manner, actual or threatened, to any claim, action, cause of action or any proceeding made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from: (i) any and all negligent or reckless acts or omissions of Authorized User, or its partners, or its or their respective directors, officers, employees, representatives or agents, in the performance or purported performance of this Agreement; (ii) breach of this Agreement except directly by TREB; or (iii) breach of any Intellectual Property, moral or property rights related to the TREB Website, the Services, Software, MLS Database, BRS Database or any Third Party Website by Authorized User, or its partners, or its or their respective directors, officers, employees, representatives or agents, or any person or entity who gained access to the MLS Database by or through Authorized User, directly or indirectly.
- (d) Authorized User agrees to defend, indemnify and hold TREB as well as each of the directors, officers, agents, and employees of TREB harmless from any losses, liabilities, damages, actions, claims or expenses (including reasonably lawyers' fees and court costs) arising or resulting from Authorized User's breach of any term of this Agreement or caused by acts or omissions performed by Authorized User or under Authorized User's Password or any password issued by Authorized User to Licensed Authorized Users or shared by either of them with others.
- (e) Authorized User shall indemnify, hold harmless and, at the request of TREB, defend TREB, its affiliates and its and their respective officers, directors and employees from and against any and all costs, expenses, awards of damages or settlements made in relation to any proceedings, complaints, actions or claims, or in relation to compliance by TREB or its contractors with any orders or directions given against or to it or its affiliates by any privacy commissioner, tribunal, person or court, arising from any breach by Authorized User of any of its obligations as set out in Section 9.

## 12. TERMINATION:

- (a) In the event Authorized User is in breach of:
  - (i) this Agreement;
  - (ii) its payment obligations as set forth in Section 6 and any provision contained in the By-Laws, TREB Requirements or the Real Estate and Business Brokers Act R.S.O. 1990, as amended under the Real Estate and Business Brokers Act, 2002 when proclaimed in force, and as may be further amended from time to time;

and, with respect to Section 12 (a)(i), if such breach is not cured within two weeks after notice from TREB, or with respect to Section 12 (a)(ii), if such breach is not cured immediately, then TREB has the right to invoke any or all of the rights contained in the TREB Requirements and Authorized User shall comply with the procedures and obligations as contained in the TREB Requirements.

- (b) Authorized User may terminate this Agreement at any time, provided it gives TREB prior written notice, and provided that it complies with the termination procedures and obligations as set forth in the TREB Requirements.
- (c) In the event TREB decides, at any time, not to continue to offer, maintain or develop the MLS Database and/or BRS Database to meet the TREB Requirements and Standards, TREB may terminate this Agreement provided it gives Authorized User six months prior written notice and Authorized User shall comply with the termination procedures and obligations as contained in the TREB Requirements.
- (d) If at any time after the time period permitted by TREB to permit Authorized User time to relocate with a new brokerage, there is not in existence a validly executed and current Guarantee and Indemnity relating to the Authorized User, in TREB's form which is available as part of TREB's Application for Membership and

Agreement form, or a Notice of Transfer relating to the Authorized User in the then current form as authorized by TREB from time to time, which is executed by any type of Broker of Record who is a Member of TREB, then TREB may at any time thereafter terminate this Agreement by notice to Authorized User.

13. **INJUNCTIVE RELIEF.**

Authorized User acknowledges that a violation of Sections 4, 7, 8, 9, and 10 of this Agreement would cause irreparable harm to TREB for which no adequate remedy at law exists and Authorized User therefore agrees that, in addition to any other remedies available, TREB shall be entitled to seek injunctive relief and to recover all costs and expenses, including reasonable lawyer's fees incurred because of any such legal action to enforce the terms of Sections 4, 7, 8, 9, and 10.

14. **NOTICES**

- (a) Any notice, direction or other instrument required or permitted to be given to a Party shall be in writing and shall be sufficiently given if delivered personally, mailed by prepaid registered mail, or transmitted by fax or other form of recorded communication to the Party as follows:
- (i) in the case of TREB, at 1400 Don Mills Road, Toronto, Ontario M3B 3N1  
Attention: President
  - (ii) in the case of Authorized User, at the Authorized User's business address as identified in the Application last filed by Authorized User with TREB, and to be addressed to the Attention of the Authorized User with a copy to the Attention of the Authorized User's Broker of Record/Manager (as applicable) at the business address as last filed by such Broker of Record/Manager with TREB.
- (b) Either Party may change its address for service from time to time by notice given to the other Party in accordance with the foregoing.
- (c) Provided that either Party may, at such Party's option, elect to provide electronic legal notices regarding this Agreement to the other Party at the email address identified in the acceptance or signature block of this Agreement. It shall be the responsibility of the recipient Party to provide prompt notice to the other Party of any changes in email addresses.

15. **ELECTRONIC ACCEPTANCE.**

- (a) By clicking "I accept" or signing this Agreement where indicated below, Authorized User agrees and consents to (i) contract electronically with TREB for the Software and Services in accordance with this Agreement; (ii) receipt of electronic legal notices regarding this Agreement to the email account Authorized User provided under Section 14 14(c) or upon accessing the Services; and (iii) that by clicking "I Accept", Authorized User intends to be bound by this Agreement.
- (b) Copy of Agreement. For electronic acceptance: In order to access, download, and print this Agreement, Authorized User should click on the link for the .PDF file version of this Agreement. For Signature Acceptance of this Agreement: Authorized User acknowledges having received a copy of this Agreement. Changes to these hardware and software requirements, if any, will be e-mailed to Authorized User. Authorized User may also request to receive a copy of this Agreement by Canada Post mail free of charge by giving notice to TREB of such request within 45 days after entering into this Agreement.

16. **MISCELLANEOUS.**

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement by which the relationship between TREB and Authorized User will be governed. There are no oral agreements, arrangements, representations or understandings between the Parties and this Agreement may not be amended or modified except by an instrument in writing duly signed by both Parties. This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and cancels and supersedes any and all prior understandings, agreements, negotiations and discussions with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements or understandings, express or implied, between the parties other than as expressly set forth in this Agreement.
- (b) **Time of the Essence.** Time shall be of the essence of this Agreement.
- (c) **Governing Law.** This Agreement shall be construed in accordance with the laws of the Province of Ontario except that no choice of law doctrine shall be used to apply the laws of any other jurisdiction. The Parties further agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- (d) **Consent to Jurisdiction.** Authorized User consents to the exclusive jurisdiction of the federal and provincial courts located in the Province of Ontario in connection with any action or proceeding to enforce, or arising out of, this Agreement and agrees that venue will be proper in such court on any such matter. The Parties agree that a summons and complaint may be served by mail or overnight courier service at their addresses first set forth above or at such other address as such party may have given written notice of in accordance with Section 14.



# **EXHIBIT**

# **F**



Mandatory Field All Property Types  
 Optional Field All Property Types

MLS LISTING # \_\_\_\_\_

FOR BOARD USE ONLY FOR A NEW LISTING OR TO BE COMPLETED FOR A RE-RUN.

**LOCATION**

PIN # \_\_\_\_\_ MLS DISTRICT \_\_\_\_\_ MUNICIPALITY \_\_\_\_\_

STREET NUMBER \_\_\_\_\_ STREET NAME \_\_\_\_\_ ABBREVIATION \_\_\_\_\_ DIR \_\_\_\_\_ APT/UNIT # \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

FRONTING ON (check 1 code) LEGAL DESCRIPTION (LOT, PLAN, CONCESSION)  
 East  South  
 North  West

LOT FRONT \* LOT DEPTH \* LOT SIZE CODE \* LOT IRREGULARITIES  
 Feet  Metres  Acres

\* MANDATORY EXCEPT FOR SALE OF BUSINESS, MOBILE/TRAILER

ACRES (check 1 code)  
 Less than .49 Acres  .50 - 1.99 Acres  2 - 4.99 Acres  5 - 9.99 Acres  10 - 24.99 Acres  
 25 - 49.99 Acres  50 - 99.99 Acres  100 + Acres

ZONING \_\_\_\_\_ DIRECTION/MAIN CROSS STREETS \_\_\_\_\_ MAP # \_\_\_\_\_ MAP COL (NUMERIC) \_\_\_\_\_ MAP ROW (ALPHA) \_\_\_\_\_  
 NOT MANDATORY FOR X AND Z

**AMOUNTS/DATES**

LIST PRICE \_\_\_\_\_ TAXES \* \_\_\_\_\_ TAX YEAR \_\_\_\_\_ ASSESSMENT \_\_\_\_\_ ASSESSMENT YR \_\_\_\_\_  
 \$ \_\_\_\_\_

CONTRACT COMMENCEMENT \_\_\_\_\_ EXPIRY DATE \_\_\_\_\_ POSSESSION DATE \_\_\_\_\_ HOLDOVER DAYS \_\_\_\_\_

SELLER NAME \_\_\_\_\_

MORTGAGE COMMENTS (80 CHARACTERS) \_\_\_\_\_

\* BUSINESS NOT MANDATORY

**EXTERIOR**

- TYPE** (check 1)
- Attached/Row/Street Townhouse
  - Business
  - Cottage
  - Detached
  - Detached with Common Elements
  - Duplex
  - Farm
  - Fourplex
  - Link
  - Mobile/Trailer

- Multiplex
  - Other
  - Rural Residential
  - Semi-Detached
  - Store with Apt/Office
  - Triplex
  - Vacant Land
- ADDITIONAL MONTHLY FEES\***  
 \_\_\_\_\_  
 \*Fees for Detached with Common Elements only

- STYLE** (check 1)
- 1 1/2 Storey
  - 2 Storey
  - 2 1/2 Storey
  - 3 Storey
  - Backsplit 3 Level
  - Backsplit 4 Level
  - Backsplit 5 Level
  - Bungalow
  - Bungalow
  - Bungalow - Raised
  - Other

- Sidesplit 3 Level
  - Sidesplit 4 Level
  - Sidesplit 5 Level
- EXTERIOR** (check up to 2)
- Aluminum Siding
  - Board & Batten
  - Brick
  - Brick Front
  - Concrete
  - Insulbrick

- Log
- Metal/Steel Siding
- Other
- Shingle
- Stone
- Stucco (Plaster)
- Vinyl Siding
- Wood

(cont'd on page 2)



**COMMENTS**

**REMARKS FOR CLIENTS** (use up to 463 characters)

- 1. Appear in the Brokerage Full, Client Full and Flyer Reports in Toronto MLS.
- 2. Are published on the Internet.
- 3. Are NOT published in the Dailies or Books.

Grid of 10 rows and 46 columns for client remarks.

**EXTRAS** (use up to 240 characters)

- 1. Appear in the Brokerage Full and Client Full Reports in Toronto MLS.
- 2. Are published on the Internet.
- 3. Are published in the Dailies and the Books.

Grid of 6 rows and 46 columns for extras.

**REMARKS FOR BROKERAGES** (use up to 280 characters)

- 1. Appear in the Brokerage Full Report in Toronto MLS and not on the Client Reports.
- 2. Are not published on the Internet.
- 3. Are published in the Dailies and the Books.

Grid of 8 rows and 46 columns for brokerages.

**OTHER**

**LISTING BROKERAGE**

**BROKER 1/SALESPERSON 1**

**BROKER 2/SALESPERSON 2**

**COMMISSION TO CO-OPERATING BROKERAGE**

**SPIS**

**PERMISSION TO ADVERTISE**

**DISTRIBUTE TO INTERNET**

**DISPLAY ADDRESS ON INTERNET**

**OPEN HOUSE DATE**

Yes  No

Yes (B)  No (A)

Yes  No

Yes  No

**FROM**

**TO**

**OPEN HOUSE NOTES**

**APPOINTMENTS**

**OCCUPANCY** (check 1)  Owner/Tenant  Owner  Partial  Tenant  Vacant

**CONTACT AFTER EXPIRED**  Yes  No

**VIRTUAL TOUR URL** (100 characters)

**PHOTO OPTIONS**

Use photo from photo library  Upload your own photo  Mail in photo  Photographer take new photo  No photo for this listing

**ADDITIONAL PHOTOS**

Yes  No

**PHOTOGRAPHER DIRECTION** (37 characters)

**NEWS AD**

Yes  No

SELLER HEREBY ACKNOWLEDGES HAVING RECEIVED A COPY OF PART 2 OF THE LISTING AGREEMENT.

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**ROOMS/DETAILS/DESCRIPTIONS - ALL RESIDENTIAL PROPERTY TYPES (Searchable)**

**LEVELS**

Basement  
 Flat (use with apartments)  
 2nd  
 3rd  
 Ground  
 In Between (1/2 level)  
 Lower level  
 (use with splits)  
 Main (use with splits)  
 Sub-basement  
 (use with splits)  
 Upper level  
 (use with splits)

**CODES**

B  
 F  
 2  
 3  
 G  
 I  
 L  
 M  
 S  
 U

Fridge  
 Microwave  
 Oven  
 Range  
 Shelves  
 Stove  
 Vanity

**CEILING**

Acoustic  
 Beamed  
 Cathedral  
 Coffered  
 Dropped  
 Illuminated  
 Mirrored  
 Moulded  
 Plaster  
 Skylight  
 Stucco  
 Tiled  
 Vaulted

**CLOSETS**

Built-in  
 Cedar  
 Closet  
 Closet Organizer  
 Double  
 His & Hers  
 Large  
 Linen  
 Mirrored  
 Walk-in  
 Walk Through  
 Wall-to-Wall

**COUNTERS**

Concrete Counter  
 Corian Counter  
 Custom Counter  
 Glass Counter  
 Granite Counter  
 Moulded Counter  
 Stainless Steel Counter  
 Stone Counter

**DOORS**

Automatic Doors  
 Colonial  
 Double  
 Dutch  
 Folding  
 French  
 Glass Doors  
 Louvered  
 Pocket  
 Saloon  
 Side  
 Sliding Doors  
 Swing

**FIREPLACE/STOVE**

Acorn Stove  
 Brick  
 Closed  
 Electric  
 Fireplace  
 Floor to Ceiling  
 Franklin Stove  
 Gas  
 Imitation  
 Insert  
 Marble  
 Pellet  
 Roughed-in  
 Stone  
 Wall-to-Wall  
 Wood Stove  
 Zero Clearance

**FLOORING**

Bamboo Floor  
 Broadloom  
 Ceramic  
 Concrete  
 Cork Floor  
 Cushion  
 Granite  
 Hardwood  
 Heated Floor  
 Laminate  
 Limestone Flooring

Linoleum  
 Marble  
 Parquet  
 Pegged  
 Plank Floor  
 Raised  
 Slate Flooring  
 Stone Floor  
 Tile  
 Tumbled Marble  
 Wood

**KITCHENS**

Breakfast Area  
 Breakfast Bar  
 Centre Island  
 Ceramic Backsplash  
 Country  
 Custom Backsplash  
 Eat-in  
 Family Size  
 Galley  
 Greenhouse  
 Hollywood  
 Modern  
 Pantry  
 Renovated  
 Stainless Steel Appliances  
 Up-dated

**LIGHTING**

Fluorescent  
 Halogen  
 Hidden  
 Indirect  
 Pot  
 Recessed  
 Track  
 Wall Sconce

**OVERLOOKS**

Backyard  
 Dining room  
 Family room  
 Frontyard  
 Garden  
 Golf Course  
 Greenbelt  
 Living room  
 Park  
 Patio  
 Pool  
 Ravine  
 Water

**ROOM COMBINED WITH**

Bedroom  
 Den  
 Dining Room  
 Family Room  
 Games Room  
 Great Room  
 Kitchen  
 Laundry  
 Library  
 Living Room  
 Master Bedroom  
 Nursery  
 Office  
 Playroom  
 Recreation Room  
 Sitting Room  
 Solarium  
 Sun Room  
 Workshop

**ROOM STYLES**

Circular  
 Formal  
 Irregular  
 L-shaped  
 Open Concept  
 Raised  
 Separate  
 Sunken

**SINKS**

Bar  
 Ceramic  
 Concrete Sink  
 Double  
 Enamel  
 Glass Sink

Marble  
 Moulded  
 Pedestal  
 Porcelain  
 Stainless Steel

**STAIRS**

Circular  
 Circular Oak  
 Curved  
 Double  
 Floating  
 Metal Railing  
 Oak Banister  
 Open  
 Scarlett O'Hara  
 Spiral  
 Staircase  
 Stair Assist  
 Suspended

**VIEWS**

North  
 North East  
 North West  
 North South  
 East  
 East West  
 South  
 South East  
 South West  
 West

**WALK-OUTS**

Walk-Out  
 to Balcony  
 to Deck  
 to Garage  
 to Garden  
 to Greenbelt  
 to Patio  
 to Pool  
 to Porch  
 to Ravine  
 to Roof  
 to Sundeck  
 to Sunroom  
 to Water  
 to Yard

**WINDOWS**

Above Grade  
 Bay  
 Bow  
 Casement  
 Clerestory  
 Glass Block  
 Greenhouse  
 Large Window  
 Leaded Glass  
 Picture  
 Stained Glass  
 Window

**MISCELLANEOUS**

Access to Garage  
 Balcony  
 Breezeway  
 California Shutters  
 Ceiling Fan  
 Chair Rail  
 Crown Moulding  
 Elevator  
 Enclosed  
 Finished  
 Hot Tub  
 Intercom  
 Juliette Balcony  
 Mirrored Walls  
 Natural Finish  
 Networked  
 Panelled  
 Partly Finished  
 Pass Through  
 Plate Rail  
 Sauna  
 Sump Pump  
 Unfinished  
 Wainscotting  
 Walk-thru  
 Walk-up  
 Wood Trim

**ROOMS**

Bathroom  
 Bedroom  
 2nd Bedroom  
 3rd Bedroom  
 4th Bedroom  
 5th Bedroom  
 Breakfast  
 Cold Room/Cantina  
 Common Room  
 Den  
 Dining  
 Exercise  
 Family  
 Foyer  
 Furnace  
 Games  
 Great Room  
 Kitchen  
 Laundry  
 Library  
 Living  
 Locker  
 Loft  
 Master Bedroom  
 Media/Entertainment  
 Nursery  
 Office  
 Other  
 Pantry  
 Playroom  
 Powder Room  
 Recreation Room  
 Sitting  
 Solarium  
 Study  
 Sun Room  
 Tandem Room  
 Utility  
 Workshop

**BARS**

Dry Bar  
 Wet Bar

**BATHS**

2 piece  
 2 piece ensuite  
 3 piece  
 3 piece ensuite  
 4 piece  
 4 piece ensuite  
 5 piece  
 5 piece ensuite  
 6 piece  
 6 piece ensuite  
 7 piece  
 7 piece ensuite  
 Bidet  
 Ensuite  
 Semi-ensuite (walk-thru)  
 Separate Shower  
 Soaker  
 Step-Up  
 Sunken  
 Walk-in Bath  
 Whirlpool

**BUILT-INS**

Appliances  
 Bar  
 Bookcase  
 Built-in Speakers  
 Closet  
 Counter-top Stove  
 Desk  
 Dishwasher  
 Fish Tank

# **EXHIBIT**

# **G**

Data Integrity Service (DIS)

Toronto  
MLS

## **Don't get DIS'd (Data Integrity Service) – Ensure your MLS® Listings are accurate**

*October 6, 2006* – Members may make verifiable complaints regarding MLS® Listings by e-mail to [dis@trebnet.com](mailto:dis@trebnet.com) or to a facsimile hotline number at 416-443-2679.

In contrast to making a formal Professional Standards complaint, this process for requesting corrections to MLS® Listings provides an easier opportunity for all Members to contribute to the integrity of the MLS® System and receive more immediate results.

**The MLS® Rules were revised effective January 1st, 2006 and the DIS program has been expanded to reflect them.**

**DIS concerns are specific to infractions to the following MLS® Rules:**

**1) MLS® Listings that display an internet address, comments or slogans which promote or advertise the services of a Member:**

### **R-105**

Information published on the MLS® System shall relate directly to the listed real estate and the MLS® Listing Agreement, and accordingly shall not include any information that promotes goods and services, provided that the Brokerage Remarks field may include the name, address, telephone and/or facsimile number and/or e-mail address (but not a link to that e-mail address) of Member(s) to be contacted for more information concerning the property.

**2) When Virtual Tours indicate personal information of the Member or the Brokerage:**

### **R-106**

Information published on the MLS® System shall not include any internet links or references to any internet links. The only exceptions to the foregoing shall be:

(a) a link to a virtual tour that meets all of the following requirements:

(i) only contains information pertaining to the property to which the MLS® Listing Agreement pertains;

(ii) does not contain any other internet links or references to any other internet links; and

- (iii) does not include any information that promotes goods or services; or
- (b) a link provided by or approved by TREB that meets all of the following requirements:
  - (i) does not contain any other internet links or references to any other internet links; and
  - (ii) does not include any information that promotes goods or services.

### **3) When 0% Commission is being offered to the Co-operating Brokerage or mandatory fields are not completed:**

#### **R-304**

- (a) No Member shall submit an MLS® Listing to the MLS® System that contravenes the TREB MLS® Rules or Policies and/or the TREB By-Law. TREB may, in its sole discretion, deem any such MLS® Listing to be invalid and either remove it from the MLS® System or refuse to publish such MLS® Listing.
- (b) Without limiting the generality of the foregoing and the other provisions of the MLS® Rules or Policies, any such MLS® Listing shall not be accepted by TREB as an MLS® Listing:
  - i) if it excludes any Members from showing the property (but this does not include an MLS® Listing that indicates "No Showings");
  - ii) if it excludes any Members from acting as a Co-operating Brokerage;
  - iii) if it does not provide compensation to the Co-operating Brokerage for the sale of the listed property;
  - v) if all Mandatory Fields have not been completed
- (c) If a submitted MLS® Listing is deemed invalid as hereinbefore provided, TREB shall send notice to the Listing Brokerage who shall, within two (2) TREB business days, remedy the information through a Re-run, or process a cancellation. On an "Incomplete" MLS® Listing that requires changes to Mandatory Fields, the Listing Brokerage is required to process a Re-run by the date specified in the notification to the Member provided by TREB.

### **4) When there are duplicate MLS® Listings by more than one Member:**

#### **R-312**

Only one MLS® Listing for any one Trade function signed by the same Seller may be placed on the MLS® System at any one time.

### **5) When there is a requirement for a name in the "Seller's" field:**

**R-360**

MLS® Listings on the MLS® System shall contain all information necessary for preparing an Offer for Sale, Lease or Sub-Lease.

**6) When an MLS® Listing is designated as an "Office" Listing:****R-370**

Where an MLS® Listing is designated as an "Office" listing in the Listing Salesperson field, the Broker of Record/Manager's name or the name of a Member who is familiar with the property shall also appear after the word "Office".

**7) When wording or other embellishments appear on the photograph:****R-385**

Photographs or other graphic images of a property, with wording or other embellishments not related to the property, shall not be accepted for an MLS® Listing to be serviced through the MLS® System.

**8) Reporting of the "sold" price where the date for the condition has expired:****R-610**

The sale, lease or sub-lease of a residential or commercial MLS® Listing shall be Reported by the Listing Brokerage through the MLS® System, whether conditional or firm, to TREB within two (2) TREB business days following acceptance of an Offer. Reporting by the Listing Brokerage of a commercial sale/lease price shall contain the unit of measurement in which the original listing was posted. All changes in the status of a previously reported conditional sale shall be Reported to TREB within two (2) TREB business days of the change.

(a) The residential sale price shall be Reported to TREB within two (2) TREB business days of either:

(i) Reporting of a firm transaction; or

(ii) removal of all condition(s)

(b) A commercial sale price shall be Reported either:

(i) at the time of Reporting a firm transaction; or

(ii) at the same time as Reporting a firm transaction, and request that the price be suppressed

until after closing; or

(iii) within five (5) TREB business days of closing of the transaction.

If information appears to be a possible infraction, a faxed letter will be sent to the Listing Salesperson and Broker of Record/Manager indicating the possible violation, and providing two (2) TREB business days to rectify.

If the possible violation has not been rectified within two (2) TREB business days of the notification, the complaint will be forwarded to the Professional Standards Department for further action.

The name of the Member filing the complaint will remain confidential.

10/07/06

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**Note to users:** Although TREB endeavours to ensure the accuracy and timeliness of information, it is not guaranteed. TREB accepts no responsibility for any loss arising from any use or reliance on the information contained herein.

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# **EXHIBIT**

# **H**

COMMERCIAL DIVISION  
INFORMATION

SEARCH  
PROPERTIES

YOUR INFORMATION  
CENTRE

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Keyword Search

- TREB Facts
- Membership
- Education
- Government Relations
- Complaints / Arbitration
- MLS Information
- Technology Corner

TOP STORIES

**Your Help Needed to Eliminate Toronto Land Transfer Tax**  
 July 13, 2012 – TREB has launched a renewed campaign to achieve the repeal of the Toronto Land Transfer Tax including a new campaign website, [www.LetsGetThisRightToronto.ca](http://www.LetsGetThisRightToronto.ca). Your participation in the campaign is crucial and will make a difference!

GTA NEWS

MEDIA CENTRE

- Public Review - Wind Turbine Health Study
- TREB Launches a Four-Part Social Media Series
- Sixth Annual Past President's Scholarships Award...
- Municipality & Community Layers Now in Map Search...

MORE NEWS >>

**New Stratus training options**  
 • e-Tutorials • Hands-on classroom training  
 • 2-hour complimentary Closer To You seminars

[CLICK HERE](#)

LEARNING CENTRE

**Listing Search in New Stratus**



Listing Search in New Stratus  
 New Stratus is a new and updated cross-browser friendly version of the MLS® System. This 8-minute tutorial covers basic navigation and how to conduct a New Search for Listings in both the Quick and Flex search forms. | [TO ACCESS THE PDF FILE, CLICK HERE.](#)

**New Stratus**  
 Listing Search in New Stratus  
 New Stratus is a new and updated cross-browser

**Search Results in New Stratus**  
 Search Results in New Stratus are limited to 200,

**Map Search in New Stratus**  
 In this 10-minute tutorial you will learn

- Stratus iPhone/iPad App
- Home Price Index
- TorontoMLS
- Facebook
- Commercial

Boards and Associations

Broker Corner

WEBForms™

**REALTOR® TOOLS**  
 Market Stats/Information

- Stats/Commentaries
- Market Watch
- Commercial Watch
- Condo Corner

Forms / Clauses

REALTOR® STORE & more

Maps / Calculators

More Resources

**RSS Feed**

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Note to users: Although TREB endeavours to ensure the accuracy and timeliness of information, it is not guaranteed. TREB accepts no responsibility for any loss arising from any use or reliance on the information contained herein.  
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# **EXHIBIT**

# **I**





BRS Land Registry Assessment REALTOR.CA OREA RECO

Home Page Touchbase RealNet Connect

Search Reports CMA Contacts Financial Add / Edit Info Centre Education E-Commerce Log Off

Quick Search - Residential Freehold Available Sale

Clear Count Submit Help

Use Saved Criteria:

Use Delete

Select Search Results Format:

Custom Reports

Save Criteria As:

Save

(default report)

Location You must select a Location element. Municipality and Community are dependent upon Area:

- Area:
- Dufferin
  - Durham
  - Grey County
  - Halton
  - Hamilton

Municipality:

Community:

GTA (Durham, Halton, Peel, Toronto and York):

Ontario:

Address

Street#:  Min  Max

Street Name: Starts w/

Postal Code: Starts w/

Street Abbr:  Abby Acre Ally

Street Dir:  E N S

Map #:  Min  Max

Map Column #:

Map Row:

Apt/Unit: Contains

Price & Status

Quick Search zoomed in

Price & Status

<b>List Price:</b>	<b>Min</b> _____ <b>Max</b> _____	<b>Expiry Date:</b>	<b>From</b> _____ <b>To</b> _____	<b>Last Update:</b>	<b>From</b> _____ <b>To</b> _____
<b>DOM:</b>	_____	<b>Open House Date:</b>	_____	<b>Last Status:</b>	<input type="button" value="Dft"/> <input type="button" value="Ext"/> <input type="button" value="Lc"/>

Property Characteristics

<b>Type:</b>	<input type="button" value="Att/Row/Twnhouse"/> <input type="button" value="Business"/> <input type="button" value="Cottage"/>	<b>Bedrooms:</b>	<b>Min</b> _____ <b>Max</b> _____	<b>Basement:</b>	<input type="button" value="Apartment"/> <input type="button" value="Crawl Space"/> <input type="button" value="Fin W/O"/>
<b>Style:</b>	<input type="button" value="1 1/2 Storey"/> <input type="button" value="2-Storey"/> <input type="button" value="2 1/2 Storey"/>	<b>Bedrooms+:</b>	_____	<b>Heat Source:</b>	<input type="button" value="Electric"/> <input type="button" value="Gas"/> <input type="button" value="Grnd Srce"/>
<b>Apx Age:</b>	<input type="button" value="New"/> <input type="button" value="0-5"/> <input type="button" value="6-15"/>	<b>BR Total:</b>	_____	<b>Heat Type:</b>	<input type="button" value="Baseboard"/> <input type="button" value="Forced Air"/> <input type="button" value="Heat Pump"/>
<b>Apx Sqft:</b>	<input type="button" value="&lt; 700"/> <input type="button" value="700-1100"/> <input type="button" value="1100-1500"/>	<b>Washrooms:</b>	_____	<b>Garage Spaces:</b>	<b>Min</b> _____ <b>Max</b> _____
		<b>Kitchens:</b>	_____	<b>Parking Spaces:</b>	_____
		<b>Kitchens+:</b>	_____		
		<b>Kit Total:</b>	_____		
		<b>Family Rm:</b>	_____		
		<b>Elevator:</b>	_____		
		<b>A/C:</b>	_____		

Quick Search  
zoomed in - part 2

Exterior

<b>Exterior:</b>	<input type="button" value="Alum Siding"/> <input type="button" value="Board/Batten"/> <input type="button" value="Brick"/>	<b>Pool:</b>	<input type="button" value="Abv Grnd"/> <input type="button" value="Indoor"/> <input type="button" value="Inground"/>	<b>Garage Type:</b>	<input type="button" value="Attached"/> <input type="button" value="Built-in"/> <input type="button" value="Carport"/>	<b>Garage Spaces:</b>	<b>Min</b> _____ <b>Max</b> _____
<b>Acreage:</b>	<input type="button" value="&lt; .49"/> <input type="button" value="50-1.99"/> <input type="button" value="2.4.99"/>	<b>Waterfront:</b>	<input type="button" value="Direct"/> <input type="button" value="Indirect"/> <input type="button" value="None"/>	<b>Drive:</b>	<input type="button" value="Available"/> <input type="button" value="Circular"/> <input type="button" value="Front Yard"/>		

# **EXHIBIT**

## **J**



**123 Anywhere Street** **\$910,000 For Sale**  
 Toronto , Ontario H0H 0H0 C01 Community  
 PI M1296, Lot 559 Taxes: \$7,189.46/2011  
 SPIS: N 496-21-Q Last Status: New

Detached **Fronting On:** N **Rooms:** 12+4  
 2-Storey **Acreage:** **Bedrooms:** 4+2  
**Dir/Cross St:** At 1<sup>st</sup> and 2<sup>nd</sup> Streets **Washrooms:** 4  
**Lot:** 50.72X137.85 Feet **Irreg:** 1x2xGround, 1x4xLower, 1x5x2nd, 1x4x2nd

**MLS#:** C2130788 **Seller:** Stephen Seller **Contact After Exp:** N **Occup:** Owner  
**Open House:** 11/16/2011 **From:** 1:30 **To:** 4:00 **DOM:** 1 **Holdover:** 90 **Possession:** March 30, 2012  
**Open House Notes:** Agents **PIN#:**

<b>Kitchens:</b> 1	<b>Exterior:</b> Stucco	<b>Zoning:</b> R1
<b>Fam Rm:</b> Y	<b>Drive:</b> Pvt Double	<b>Cable TV:</b> Hydro:
<b>Basement:</b> Finished	<b>GarType/Spaces:</b> Attached/2	<b>Gas:</b> Phone:
<b>Fireplace/Stv:</b> Y <b>Central Vac:</b> Y	<b>Parking Spaces:</b> 4	<b>Water:</b> Municipal
<b>Heat:</b> Gas	<b>UFFI:</b> No	<b>Water Supply:</b>
Forced Air	<b>Pool:</b> Inground	<b>Sewers:</b> Sewers
<b>A/C:</b> Central Air	Fenced Yard	<b>Spec Desig:</b> Unknown
<b>Apx Age:</b> 16-30	Gmbelt/Conserv	<b>Farm/Agr:</b>
<b>Apx Sqft:</b>	Public Transit	<b>Waterfront:</b>
<b>Assessment:</b>	Ravine	<b>Retirement:</b> N
<b>Addl Mo Fee:</b>	<b>Energy Cert:</b> Y	Garden Shed
<b>Elev/Lift:</b> N <b>Laundry Lev:</b> Main	<b>Cert Level:</b> 73 Aye90205	
<b>Phys Hdcap-Equip:</b>	<b>GreenPIS:</b>	

#	Room	Level	Dimensions (ft)			
1	Living	Ground	19.51 x	14.48	Broadloom	Bow Window
2	Dining	Ground	15.93 x	13.47	French Doors	O/Looks Garden
3	Kitchen	Ground	18.22 x	14.81	Hardwood Floor	O/Looks Garden W/O To Deck
4	Den	Ground	11.61 x	10.81	Hardwood Floor	Closet
5	Family	Ground	18.86 x	11.81	Hardwood Floor	Gas Fireplace O/Looks Garden
6	Foyer	Ground	12.32 x	11.83	Ceramic Floor	Double Closet Spiral Stairs
7	Laundry	Ground	7.00 x	6.32	Ceramic Floor	Side Door
8	Master	2nd	18.76 x	11.85	W/I Closet	4 Pc Ensuite California Shutters
9	2nd Br	2nd	16.27 x	12.32	Closet	
10	3rd Br	2nd	12.14 x	12.04		
11	Rec	Lower	34.65 x	11.22	Broadloom	Gas Fireplace

**Remarks For Clients:** Just Move In! Spectacular Lovingly Cared For Home. Professionally Landscaped Lot Backing On to Trees. Very Well Maintained :New Hi Eff Furn(10), Elec Air Purifier(10), Central Air(08), Inground Salt Water Pool With Heater, Lawn Sprinkler Sys+Lighting. New Pella Wdws,Doors (03),New Shingles('03 Apprx).Upgraded Bathrooms and Kitchen (08).  
**Extras:** Cac; C/Vac; G.E-Stove, Micro, Fridge/Freezer, DWasher; G.E. Washer & Dryer; Custom Spa Bath; 2 Auto Gar Door Openers & 2 Remotes; Garburator; 2 Gas F/Places; Pool & Equip-Salt Water Sys, Hot water heater is a rental  
**Remarks for Brokerages:** Insp Report 10/31/11 Avlb. Attach Sch B & Vdr Disclosure (L/A Related To Vdr) To All Offers. Bnk Drft/Certif Chq On Acceptance Pls.\*Great Street-Great Neighbourhood! Just Show & Sell!! \*Agnt Pls Leave Business Card Alarm code 887. Buyer To Acknowledge Basement Apartment is Illegal

**Mortgage Comments:** First Mortgage In The Amount Of \$365,500 With 3.64% Interest Rate Due June 1st 2013, Monthly Payment \$851.23. P & I Held By Bob's Bank Mortgages Is Assumable Upon Qualification. Private 2nd Mortgage \$90,000 At 8.55% Due october 30th 2012, Assumable Subject To Approval.

TRIPLE A REAL ESTATE INC., BROKERAGE 416-222-2222 Fax: 416-333-3333  
 444 Realestate Street, Ste.1000, Toronto M4A3T9  
 Bob Agent, Salesperson 416-222-2222

**Contract Date:** 11/1/2011 **Condition:** **Appts:**  
**Expiry Date:** 3/30/2012 **Cond Expiry:** **Ad:** Y  
**Last Update:** 11/1/2011 **CB Comm:** 2.5% + Hst **Escape:**  
**Original \$:** \$910,000

# **EXHIBIT**

# **K**

**Client Full Sample Report**



**123 Anywhere Street** **\$910,000**  
 Toronto , Ontario H0H 0H0 C01

**SPIS: N** 496-21-Q **Taxes: \$7,189.46/2011**

Detached **Fronting On:** N **Rooms:** 12+4  
 2-Storey **Acreage:** **Bedrooms:** 4+2  
**Dir/Cross St:** At 1<sup>st</sup> and 2<sup>nd</sup> Streets **Washrooms:** 4  
**Lot:** 50.72X137.85 Feet Irreg: 1x2xGround, 1x4xLower, 1x5x2nd, 1x4x2nd

**MLS#: C2130788** **DOM:1** **Possession:** March 30, 2012

**PIN#:** **Contract Date:** 11/1/2011

<b>Kitchens:</b> 1 <b>Fam Rm:</b> Y <b>Basement:</b> Finished <b>Fireplace/Stv:</b> Y <b>Heat:</b> Gas Forced Air Central Air <b>A/C:</b> Central Air <b>Apx Age:</b> 16-30 <b>Apx Sqft:</b> <b>Assessment:</b> <b>Addl Mo Fee:</b> <b>Elev/Lift:</b> N <b>Phys Hdcap-Equip:</b> N	<b>Central Vac:</b> Y  <b>Laundry Main Lev:</b>	<b>Exterior:</b> Stucco <b>Drive:</b> Pvt Double <b>GarType/Spaces:</b> Attached/2 <b>Parking Spaces:</b> 4 <b>UFFI:</b> No <b>Pool:</b> Inground Fenced Yard Grnbelt/Conserv Public Transit Ravine	<b>Zoning:</b> R1 <b>Cable TV:</b> Hydro: <b>Gas:</b> Phone: <b>Water:</b> Municipal <b>Water Supply:</b> <b>Sewers:</b> Sewers <b>Spec Desig:</b> Unknown <b>Farm/Agr:</b> <b>Waterfront:</b> <b>Retirement:</b> N Garden Shed
---	---	--	---

#	Room	Level	Dimensions (ft)			
1	Living	Ground	19.51 x 14.48	Broadloom	Bow Window	
2	Dining	Ground	15.93 x 13.47	French Doors	O/Looks Garden	
3	Kitchen	Ground	18.22 x 14.81	Hardwood Floor	O/Looks Garden	W/O To Deck
4	Den	Ground	11.61 x 10.81	Hardwood Floor	Closet	
5	Family	Ground	18.86 x 11.81	Hardwood Floor	Gas Fireplace	O/Looks Garden
6	Foyer	Ground	12.32 x 11.83	Ceramic Floor	Double Closet	Spiral Stairs
7	Laundry	Ground	7.00 x 6.32	Ceramic Floor	Side Door	
8	Master	2nd	18.76 x 11.85	W/I Closet	4 Pc Ensuite	California Shutters
9	2nd Br	2nd	16.27 x 12.32	Closet		
10	3rd Br	2nd	12.14 x 12.04			
11	Rec	Lower	34.65 x 11.22	Broadloom	Gas Fireplace	

**Remarks For Clients:** Just Move In! Spectacular Lovingly Cared For Home. Professionally Landscaped Lot Backing On to Trees. Very Well Maintained: New Hi Eff Furn(10), Elec Air Purifier(10), Central Air(08), Inground Salt Water Pool With Heater. ,Lawn Sprinkler Sys+Lighting. New Pella Wdws,Doors (03),New Shingles('03 Apprx).Upgraded Bathrooms and Kitchen (08).

**Extras:** Cac; C/Vac; G.E-Stove, Micro, Fridge/Freezer, D/Washer; G.E. Washer & Dryer; Custom Spa Bath; 2 Auto Gar Door Openers & 2 Remotes; Garburator; 2 Gas F/Places; Pool & Equip-Salt Water Sys. ,Hot water heater is a rental

**Listing Contracted With:** TRIPLE A REAL ESTATE INC., BROKERAGE 416-222-2222

# **EXHIBIT**

# **L**

**Property Match Sample Report**



**123 Anywhere Street** **\$910,000 For Sale**  
 Toronto , Ontario H0H 0H0 C01 Community  
 PI M1296, Lot 559 Taxes: \$7,189.46/2011

SPIS: N 496-21-Q Last Status: New

Detached Fronting On: N Rooms: 12+4  
 2-Storey Acreage: Bedrooms: 4+2  
 Dir/Cross St: At 1<sup>st</sup> and 2<sup>nd</sup> Streets Washrooms: 4  
 Lot: 50.72X137.85 Feet Irreg: 1x2xGround,  
1x4xLower,  
1x5x2nd, 1x4x2nd

MLS#: C2130788 Possession: March 30, 2012 PIN#:

<p><b>Kitchens:</b> 1  <b>Fam Rm:</b> Y  <b>Basement:</b> Finished  <b>Fireplace/Stv:</b> Y <b>Central Vac:</b> Y  <b>Heat:</b> Gas                  Forced Air  <b>A/C:</b> Central Air  <b>Apx Age:</b> 16-30  <b>Apx Sqft:</b>  <b>Assessment:</b>  <b>Add Mo Fee:</b>  <b>Elev/Lift:</b> N <b>Laundry Lev:</b> Main  <b>Phys Hdcap-Equip:</b> N</p>	<p><b>Exterior:</b> Stucco  <b>Drive:</b> Pvt Double  <b>GarType/Spaces:</b> Attached/2  <b>Parking Spaces:</b> 4  <b>UFFI:</b> No  <b>Pool:</b> Inground                  Fenced Yard                  Grnbelt/Conserv                  Public Transit                  Ravine</p>	<p><b>Zoning:</b> R1  <b>Cable TV:</b> Hydro:  <b>Gas:</b> Phone:  <b>Water:</b> Municipal  <b>Water Supply:</b>  <b>Sewers:</b> Sewers  <b>Spec Desig:</b> Unknown  <b>Farm/Agr:</b>  <b>Waterfront:</b>  <b>Retirement:</b> N                  Garden Shed</p>
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#	Room	Level	Dimensions (ft)			
1	Living	Ground	19.51 x	14.48	Broadloom	Bow Window
2	Dining	Ground	15.93 x	13.47	French Doors	O/Looks Garden
3	Kitchen	Ground	18.22 x	14.81	Hardwood Floor	O/Looks Garden
4	Den	Ground	11.61 x	10.81	Hardwood Floor	Closet
5	Family	Ground	18.86 x	11.81	Hardwood Floor	Gas Fireplace
6	Foyer	Ground	12.32 x	11.83	Ceramic Floor	Double Closet
7	Laundry	Ground	7.00 x	6.32	Ceramic Floor	Side Door
8	Master	2nd	18.76 x	11.85	W/I Closet	4 Pc Ensuite
9	2nd Br	2nd	16.27 x	12.32	Closet	California Shutters
10	3rd Br	2nd	12.14 x	12.04		
11	Rec	Lower	34.65 x	11.22	Broadloom	Gas Fireplace

**Remarks For Clients:** Just Move In! Spectacular Lovingly Cared For Home. Professionally Landscaped Lot Backing On to Trees. Very Well Maintained: New Hi Eff Furn(10), Elec Air Purifier(10), Central Air(08), Inground Salt Water Pool With Heater. ,Lawn Sprinkler Sys+Lighting. New Pella Wdws,Doors (03),New Shingles('03 Apprx).Upgraded Bathrooms and Kitchen (08).

**Extras:** Cac; C/Vac; G.E-Stove, Micro, Fridge/Freezer, DWasher; G.E. Washer & Dryer; Custom Spa Bath; 2 Auto Gar Door Openers & 2 Remotes; Garburator; 2 Gas F/Places; Pool & Equip-Salt Water Sys, ,Hot water heater is a rental

TRIPLE A REAL ESTATE INC., BROKERAGE 416-222-2222

# **EXHIBIT**

# **M**

Comparable Summary Report

<b>Comparable Summary Report</b>										
<p><b>355 Briar Hill Ave</b>  <b>Toronto C04</b></p> <p>1/22/2002</p>										
<b>Subject Property</b>										
Address	Municipality	Type	Style	Bedrooms	Bathrooms	Suggested Price				
355 Briar Hill Ave	Toronto	Detached	2-Storey	3+1	2	<b>\$459,900</b>				
<b>Sold</b>										
Address	Municipality	Type	Style	Br	Wk	List Price	Sold Price	% List	Sold Date	DOM
11 Dells Ave	Toronto	Detached	2-Storey	3+1	2	\$439,000	\$439,000	100	01/30/2001	15
28 Castlewood Rd	Toronto	Detached	2-Storey	3	2	\$469,000	\$445,000	97	01/18/2001	28
94 Castlewood Rd	Toronto	Detached	2-Storey	5+1	3	\$469,000	\$445,000	95	02/14/2000	30
10 Deloraine Ave	Toronto	Detached	2-Storey	4	2	\$475,000	\$470,000	99	12/11/2000	98
101 St Germain Ave	Toronto	Detached	2-Storey	5	2	\$459,000	\$487,000	106	06/2/2001	12
203 Glengrave Ave W	Toronto	Detached	2-Storey	3+1	3	\$489,000	\$489,000	100	01/13/2000	9
843 Duplex Ave	Toronto	Detached	2-Storey	3	2	\$489,000	\$489,000	100	10/16/2000	19
# Properties: 7				Averages:		\$468,429	\$468,429	100		30
<b>Available</b>										
Address	Municipality	Type	Style	Br	Wk	Orig Price	List Price	Contract Date	DOM	
88 Castlefield Ave	Toronto	Detached	2-Storey	3+1	2	\$489,900	\$489,900	10/30/2001	84	
# Properties: 1				Averages:		\$489,900	\$489,900		84	
<small>* denotes a change in the data                  Toronto Real Estate Board (TREB) assumes no responsibility for the accuracy of any information shown. Copyright TREB 2001</small>										

# EXHIBIT

# N

**TREB DATA LICENSE AGREEMENT**  
 (“Agreement”)

Parties: Toronto Real Estate Board (“TREB”), 1400 Don Mills Road, Toronto, Ontario, M3B 3N1 and the data licensee (“Licensee”) described on the signing page of this Agreement.

BACKGROUND

TREB maintains a database of real properties. Brokerages and Brokers and/or others populate the database with information. Licensee wishes to obtain a license from TREB for the use and dissemination of certain of the information, pursuant to this Agreement.

GENERAL TERMS AND CONDITIONS

1. LICENSE GRANT AND RIGHT OF USE

a. Definitions:

“**Broker of Record**” means an individual who is a Registrant in good standing and who is a Member in good standing and who is employed, appointed or duly authorized to trade in real estate by a Brokerage and who is designated as the Broker of Record for that Brokerage.

“**Broker**” means an individual who is a Registrant in good standing and who is a Member in good standing and who is employed, appointed or duly authorized to trade in real estate by a Brokerage.

“**Data**” means information provided to TREB and included in the Database.

“**Database**” means the database of information on real properties maintained by TREB.

“**Brokerage**” means a sole proprietor, partnership or corporation registered under the *Real Estate and Business Brokers Act* (Ontario) as a broker and which is a Member.

“**Franchised Brokers**” means Brokers of Record employed by a Brokerage which is party to a franchise agreement with Licensee, where such Brokerage is franchisee and Licensee is franchisor under such franchise agreement and where such agreement has not expired or has not otherwise been terminated

“**License Fees**” has the meaning set out in Schedule “A”.

“**Member**” includes all types of Members of TREB as defined in TREB’s By-laws and who TREB has authorized in writing to have access to the Database.

“**Office**” means a single branch location of a sole proprietor, partnership or corporation registered under the *Real Estate and Business Brokers Act* (Ontario) as a brokerage and which is a Member.

“**Registrant**” means a person admitted to, and continuing in, membership in the Real Estate Council of Ontario as a broker or Broker of Record.

b. Subject to Sections 1.c., d., e., f. and g., TREB grants to Licensee a non-exclusive and non-transferable license to obtain the Data from TREB and to use it solely for the purposes of assisting Licensee in carrying on its business of co-ordinating publicity and marketing operations for Broker of Record, Franchised Brokers and the Brokerages that employ them with respect to transactions involving real estate in Ontario.

c. Licensee shall, with regard to the Data, observe the requirements of the *Protection of Privacy and Electronic Documents Act* (Canada) and any successor legislation and any legislation of similar effect in the Province of Ontario as though that legislation were fully in force and shall indemnify TREB from all liability in connection with Licensee’s failure to do so.

d. Subject to Section 1.c., Licensee shall, and shall cause its agents to, promptly (i.e. within 60 days) delete the Data from its records and files once it is no longer current and, in any event, when any property listing related to any such Data expires, or where any consent necessary for the collection, use and disclosure of any such Data is rescinded. Licensee shall, and shall cause its agents to, delete the related Data from its records and files as soon as possible where a consent expires or is terminated.

e. Licensee’s rights in the Data will be limited to those expressly granted in this Agreement. TREB reserves all rights and licenses in and to the Data not expressly granted to Licensee under this Agreement. For certainty, Licensee shall not knowingly permit third parties to display the Data on the internet or to otherwise display or distribute the Data except with the written agreement of TREB in form and content acceptable to TREB.

f. TREB supplies Data to Licensee on an “as is” basis and makes no covenants, warranties or representations in connection with the Data or the delivery thereof. TREB disclaims all implied representations, conditions or warranties of noninfringement, alienability, merchantability or fitness for a particular purpose.

## 2. FEES

a. Licensee shall pay the License Fees (if any) to TREB as consideration for this license, in the manner set out in Schedule "A". All License Fees paid hereunder are nonrefundable.

b. All prices and fees are in Canadian dollars unless otherwise specified. Licensee will pay all taxes and duties assessed by any authority in connection with this Agreement and with Licensee's performance hereunder, if required by law. Licensee will promptly reimburse TREB for any and all taxes or duties that TREB may be required to pay in connection with this Agreement or its performance. This provision does not apply to taxes based on TREB's income, or any taxes for which Licensee is exempt, provided Licensee has furnished TREB with a valid tax exemption certificate.

## 3. DELIVERY OF DATA

a. TREB will provide the Licensee with access to the Data on, at least, a daily basis, by any manner as selected by TREB.

b. TREB shall not be required to deliver to Licensee any Data that does not meet the requirements or any Data where TREB is not satisfied, at its sole discretion, that such Data is in a satisfactory form and content.

c. Licensee agrees to provide TREB with all information and materials requested by TREB for use in replicating, diagnosing and correcting any Data delivery problem reported by Licensee. Licensee acknowledges that TREB's ability to provide the Data is dependent on (i) Licensee providing TREB with the information necessary to replicate Data problems; and (ii) Licensee configuring the correct telecommunications and operating environment, and maintaining same, as specified by TREB. TREB will not be responsible for errors that are not caused by TREB, and Licensee agrees to indemnify TREB for all losses experienced by TREB as a result of the Licensee's errors.

d. Delivery of the Data is subject to force majeure.

## 4. CONFIDENTIALITY AND IP OWNERSHIP

a. Any business, operational or technical information provided to Licensee by TREB hereunder that is marked or otherwise identified as confidential or proprietary, or that Licensee knows or reasonably should know is confidential or proprietary ("Proprietary Information") contains valuable and confidential information that is proprietary to TREB and that includes and constitutes trade secrets and unpublished copyright protected material of TREB.

Licensee agrees to maintain the confidentiality of TREB's Proprietary Information and to use it only in exploiting its rights and obligations under this Agreement. The Data and Proprietary Information are owned by TREB, and nothing in this Agreement shall be construed to convey any title or ownership rights to the Data or Proprietary Information to Licensee. Licensee shall make best efforts to prevent the theft of any Data or Proprietary Information and/or the disclosure, copying, reproduction or distribution of the Data or Proprietary Information unless such activity is specifically authorized by TREB in writing.

b. These confidentiality obligations shall not apply to any Proprietary Information that (i) is or becomes a part of the public domain through no act or omission by the Licensee, (ii) is independently developed by employees of the Licensee without use or reference to the Proprietary Information, (iii) is disclosed to the Licensee by a third party that, to the Licensee's knowledge, was not bound by a confidentiality obligation or other prohibitive contractual obligation to TREB, or (iv) is demanded by a lawful order from any court or any body empowered to issue such an order. Licensee agrees to notify TREB promptly of the receipt of any such order, and to provide TREB with a copy of such order.

## 5. TERM AND TERMINATION

a. This Agreement shall continue in force for the balance of the current calendar year. Thereafter this Agreement shall automatically renew for a further calendar year unless either party gives 60 days written notice of non-renewal to the other party.

b. This Agreement, any Assignment, and/or any license granted hereunder may be terminated in accordance with the following:

(i) TREB may terminate this Agreement and/or the license granted herein:

(A) immediately, if Licensee uses, transfers or discloses any of the Proprietary Information or Data in violation of this Agreement or if a third party uses, transfers or discloses any of the Data disclosed by TREB to Licensee without TREB's prior written agreement;

(B) immediately, if Licensee ceases to be a member of TREB or if Broker of Record rescinds authorization; or

(C) upon 30 calendar days written notice if Licensee has breached any other material provision of this Agreement, including failure to make payments when due, and such breach is not fully cured within such 30 day period.

(ii) Licensee may terminate this Agreement on 30 calendar days written notice if TREB has breached any material provision of this Agreement and such breach is not fully cured within such 30 day period.

c. Upon termination of the Agreement or the license granted herein, Licensee's right to use and/or possess the Data and Proprietary Information shall immediately cease. Licensee shall immediately stop using the Data and Proprietary Information and shall delete all copies thereof from all storage media used by Licensee. Licensee shall provide TREB with written certification signed by an officer of Licensee that all copies of the Data and Proprietary Information have been destroyed and that Licensee has retained no copies. Nothing in this provision prevents Licensee from utilizing its own data that is identical or similar to the Data.

d. Termination of this Agreement, any Assignment or any license granted hereunder shall not limit the remedies otherwise available to either party, including injunctive relief.

#### 6. INDEMNITY

Licensee will defend or settle at its own expense any and all suits, actions or claims against TREB regarding (i) any part of the Data or (ii) the use of the Data by Licensee or any customer, or contact of Licensee in the manner contemplated by this Agreement. Licensee will pay all damages awarded in any such suit, action or claim and will indemnify and save harmless TREB from any other cost or liability reasonably incurred by it as a result of such suit, action or claim.

#### 7. LIMITATIONS OF LIABILITY

a. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER TREB NOR ANY PERSON RELATED TO TREB SHALL BE LIABLE HEREUNDER FOR DAMAGES WHICH EXCEED, IN THE AGGREGATE, THE FEES PAID BY LICENSEE FOR THE SPECIFIC DATA THAT GAVE RISE TO SUCH DAMAGES.

b. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TREB BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO THOSE FOR BUSINESS INTERRUPTION OR LOSS OF PROFITS, EVEN IF TREB HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE.

c. NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR

PERSONAL INJURY CAUSED BY A PARTY'S NEGLIGENCE OR LIABILITY FOR FRAUD.

d. The provisions of this Agreement allocate the risks between Licensee and TREB. TREB's pricing reflects this allocation of risk and the limitations of liability specified herein.

#### 8. MISCELLANEOUS

a. Licensee appoints each of its registered real estate agents as its agent to access the Data from the Database and acknowledges that TREB shall not be held accountable for releasing Data to any person purporting to be a registered real estate agent of the Licensee.

b. Licensee warrants all information contained on this form is correct and that any changes to their membership to Office, Brokerage or otherwise are the responsibility of the Licensee to report to TREB.

c. Licensee will not, without the approval in writing of TREB (which approval may be arbitrarily withheld) assign or transfer its interest in this Agreement or any license granted or created hereunder.

d. Licensee will not use the trade-marks or name of TREB, or use TREB or its directors or officers as references, without TREB's prior written permission.

e. During the currency of this Agreement and for 24 months after this Agreement terminates, Licensee will not directly or indirectly engage in, or have an interest in, or provide advice to or any guarantee for the indebtedness of, any business that provides electronic multiple listing services similar to that of TREB.

f. The parties are independent contractors and nothing in this Agreement shall be deemed to make either party an agent, employee, partner or joint venturer of the other party. Neither party shall have the authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

g. All notices, requests, approvals, consents and other communications required or permitted under this Agreement will be in writing, including in the form of an electronic document.

h. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such deletion.

i. The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.

provisions, and in such case this Agreement shall terminate.

j. TREB may stipulate new provisions for this Agreement during any renewal hereof after the first full calendar year. The Licensee is not bound to accept the renewal of this Agreement if it is not satisfied with TREB's proposed new

k. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada.

**Required Signatures**

**LICENSEE:**

**TORONTO REAL ESTATE BOARD**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**Member Name Printed: (if Member is licensee)**

**Broker of Record Signature:**

**Licensee's TREB Membership Number:**

**Broker of Record Name Printed:**

**Office Name:**

**Office Address:**

**Please check off one of the following:**

- Release all of Brokerage's Listings
- Release all of Branch Office's Listings
- Release only Licensee's Listings

**Licensee's Email Address:**

**SCHEDULE "A"****LICENSE FEES**

TREB may change its License Fees no more often than annually, and no increase in License Fees shall exceed 10 percent per annum over the License Fees for the prior calendar year.

The License Fees payable by the Licensee are as follows:

1. For the period commencing on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and ending on December 31, 20\_\_, the sum of \$ \_\_\_\_\_, plus taxes.
2. For the calendar year commencing on the 1<sup>st</sup> day of January 20\_\_ and ending on December 31, 20\_\_, the sum of \$ \_\_\_\_\_, plus taxes.

The first payment of License Fees is due on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ for the part year referred to in paragraph numbered 1, above. The second payment of License Fees for the calendar year commencing January 1, 20\_\_ is due on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_. Late payment of License Fees shall attract simple interest at the rate of 1\_ percent per month (18 percent per year) calculated from the due date thereof.

**THIRD PARTY DATA TRANSFER ADDENDUM**

This is an addendum to a License Agreement between Toronto Real Estate Board ("TREB") and the undersigned Licensee respecting responsibility for the handling of Data transfers to third parties, as requested by the Licensee. This addendum forms part of the License Agreement dated \_\_\_\_\_, 20\_\_ and the capitalized terms herein are the same as those used in the License Agreement.

The Licensee hereby authorizes and directs TREB to deliver Data to the "Third Party" at the Internet address set out on page 2 of this Addendum. The Licensee represents, warrants and covenants that the Data will be received and used by the "Third Party" (i) as agent for the Licensee only for the purposes set out in the License Agreement, (ii) only by the Third Party on behalf of the Licensee and for no other purpose or person, and (iii) in full compliance with all applicable laws, statutes and regulations including the *Personal Information and Electronic Documents Act* (Canada). For certainty, should any person rescind a consent necessary for the collection, use and disclosure of any Data at any time, Licensee shall cause Third Party to cease its use of such Data immediately and Third Party agrees to do so. The Licensee covenants and agrees that as between it and TREB, it will be fully responsible for the actions and omissions of the Third Party. Should Third Party use the Data in any way that contravenes this Addendum, including without limitation in a manner not permitted by the License Agreement, TREB may cease delivery of the Data to such Third Party without prejudice to any other rights or remedies TREB may have against Licensee and/or Third Party.

The Licensee will indemnify TREB for all claims, suits, damages, costs and losses experienced by TREB as a result of TREB's carrying out the direction contained in this Addendum. The Third Party hereby waives any claims, causes of action or rights it might have against TREB of any kind whatsoever regarding the Data and TREB's provision of the Data or TREB's ceasing to provide the Data at any time and from time to time to Third Party.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed name of Licensee

\_\_\_\_\_  
Broker of Record Signature

\_\_\_\_\_  
Licensee's e-mail Address

\_\_\_\_\_  
Broker of Record Name Printed  
(I have authority to bind the Licensee.)

---

The undersigned Third Party acknowledges this Third Party Data Transfer Addendum and, for good and valuable consideration, the sufficiency of which is acknowledged, the undersigned Third Party accepts and agrees with the contents of this Addendum.

_____ Printed Name of Third Party*	_____ Authorized Signature (Third Party) Name: Title: (I have the authority to bind the Third Party)
_____ Contact	_____ Address
_____ Contact e-mail Address	_____ City/Town
_____ Contact Phone Number	_____ State/Province
_____ Internet address for delivery of Data	_____ Zip/Postal Code

\* Put name of licensee if licensee is doing programming themselves only.  
\* Put LES if licensee is utilizing for internal LES office software (QOC).

# **EXHIBIT**

# **O**

Agreement made as of the 1st Day of February, 2009. ["Effective Date"]

**GEOWAREHOUSE REAL ESTATE BOARD AGREEMENT**

**BETWEEN:**

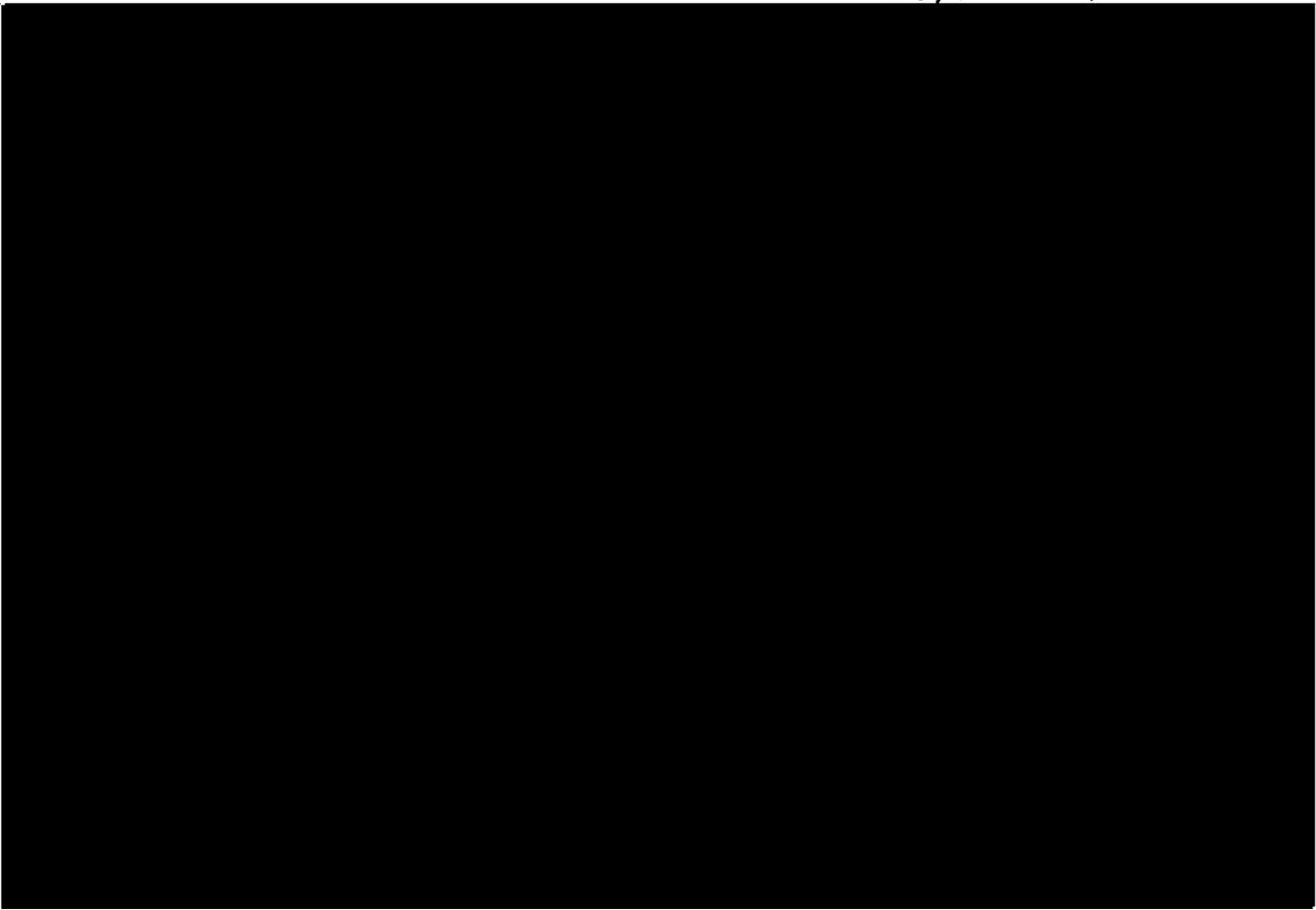
**TERANET ENTERPRISES INC.**, a corporation incorporated under the laws of the Province of Ontario, with its principal offices at 1 Adelaide Street East, Suite 600, Toronto, Ontario M5C 2V9

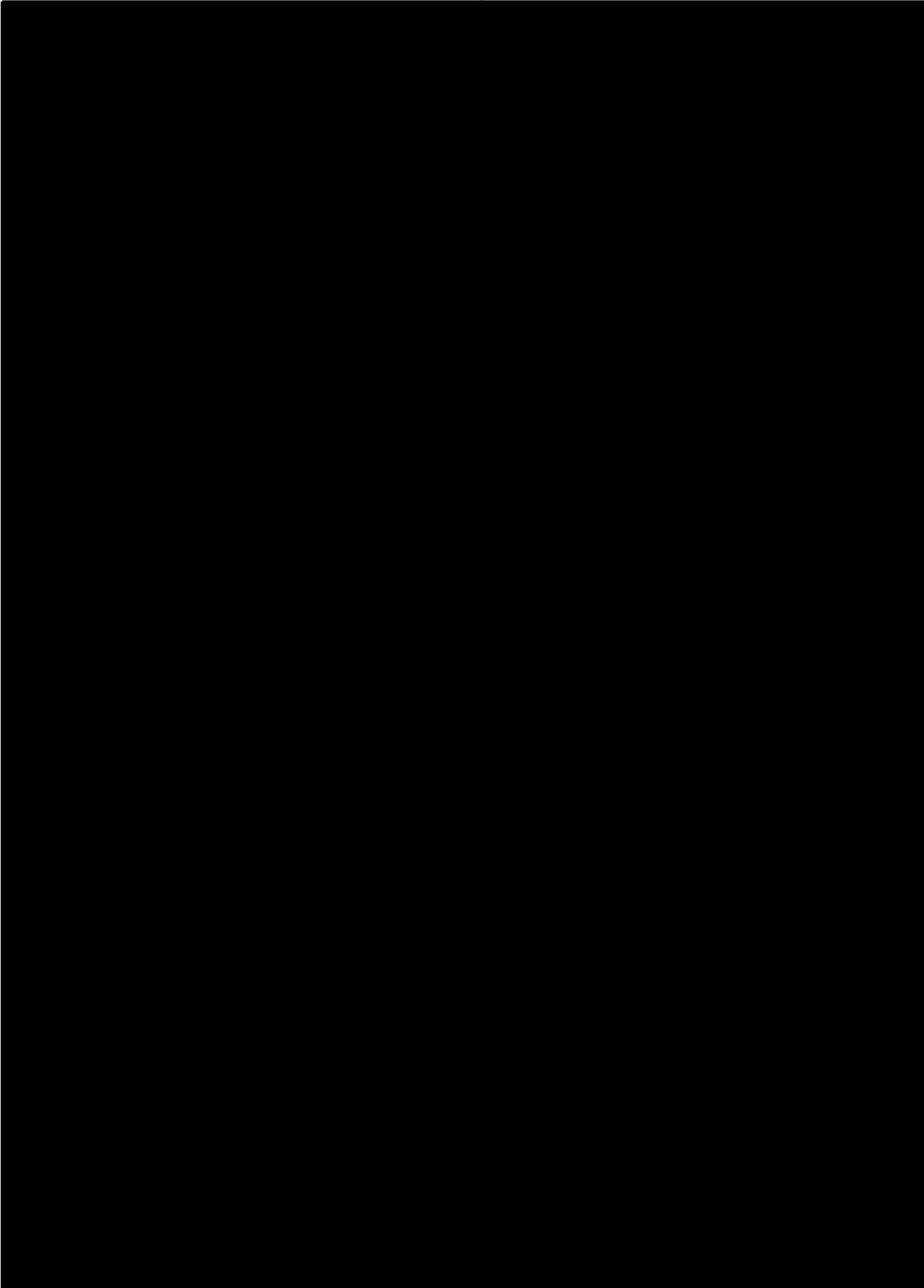
(hereinafter referred to as "Teranet")

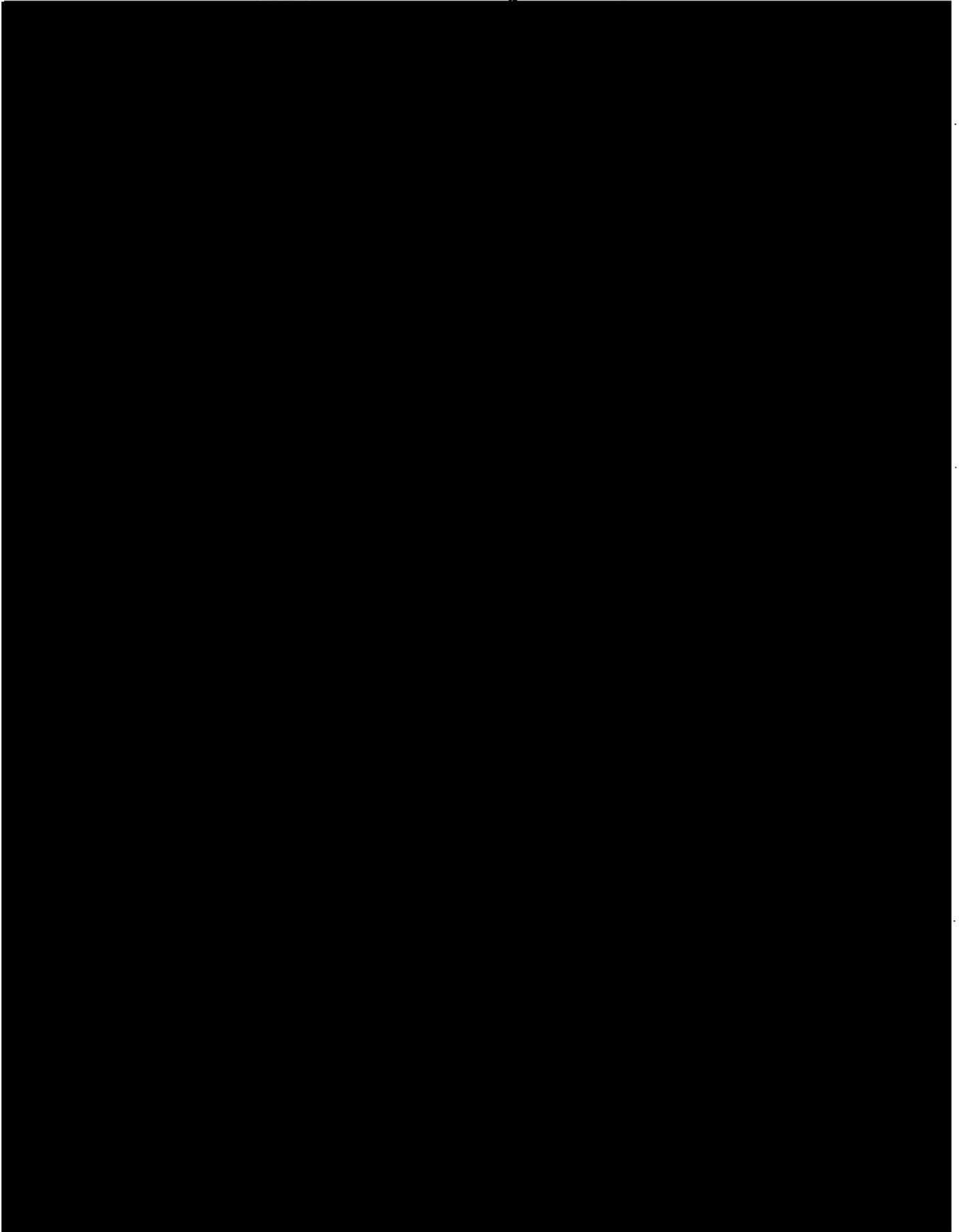
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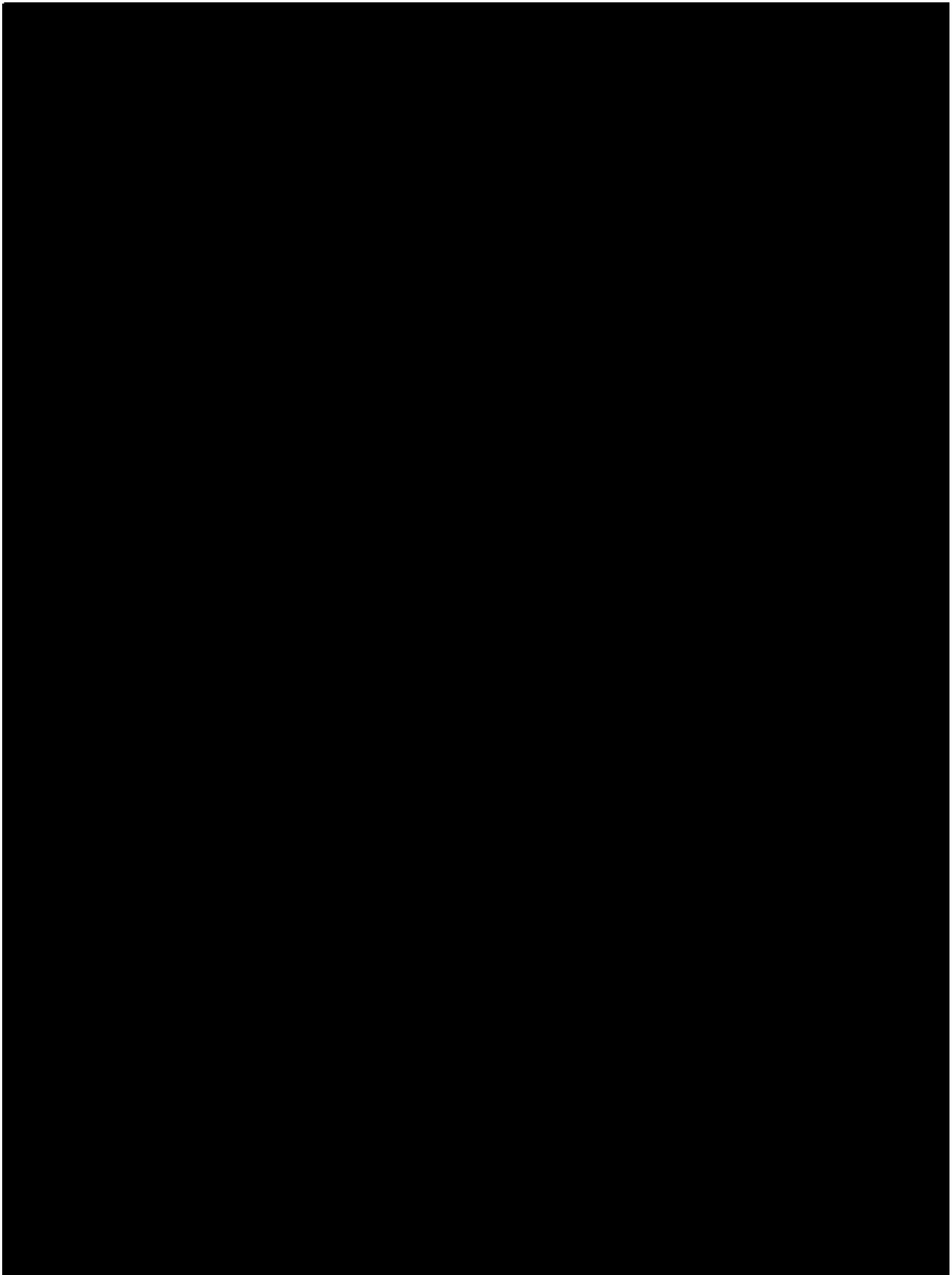
**THE TORONTO REAL ESTATE BOARD**, a not-for-profit corporation incorporated under the laws of the Province of Ontario, with its principal offices at 1400 Don Mills Road, Toronto, Ontario M3B 3N1

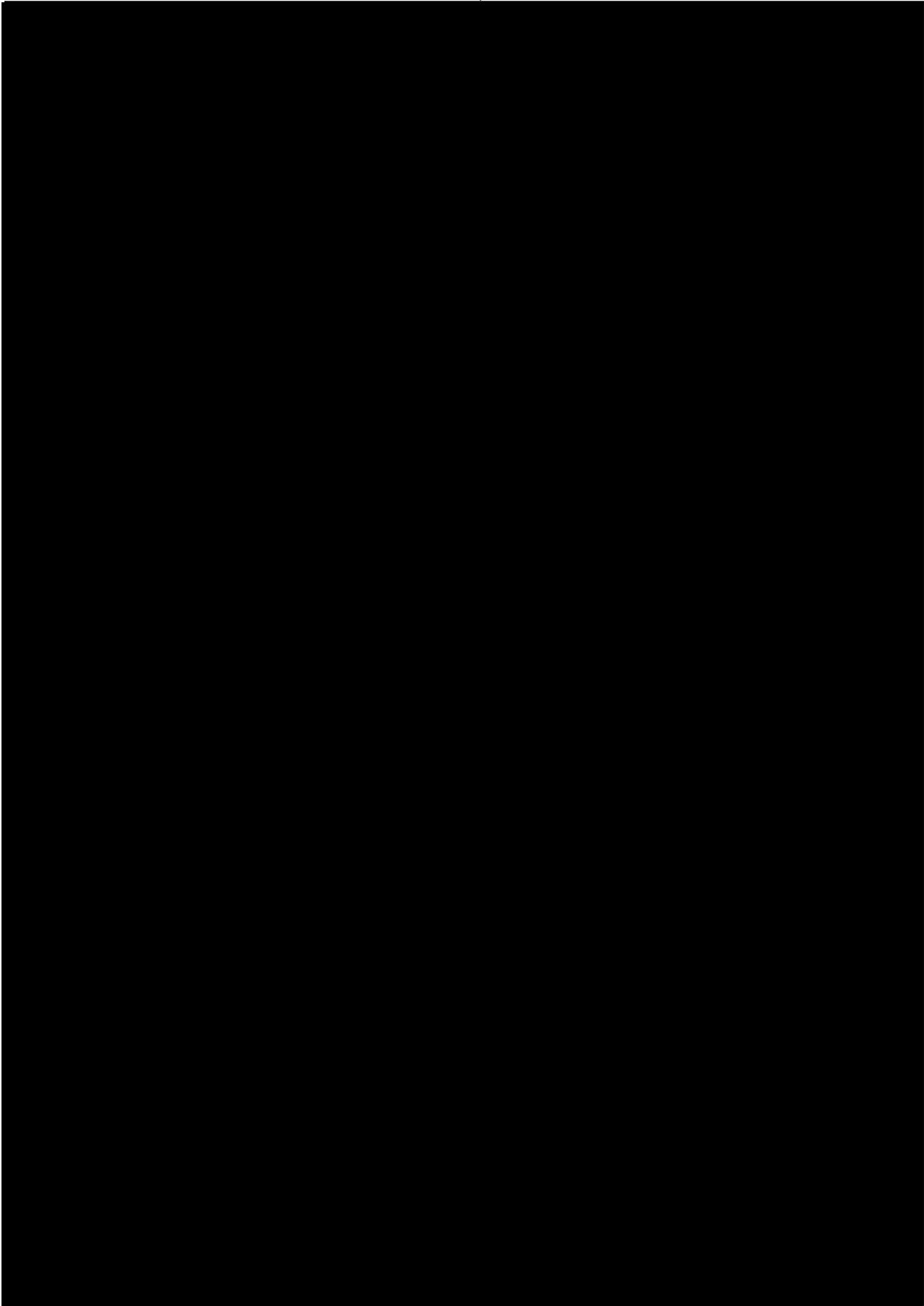
(hereinafter referred to as the "Board")



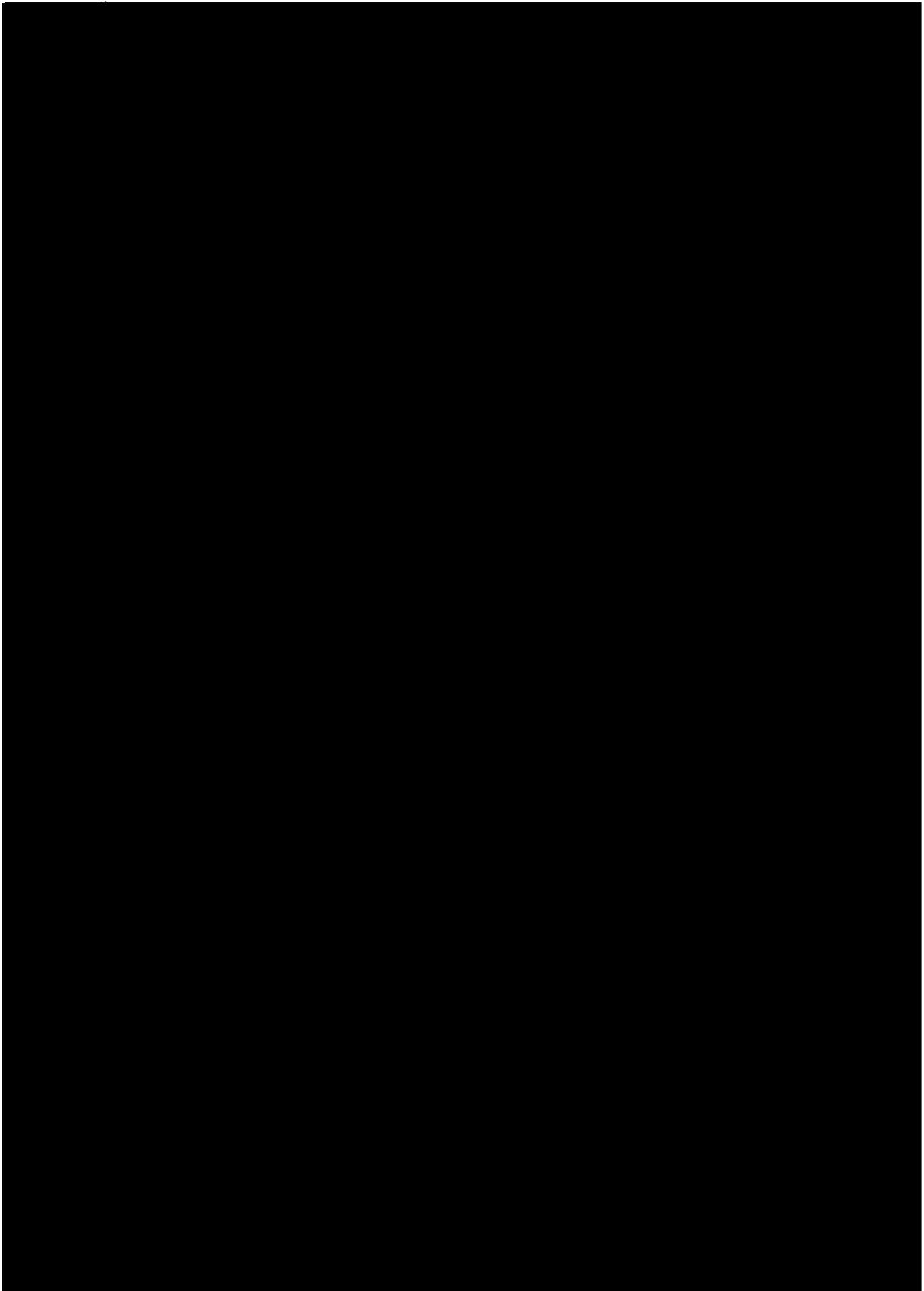






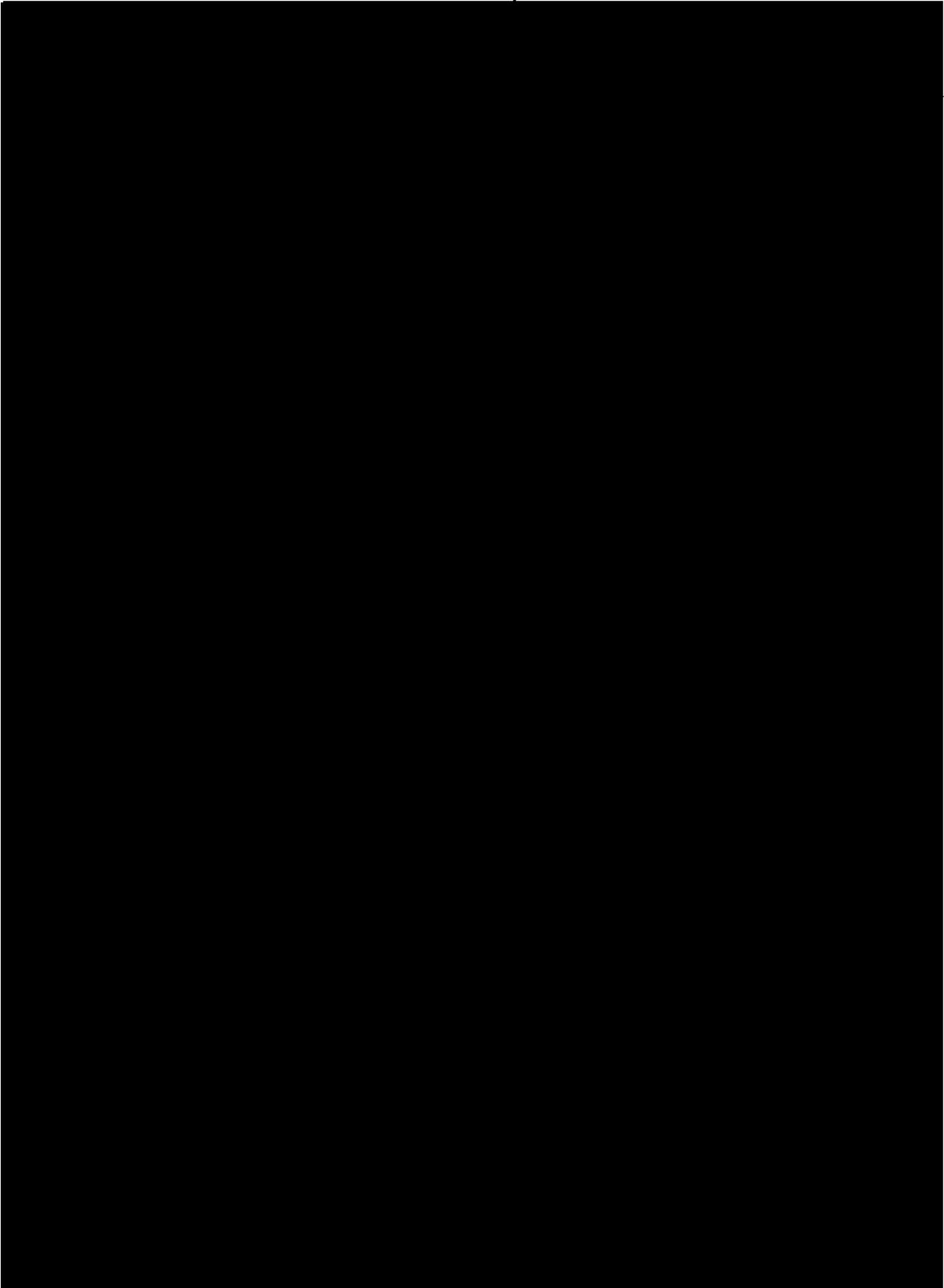


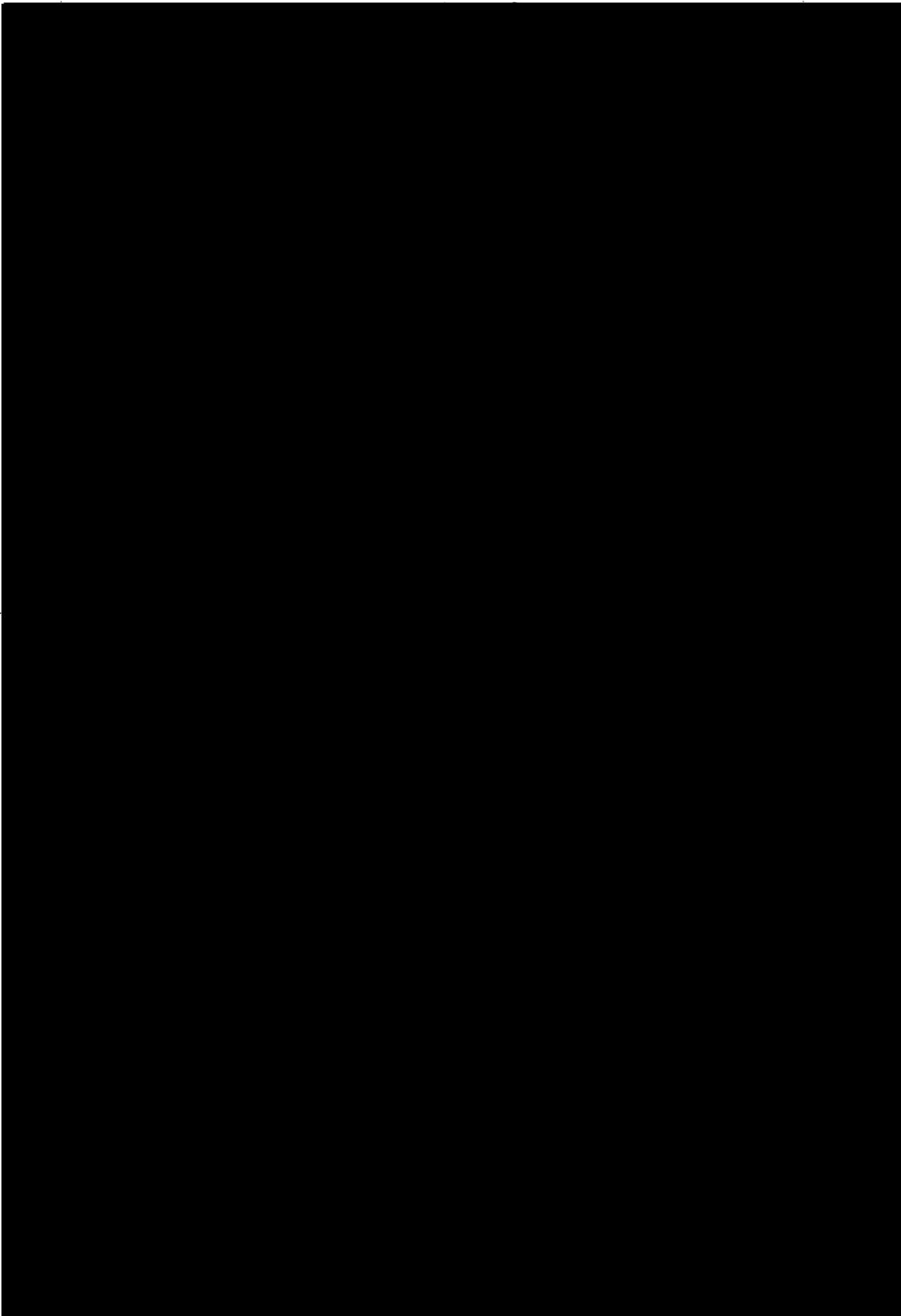
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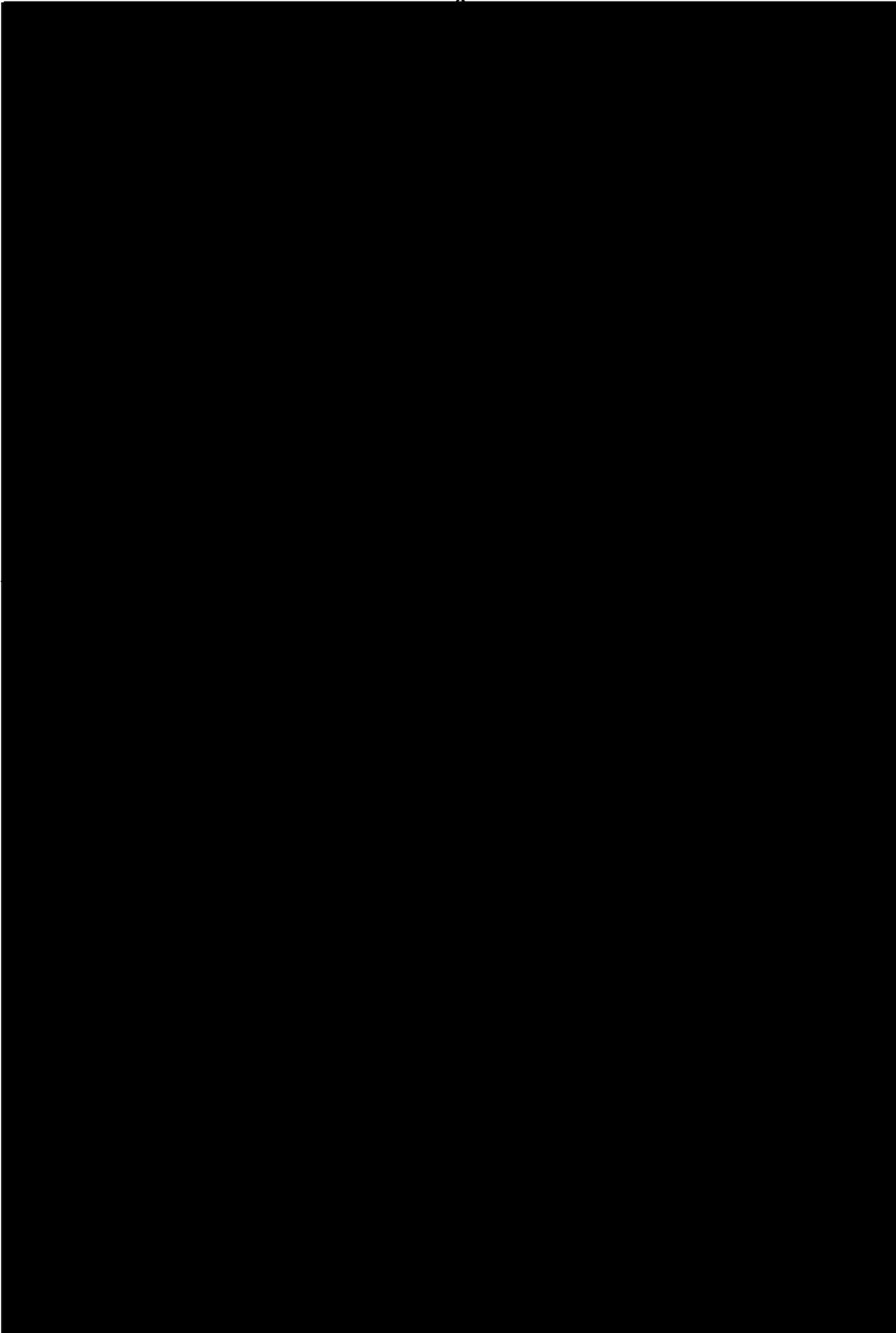


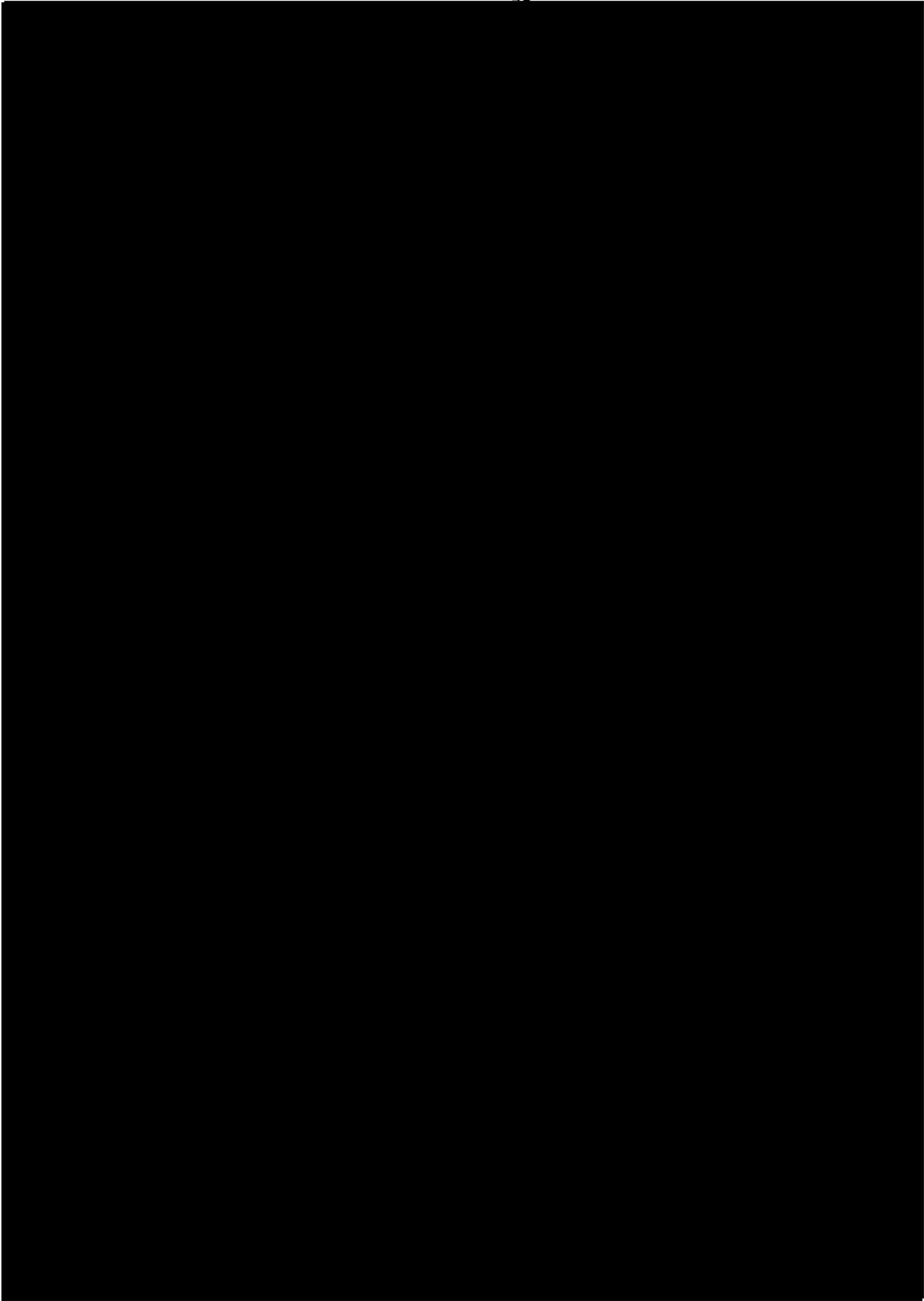


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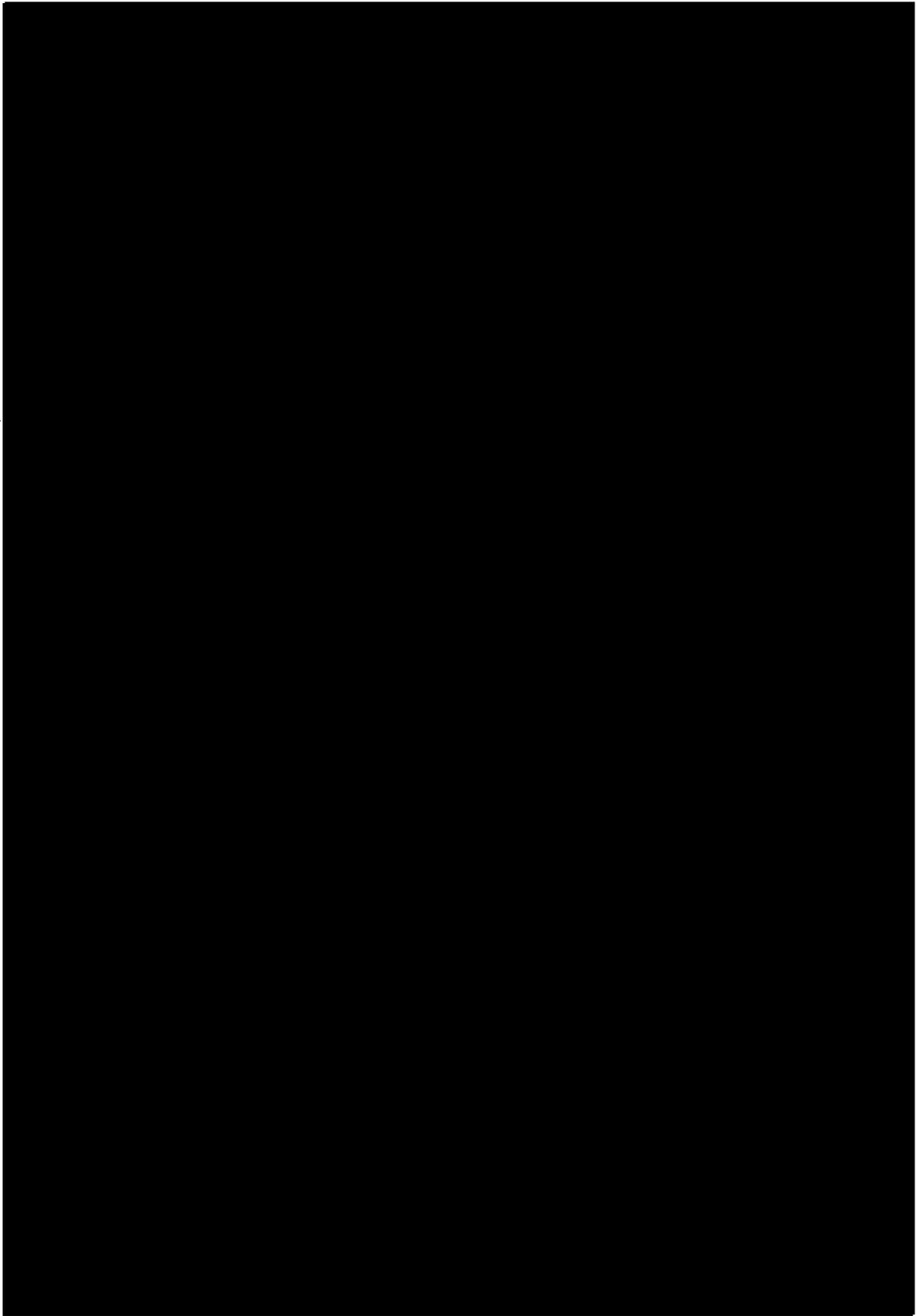
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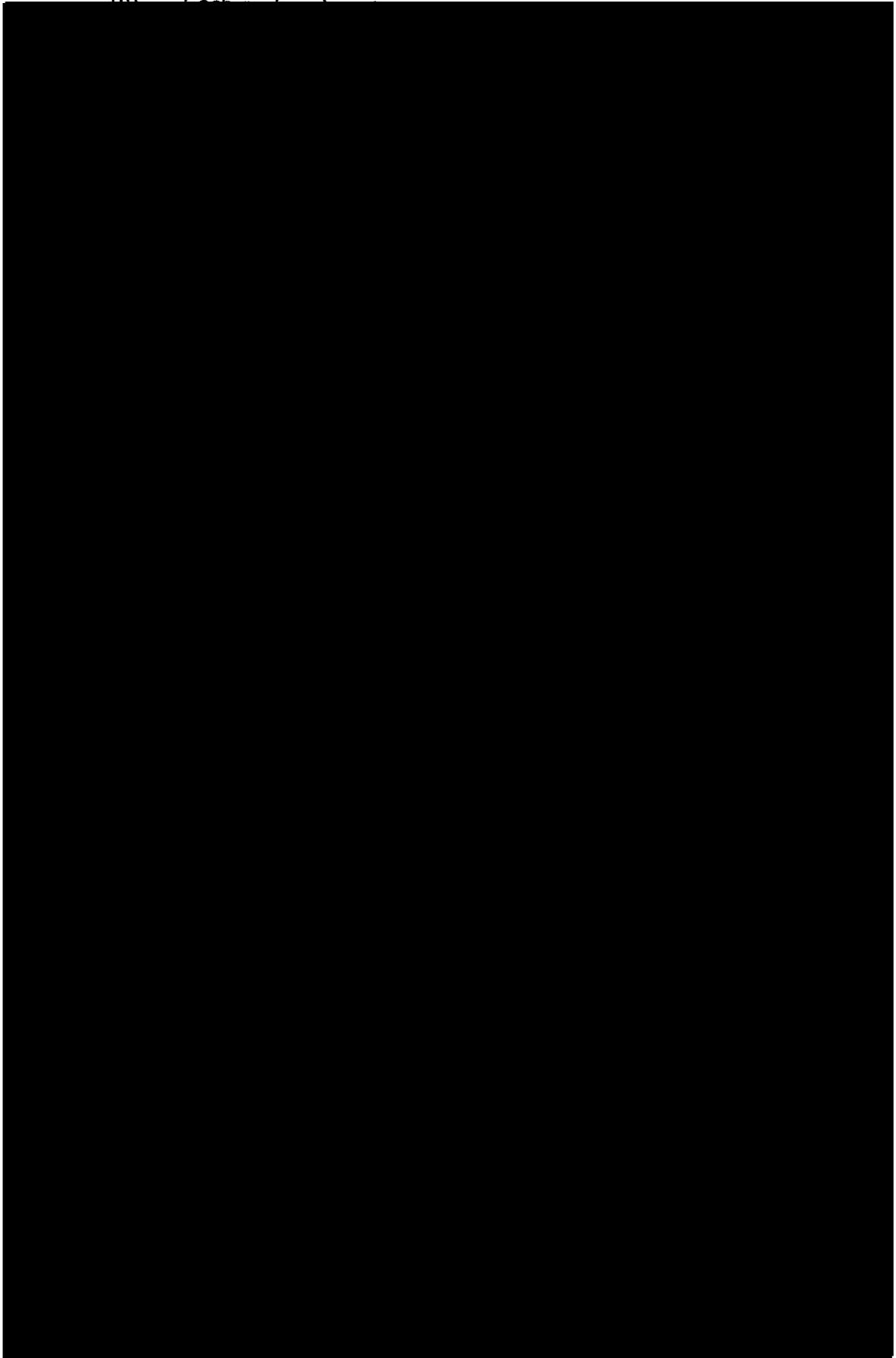


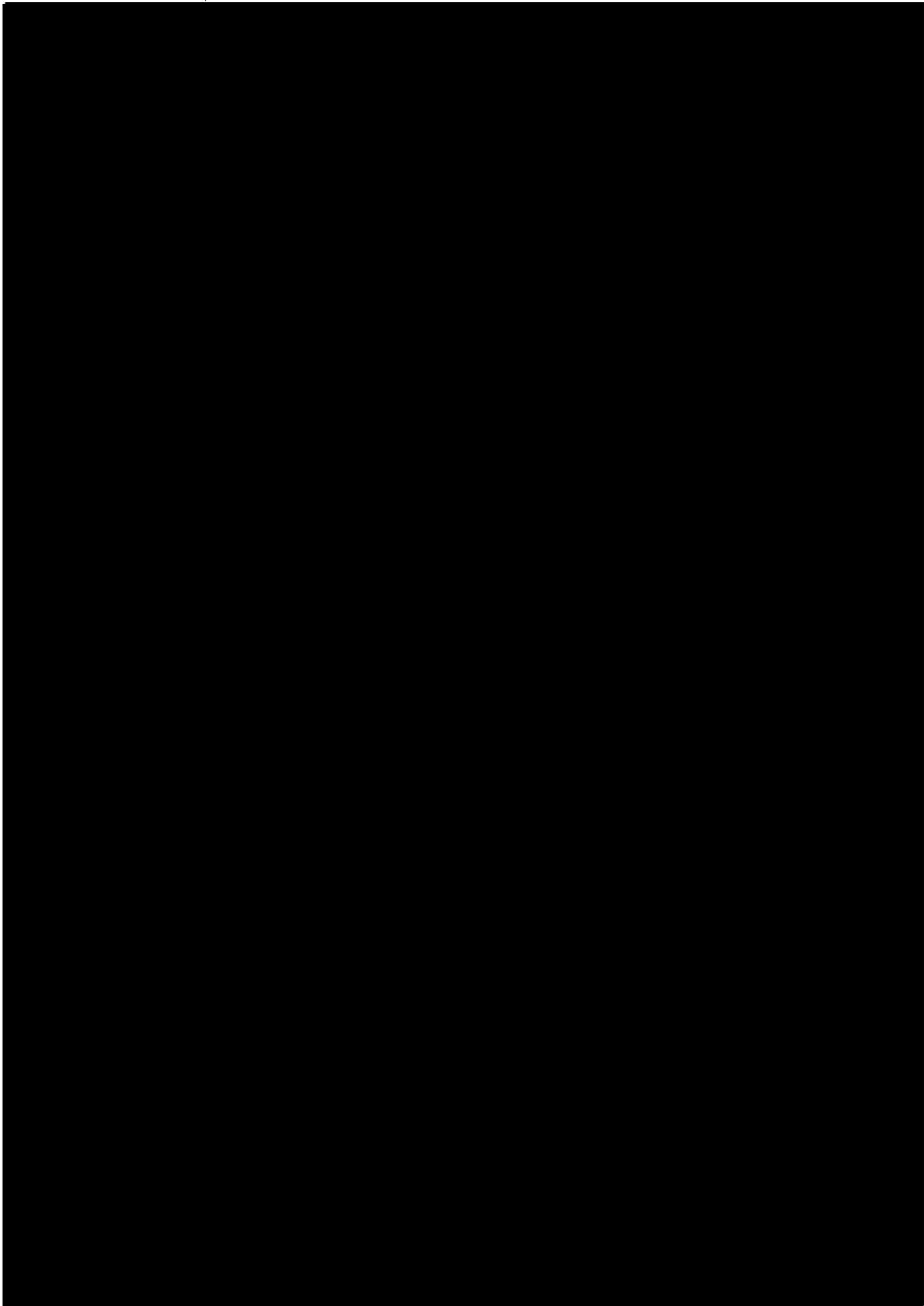
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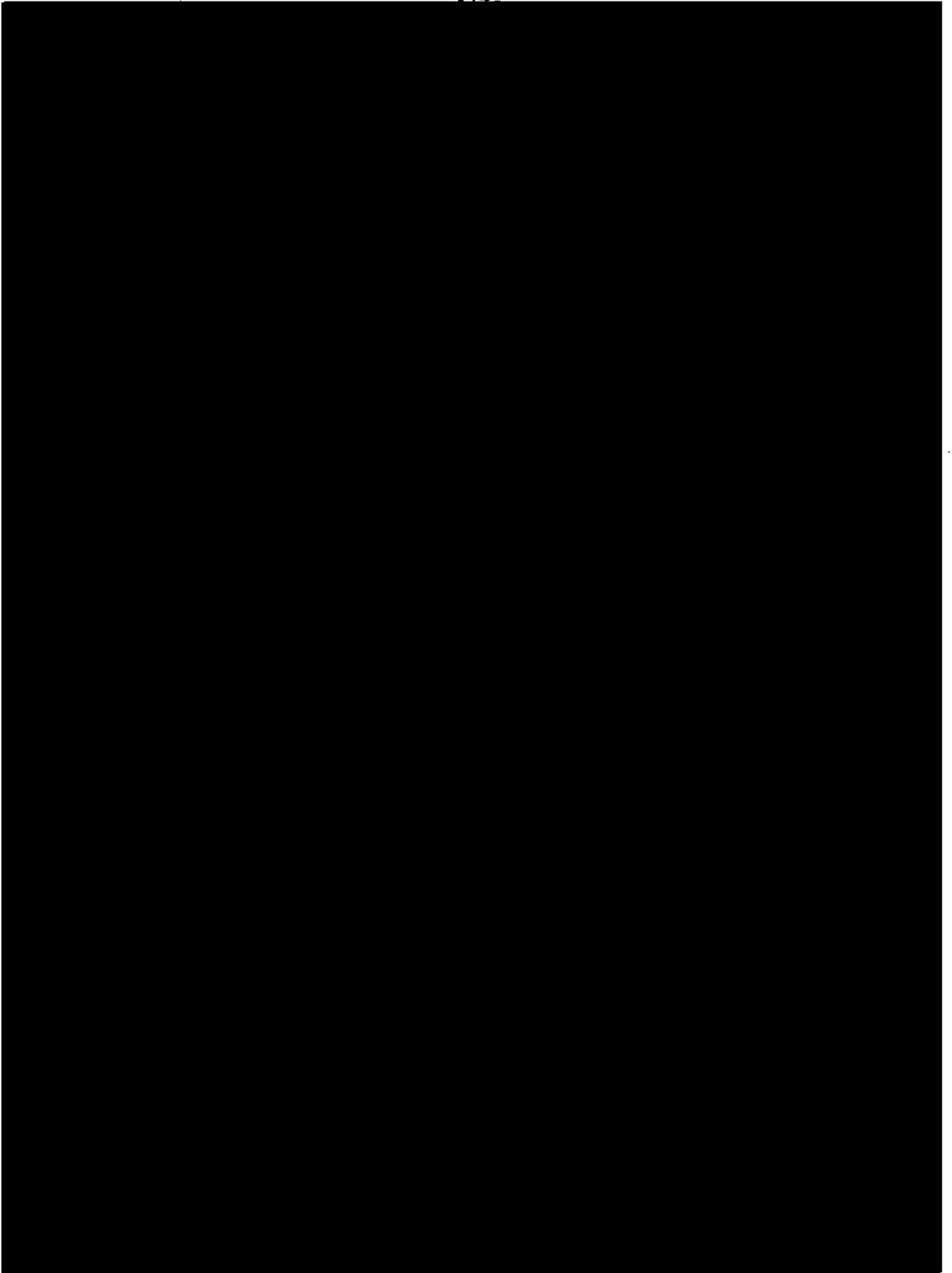


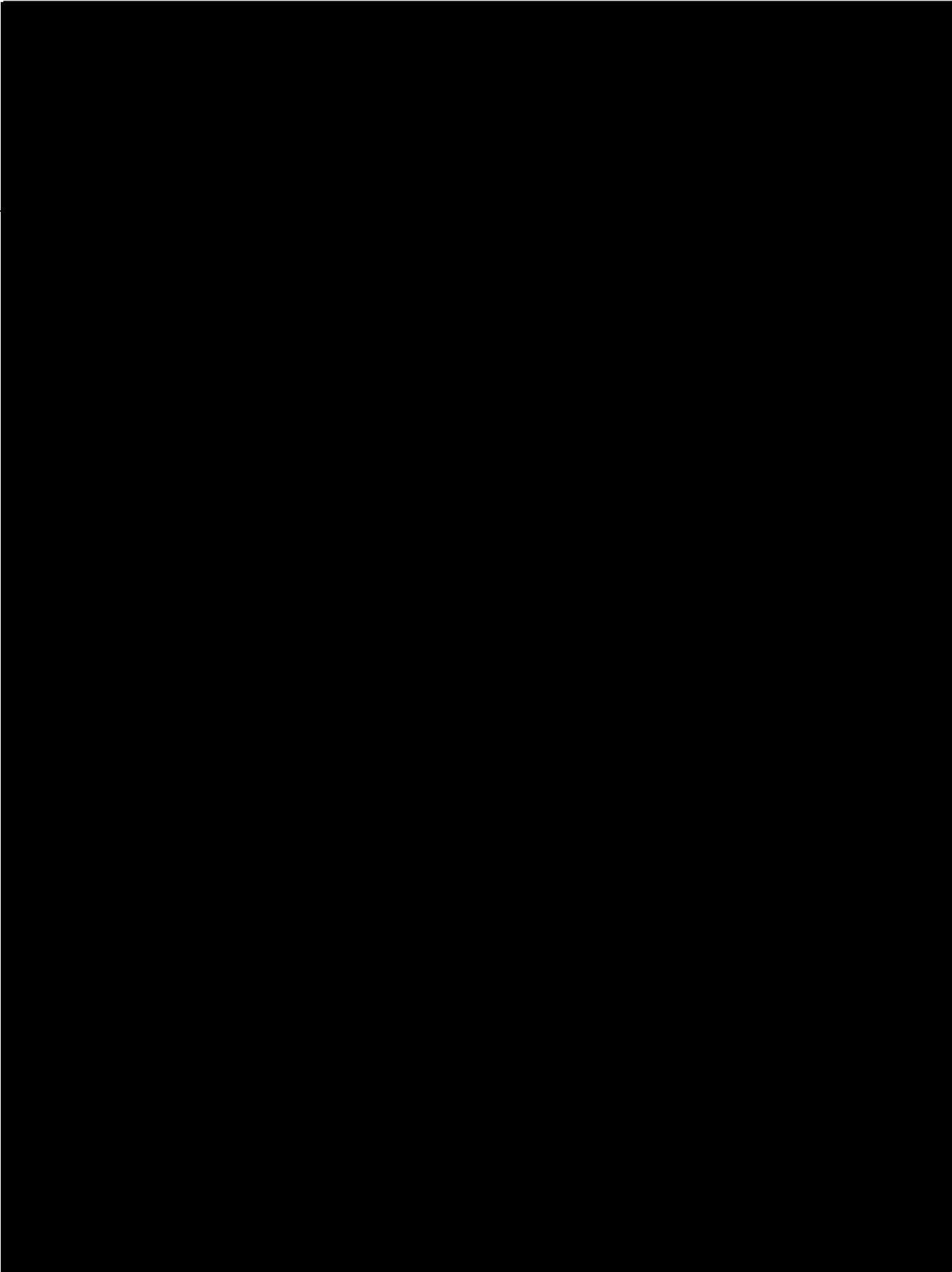
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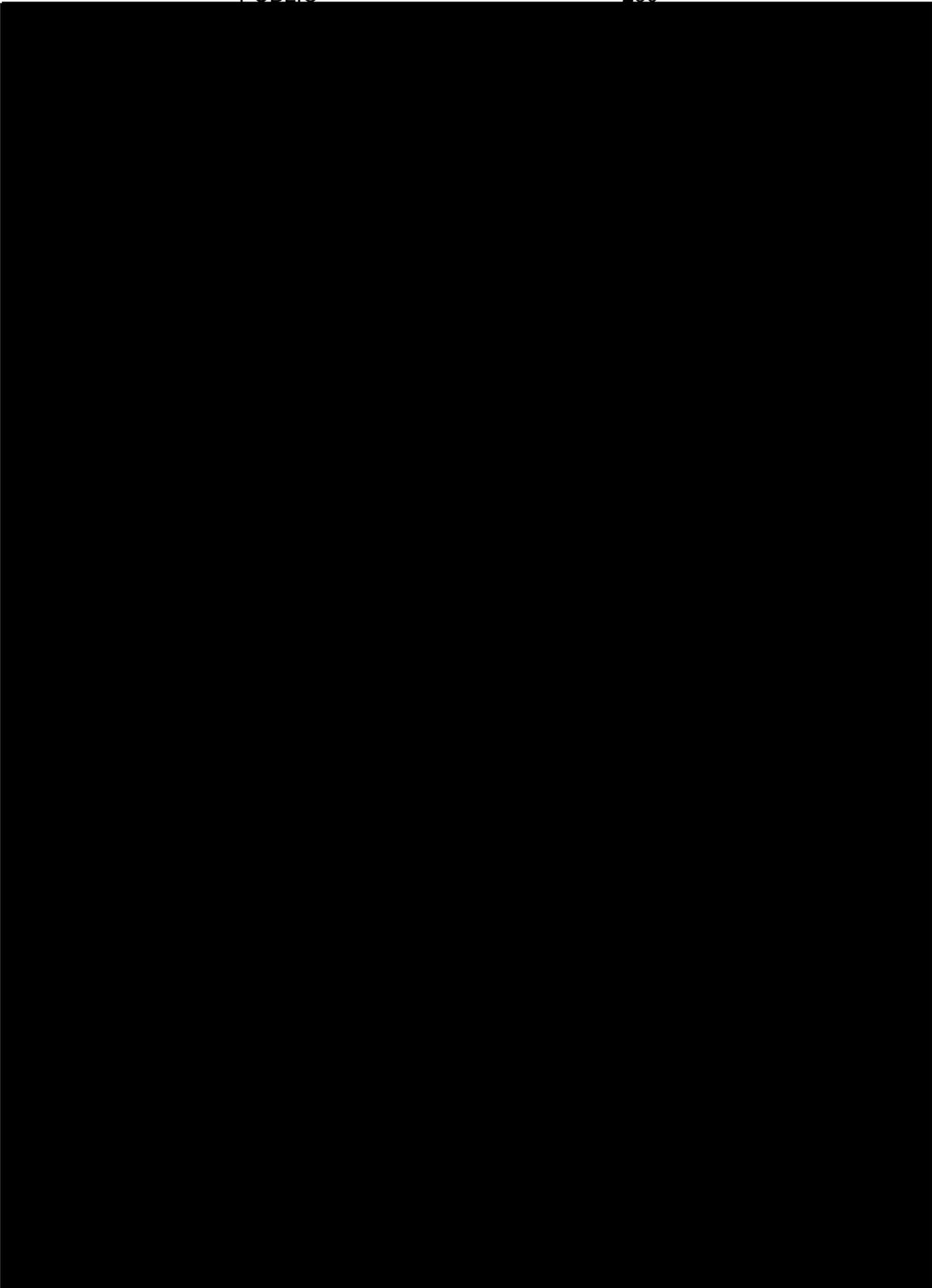


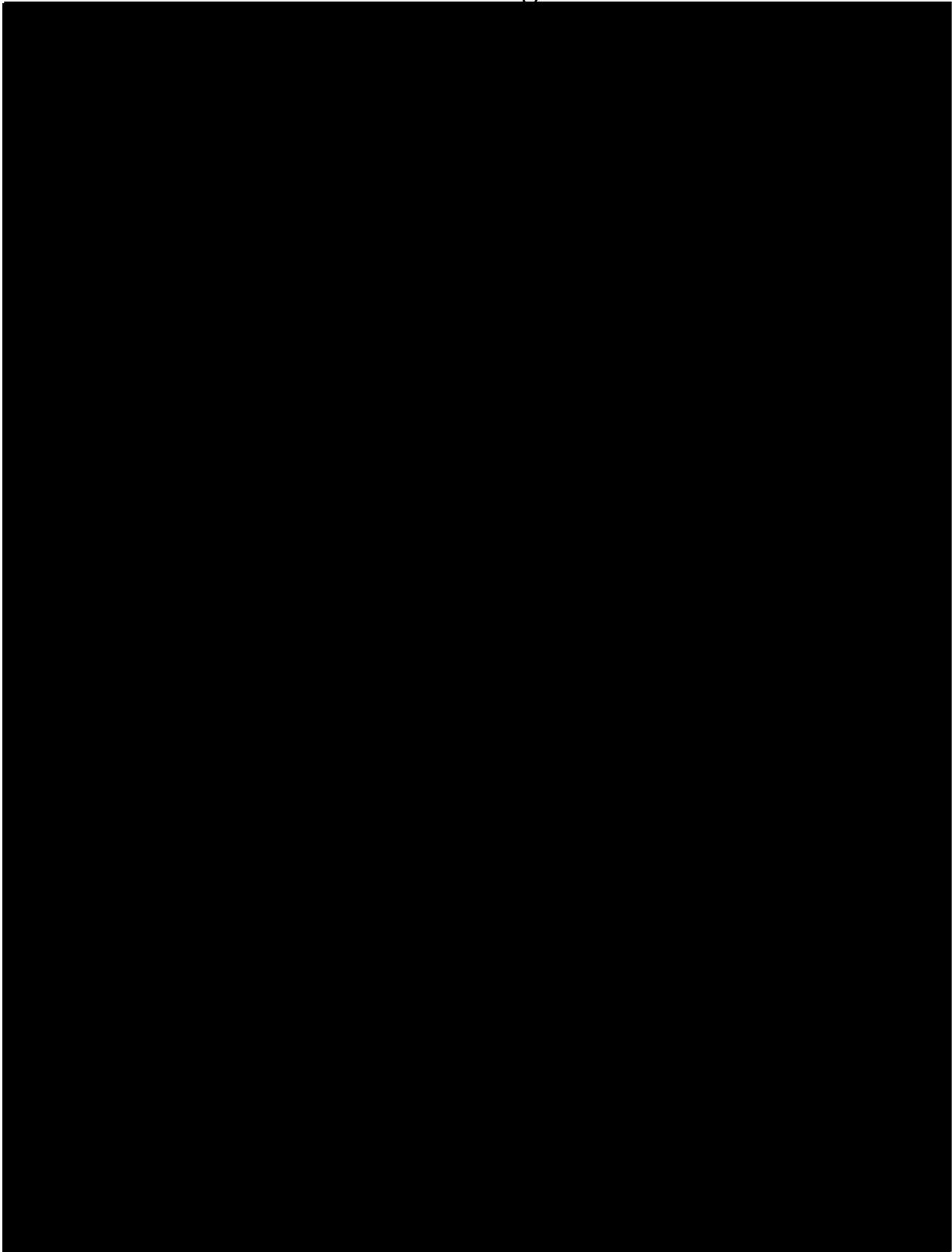


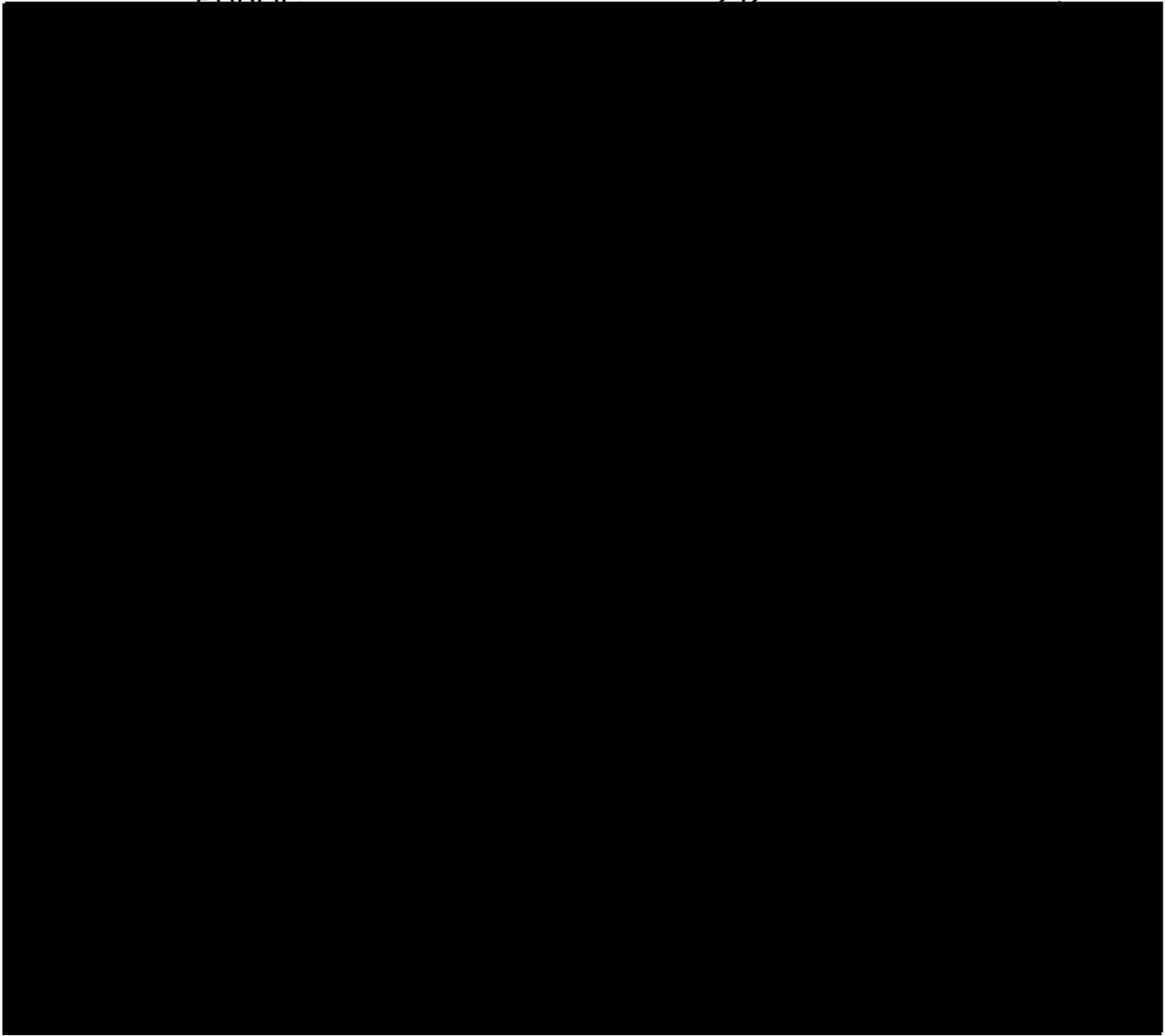
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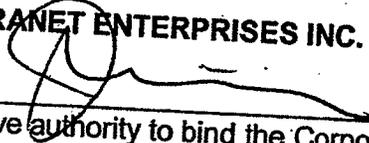




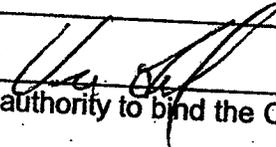


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first referenced above.

**TERANET ENTERPRISES INC.**

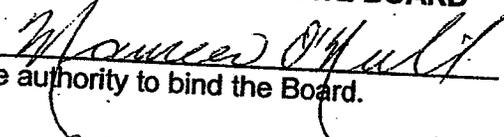
Per:  **JOS WINTERMANS**  
I have authority to bind the Corporation. *President & Secretary*

Title: \_\_\_\_\_

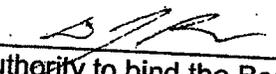
Per:  **VIC FORD**  
I have authority to bind the Corporation. *Vice President*

Title: \_\_\_\_\_

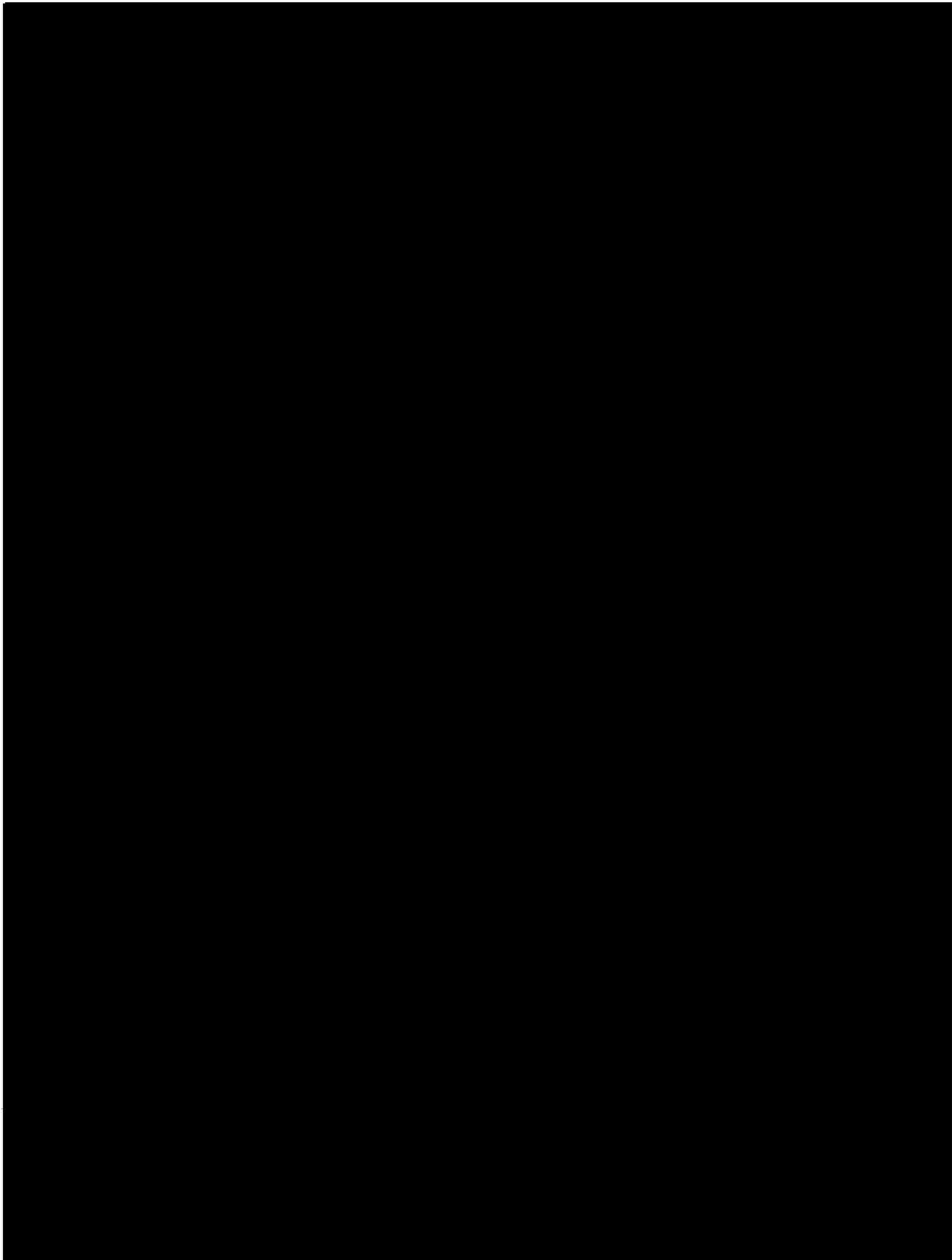
**THE TORONTO REAL ESTATE BOARD**

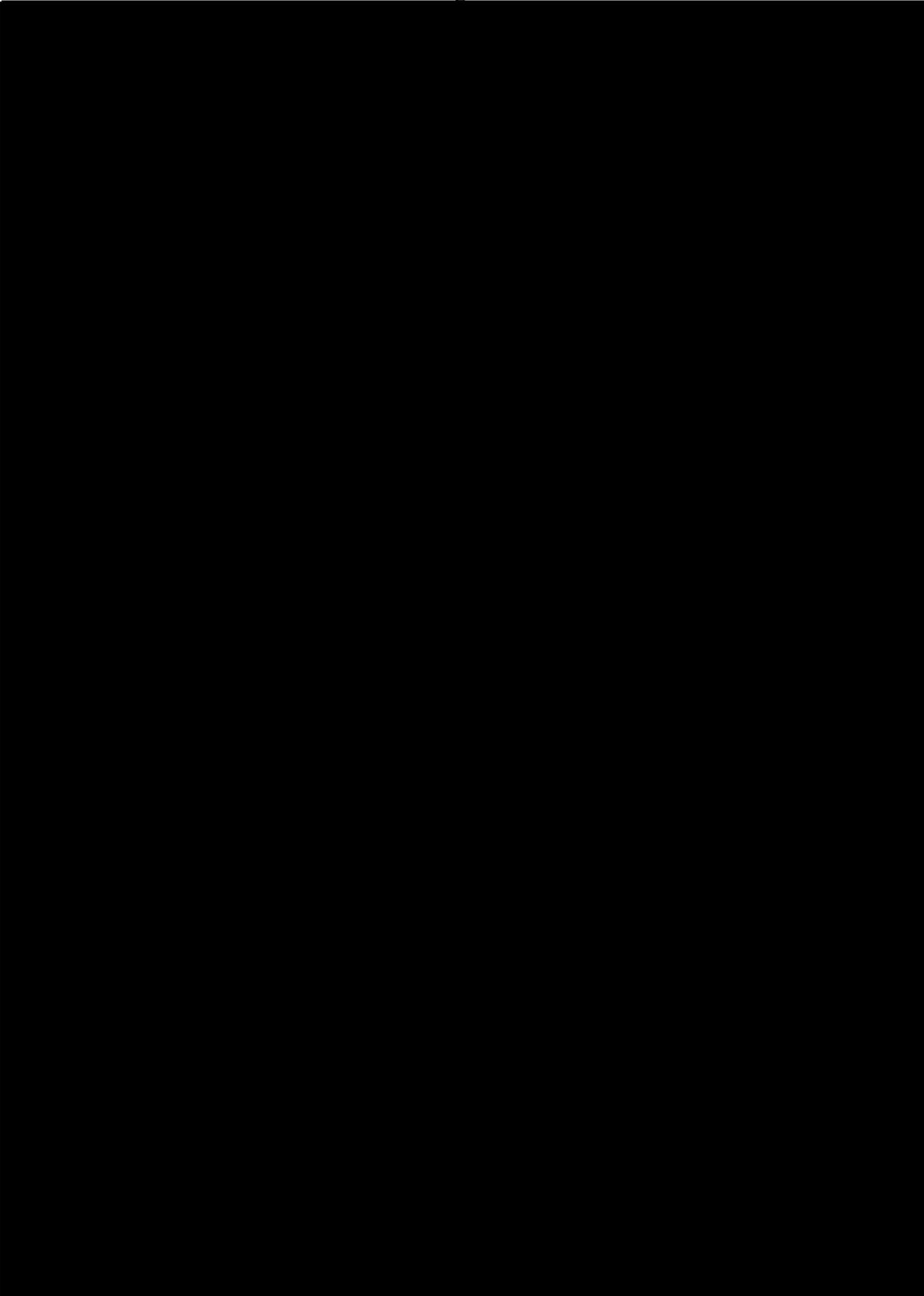
Per:   
I have authority to bind the Board.

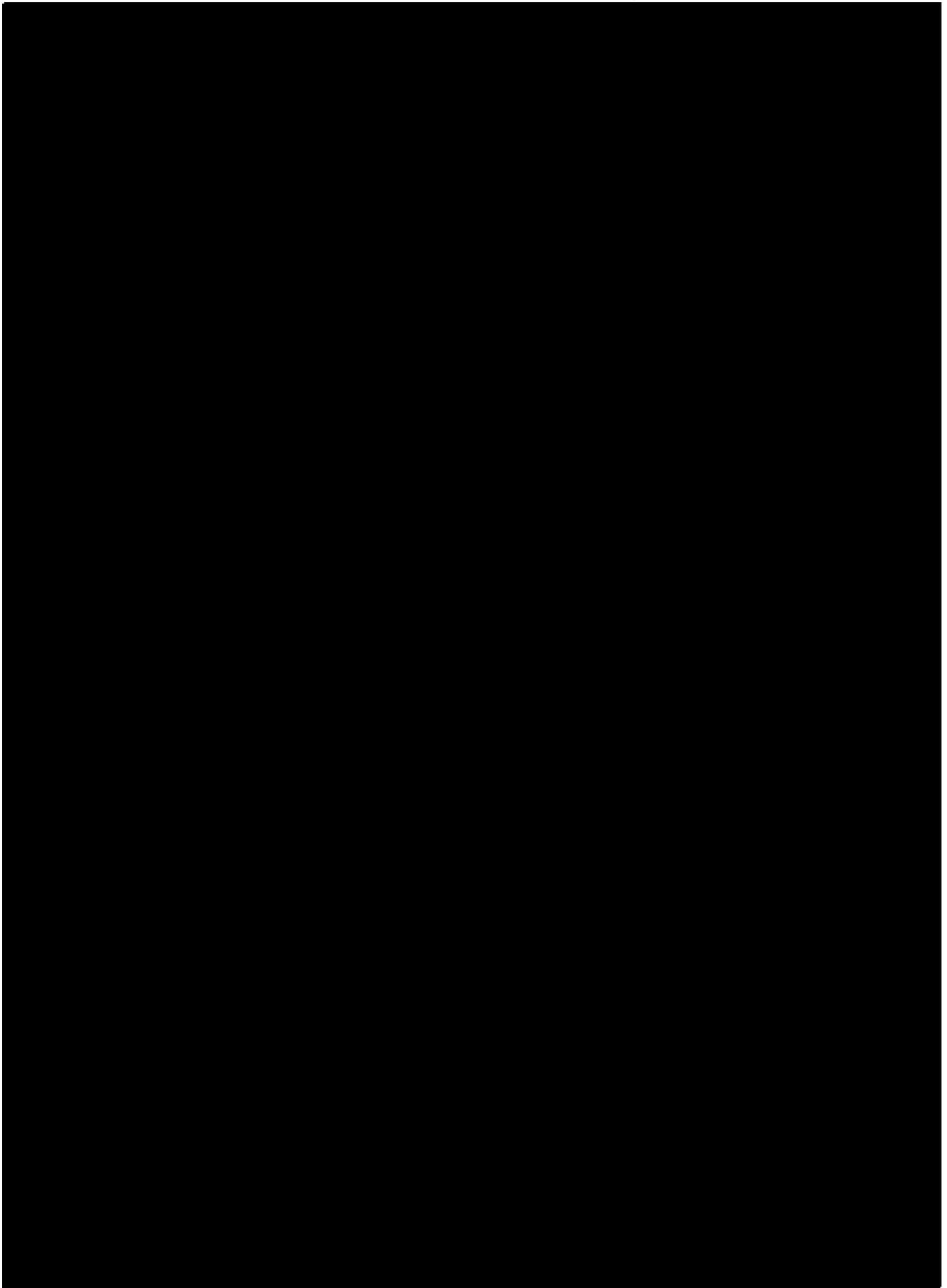
Title: *President*

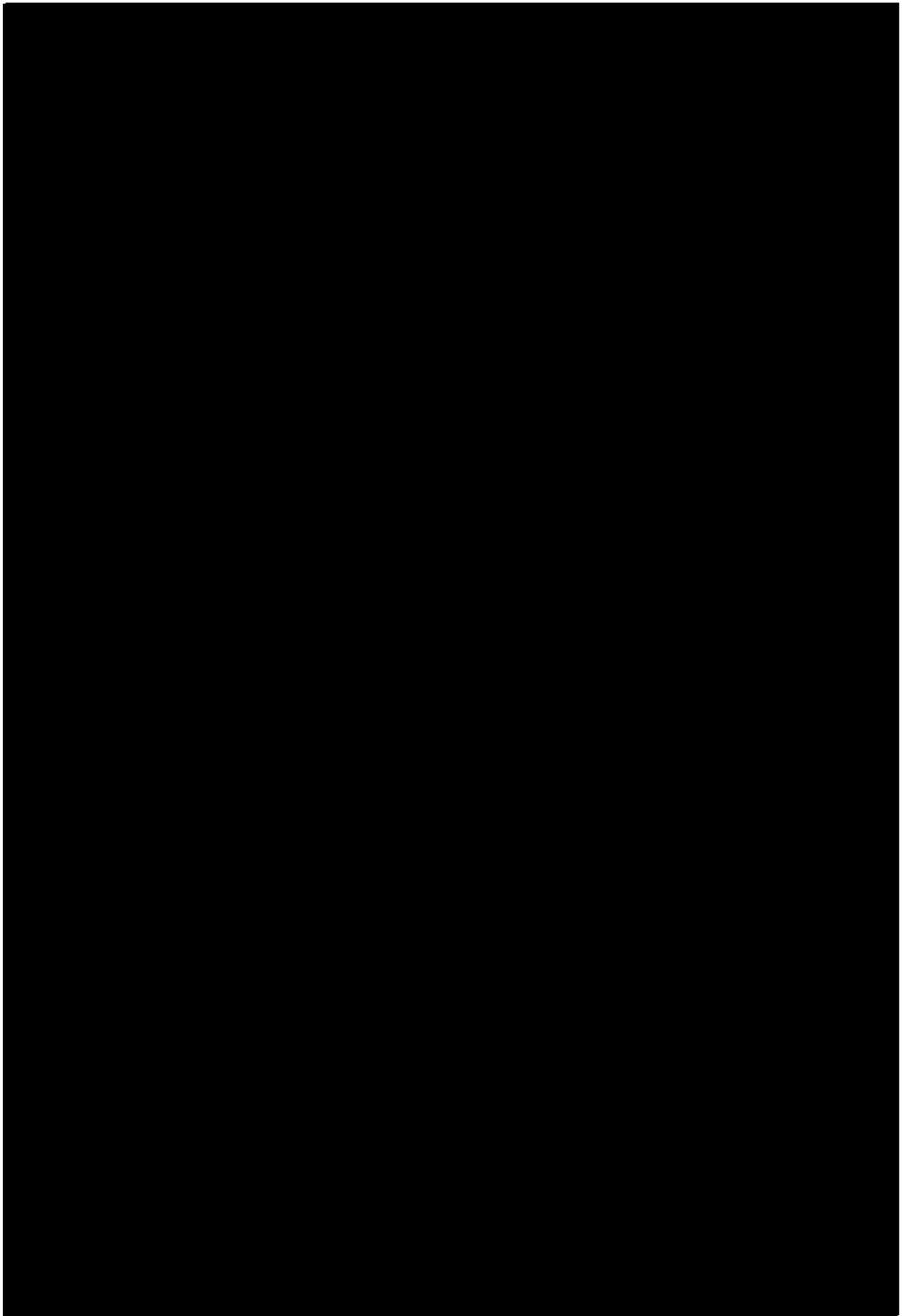
Per:   
I have authority to bind the Board.

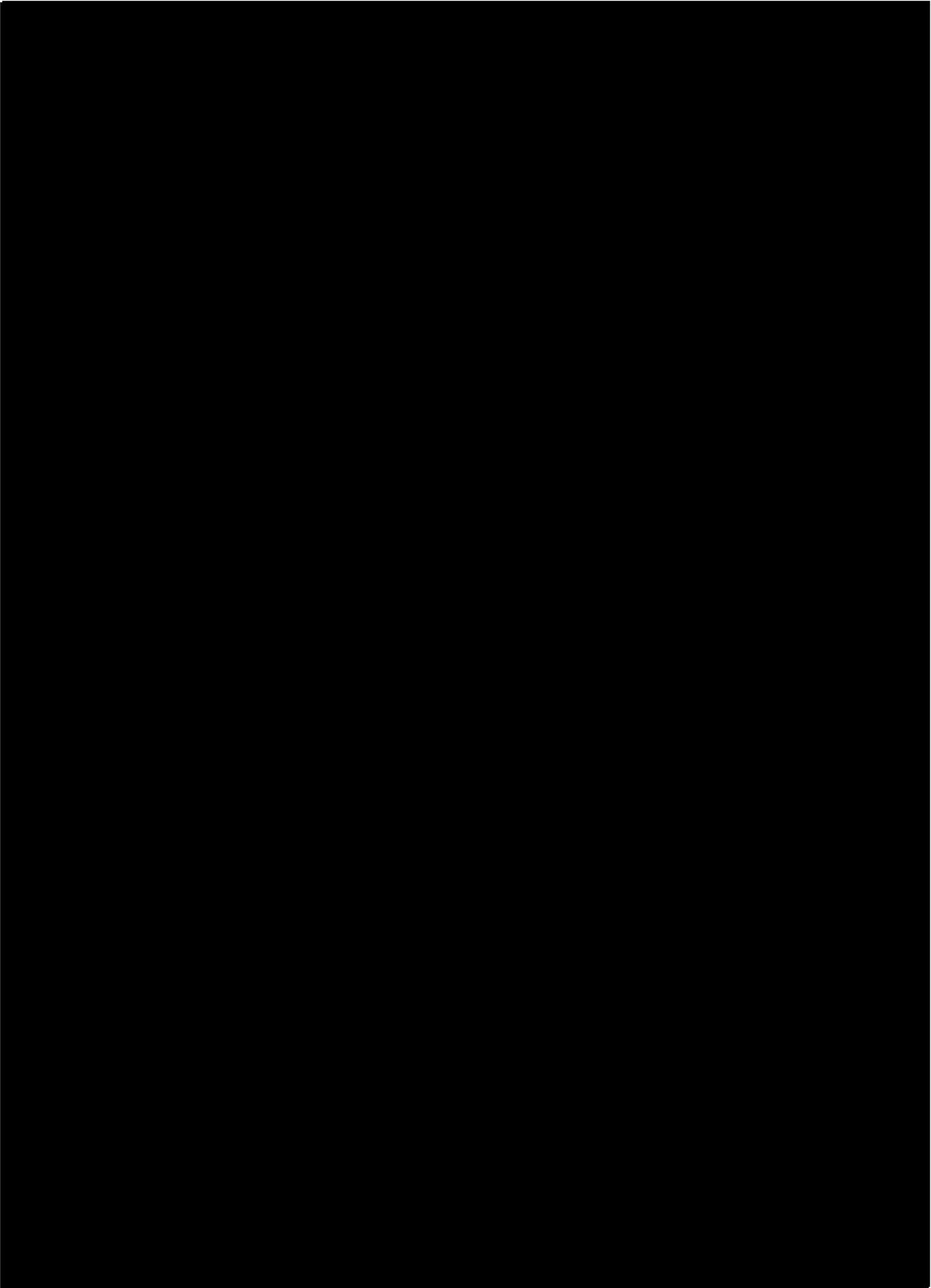
Title: *CEO*

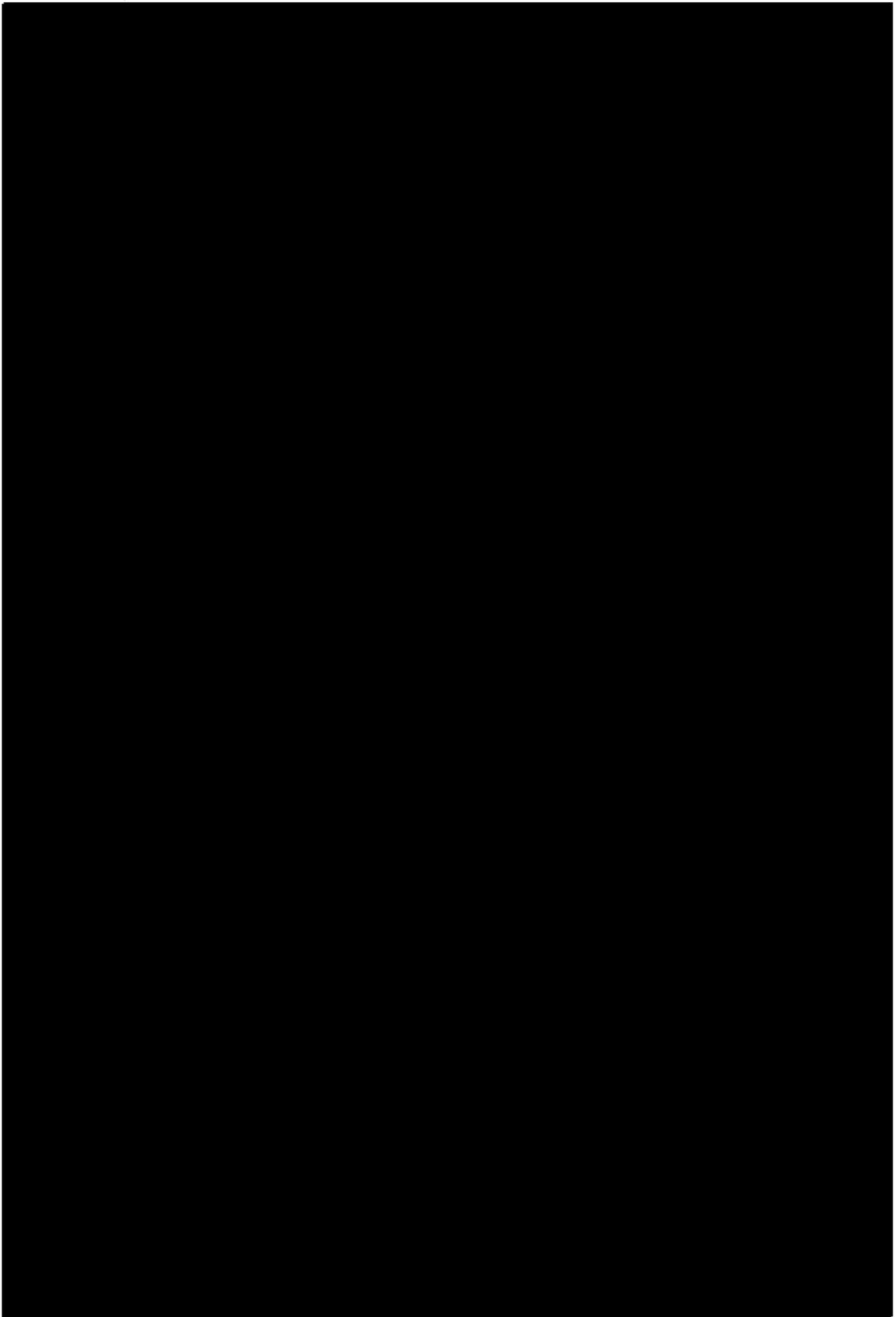


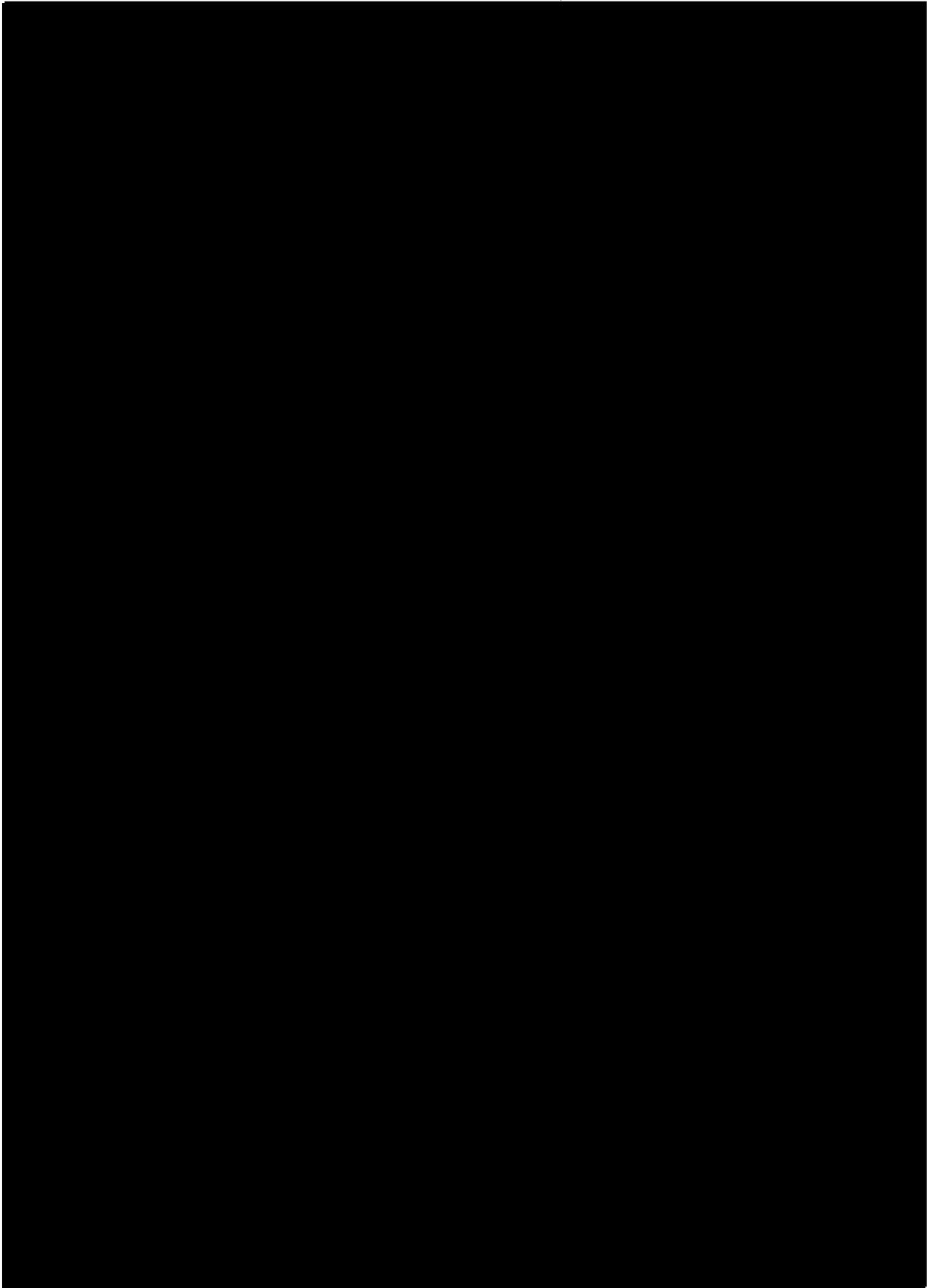


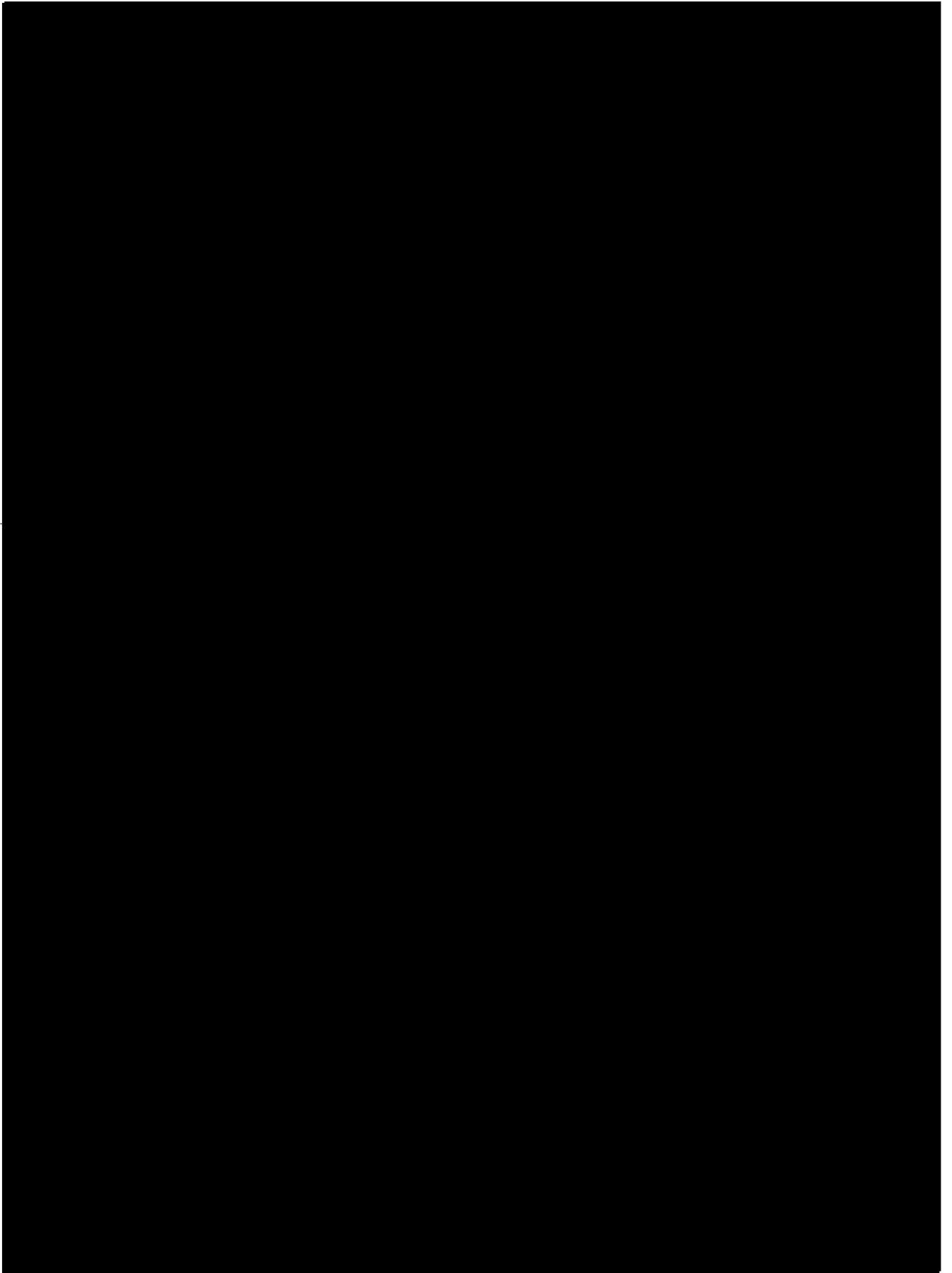


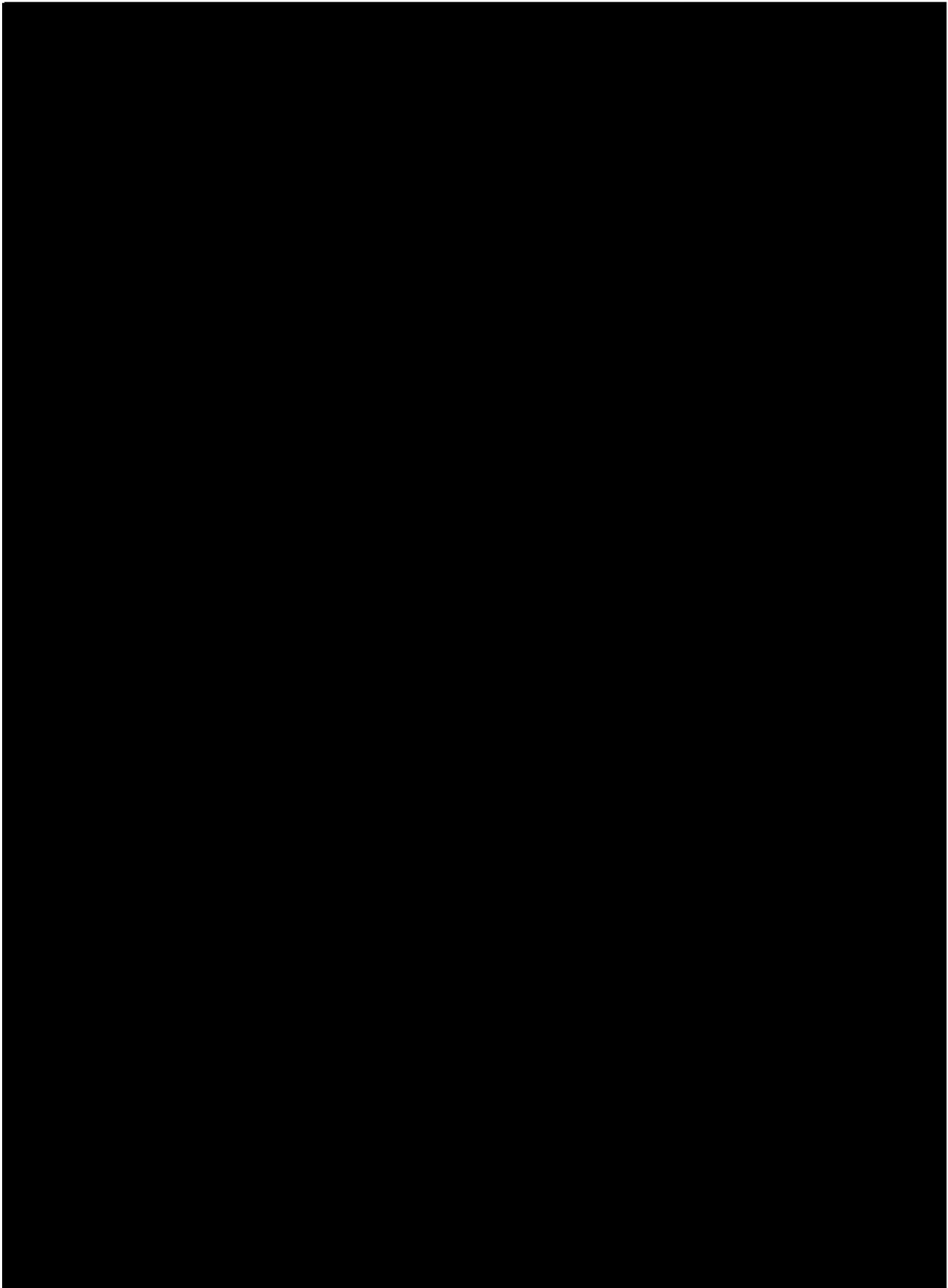


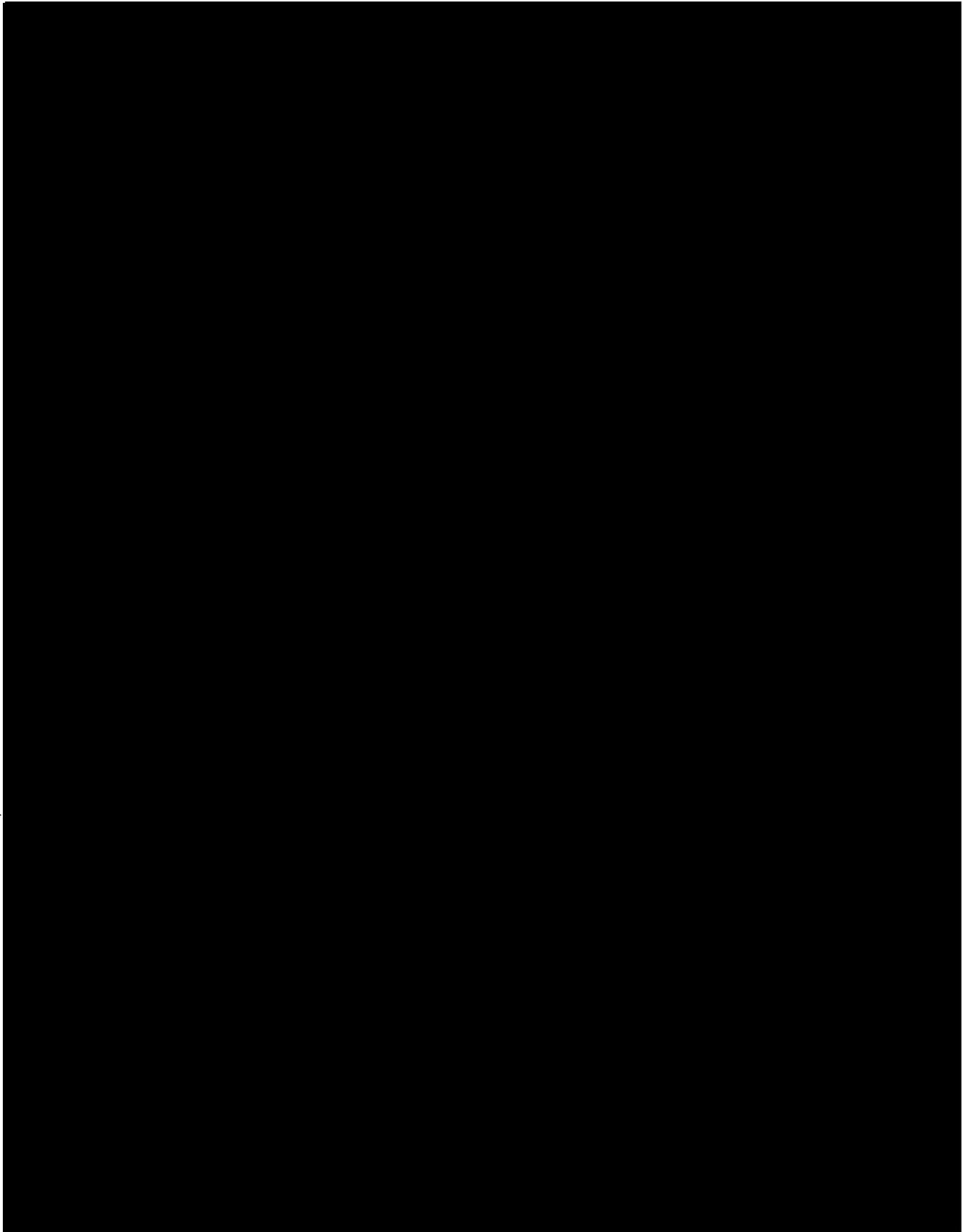


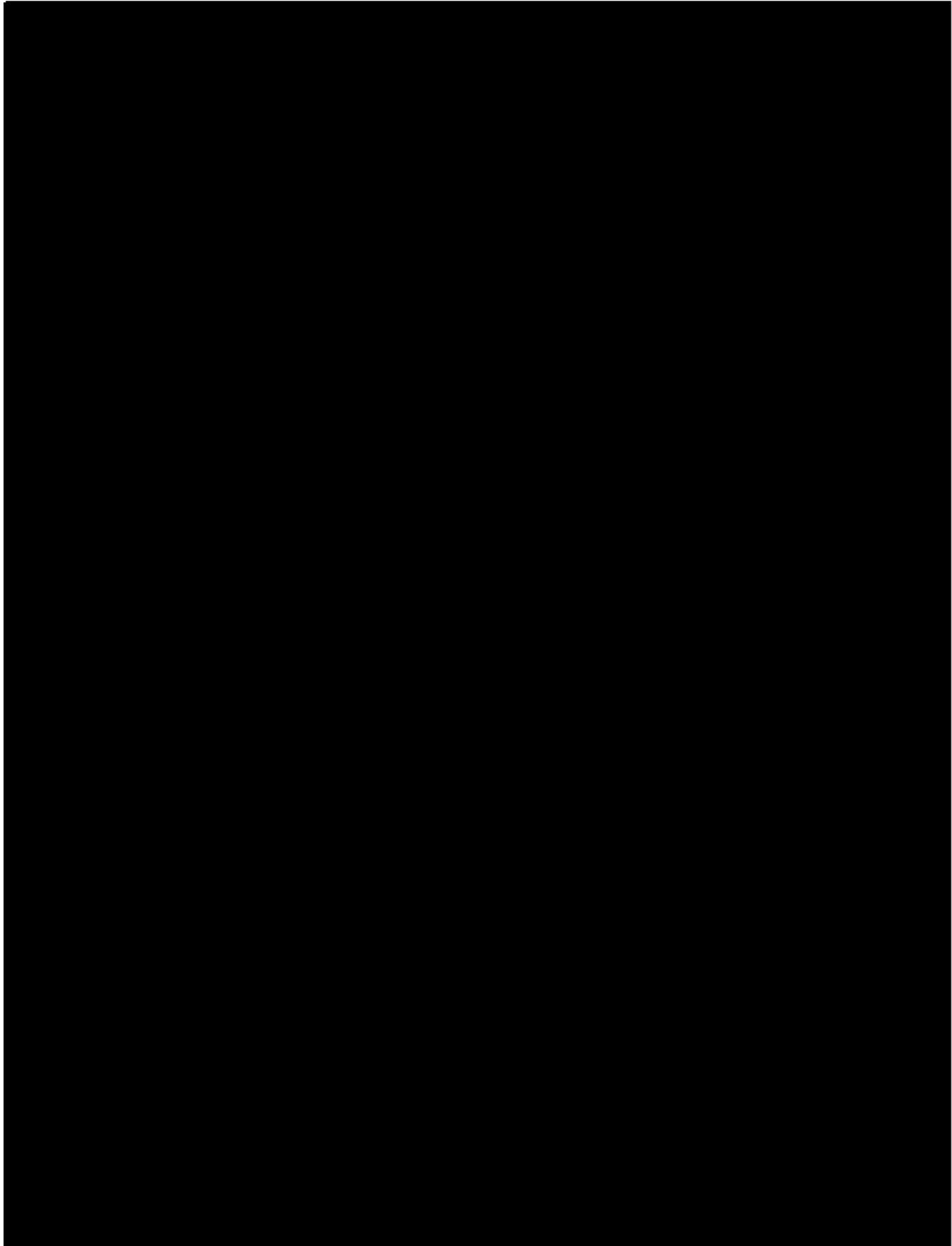


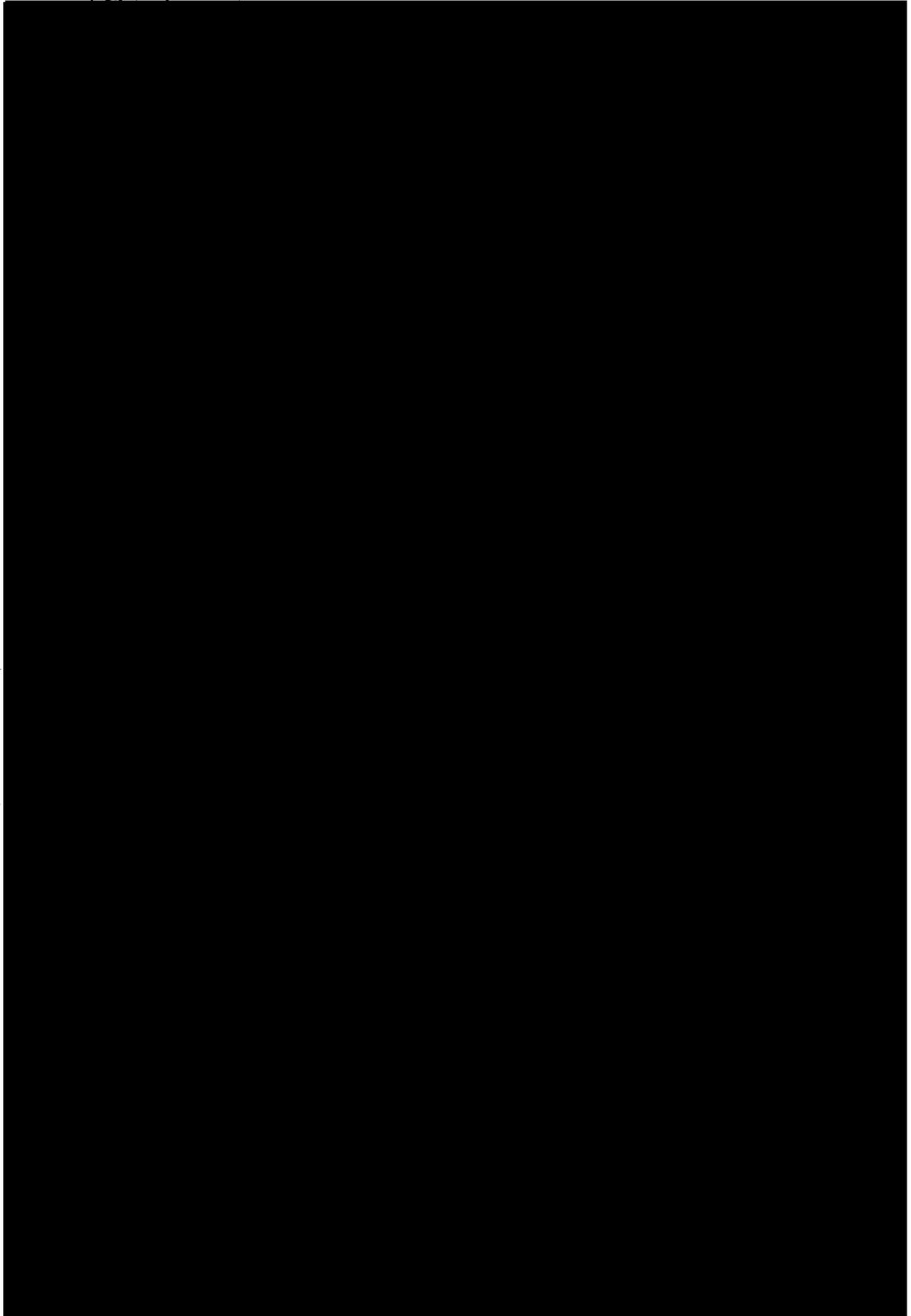


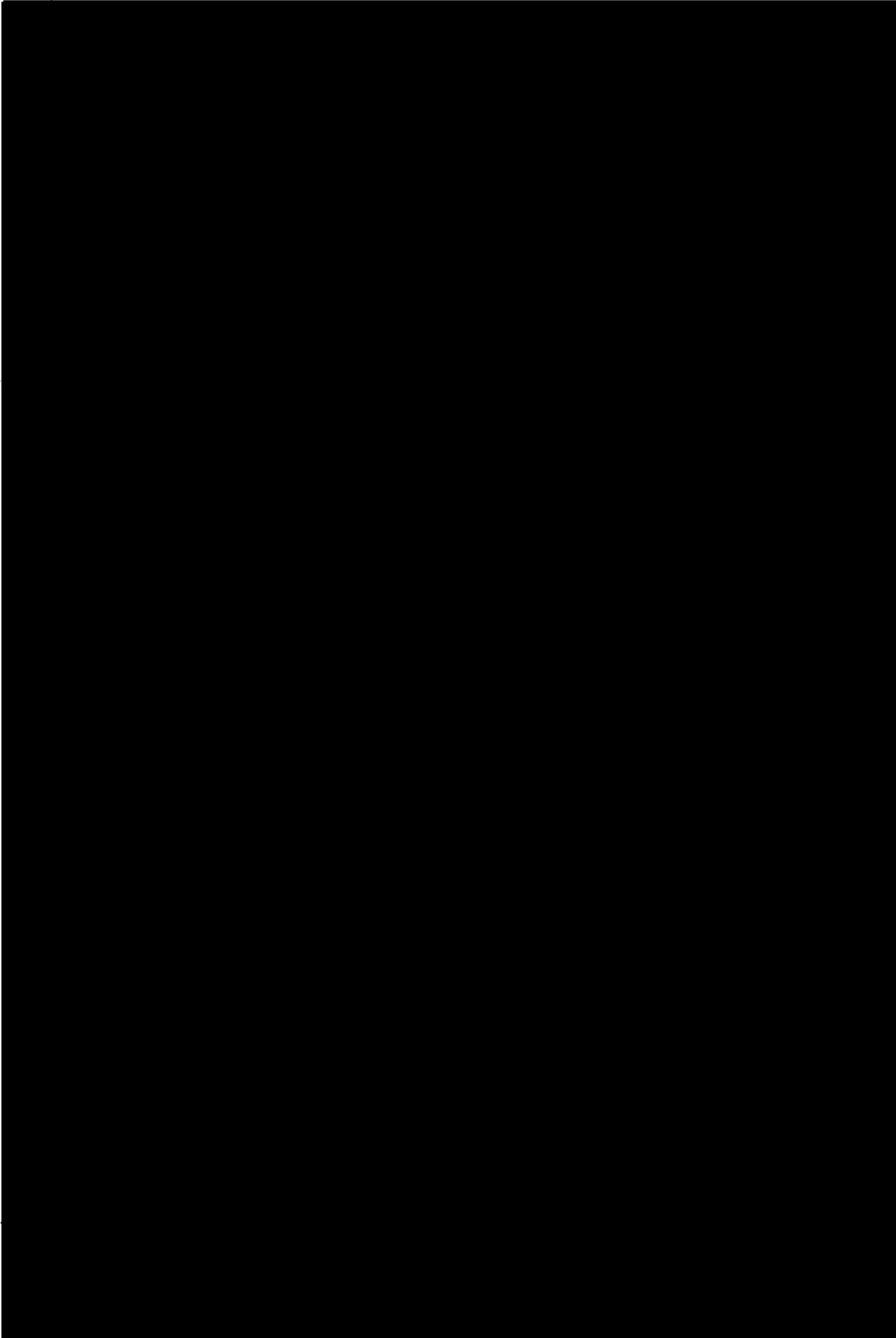


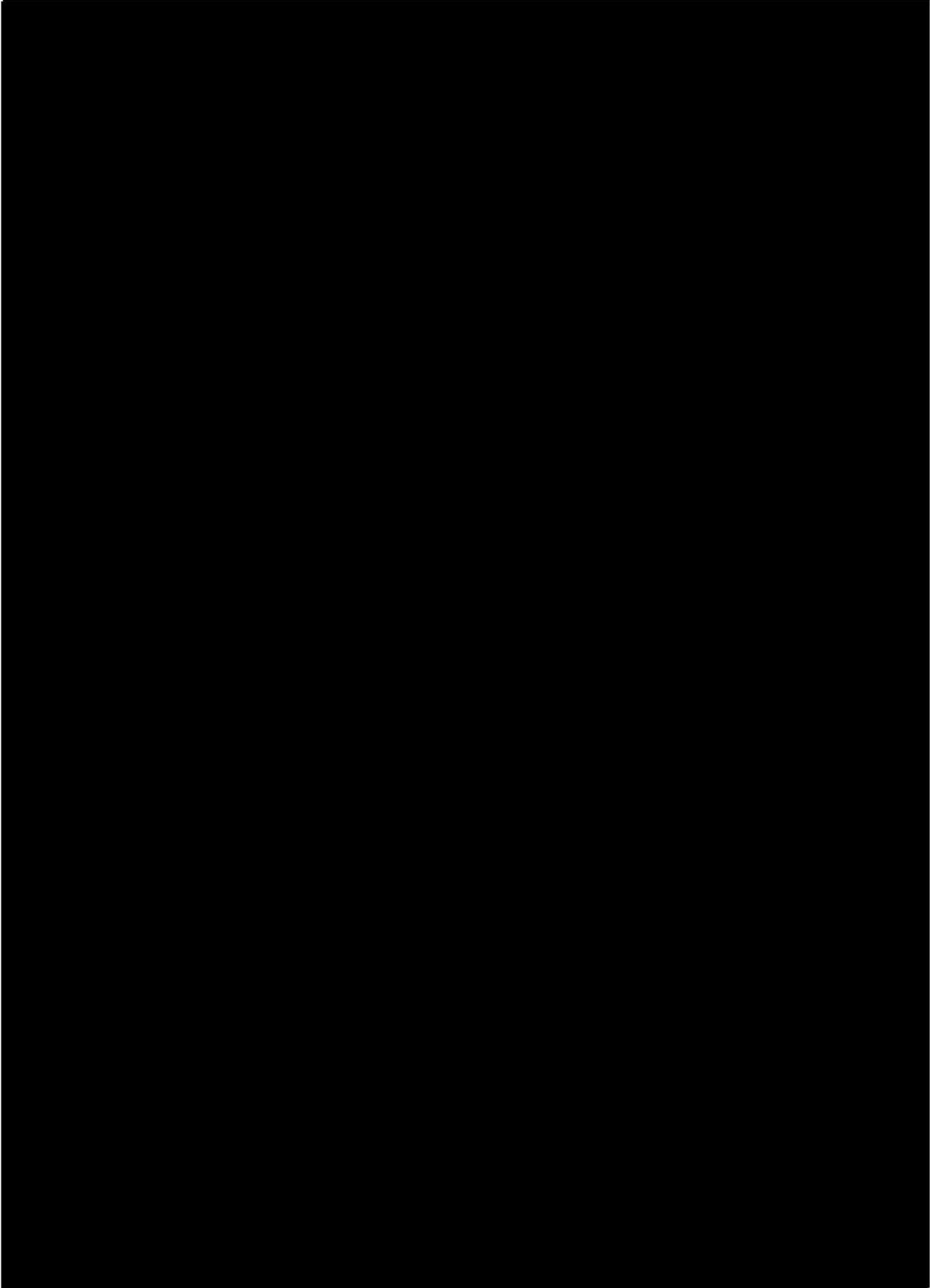


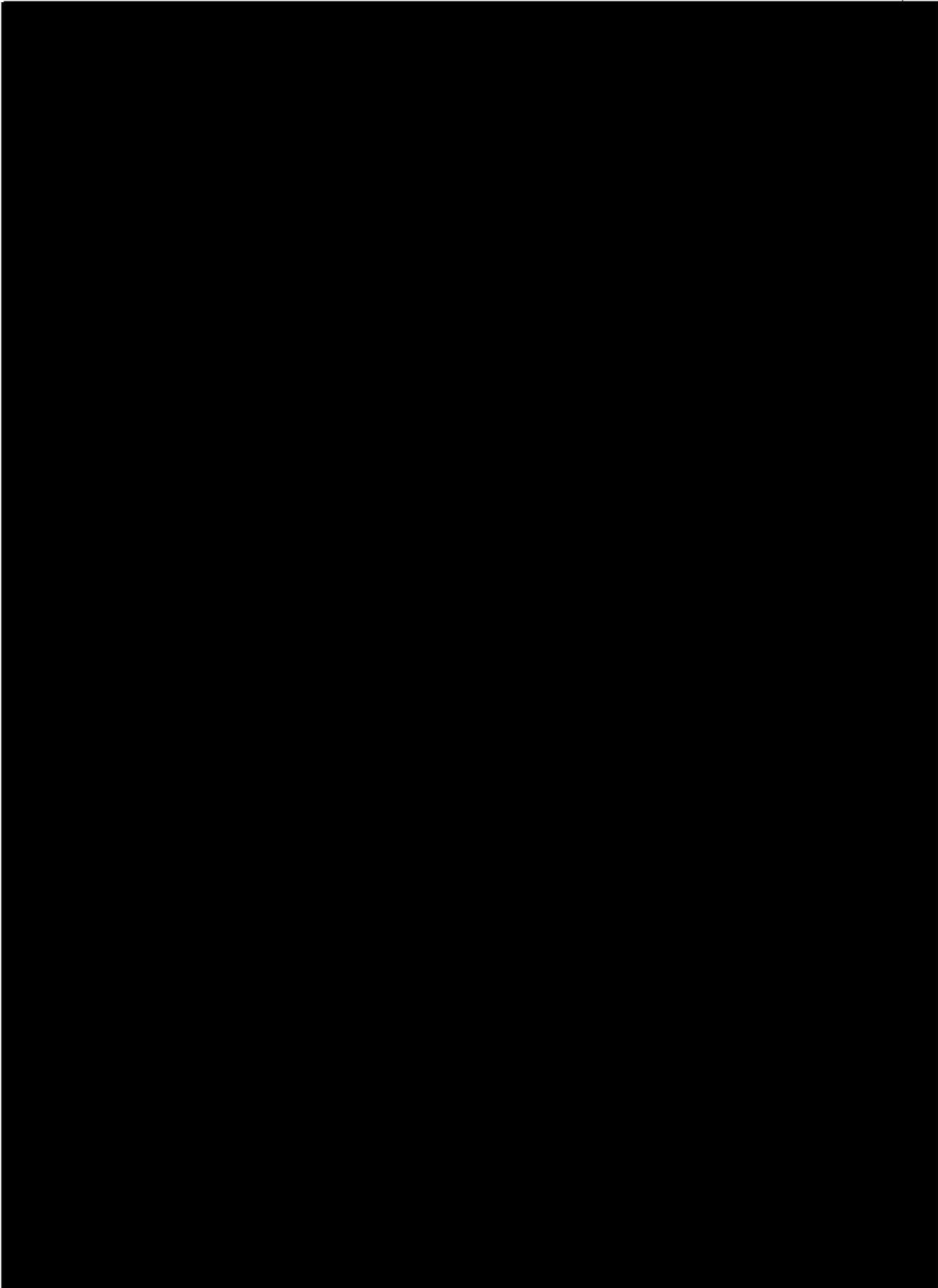


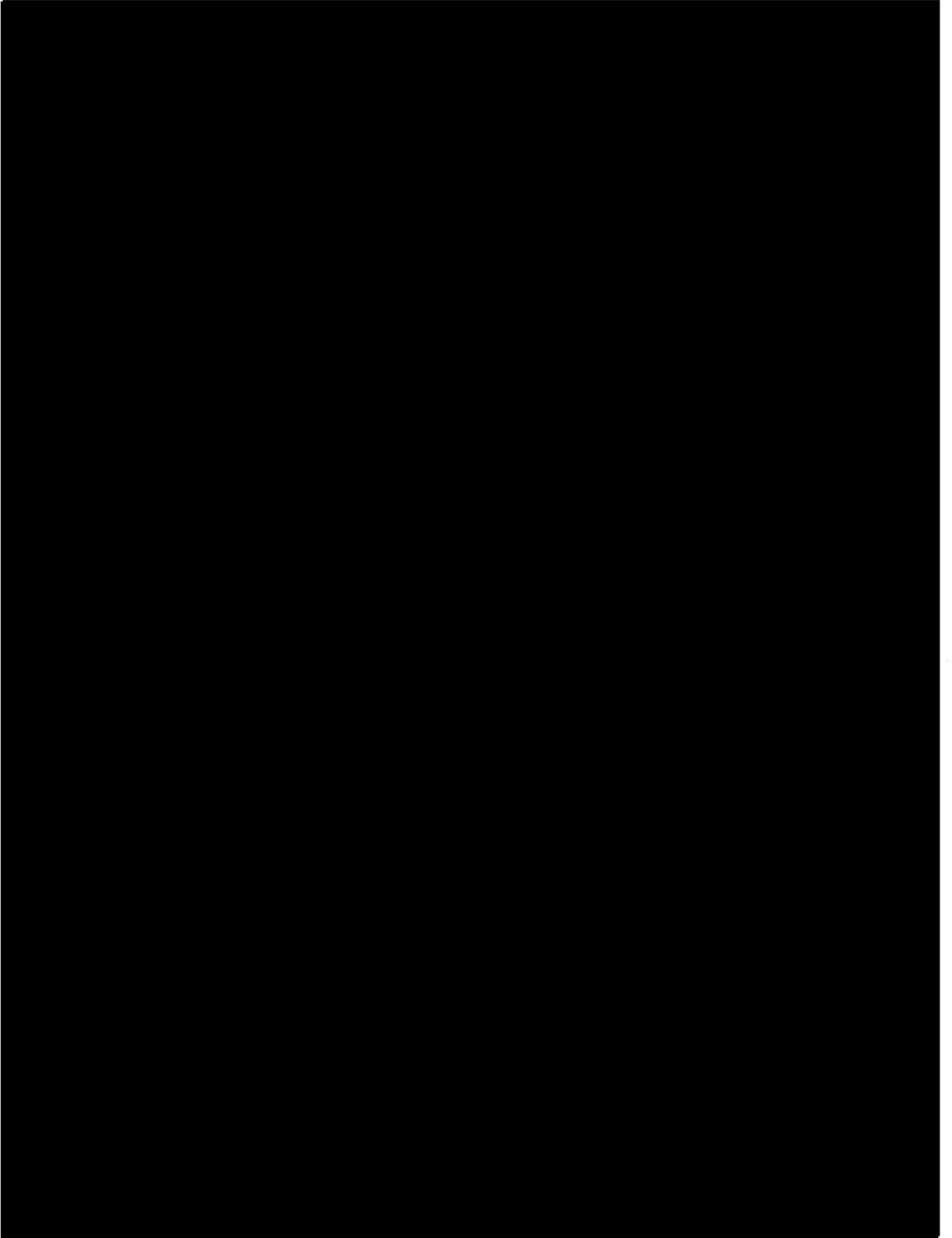


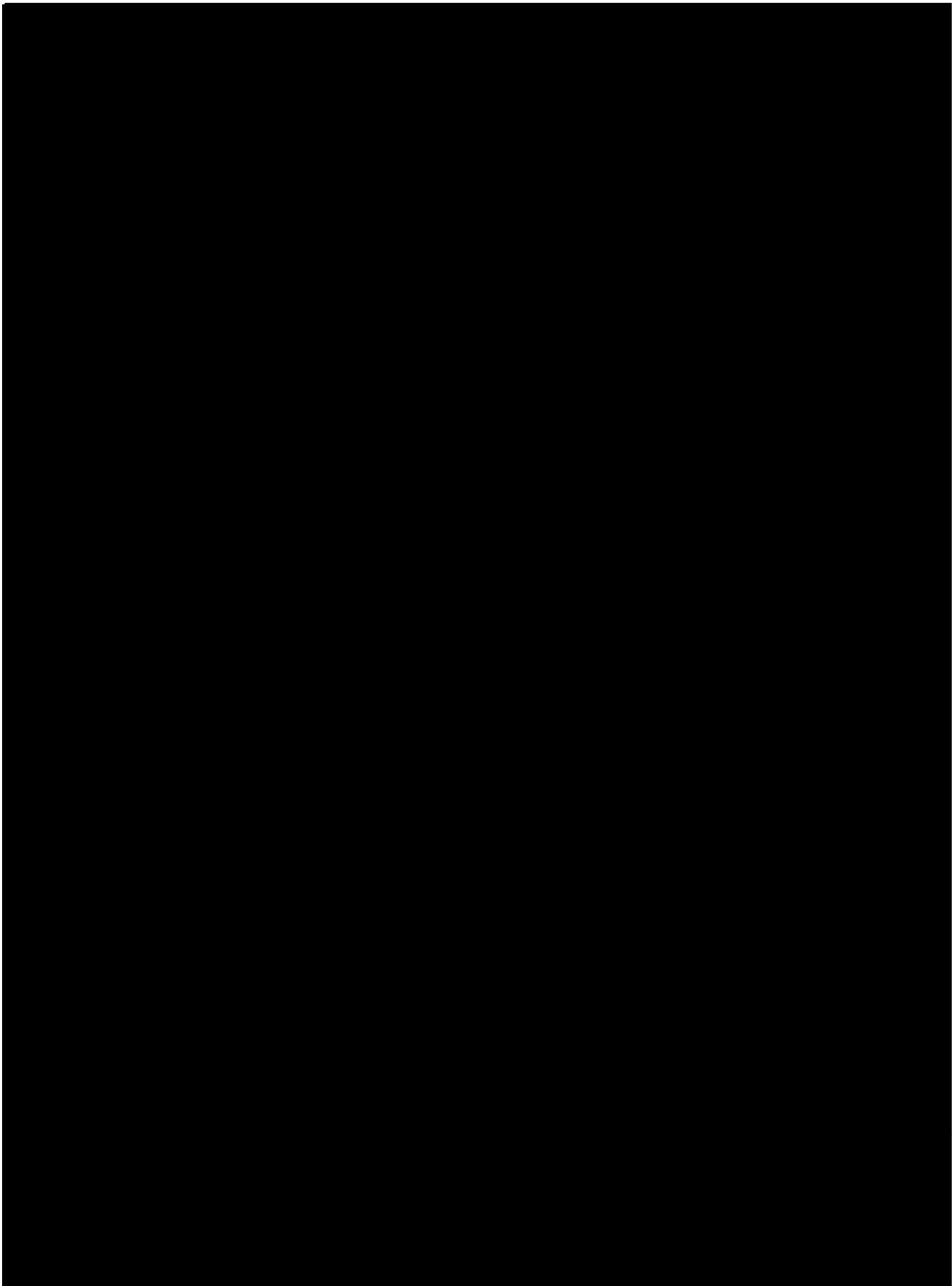




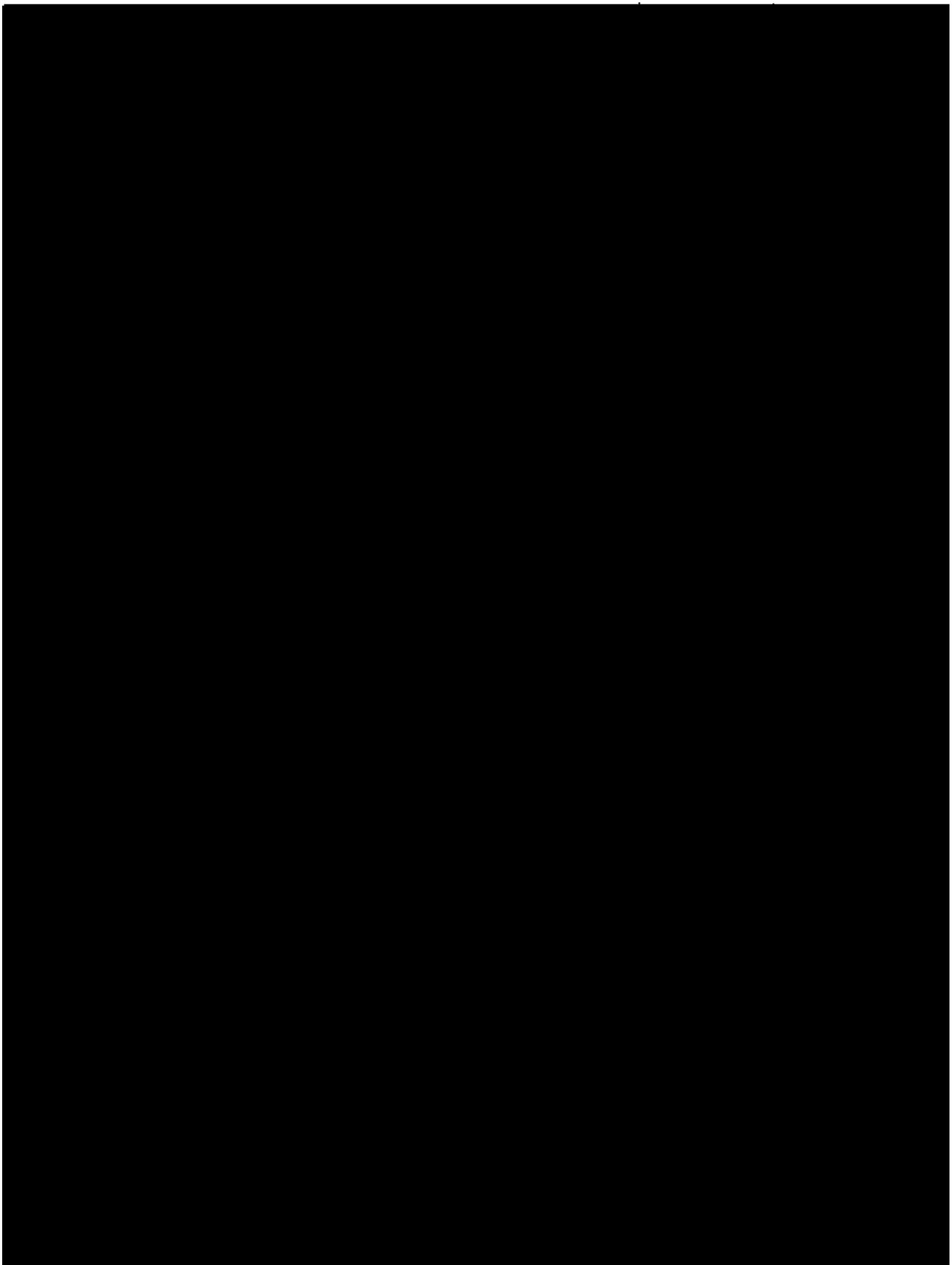


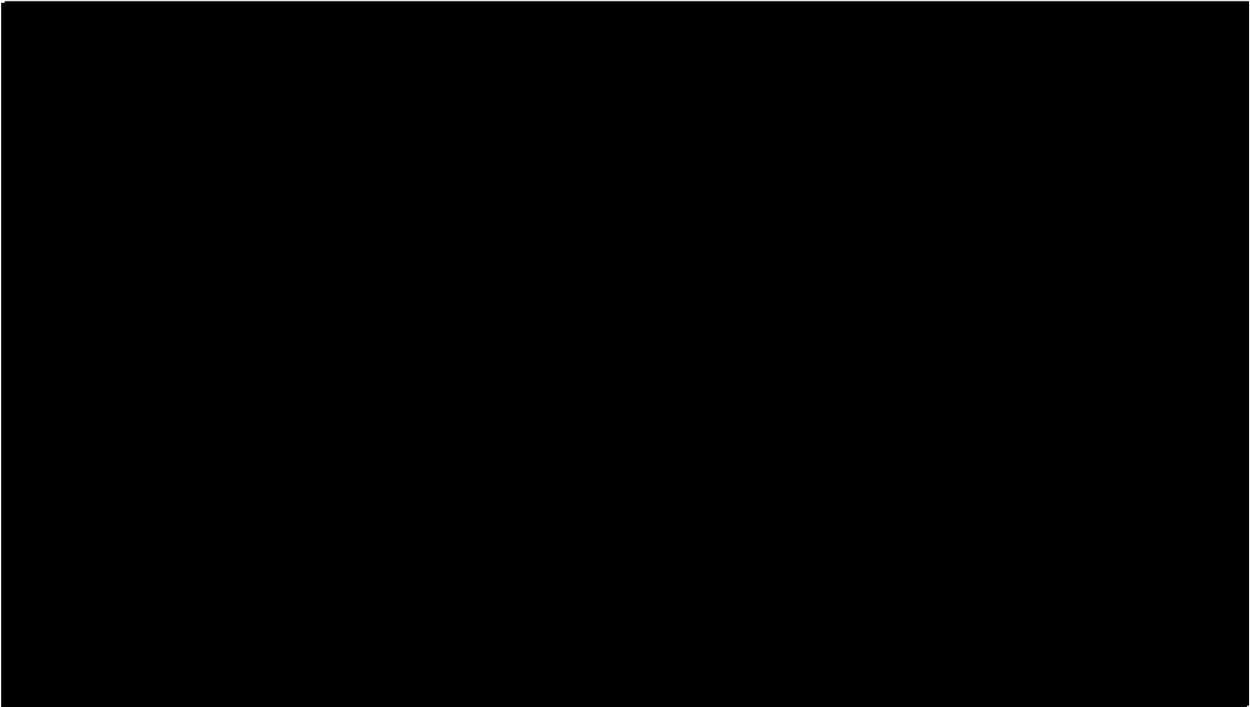




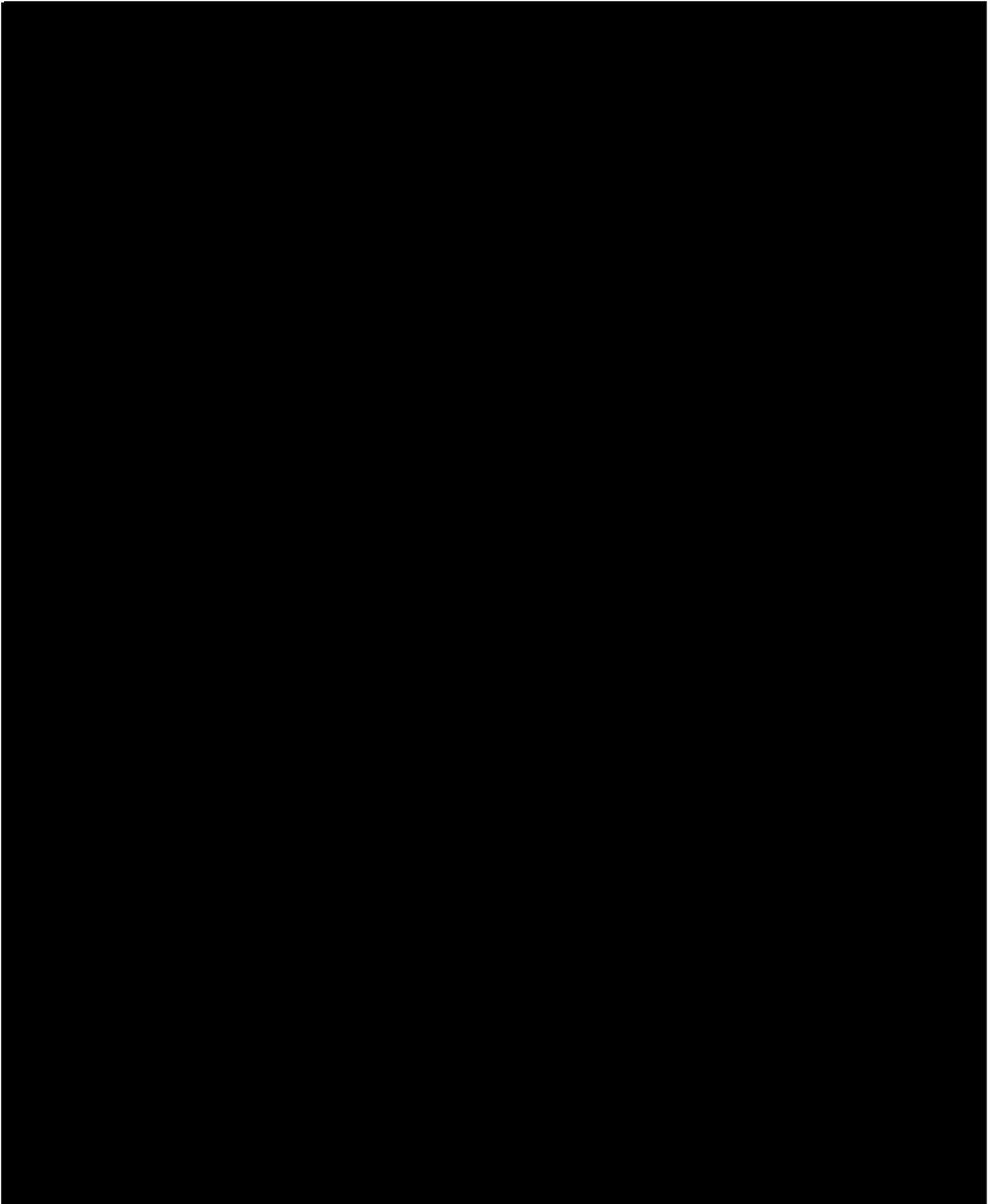


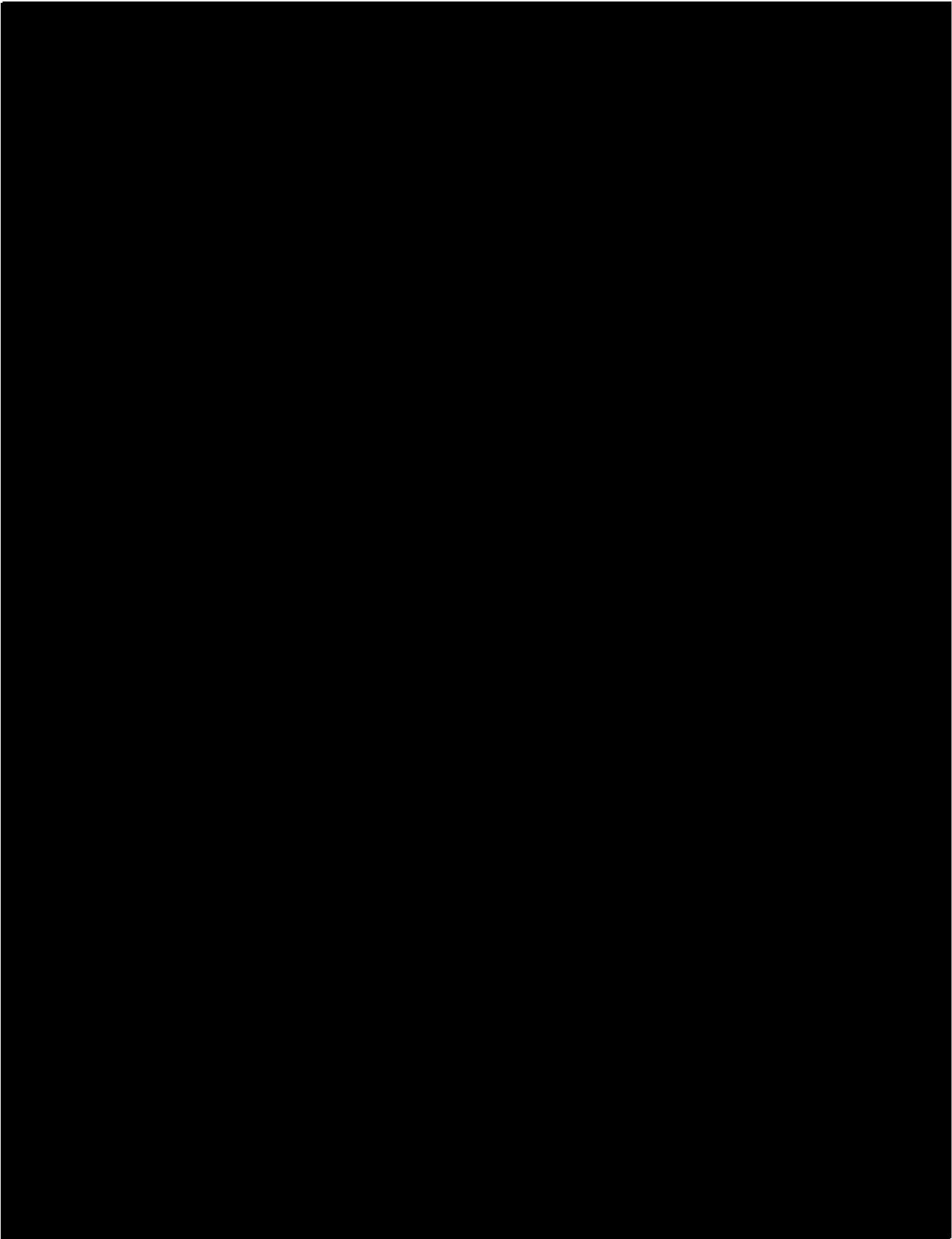


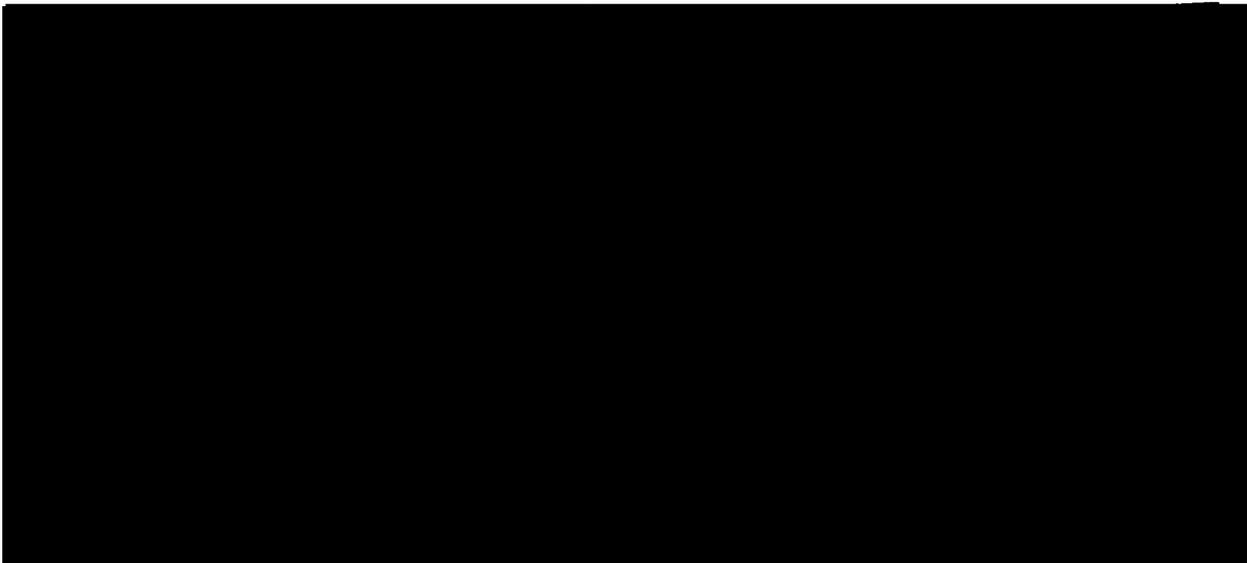




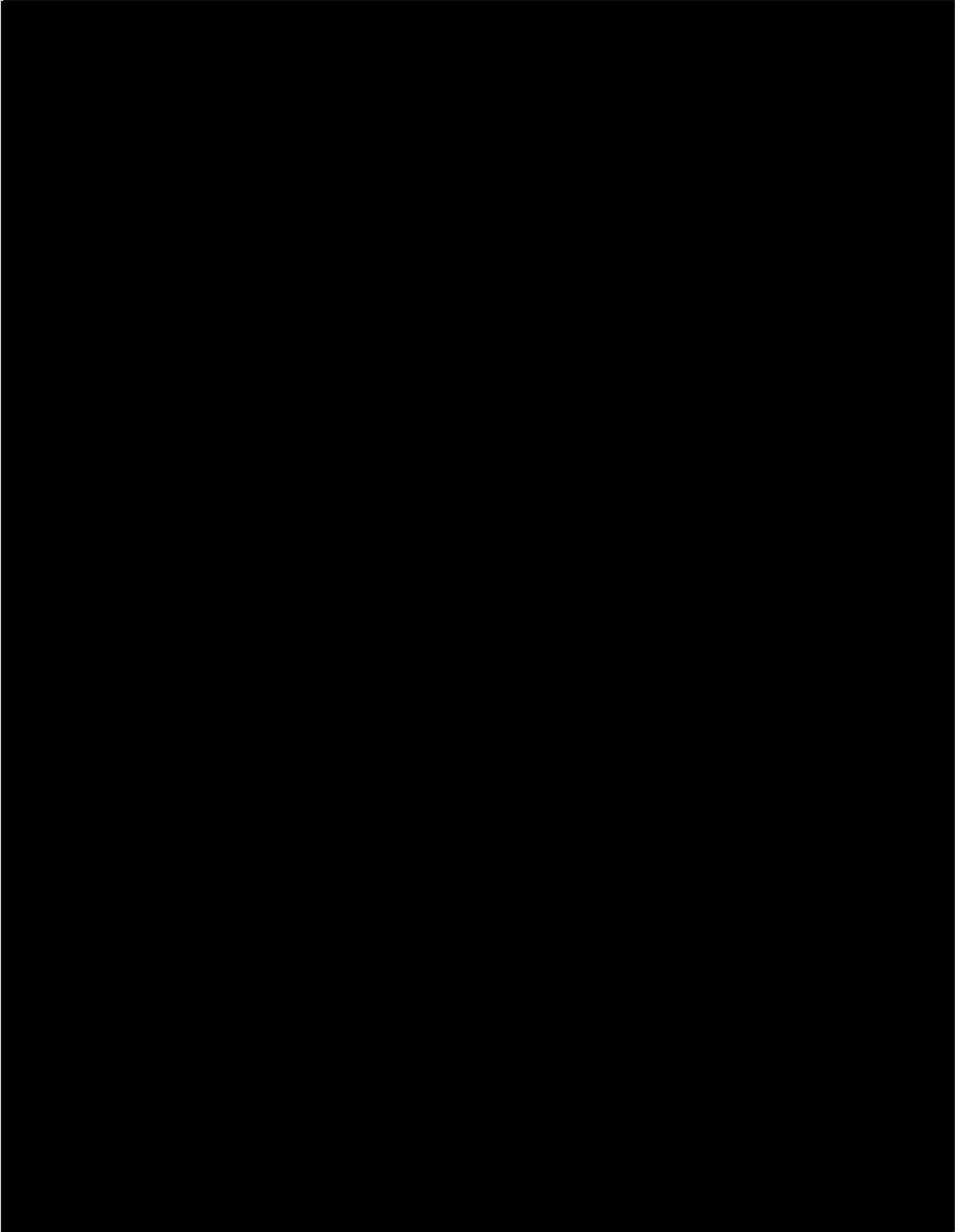
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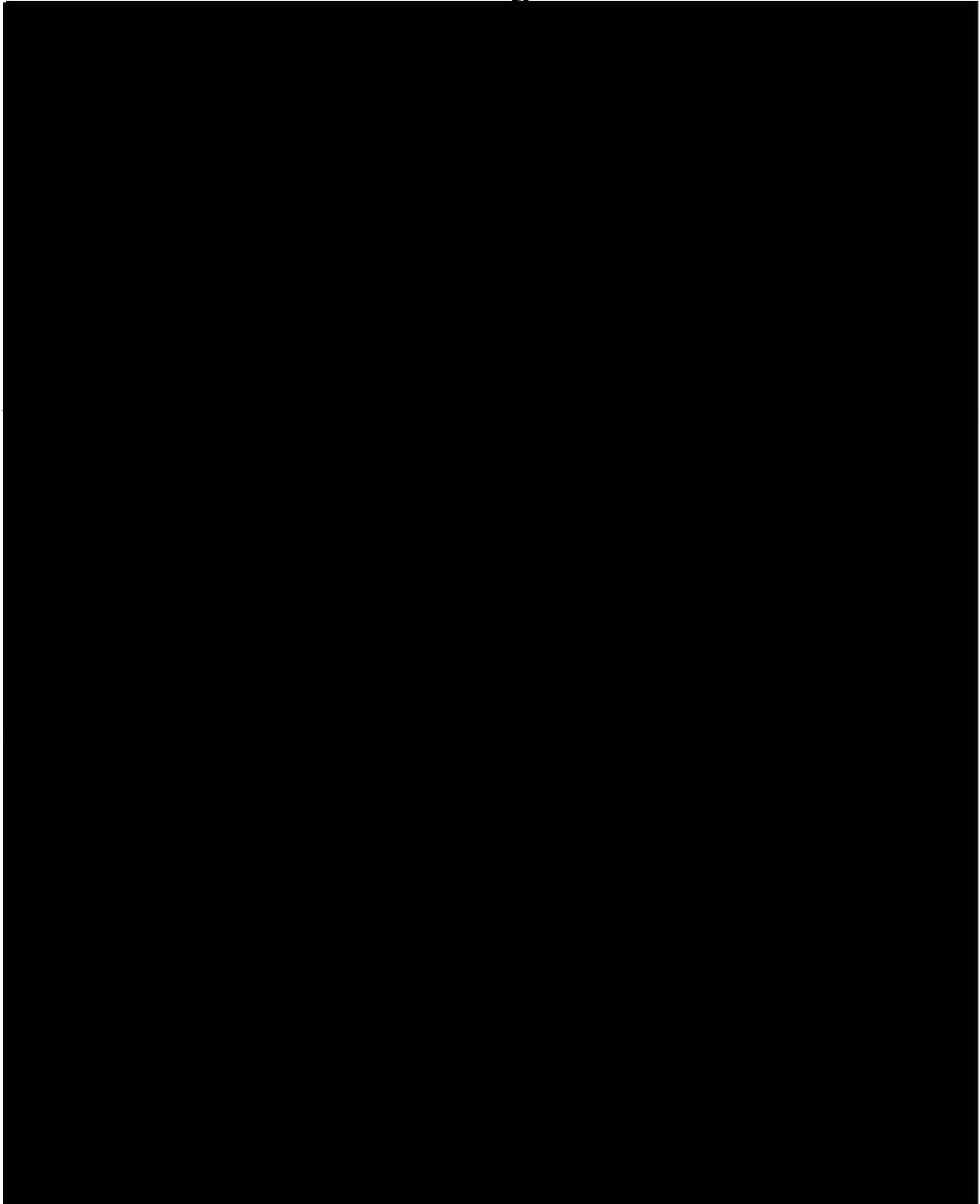




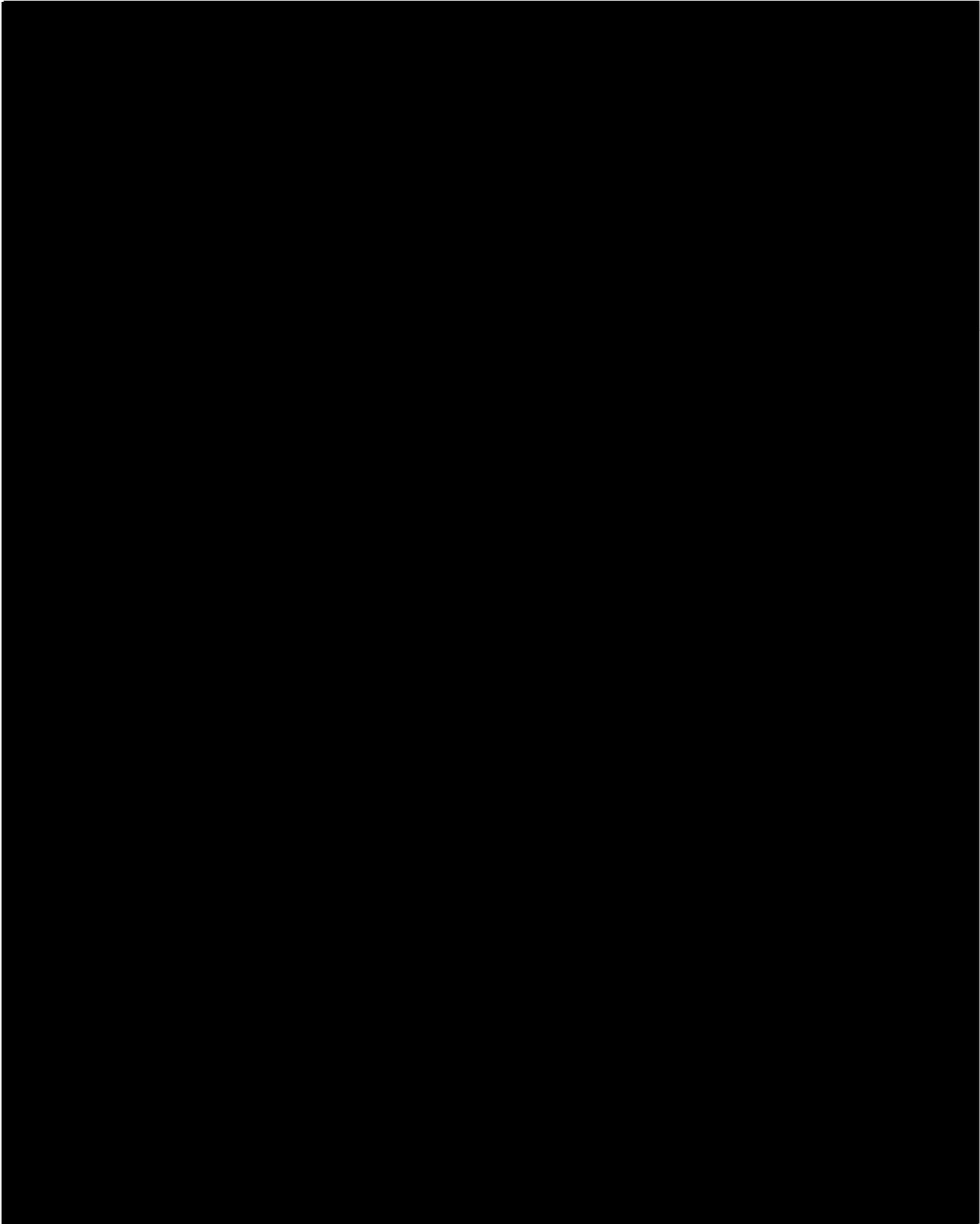


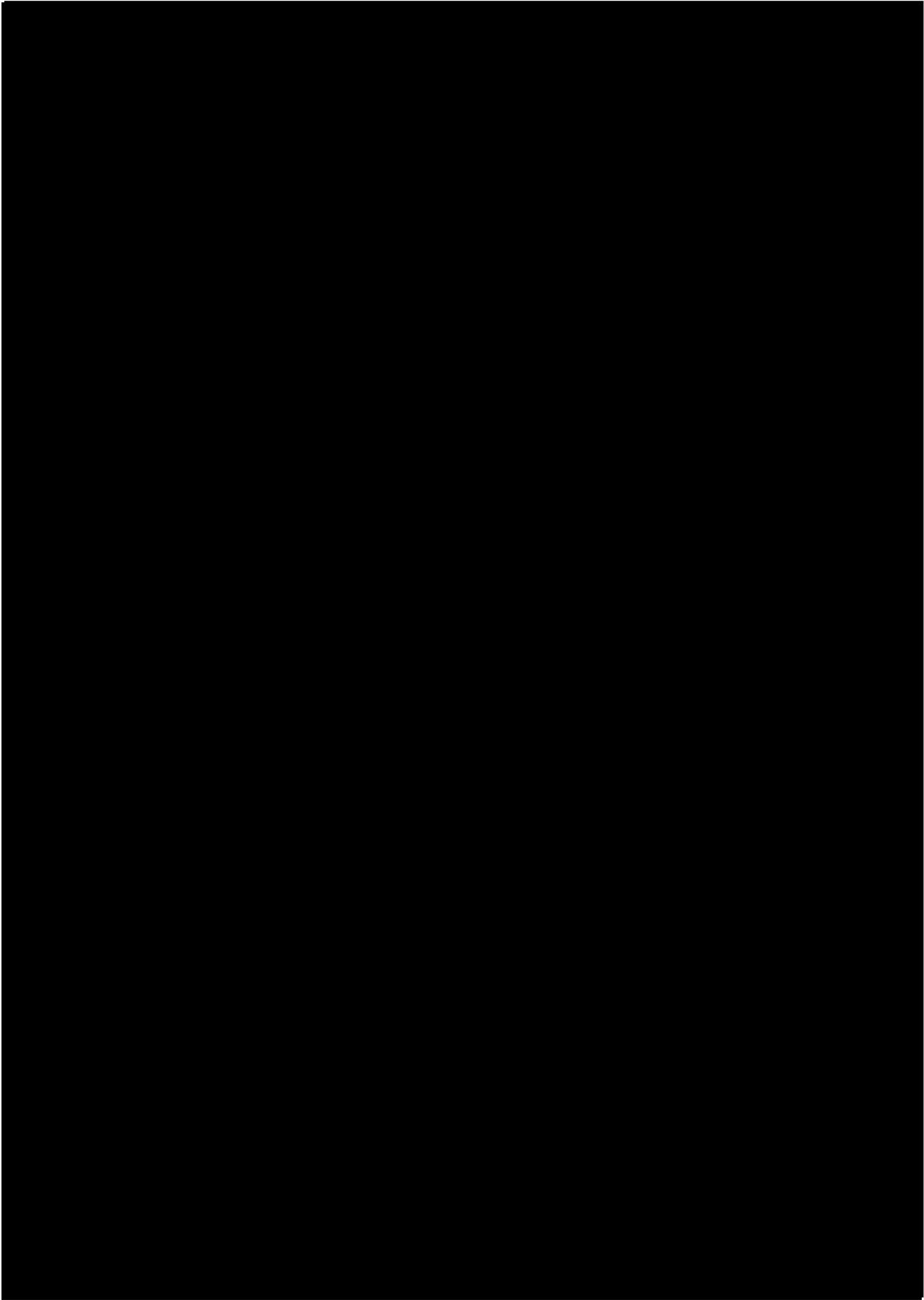
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PRICING**

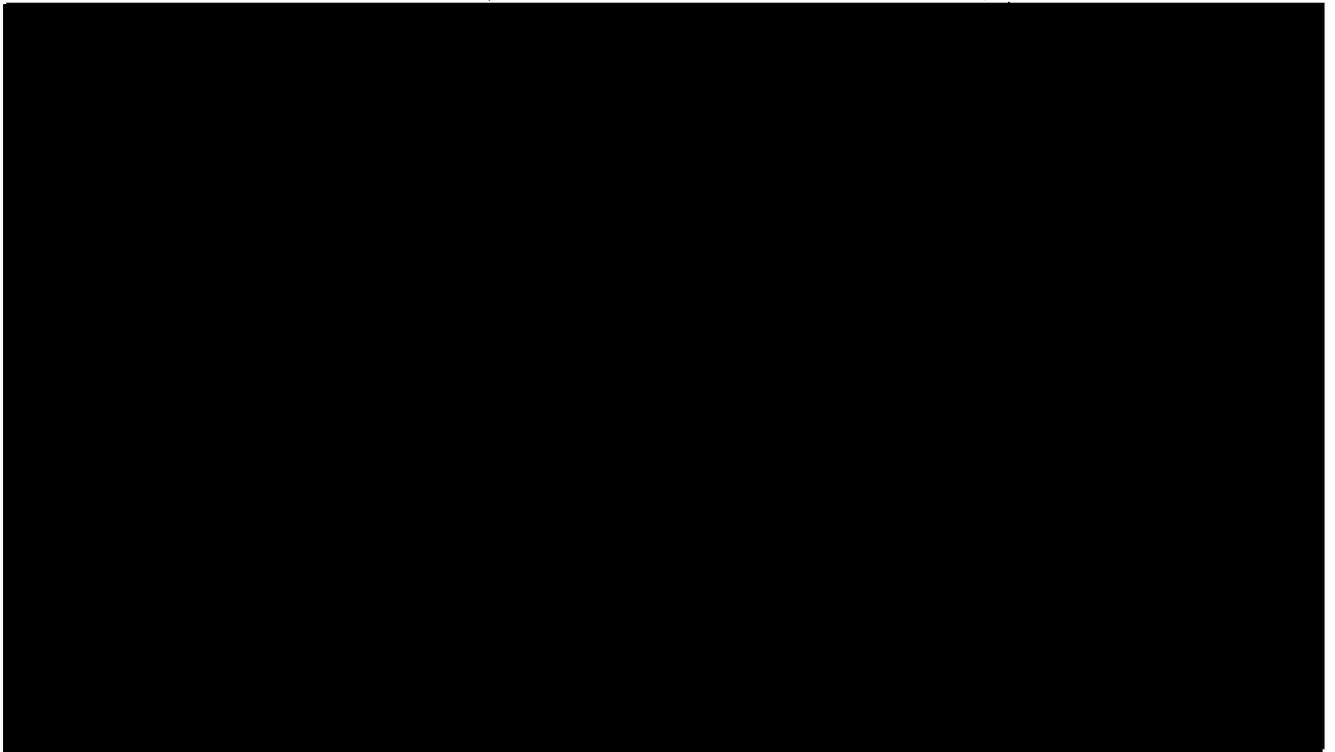


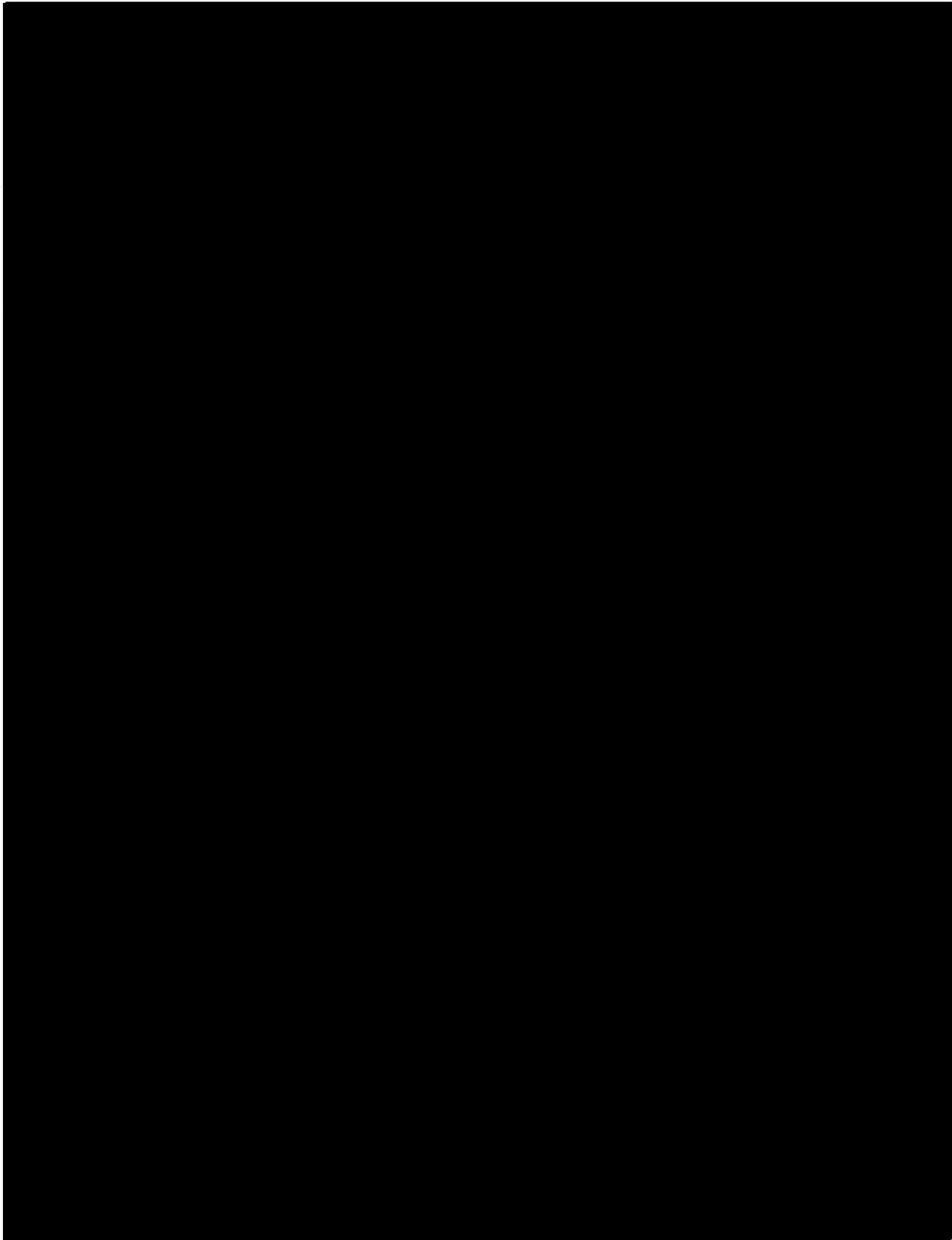


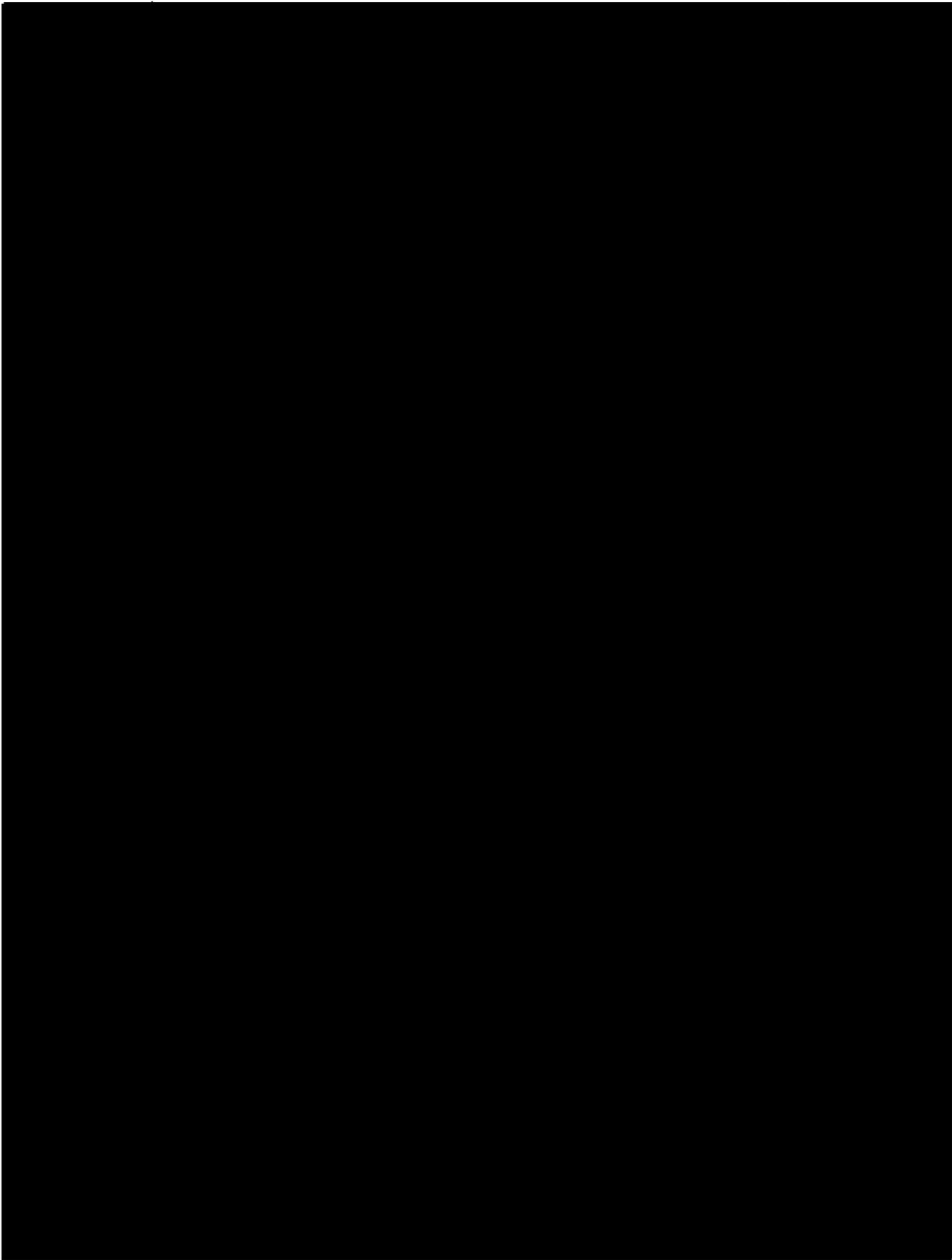
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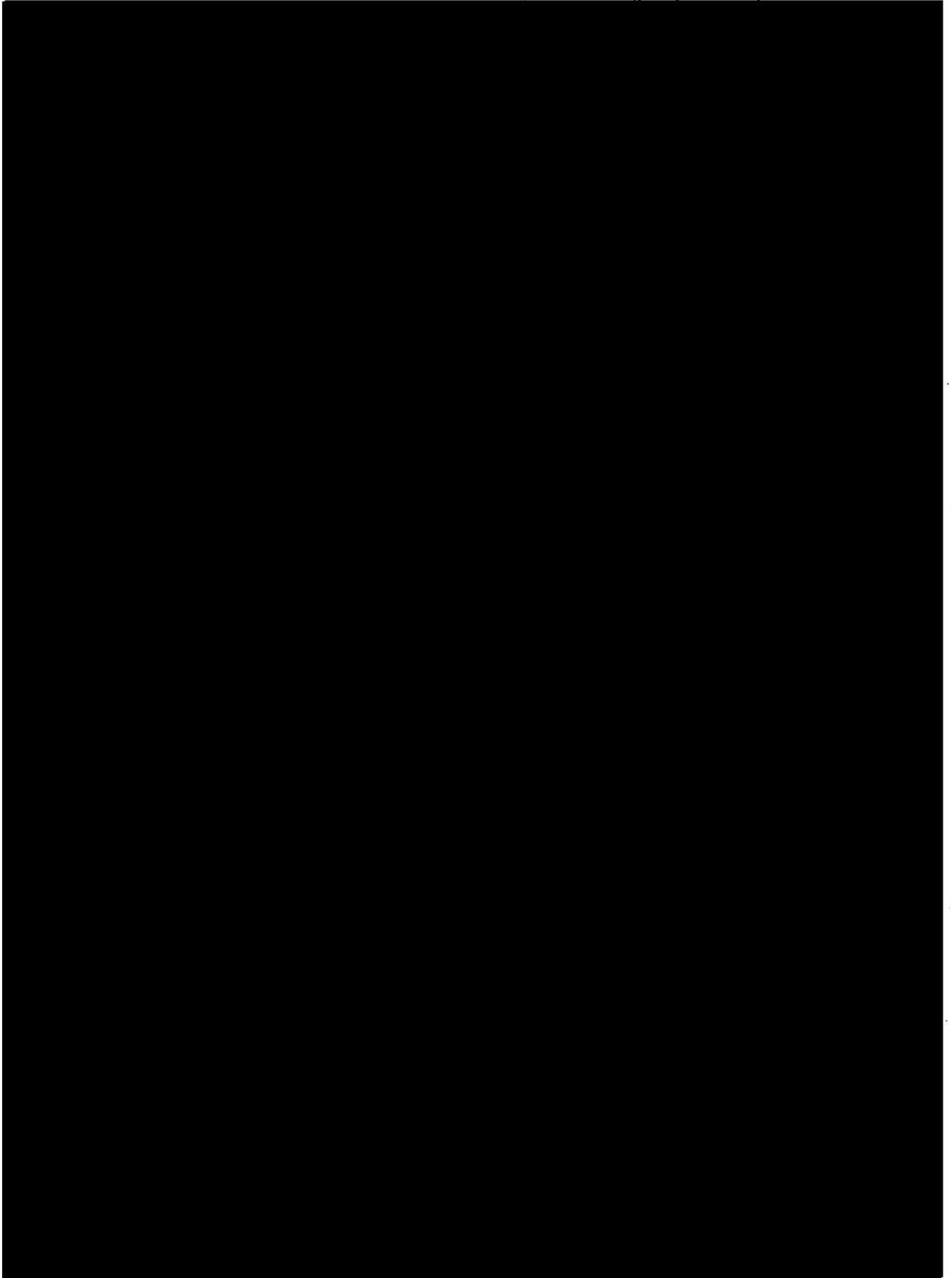


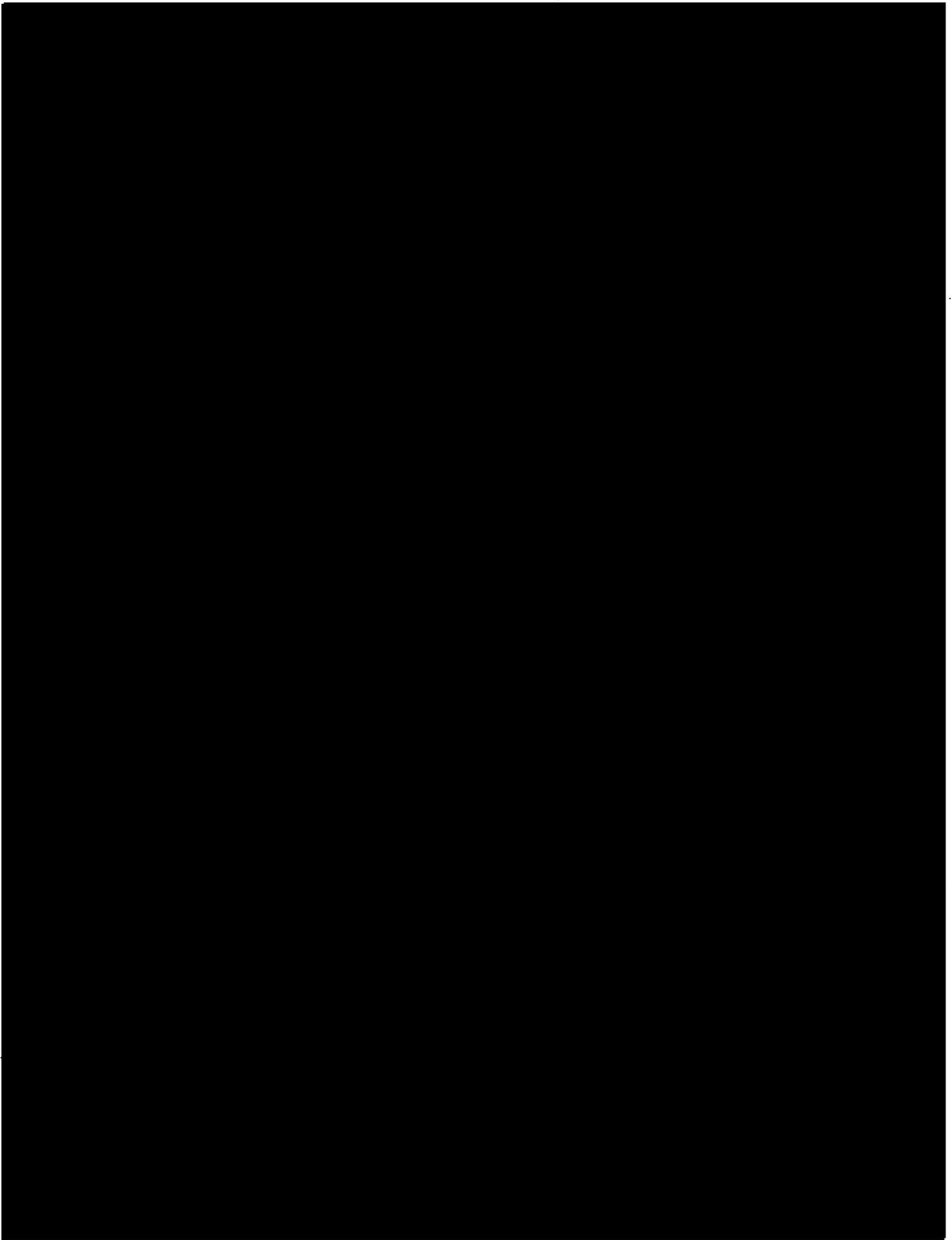










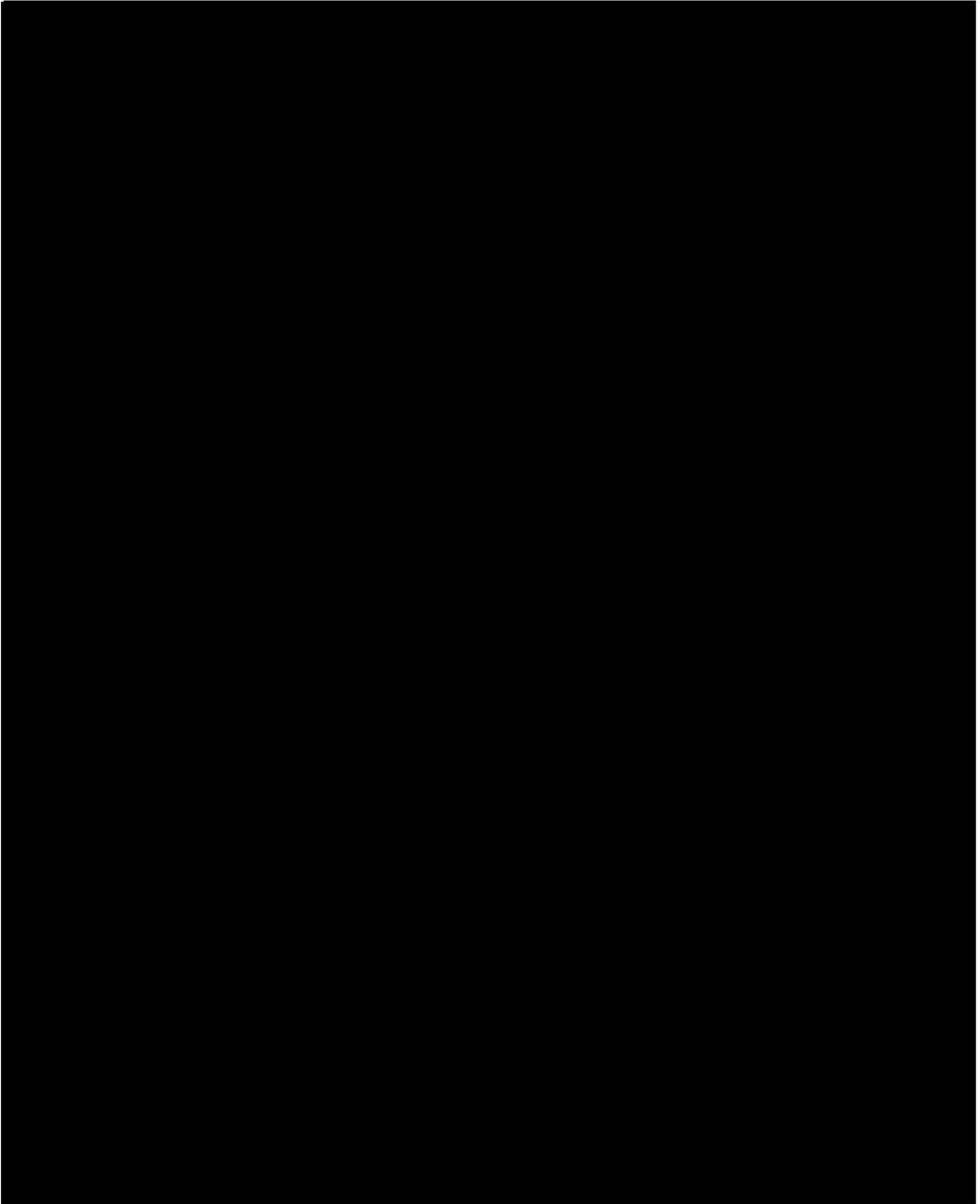


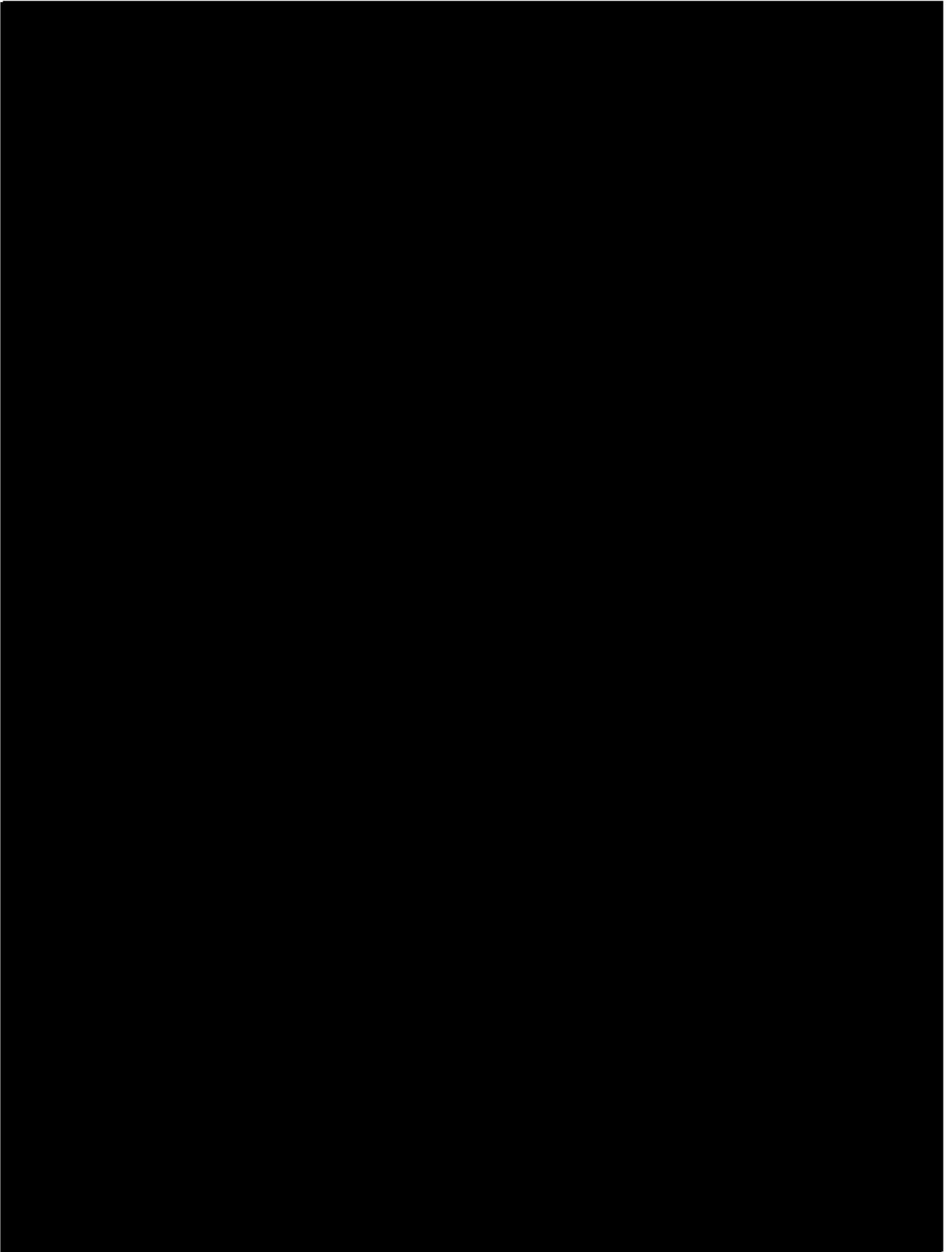
# **EXHIBIT**

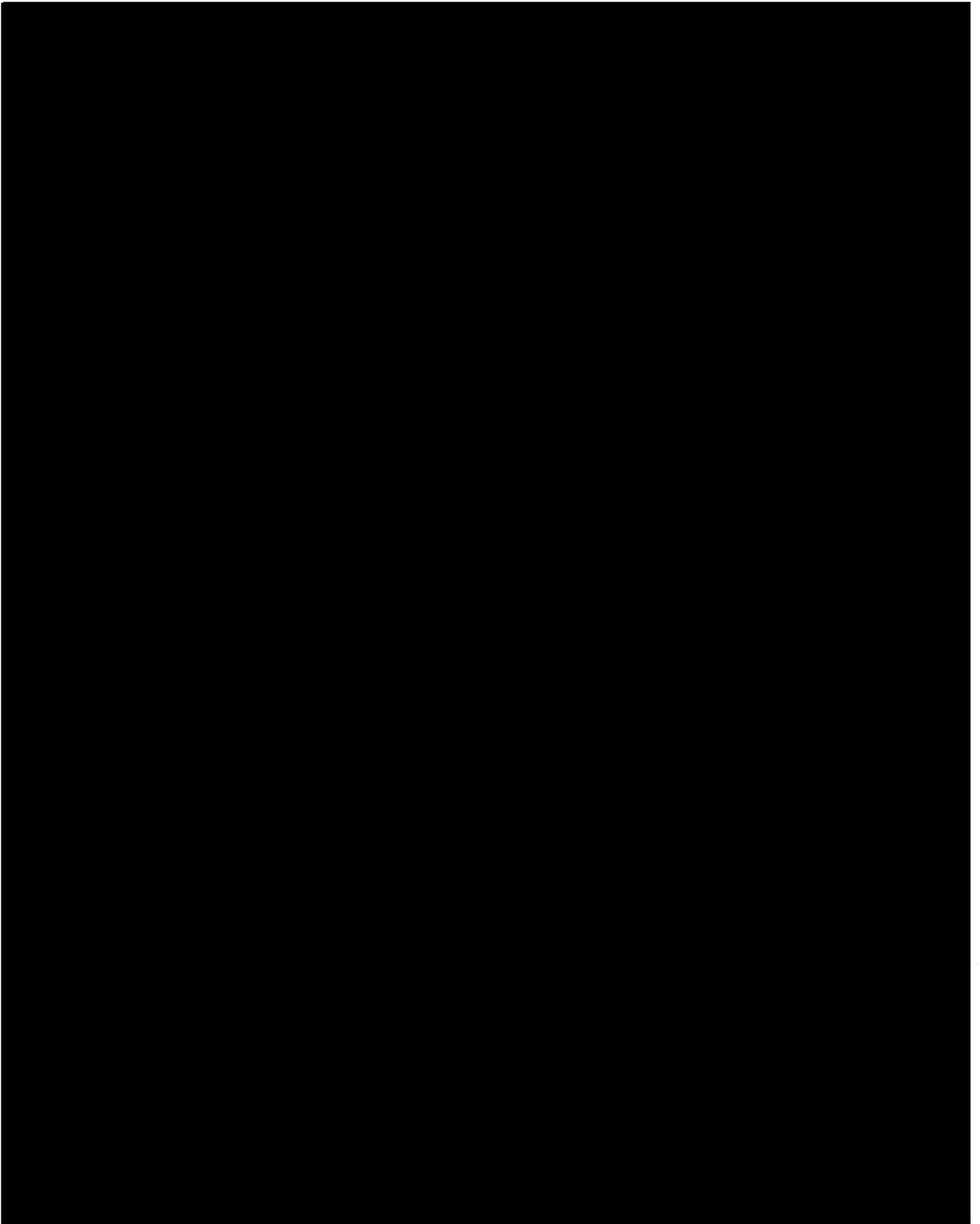
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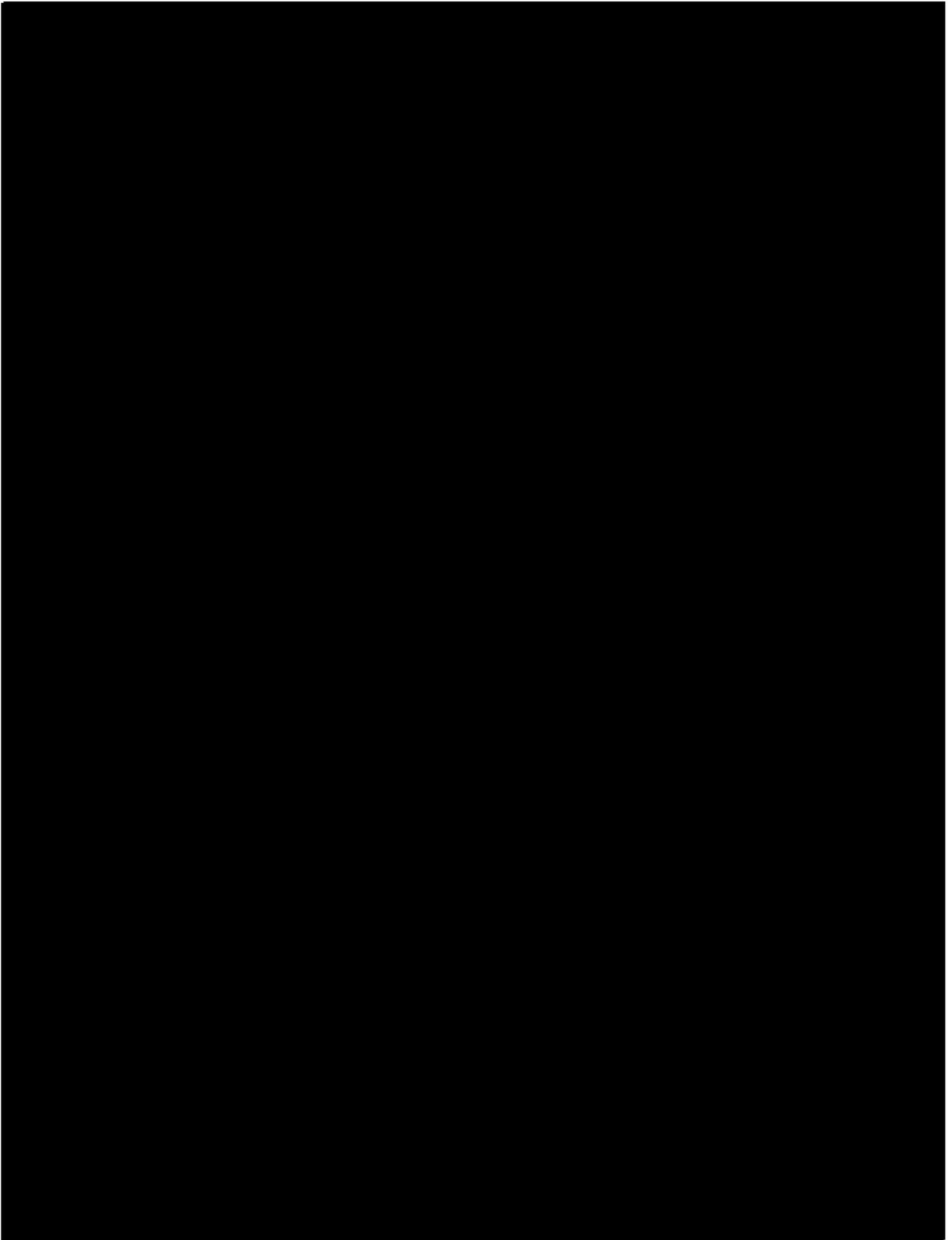
GeoWarehouse® Online Service

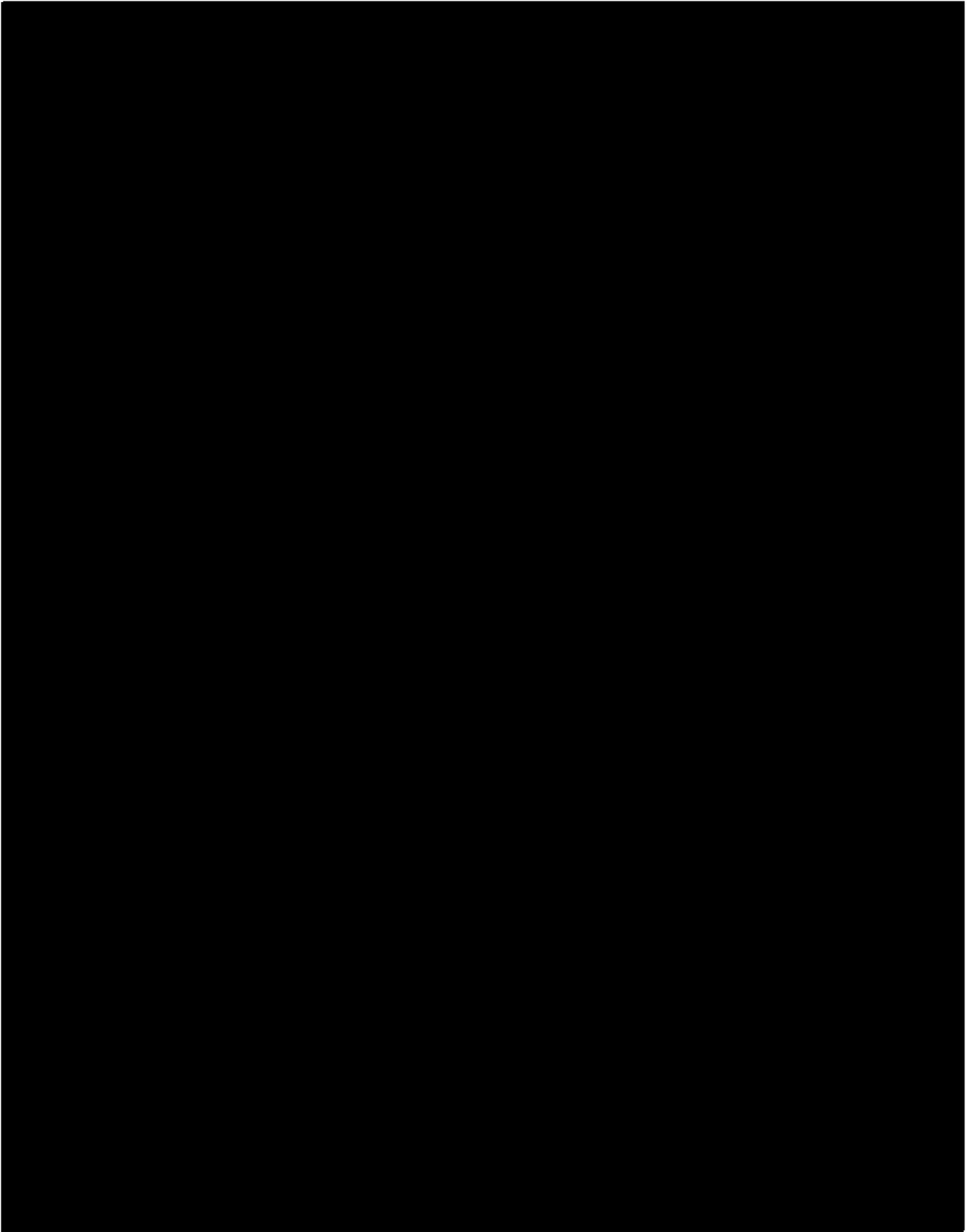
LEGAL TERMS AND CONDITIONS

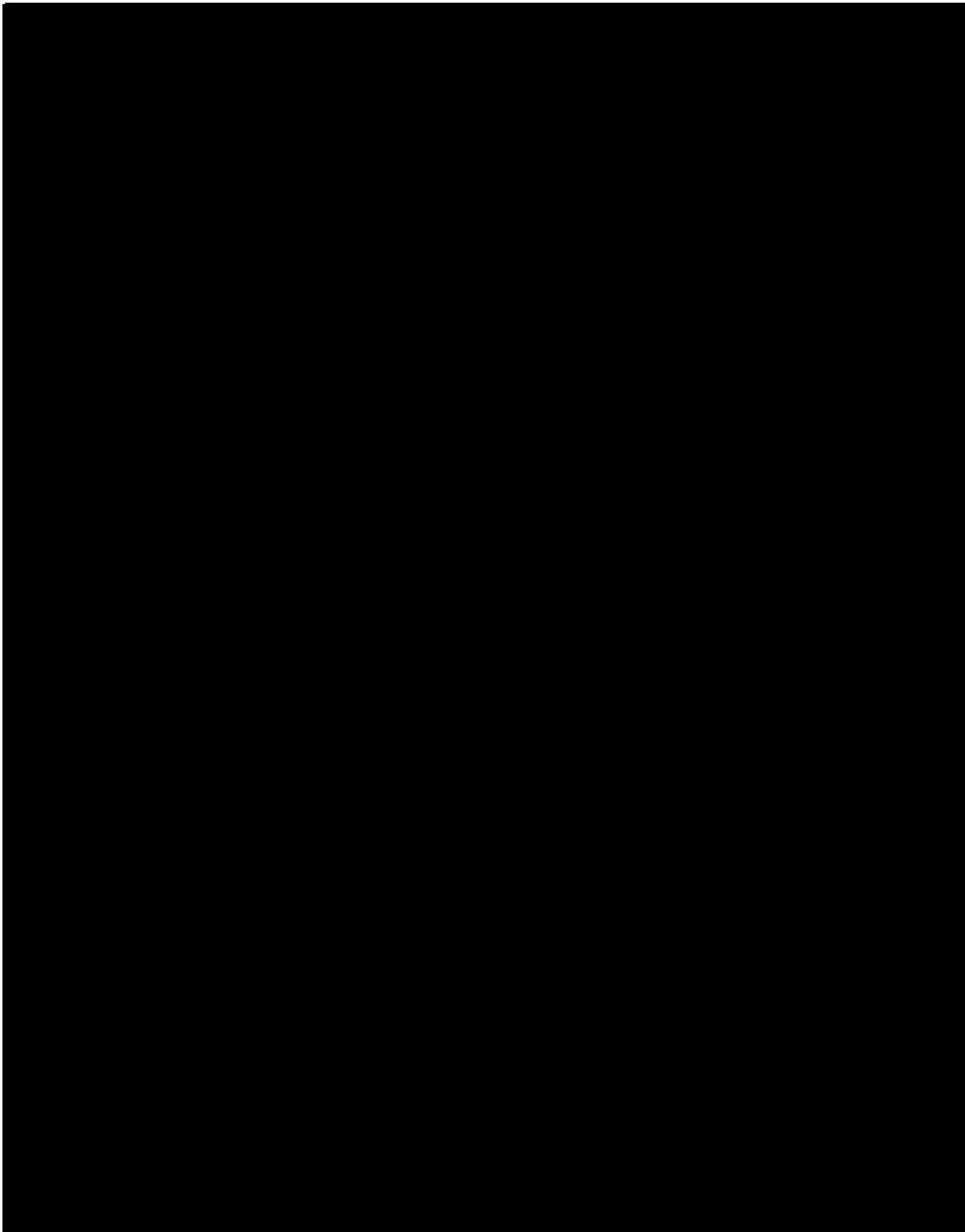


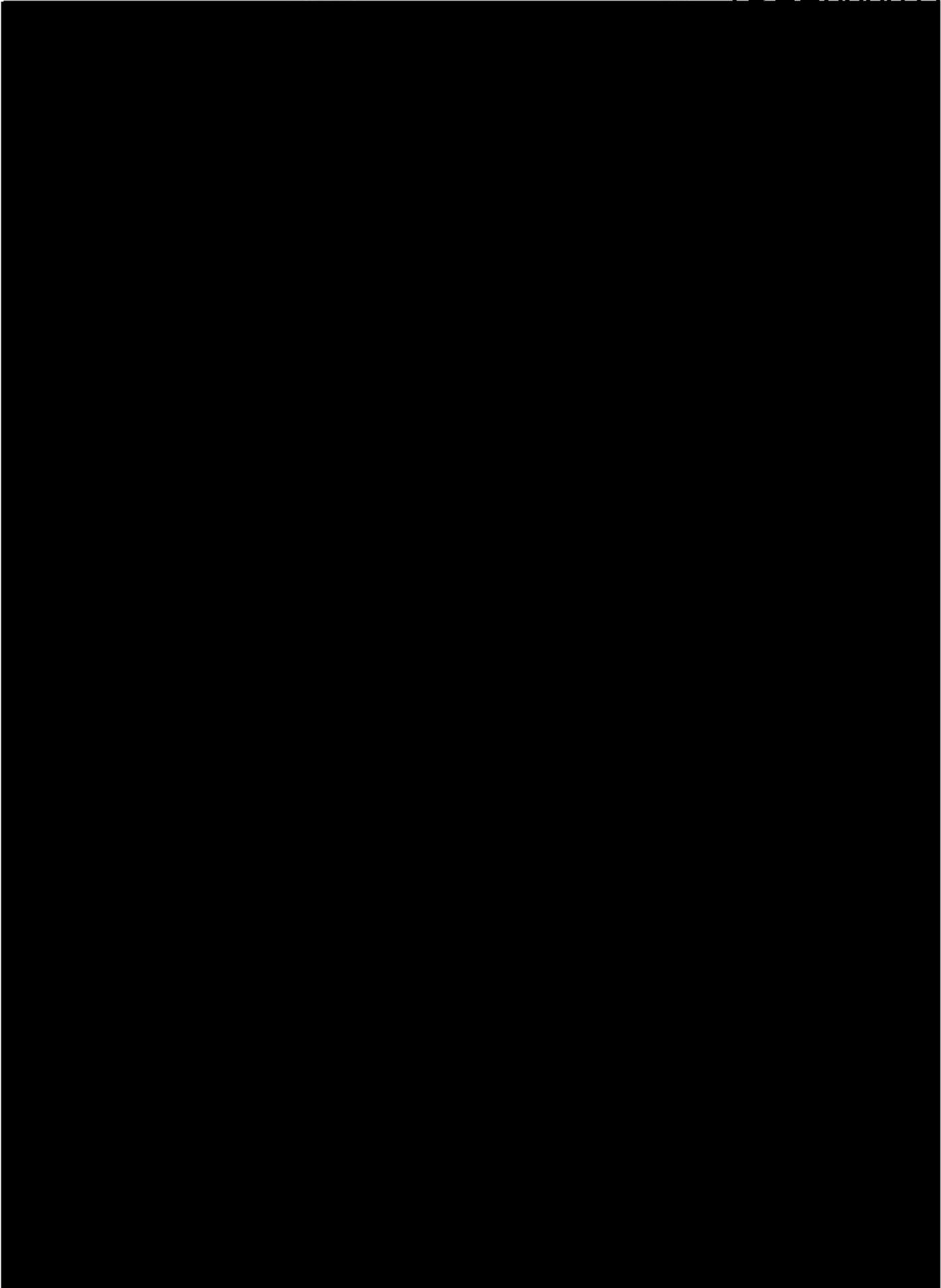


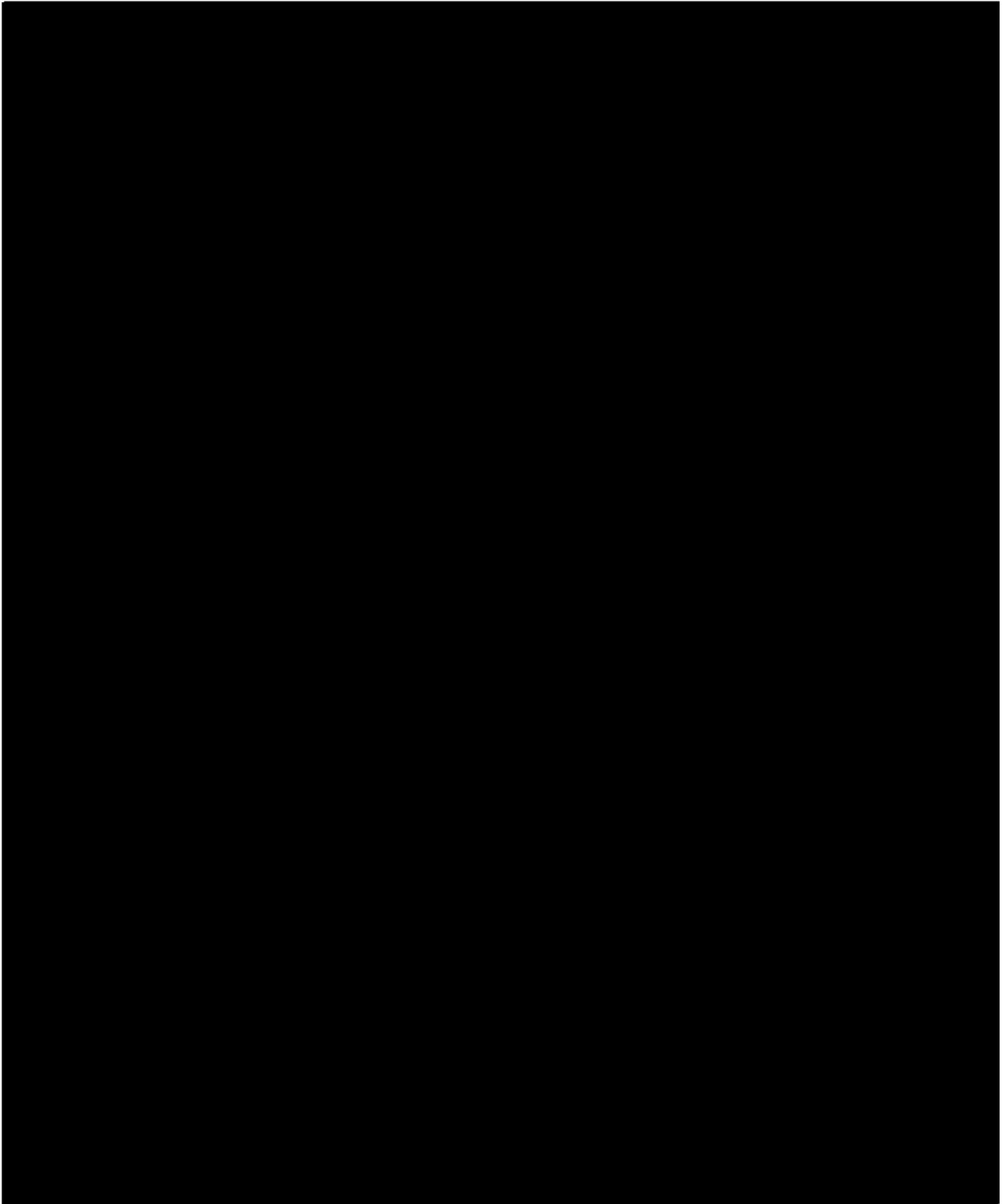












# EXHIBIT

# Q

# Market Watch

December 2011

For All TREB Member Inquiries:  
276 (416) 443-8152

For All Media/Public Inquiries:  
(416) 443-8158



## Economic Indicators

Real GDP Growth <sup>i</sup>		
Q3 2011	▲	3.5%
Toronto Employment Growth <sup>ii</sup>		
November 2011	▲	0.3%
Toronto Unemployment Rate		
November 2011	▲	8.4%
Inflation (Yr./Yr. CPI Growth) <sup>ii</sup>		
November 2011	-	2.9%
Bank of Canada Overnight Rate <sup>iii</sup>		
December 2011	-	1.0%
Prime Rate <sup>iv</sup>		
December 2011	-	3.0%
Mortgage Rates (Dec. 2011) <sup>iv</sup>		
Chartered Bank Fixed Rates		
1 Year	-	3.50%
3 Year	-	4.05%
5 Year	-	5.29%

### Sources and Notes:

<sup>i</sup>Statistics Canada, Quarter-over-quarter growth, annualized

<sup>ii</sup>Statistics Canada, Year-over-year growth for the most recently reported month

<sup>iii</sup>Bank of Canada, Rate from most recent Bank of Canada announcement

<sup>iv</sup>Bank of Canada, rates for most recently completed month

## Second-Best Year on Record for Sales

Toronto, January 5, 2012 — Greater Toronto REALTORS® reported 4,718 transactions through the TorontoMLS® system in December 2011. The December result capped off the second-best year on record under the current Toronto Real Estate Board (TREB) boundaries. Total sales for 2011 amounted to 89,347 – up four per cent in comparison to 2010.

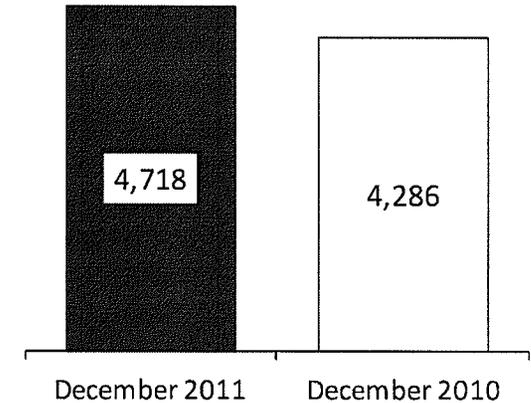
“Low borrowing costs kept Buyers confident in their ability to comfortably cover their mortgage payments along with other major housing costs,” said TREB President Richard Silver. “If Buyers had not been constrained by a shortage of listings over the past 12 months, we would have been flirting with a new sales record in the Greater Toronto Area,” added Silver.

The average selling price in December was \$451,436 – up four per cent compared to December 2010. For all of 2011, the average selling price was \$465,412, an increase of eight per cent in comparison to the average of \$431,276 in 2010.

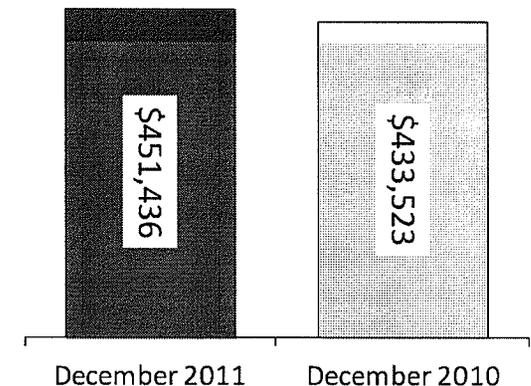
“Months of inventory remained below the pre-recession norm in 2011. Very tight market conditions meant substantial competition between Buyers and strong upward pressure on selling prices,” said Jason Mercer, TREB’s Senior Manager of Market Analysis.

“TREB’s baseline forecast for 2012 is for an average price of \$485,000, representing a more moderate four per cent annual rate of price growth. This baseline view is subject to a heightened degree of risk given the uncertain global economic outlook,” continued Mercer.

## TorontoMLS® Sales Activity<sup>1,7</sup>



## TorontoMLS® Average Price<sup>1,7</sup>



## Sales & Average Price By Major Home Type<sup>1,7</sup>

### December 2011

	Sales			Average Price		
	416	905	Total	416	905	Total
Detached	581	1,512	2,093	\$701,846	\$525,360	\$574,351
Yr./Yr. % Change	4%	12%	10%	3%	4%	3%
Semi-Detached	202	289	491	\$517,152	\$365,417	\$427,842
Yr./Yr. % Change	20%	12%	15%	10%	9%	10%
Townhouse	199	517	716	\$372,164	\$333,359	\$344,144
Yr./Yr. % Change	3%	20%	15%	-7%	8%	2%
Condo Apartment	943	363	1,306	\$351,104	\$275,173	\$330,000
Yr./Yr. % Change	7%	-3%	4%	3%	9%	5%

## Year-Over-Year Summary<sup>1,7</sup>

	2011	2010	% Chg.
Sales	4,718	4,286	10.1%
New Listings	4,811	4,229	13.8%
Active Listings	12,868	11,196	14.9%
Average Price	\$451,436	\$433,523	4.1%
Average DOM	32	37	-13.0%

TREB00040782

SALES BY PRICE RANGE AND HOUSE TYPE<sup>1,7</sup>

DECEMBER 2011

Price Range	Detached	Semi-Detached	Att/Row/Twnhouse	Condo Townhouse	Condo Apt	Link	Co-op Apt	Det Condo	Co-ownership Apt	Total
\$0 to \$99,999	5	2	1	3	17	0	1	0	1	30
\$100,000 to \$199,999	47	15	4	56	192	1	3	0	5	323
\$200,000 to \$299,999	199	49	72	151	440	28	1	0	1	941
\$300,000 to \$399,999	398	195	118	137	387	16	3	4	0	1,258
\$400,000 to \$499,999	424	137	73	33	148	33	0	2	0	850
\$500,000 to \$599,999	333	45	24	11	59	13	0	0	0	485
\$600,000 to \$699,999	238	22	14	6	25	0	0	0	0	305
\$700,000 to \$799,999	129	4	3	5	17	0	0	0	0	158
\$800,000 to \$899,999	95	12	1	0	4	0	0	0	0	112
\$900,000 to \$999,999	59	2	1	0	3	0	0	0	0	65
\$1,000,000 to \$1,249,999	69	4	0	1	8	0	0	0	0	82
\$1,250,000 to \$1,499,999	43	3	0	1	0	0	0	0	0	47
\$1,500,000 to \$1,749,999	25	0	0	0	3	0	0	0	0	28
\$1,750,000 to \$1,999,999	9	0	0	0	1	0	0	0	0	10
\$2,000,000 +	20	1	1	0	2	0	0	0	0	24
<b>Total Sales</b>	<b>2,093</b>	<b>491</b>	<b>312</b>	<b>404</b>	<b>1,306</b>	<b>91</b>	<b>8</b>	<b>6</b>	<b>7</b>	<b>4,718</b>
<b>Share of Total Sales</b>	<b>44.4%</b>	<b>10.4%</b>	<b>6.6%</b>	<b>8.6%</b>	<b>27.7%</b>	<b>1.9%</b>	<b>0.2%</b>	<b>0.1%</b>	<b>0.1%</b>	<b>-</b>
<b>Average Price</b>	<b>\$574,351</b>	<b>\$427,842</b>	<b>\$388,168</b>	<b>\$310,146</b>	<b>\$330,000</b>	<b>\$386,891</b>	<b>\$206,750</b>	<b>\$370,833</b>	<b>\$173,557</b>	<b>\$451,436</b>

SALES BY PRICE RANGE AND HOUSE TYPE<sup>1,7</sup>

YEAR-TO-DATE, 2011

Price Range	Detached	Semi-Detached	Att/Row/Twnhouse	Condo Townhouse	Condo Apt	Link	Co-op Apt	Det Condo	Co-ownership Apt	Total
\$0 to \$99,999	33	5	6	44	230	0	15	0	5	338
\$100,000 to \$199,999	804	229	82	886	3,277	21	58	4	28	5,389
\$200,000 to \$299,999	3,759	1,088	1,326	2,527	7,441	356	25	32	41	16,595
\$300,000 to \$399,999	8,038	3,853	2,471	2,510	6,671	344	24	29	7	23,947
\$400,000 to \$499,999	8,717	2,769	1,507	576	2,616	542	7	25	0	16,759
\$500,000 to \$599,999	7,025	848	560	220	1,033	193	5	7	1	9,892
\$600,000 to \$699,999	4,655	493	237	132	432	27	0	0	0	5,976
\$700,000 to \$799,999	2,708	266	96	64	222	3	0	3	0	3,362
\$800,000 to \$899,999	1,714	133	57	26	90	0	0	2	0	2,022
\$900,000 to \$999,999	1,021	45	23	13	59	0	0	0	0	1,161
\$1,000,000 to \$1,249,999	1,413	74	18	16	97	0	1	0	0	1,619
\$1,250,000 to \$1,499,999	809	32	10	9	36	0	0	0	0	896
\$1,500,000 to \$1,749,999	436	18	6	2	35	0	0	0	0	497
\$1,750,000 to \$1,999,999	244	12	2	0	18	0	0	1	0	277
\$2,000,000 +	551	19	1	1	45	0	0	0	0	617
<b>Total Sales</b>	<b>41,927</b>	<b>9,884</b>	<b>6,402</b>	<b>7,026</b>	<b>22,302</b>	<b>1,486</b>	<b>135</b>	<b>103</b>	<b>82</b>	<b>89,347</b>
<b>Share of Total Sales</b>	<b>46.9%</b>	<b>11.1%</b>	<b>7.2%</b>	<b>7.9%</b>	<b>25.0%</b>	<b>1.7%</b>	<b>0.2%</b>	<b>0.1%</b>	<b>0.1%</b>	<b>-</b>
<b>Average Price</b>	<b>\$584,011</b>	<b>\$431,811</b>	<b>\$396,554</b>	<b>\$317,471</b>	<b>\$331,345</b>	<b>\$391,937</b>	<b>\$225,547</b>	<b>\$385,026</b>	<b>\$218,248</b>	<b>\$465,412</b>

## SUMMARY OF EXISTING HOME TRANSACTIONS

ALL HOME TYPES, DECEMBER 2011  
ALL TREB AREAS

	Number of Sales	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	SNLR (Trend) <sup>3</sup>	Active Listings <sup>3</sup>	Mos. Inv. (Trend) <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>4,718</b>	<b>\$2,129,875,371</b>	<b>\$451,436</b>	<b>\$384,250</b>	<b>4,811</b>	<b>60.8%</b>	<b>12,868</b>	<b>2.2</b>	<b>98%</b>	<b>32</b>
<b>Halton Region</b>	<b>240</b>	<b>\$116,791,934</b>	<b>\$486,633</b>	<b>\$443,500</b>	<b>233</b>	<b>62.8%</b>	<b>797</b>	<b>2.3</b>	<b>97%</b>	<b>35</b>
Burlington	20	\$7,392,594	\$369,630	\$392,000	33	66.5%	101	2.4	98%	41
Halton Hills	43	\$19,700,100	\$458,142	\$479,900	36	66.7%	163	2.5	97%	42
Milton	74	\$31,616,400	\$427,249	\$395,000	66	64.7%	166	1.7	98%	26
Oakville	103	\$58,082,840	\$563,911	\$478,000	98	58.9%	367	2.7	97%	38
<b>Peel Region</b>	<b>1,051</b>	<b>\$437,414,758</b>	<b>\$416,189</b>	<b>\$381,900</b>	<b>1,098</b>	<b>60.8%</b>	<b>2,572</b>	<b>2.0</b>	<b>97%</b>	<b>30</b>
Brampton	447	\$171,731,904	\$384,188	\$371,000	514	59.3%	1,079	2.0	98%	30
Caledon	54	\$29,056,013	\$538,074	\$481,500	37	57.3%	194	3.6	96%	55
Mississauga	550	\$236,626,841	\$430,231	\$378,500	547	62.3%	1,299	1.9	97%	28
<b>City of Toronto</b>	<b>1,948</b>	<b>\$923,877,841</b>	<b>\$474,270</b>	<b>\$385,000</b>	<b>2,019</b>	<b>60.0%</b>	<b>5,253</b>	<b>2.2</b>	<b>99%</b>	<b>30</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE:</b> 										
<b>York Region</b>	<b>827</b>	<b>\$445,821,943</b>	<b>\$539,083</b>	<b>\$474,000</b>	<b>782</b>	<b>64.0%</b>	<b>2,004</b>	<b>2.0</b>	<b>97%</b>	<b>31</b>
Aurora	40	\$20,815,088	\$520,377	\$440,400	35	69.1%	94	1.9	96%	30
E. Gwillimbury	14	\$5,305,500	\$378,964	\$331,750	15	58.9%	55	3.4	98%	38
Georgina	44	\$12,104,500	\$275,102	\$257,500	54	59.4%	170	3.7	97%	45
King	18	\$15,884,800	\$882,489	\$795,000	21	41.6%	135	7.6	92%	84
Markham	235	\$129,361,217	\$550,473	\$490,000	221	64.4%	493	1.6	98%	31
Newmarket	64	\$24,829,700	\$387,964	\$382,750	52	75.4%	95	1.3	98%	25
Richmond Hill	166	\$102,687,895	\$618,602	\$565,300	145	64.1%	312	1.6	97%	27
Vaughan	199	\$111,957,843	\$562,602	\$515,000	189	63.5%	503	1.9	97%	27
Whitchurch-Stouffville	47	\$22,875,400	\$486,711	\$439,900	50	59.1%	147	3.1	97%	39
<b>Durham Region</b>	<b>517</b>	<b>\$163,265,162</b>	<b>\$315,793</b>	<b>\$290,000</b>	<b>548</b>	<b>58.3%</b>	<b>1,592</b>	<b>2.6</b>	<b>97%</b>	<b>37</b>
Ajax	92	\$30,367,413	\$330,081	\$305,257	98	60.4%	197	2.0	98%	25
Brock	9	\$3,101,500	\$344,611	\$237,500	11	38.4%	111	9.2	95%	120
Clarington	80	\$25,243,650	\$315,546	\$263,500	93	53.9%	275	2.9	98%	43
Oshawa	124	\$29,972,301	\$241,712	\$229,450	145	58.1%	380	2.7	98%	37
Pickering	77	\$25,957,890	\$337,115	\$320,300	75	63.0%	198	2.0	98%	32
Scugog	12	\$4,849,400	\$404,117	\$339,000	25	49.6%	90	4.9	96%	53
Uxbridge	16	\$7,512,488	\$469,531	\$403,750	15	52.6%	104	4.8	96%	39
Whitby	107	\$36,260,520	\$338,883	\$327,000	86	62.8%	237	1.9	97%	36
<b>Dufferin County</b>	<b>34</b>	<b>\$10,449,400</b>	<b>\$307,335</b>	<b>\$293,250</b>	<b>22</b>	<b>66.2%</b>	<b>130</b>	<b>2.6</b>	<b>98%</b>	<b>53</b>
Orangeville	34	\$10,449,400	\$307,335	\$293,250	22	66.2%	130	2.6	98%	53
<b>Simcoe County</b>	<b>101</b>	<b>\$32,254,333</b>	<b>\$319,350</b>	<b>\$290,000</b>	<b>109</b>	<b>56.8%</b>	<b>520</b>	<b>4.4</b>	<b>96%</b>	<b>66</b>
Adjala-Tosorontio	14	\$5,091,450	\$363,675	\$330,000	7	47.0%	75	7.3	94%	96
Bradford West Gwillimbury	28	\$9,845,998	\$351,643	\$337,000	24	69.1%	84	2.5	96%	33
Essa	9	\$3,807,375	\$423,042	\$300,000	24	49.0%	73	5.6	96%	95
Innisfil	27	\$6,799,250	\$251,824	\$259,000	26	50.3%	157	5.3	97%	65
New Tecumseth	23	\$6,710,260	\$291,750	\$287,150	28	61.8%	131	4.0	97%	80

SUMMARY OF EXISTING HOME TRANSACTIONS

ALL HOME TYPES, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Number of Sales	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	SNLR (Trend) <sup>3</sup>	Active Listings <sup>3</sup>	Mos. Inv. (Trend) <sup>9</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>4,718</b>	<b>\$2,129,875,371</b>	<b>\$451,436</b>	<b>\$384,250</b>	<b>4,811</b>	<b>60.8%</b>	<b>12,868</b>	<b>2.2</b>	<b>98%</b>	<b>32</b>
<b>City of Toronto Total</b>	<b>1,948</b>	<b>\$923,877,841</b>	<b>\$474,270</b>	<b>\$385,000</b>	<b>2,019</b>	<b>60.0%</b>	<b>5,253</b>	<b>2.2</b>	<b>99%</b>	<b>30</b>
<b>Toronto West</b>	<b>515</b>	<b>\$209,643,241</b>	<b>\$407,074</b>	<b>\$369,000</b>	<b>514</b>	<b>58.2%</b>	<b>1,523</b>	<b>2.6</b>	<b>98%</b>	<b>31</b>
Toronto W01	25	\$14,484,975	\$579,399	\$549,000	29	59.8%	75	2.1	101%	20
Toronto W02	46	\$23,235,600	\$505,122	\$483,000	37	70.4%	77	1.2	101%	20
Toronto W03	39	\$13,961,000	\$357,974	\$346,000	39	58.7%	108	2.2	97%	18
Toronto W04	47	\$15,909,001	\$338,489	\$321,800	49	59.1%	162	2.8	99%	35
Toronto W05	77	\$24,921,700	\$323,658	\$345,000	79	54.4%	240	3.4	97%	42
Toronto W06	65	\$26,006,310	\$400,097	\$381,000	101	50.0%	296	3.2	98%	32
Toronto W07	21	\$14,482,600	\$689,648	\$645,000	15	68.3%	29	1.5	101%	21
Toronto W08	108	\$50,880,455	\$471,115	\$381,250	74	62.1%	248	2.2	97%	32
Toronto W09	32	\$10,752,000	\$336,000	\$361,500	33	54.1%	112	3.3	97%	31
Toronto W10	55	\$15,009,600	\$272,902	\$272,000	58	56.0%	176	3.2	96%	35
<b>Toronto Central</b>	<b>871</b>	<b>\$493,498,950</b>	<b>\$566,589</b>	<b>\$417,000</b>	<b>942</b>	<b>60.1%</b>	<b>2,461</b>	<b>2.1</b>	<b>99%</b>	<b>31</b>
Toronto C01	236	\$102,494,187	\$434,297	\$385,450	282	55.4%	819	2.6	98%	32
Toronto C02	42	\$46,393,636	\$1,104,610	\$734,500	52	56.4%	166	2.7	97%	37
Toronto C03	28	\$15,330,500	\$547,518	\$456,500	24	58.7%	89	2.3	100%	32
Toronto C04	51	\$46,365,000	\$909,118	\$850,000	57	60.1%	143	2.0	100%	34
Toronto C06	13	\$7,581,490	\$583,192	\$640,000	12	59.4%	49	2.2	98%	40
Toronto C07	71	\$35,469,990	\$499,577	\$335,000	67	65.5%	152	1.8	98%	24
Toronto C08	83	\$36,649,491	\$441,560	\$415,000	80	62.5%	213	2.0	99%	37
Toronto C09	17	\$16,275,400	\$957,376	\$525,000	7	65.4%	45	2.0	98%	25
Toronto C10	33	\$21,410,676	\$648,808	\$500,000	15	69.9%	53	1.5	98%	28
Toronto C11	25	\$10,782,719	\$431,309	\$250,000	23	63.7%	62	1.9	98%	36
Toronto C12	20	\$28,581,698	\$1,429,085	\$1,200,555	23	53.2%	105	3.4	98%	27
Toronto C13	44	\$16,661,500	\$378,670	\$337,500	41	64.7%	91	1.8	99%	27
Toronto C14	113	\$60,237,988	\$533,080	\$386,500	111	63.5%	243	1.6	99%	29
Toronto C15	95	\$49,264,675	\$518,576	\$425,000	148	60.5%	231	1.8	101%	26
<b>Toronto East</b>	<b>562</b>	<b>\$220,735,650</b>	<b>\$392,768</b>	<b>\$360,000</b>	<b>563</b>	<b>61.6%</b>	<b>1,269</b>	<b>1.9</b>	<b>99%</b>	<b>27</b>
Toronto E01	44	\$22,271,525	\$506,171	\$474,950	51	60.8%	92	1.6	103%	15
Toronto E02	42	\$26,095,200	\$621,314	\$513,900	32	63.8%	74	1.2	99%	24
Toronto E03	58	\$29,810,775	\$513,979	\$448,500	46	62.2%	95	1.5	103%	16
Toronto E04	68	\$21,516,150	\$316,414	\$352,250	66	62.4%	158	2.0	98%	31
Toronto E05	67	\$25,569,138	\$381,629	\$328,000	49	70.7%	86	1.4	98%	25
Toronto E06	18	\$7,927,800	\$440,433	\$399,450	18	60.3%	36	1.8	97%	21
Toronto E07	60	\$21,232,075	\$353,868	\$312,250	51	58.7%	173	2.1	100%	33
Toronto E08	42	\$14,900,490	\$354,774	\$319,250	45	59.0%	100	2.5	96%	33
Toronto E09	70	\$21,333,150	\$304,759	\$298,500	97	59.5%	219	2.2	98%	27
Toronto E10	33	\$11,377,250	\$344,765	\$339,000	44	61.1%	90	2.0	99%	37
Toronto E11	60	\$18,702,097	\$311,702	\$277,000	64	58.8%	146	2.4	98%	32

SUMMARY OF EXISTING HOME TRANSACTIONS

ALL HOME TYPES, YEAR-TO-DATE 2011  
ALL TREB AREAS

	Number of Sales	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>89,347</b>	<b>\$41,583,198,363</b>	<b>\$465,412</b>	<b>\$391,000</b>	<b>146,937</b>	<b>99%</b>	<b>26</b>
<b>Halton Region</b>	<b>5,199</b>	<b>\$2,688,440,863</b>	<b>\$517,107</b>	<b>\$440,000</b>	<b>8,309</b>	<b>98%</b>	<b>27</b>
Burlington	626	\$268,681,258	\$429,203	\$370,000	943	97%	30
Halton Hills	935	\$410,274,791	\$438,797	\$410,000	1,401	98%	32
Milton	1,586	\$682,538,594	\$430,352	\$404,200	2,480	99%	20
Oakville	2,052	\$1,326,946,220	\$646,660	\$548,000	3,485	97%	29
<b>Peel Region</b>	<b>18,910</b>	<b>\$7,725,560,137</b>	<b>\$408,544</b>	<b>\$371,500</b>	<b>31,145</b>	<b>98%</b>	<b>24</b>
Brampton	7,646	\$2,902,211,838	\$379,573	\$361,000	12,939	98%	23
Caledon	818	\$424,581,268	\$519,048	\$464,000	1,433	97%	34
Mississauga	10,446	\$4,398,767,031	\$421,096	\$376,000	16,773	98%	23
<b>City of Toronto</b>	<b>36,018</b>	<b>\$18,079,988,933</b>	<b>\$501,971</b>	<b>\$399,000</b>	<b>60,003</b>	<b>99%</b>	<b>25</b>
! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: 							
<b>York Region</b>	<b>17,000</b>	<b>\$9,191,635,574</b>	<b>\$540,684</b>	<b>\$481,000</b>	<b>26,612</b>	<b>98%</b>	<b>24</b>
Aurora	970	\$511,252,852	\$527,065	\$447,000	1,403	98%	25
E. Gwillimbury	298	\$130,994,178	\$439,578	\$382,250	507	97%	38
Georgina	864	\$249,378,633	\$288,633	\$270,000	1,455	97%	42
King	254	\$201,318,177	\$792,591	\$681,500	610	94%	56
Markham	4,742	\$2,603,306,507	\$548,989	\$494,000	7,385	99%	20
Newmarket	1,397	\$580,099,143	\$415,246	\$385,900	1,854	98%	24
Richmond Hill	3,529	\$2,123,944,740	\$601,855	\$539,800	5,518	99%	21
Vaughan	4,198	\$2,381,348,204	\$567,258	\$520,000	6,613	98%	23
Whitchurch-Stouffville	748	\$409,993,140	\$548,119	\$460,000	1,267	97%	35
<b>Durham Region</b>	<b>9,807</b>	<b>\$3,111,094,425</b>	<b>\$317,232</b>	<b>\$292,900</b>	<b>16,747</b>	<b>98%</b>	<b>31</b>
Ajax	1,773	\$615,364,102	\$347,075	\$327,500	2,936	98%	25
Brock	178	\$46,782,857	\$262,825	\$220,000	466	95%	73
Clarington	1,456	\$413,357,784	\$283,900	\$262,900	2,609	98%	34
Oshawa	2,404	\$586,379,716	\$243,918	\$230,000	4,139	98%	32
Pickering	1,323	\$493,070,116	\$372,691	\$343,000	2,101	98%	26
Scugog	280	\$104,373,810	\$372,764	\$329,000	582	97%	52
Uxbridge	317	\$142,149,898	\$448,422	\$397,000	606	97%	51
Whitby	2,076	\$709,616,142	\$341,819	\$323,700	3,308	98%	24
<b>Dufferin County</b>	<b>567</b>	<b>\$173,454,093</b>	<b>\$305,916</b>	<b>\$292,000</b>	<b>857</b>	<b>98%</b>	<b>36</b>
Orangeville	567	\$173,454,093	\$305,916	\$292,000	857	98%	36
<b>Simcoe County</b>	<b>1,846</b>	<b>\$613,024,338</b>	<b>\$332,083</b>	<b>\$300,000</b>	<b>3,264</b>	<b>97%</b>	<b>52</b>
Adjala-Tosorontio	154	\$63,114,000	\$409,831	\$380,000	331	97%	74
Bradford West Gwillimbury	488	\$178,487,925	\$365,754	\$340,000	713	98%	35
Essa	231	\$69,204,080	\$299,585	\$255,000	473	97%	59
Innisfil	468	\$145,819,355	\$311,580	\$281,750	930	96%	59
New Tecumseth	505	\$156,398,978	\$309,701	\$285,000	817	97%	51

## SUMMARY OF EXISTING HOME TRANSACTIONS

ALL HOME TYPES, YEAR-TO-DATE 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Number of Sales	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>89,347</b>	<b>\$41,583,198,363</b>	<b>\$465,412</b>	<b>\$391,000</b>	<b>146,937</b>	<b>99%</b>	<b>26</b>
<b>City of Toronto Total</b>	<b>36,018</b>	<b>\$18,079,988,933</b>	<b>\$501,971</b>	<b>\$399,000</b>	<b>60,003</b>	<b>99%</b>	<b>25</b>
<b>Toronto West</b>	<b>8,875</b>	<b>\$3,858,959,976</b>	<b>\$434,812</b>	<b>\$380,000</b>	<b>15,244</b>	<b>99%</b>	<b>28</b>
Toronto W01	660	\$358,250,777	\$542,804	\$451,000	1,103	102%	21
Toronto W02	888	\$482,322,274	\$543,156	\$500,084	1,262	102%	17
Toronto W03	766	\$278,509,392	\$363,589	\$354,000	1,304	99%	25
Toronto W04	924	\$312,526,466	\$338,232	\$325,000	1,564	98%	32
Toronto W05	1,137	\$379,719,836	\$333,966	\$340,000	2,091	97%	35
Toronto W06	1,105	\$475,302,530	\$430,138	\$403,000	2,209	99%	28
Toronto W07	304	\$201,819,596	\$663,880	\$622,500	445	101%	19
Toronto W08	1,628	\$906,457,249	\$556,792	\$466,250	2,620	99%	26
Toronto W09	524	\$201,162,241	\$383,897	\$399,450	968	98%	34
Toronto W10	939	\$262,889,615	\$279,968	\$285,000	1,678	97%	32
<b>Toronto Central</b>	<b>17,086</b>	<b>\$10,148,114,823</b>	<b>\$593,943</b>	<b>\$425,000</b>	<b>28,445</b>	<b>99%</b>	<b>24</b>
Toronto C01	4,843	\$2,102,647,527	\$434,162	\$380,000	8,747	99%	27
Toronto C02	799	\$766,509,870	\$959,337	\$731,250	1,417	99%	27
Toronto C03	535	\$448,641,092	\$838,581	\$545,000	911	99%	25
Toronto C04	969	\$1,001,029,808	\$1,033,054	\$893,300	1,612	100%	20
Toronto C06	307	\$170,552,725	\$555,546	\$540,500	517	99%	22
Toronto C07	1,359	\$687,228,156	\$505,687	\$415,000	2,075	99%	23
Toronto C08	1,683	\$729,273,360	\$433,318	\$384,900	2,691	99%	25
Toronto C09	356	\$436,811,414	\$1,226,998	\$876,000	544	99%	24
Toronto C10	746	\$462,283,844	\$619,683	\$535,000	1,068	100%	21
Toronto C11	524	\$295,182,842	\$563,326	\$308,400	822	101%	26
Toronto C12	448	\$711,635,568	\$1,588,472	\$1,325,000	842	96%	32
Toronto C13	854	\$446,538,101	\$522,878	\$395,500	1,319	100%	24
Toronto C14	2,196	\$1,164,350,914	\$530,214	\$396,800	3,456	100%	22
Toronto C15	1,467	\$725,429,602	\$494,499	\$425,000	2,424	100%	23
<b>Toronto East</b>	<b>10,057</b>	<b>\$4,072,914,134</b>	<b>\$404,983</b>	<b>\$379,000</b>	<b>16,314</b>	<b>100%</b>	<b>22</b>
Toronto E01	904	\$493,449,152	\$545,851	\$520,250	1,487	103%	14
Toronto E02	878	\$542,790,803	\$618,213	\$540,000	1,376	101%	15
Toronto E03	1,047	\$504,863,283	\$482,200	\$460,000	1,683	102%	17
Toronto E04	1,176	\$381,935,935	\$324,775	\$341,750	1,885	99%	24
Toronto E05	1,147	\$426,283,968	\$371,651	\$333,000	1,623	101%	19
Toronto E06	432	\$201,409,289	\$466,225	\$409,000	717	99%	21
Toronto E07	987	\$360,663,513	\$365,414	\$360,000	1,681	100%	22
Toronto E08	609	\$240,916,729	\$395,594	\$360,000	1,032	98%	28
Toronto E09	1,310	\$397,917,687	\$303,754	\$301,580	2,202	99%	26
Toronto E10	587	\$228,167,462	\$388,701	\$390,000	960	99%	24
Toronto E11	980	\$294,516,313	\$300,527	\$290,000	1,668	98%	29

## SUMMARY OF EXISTING HOME TRANSACTIONS

DETACHED HOUSES, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>2,093</b>	<b>\$1,202,117,480</b>	<b>\$574,351</b>	<b>\$493,000</b>	<b>2,087</b>	<b>6,249</b>	<b>98%</b>	<b>34</b>
<b>Halton Region</b>	<b>130</b>	<b>\$77,623,650</b>	<b>\$597,105</b>	<b>\$550,000</b>	<b>146</b>	<b>608</b>	<b>97%</b>	<b>38</b>
Burlington	8	\$3,611,000	\$451,375	\$433,000	20	77	98%	28
Halton Hills	34	\$17,280,100	\$508,238	\$499,000	27	143	97%	45
Milton	35	\$17,983,900	\$513,826	\$505,000	39	126	98%	32
Oakville	53	\$38,748,650	\$731,107	\$690,000	60	262	97%	39
<b>Peel Region</b>	<b>495</b>	<b>\$265,898,729</b>	<b>\$537,169</b>	<b>\$480,000</b>	<b>483</b>	<b>1,338</b>	<b>97%</b>	<b>32</b>
Brampton	259	\$115,898,215	\$447,483	\$430,000	289	648	98%	31
Caledon	44	\$25,607,013	\$581,978	\$527,400	32	184	96%	63
Mississauga	192	\$124,393,501	\$647,883	\$562,000	162	506	97%	28
<b>City of Toronto</b>	<b>581</b>	<b>\$407,772,588</b>	<b>\$701,846</b>	<b>\$566,000</b>	<b>529</b>	<b>1,287</b>	<b>99%</b>	<b>26</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>442</b>	<b>\$297,671,756</b>	<b>\$673,466</b>	<b>\$613,675</b>	<b>464</b>	<b>1,292</b>	<b>97%</b>	<b>36</b>
Aurora	20	\$13,446,888	\$672,344	\$538,500	21	62	94%	36
E. Gwillimbury	9	\$3,886,500	\$431,833	\$387,500	11	51	98%	44
Georgina	37	\$10,666,500	\$288,284	\$281,000	51	160	97%	48
King	16	\$15,077,800	\$942,363	\$800,000	17	123	91%	92
Markham	100	\$75,085,068	\$750,851	\$674,000	89	209	98%	34
Newmarket	33	\$14,780,400	\$447,891	\$454,700	31	62	98%	26
Richmond Hill	94	\$75,637,057	\$804,650	\$736,000	84	190	97%	30
Vaughan	101	\$71,876,043	\$711,644	\$622,000	113	305	97%	28
Whitchurch-Stouffville	32	\$17,215,500	\$537,984	\$505,400	47	130	97%	46
<b>Durham Region</b>	<b>345</b>	<b>\$120,095,899</b>	<b>\$348,104</b>	<b>\$327,500</b>	<b>370</b>	<b>1,178</b>	<b>97%</b>	<b>39</b>
Ajax	53	\$19,935,100	\$376,134	\$347,500	59	116	98%	24
Brock	9	\$3,101,500	\$344,611	\$237,500	9	102	95%	120
Clarington	53	\$17,689,750	\$333,769	\$296,000	68	205	98%	46
Oshawa	94	\$24,569,601	\$261,379	\$254,500	109	284	98%	40
Pickering	40	\$16,549,440	\$413,736	\$384,500	35	121	97%	33
Scugog	11	\$4,631,400	\$421,036	\$340,000	25	89	96%	57
Uxbridge	13	\$6,639,488	\$510,730	\$430,000	13	91	95%	42
Whitby	72	\$26,979,620	\$374,717	\$352,500	52	170	97%	34
<b>Dufferin County</b>	<b>22</b>	<b>\$7,595,400</b>	<b>\$345,245</b>	<b>\$322,250</b>	<b>16</b>	<b>94</b>	<b>98%</b>	<b>47</b>
Orangeville	22	\$7,595,400	\$345,245	\$322,250	16	94	98%	47
<b>Simcoe County</b>	<b>78</b>	<b>\$25,459,458</b>	<b>\$326,403</b>	<b>\$290,000</b>	<b>79</b>	<b>452</b>	<b>96%</b>	<b>72</b>
Adjala-Tosorontio	14	\$5,091,450	\$363,675	\$330,000	7	75	94%	96
Bradford West Gwillimbury	15	\$5,892,498	\$392,833	\$380,000	13	66	97%	32
Essa	8	\$3,603,500	\$450,438	\$345,000	17	61	96%	103
Innisfil	24	\$6,128,250	\$255,344	\$270,500	24	154	96%	67
New Tecumseth	17	\$4,743,760	\$279,045	\$277,000	18	96	96%	80

## SUMMARY OF EXISTING HOME TRANSACTIONS

DETACHED HOUSES, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>2,093</b>	<b>\$1,202,117,480</b>	<b>\$574,351</b>	<b>\$493,000</b>	<b>2,087</b>	<b>6,249</b>	<b>98%</b>	<b>34</b>
<b>City of Toronto Total</b>	<b>581</b>	<b>\$407,772,588</b>	<b>\$701,846</b>	<b>\$566,000</b>	<b>529</b>	<b>1,287</b>	<b>99%</b>	<b>26</b>
<b>Toronto West</b>	<b>190</b>	<b>\$108,454,825</b>	<b>\$570,815</b>	<b>\$520,000</b>	<b>159</b>	<b>451</b>	<b>98%</b>	<b>28</b>
Toronto W01	7	\$5,530,300	\$790,043	\$720,000	4	9	102%	18
Toronto W02	14	\$9,212,600	\$658,043	\$636,000	11	23	101%	28
Toronto W03	20	\$7,816,000	\$390,800	\$358,500	23	58	97%	20
Toronto W04	22	\$9,583,600	\$435,618	\$397,500	21	80	99%	26
Toronto W05	18	\$8,982,500	\$499,028	\$469,000	13	42	97%	44
Toronto W06	20	\$10,434,000	\$521,700	\$481,000	20	43	98%	33
Toronto W07	17	\$12,625,600	\$742,682	\$726,000	11	19	101%	20
Toronto W08	41	\$29,991,025	\$731,488	\$625,000	28	99	97%	29
Toronto W09	11	\$6,083,000	\$553,000	\$526,000	12	37	97%	32
Toronto W10	20	\$8,196,200	\$409,810	\$379,500	16	41	97%	28
<b>Toronto Central</b>	<b>170</b>	<b>\$185,619,136</b>	<b>\$1,091,877</b>	<b>\$888,500</b>	<b>143</b>	<b>440</b>	<b>99%</b>	<b>28</b>
Toronto C01	3	\$1,965,800	\$655,267	\$640,000	-	5	91%	55
Toronto C02	11	\$15,227,100	\$1,384,282	\$1,400,000	5	25	96%	23
Toronto C03	13	\$9,051,000	\$696,231	\$495,000	8	44	99%	47
Toronto C04	34	\$37,976,000	\$1,116,941	\$1,102,600	38	84	100%	34
Toronto C06	8	\$6,054,500	\$756,813	\$696,250	7	23	98%	27
Toronto C07	20	\$18,845,390	\$942,270	\$768,000	19	55	99%	29
Toronto C08	2	\$1,640,000	\$820,000	\$820,000	1	5	98%	41
Toronto C09	4	\$9,077,000	\$2,269,250	\$1,887,500	1	14	97%	13
Toronto C10	5	\$6,410,826	\$1,282,165	\$905,326	1	10	97%	38
Toronto C11	5	\$5,610,000	\$1,122,000	\$1,140,000	1	14	98%	27
Toronto C12	13	\$22,623,610	\$1,740,278	\$1,480,000	13	76	98%	25
Toronto C13	4	\$3,755,000	\$938,750	\$765,000	8	23	102%	14
Toronto C14	21	\$24,150,000	\$1,150,000	\$968,000	23	36	99%	26
Toronto C15	27	\$23,232,910	\$860,478	\$798,800	18	26	105%	16
<b>Toronto East</b>	<b>221</b>	<b>\$113,698,627</b>	<b>\$514,473</b>	<b>\$440,000</b>	<b>227</b>	<b>396</b>	<b>99%</b>	<b>21</b>
Toronto E01	8	\$5,233,500	\$654,188	\$625,500	15	21	102%	14
Toronto E02	14	\$11,240,100	\$802,864	\$709,050	10	23	97%	23
Toronto E03	36	\$19,930,401	\$553,622	\$448,500	35	56	102%	17
Toronto E04	36	\$14,606,650	\$405,740	\$399,500	32	49	98%	24
Toronto E05	19	\$11,644,688	\$612,878	\$575,000	8	20	98%	25
Toronto E06	13	\$6,319,900	\$486,146	\$425,000	14	31	97%	21
Toronto E07	14	\$8,144,988	\$581,785	\$566,344	13	23	101%	26
Toronto E08	15	\$9,073,000	\$604,867	\$485,500	24	39	95%	20
Toronto E09	28	\$11,040,500	\$394,304	\$389,500	26	37	99%	16
Toronto E10	19	\$7,724,100	\$406,532	\$380,000	31	57	99%	22
Toronto E11	19	\$8,740,800	\$460,042	\$490,000	19	40	99%	26

## SUMMARY OF EXISTING HOME TRANSACTIONS

SEMI-DETACHED HOUSES, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>491</b>	<b>\$210,070,177</b>	<b>\$427,842</b>	<b>\$394,500</b>	<b>446</b>	<b>729</b>	<b>99%</b>	<b>23</b>
<b>Halton Region</b>	<b>22</b>	<b>\$8,351,300</b>	<b>\$379,605</b>	<b>\$378,500</b>	<b>12</b>	<b>29</b>	<b>98%</b>	<b>21</b>
Burlington	-	-	-	-	-	-	-	-
Halton Hills	3	\$920,500	\$306,833	\$355,000	2	2	98%	12
Milton	13	\$4,902,800	\$377,138	\$375,200	7	18	99%	21
Oakville	6	\$2,528,000	\$421,333	\$400,500	3	9	98%	28
<b>Peel Region</b>	<b>150</b>	<b>\$55,263,139</b>	<b>\$368,421</b>	<b>\$359,000</b>	<b>196</b>	<b>272</b>	<b>98%</b>	<b>24</b>
Brampton	84	\$28,885,849	\$343,879	\$340,000	106	152	98%	27
Caledon	4	\$1,389,000	\$347,250	\$362,000	3	4	99%	17
Mississauga	62	\$24,988,290	\$403,037	\$412,500	87	116	99%	21
<b>City of Toronto</b>	<b>202</b>	<b>\$104,464,788</b>	<b>\$517,152</b>	<b>\$455,000</b>	<b>155</b>	<b>271</b>	<b>101%</b>	<b>21</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE:</b>								
<b>York Region</b>	<b>68</b>	<b>\$29,546,850</b>	<b>\$434,513</b>	<b>\$439,500</b>	<b>41</b>	<b>69</b>	<b>99%</b>	<b>21</b>
Aurora	2	\$780,000	\$390,000	\$390,000	2	1	99%	9
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	1	\$85,000	\$85,000	\$85,000	-	3	77%	47
King	1	\$370,000	\$370,000	\$370,000	1	-	97%	9
Markham	18	\$8,473,500	\$470,750	\$452,500	15	21	100%	24
Newmarket	10	\$3,638,900	\$363,890	\$374,200	6	9	99%	23
Richmond Hill	8	\$3,744,950	\$468,119	\$457,875	5	3	99%	12
Vaughan	18	\$8,604,000	\$478,000	\$470,000	10	18	98%	20
Whitchurch-Stouffville	10	\$3,850,500	\$385,050	\$386,500	2	14	98%	22
<b>Durham Region</b>	<b>36</b>	<b>\$9,074,600</b>	<b>\$252,072</b>	<b>\$253,500</b>	<b>34</b>	<b>71</b>	<b>98%</b>	<b>27</b>
Ajax	8	\$2,434,500	\$304,313	\$313,500	10	14	96%	32
Brock	-	-	-	-	1	-	-	-
Clarington	3	\$454,500	\$151,500	\$175,000	2	3	97%	47
Oshawa	13	\$2,469,600	\$189,969	\$194,000	14	37	98%	24
Pickering	10	\$3,216,000	\$321,600	\$328,500	4	12	98%	20
Scugog	1	\$218,000	\$218,000	\$218,000	-	-	99%	12
Uxbridge	-	-	-	-	-	1	-	-
Whitby	1	\$282,000	\$282,000	\$282,000	3	4	98%	30
<b>Dufferin County</b>	<b>7</b>	<b>\$1,567,000</b>	<b>\$223,857</b>	<b>\$223,000</b>	<b>4</b>	<b>7</b>	<b>97%</b>	<b>33</b>
Orangeville	7	\$1,567,000	\$223,857	\$223,000	4	7	97%	33
<b>Simcoe County</b>	<b>6</b>	<b>\$1,802,500</b>	<b>\$300,417</b>	<b>\$315,000</b>	<b>4</b>	<b>10</b>	<b>92%</b>	<b>46</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	6	\$1,802,500	\$300,417	\$315,000	3	5	92%	46
Essa	-	-	-	-	-	2	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	-	-	-	-	1	3	-	-

## SUMMARY OF EXISTING HOME TRANSACTIONS

SEMI-DETACHED HOUSES, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>491</b>	<b>\$210,070,177</b>	<b>\$427,842</b>	<b>\$394,500</b>	<b>446</b>	<b>729</b>	<b>99%</b>	<b>23</b>
<b>City of Toronto Total</b>	<b>202</b>	<b>\$104,464,788</b>	<b>\$517,152</b>	<b>\$455,000</b>	<b>155</b>	<b>271</b>	<b>101%</b>	<b>21</b>
<b>Toronto West</b>	<b>72</b>	<b>\$30,770,975</b>	<b>\$427,375</b>	<b>\$387,000</b>	<b>53</b>	<b>105</b>	<b>99%</b>	<b>23</b>
Toronto W01	5	\$3,610,875	\$722,175	\$812,500	1	-	102%	23
Toronto W02	14	\$6,958,000	\$497,000	\$483,000	9	14	101%	13
Toronto W03	13	\$4,799,500	\$369,192	\$376,500	10	31	97%	11
Toronto W04	4	\$1,571,000	\$392,750	\$406,500	2	3	100%	24
Toronto W05	26	\$9,651,600	\$371,215	\$359,600	22	45	97%	37
Toronto W06	3	\$1,327,000	\$442,333	\$409,500	3	4	97%	18
Toronto W07	1	\$560,000	\$560,000	\$560,000	-	-	98%	18
Toronto W08	2	\$882,000	\$441,000	\$441,000	1	-	100%	18
Toronto W09	1	\$395,000	\$395,000	\$395,000	1	4	99%	18
Toronto W10	3	\$1,016,000	\$338,667	\$325,000	4	4	96%	9
<b>Toronto Central</b>	<b>57</b>	<b>\$37,334,040</b>	<b>\$654,983</b>	<b>\$550,000</b>	<b>47</b>	<b>71</b>	<b>101%</b>	<b>20</b>
Toronto C01	12	\$8,854,390	\$737,866	\$658,445	13	16	101%	19
Toronto C02	3	\$4,920,000	\$1,640,000	\$1,410,000	4	12	102%	45
Toronto C03	6	\$2,757,000	\$459,500	\$468,500	7	19	103%	23
Toronto C04	3	\$2,780,000	\$926,667	\$786,000	1	2	99%	43
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	3	\$1,430,000	\$476,667	\$475,000	1	-	99%	15
Toronto C08	3	\$2,039,900	\$679,967	\$619,900	2	8	101%	22
Toronto C09	-	-	-	-	-	5	-	-
Toronto C10	7	\$5,190,750	\$741,536	\$685,000	1	1	101%	17
Toronto C11	1	\$720,000	\$720,000	\$720,000	1	-	104%	7
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	9	\$3,900,000	\$433,333	\$437,000	6	3	99%	18
Toronto C14	-	-	-	-	-	-	-	-
Toronto C15	10	\$4,742,000	\$474,200	\$471,000	11	5	99%	12
<b>Toronto East</b>	<b>73</b>	<b>\$36,359,773</b>	<b>\$498,079</b>	<b>\$460,000</b>	<b>55</b>	<b>95</b>	<b>102%</b>	<b>19</b>
Toronto E01	15	\$7,712,800	\$514,187	\$482,000	15	30	104%	12
Toronto E02	20	\$11,316,300	\$565,815	\$521,900	12	23	101%	19
Toronto E03	12	\$7,737,974	\$644,831	\$566,506	6	14	108%	11
Toronto E04	3	\$1,167,000	\$389,000	\$324,000	1	7	99%	13
Toronto E05	1	\$438,000	\$438,000	\$438,000	5	1	97%	7
Toronto E06	2	\$729,000	\$364,500	\$364,500	2	1	97%	32
Toronto E07	6	\$2,349,299	\$391,550	\$403,500	5	2	101%	20
Toronto E08	3	\$1,081,500	\$360,500	\$352,000	-	1	96%	27
Toronto E09	2	\$720,900	\$360,450	\$360,450	1	1	107%	12
Toronto E10	3	\$1,011,000	\$337,000	\$335,000	2	4	97%	38
Toronto E11	6	\$2,096,000	\$349,333	\$359,000	6	11	96%	40

## SUMMARY OF EXISTING HOME TRANSACTIONS

CONDOMINIUM TOWNHOUSES, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>404</b>	<b>\$125,298,895</b>	<b>\$310,146</b>	<b>\$291,500</b>	<b>361</b>	<b>868</b>	<b>98%</b>	<b>29</b>
<b>Halton Region</b>	<b>17</b>	<b>\$5,847,400</b>	<b>\$343,965</b>	<b>\$339,000</b>	<b>14</b>	<b>29</b>	<b>97%</b>	<b>37</b>
Burlington	2	\$828,500	\$414,250	\$414,250	6	9	98%	26
Halton Hills	4	\$868,500	\$217,125	\$226,750	2	7	95%	28
Milton	1	\$237,500	\$237,500	\$237,500	1	1	99%	79
Oakville	10	\$3,912,900	\$391,290	\$364,450	5	12	97%	39
<b>Peel Region</b>	<b>153</b>	<b>\$44,641,100</b>	<b>\$291,772</b>	<b>\$282,000</b>	<b>127</b>	<b>272</b>	<b>98%</b>	<b>26</b>
Brampton	35	\$8,308,000	\$237,371	\$228,000	35	85	98%	30
Caledon	2	\$601,000	\$300,500	\$300,500	-	2	99%	21
Mississauga	116	\$35,732,100	\$308,035	\$313,850	92	185	98%	25
<b>City of Toronto</b>	<b>149</b>	<b>\$50,657,695</b>	<b>\$339,985</b>	<b>\$320,000</b>	<b>145</b>	<b>355</b>	<b>98%</b>	<b>30</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>48</b>	<b>\$16,414,900</b>	<b>\$341,977</b>	<b>\$333,000</b>	<b>34</b>	<b>88</b>	<b>98%</b>	<b>30</b>
Aurora	5	\$1,860,000	\$372,000	\$315,000	5	12	98%	35
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	2	\$342,000	\$171,000	\$171,000	1	4	96%	50
King	1	\$437,000	\$437,000	\$437,000	1	1	98%	28
Markham	19	\$6,805,800	\$358,200	\$348,000	9	41	99%	39
Newmarket	7	\$1,845,500	\$263,643	\$270,500	5	4	98%	24
Richmond Hill	7	\$2,325,800	\$332,257	\$329,000	7	13	97%	16
Vaughan	7	\$2,798,800	\$399,829	\$375,000	6	11	99%	16
Whitchurch-Stouffville	-	-	-	-	-	2	-	-
<b>Durham Region</b>	<b>36</b>	<b>\$7,561,300</b>	<b>\$210,036</b>	<b>\$210,000</b>	<b>40</b>	<b>115</b>	<b>98%</b>	<b>32</b>
Ajax	10	\$2,373,400	\$237,340	\$241,500	2	17	98%	26
Brock	-	-	-	-	1	7	-	-
Clarington	-	-	-	-	4	13	-	-
Oshawa	7	\$912,100	\$130,300	\$118,000	12	31	97%	28
Pickering	15	\$3,329,800	\$221,987	\$226,800	11	29	97%	37
Scugog	-	-	-	-	-	-	-	-
Uxbridge	1	\$283,000	\$283,000	\$283,000	1	5	98%	15
Whitby	3	\$663,000	\$221,000	\$215,000	9	13	98%	36
<b>Dufferin County</b>	<b>1</b>	<b>\$176,500</b>	<b>\$176,500</b>	<b>\$176,500</b>	<b>-</b>	<b>4</b>	<b>99%</b>	<b>41</b>
Orangeville	1	\$176,500	\$176,500	\$176,500	-	4	99%	41
<b>Simcoe County</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>5</b>	<b>-</b>	<b>-</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	-	-	-	-	1	1	-	-
Essa	-	-	-	-	-	-	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	-	-	-	-	-	4	-	-

## SUMMARY OF EXISTING HOME TRANSACTIONS

CONDOMINIUM TOWNHOUSES, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>404</b>	<b>\$125,298,895</b>	<b>\$310,146</b>	<b>\$291,500</b>	<b>361</b>	<b>868</b>	<b>98%</b>	<b>29</b>
<b>City of Toronto Total</b>	<b>149</b>	<b>\$50,657,695</b>	<b>\$339,985</b>	<b>\$320,000</b>	<b>145</b>	<b>355</b>	<b>98%</b>	<b>30</b>
<b>Toronto West</b>	<b>40</b>	<b>\$11,972,150</b>	<b>\$299,304</b>	<b>\$291,750</b>	<b>41</b>	<b>116</b>	<b>98%</b>	<b>32</b>
Toronto W01	2	\$927,900	\$463,950	\$463,950	2	4	100%	14
Toronto W02	3	\$1,078,000	\$359,333	\$350,000	4	7	101%	22
Toronto W03	-	-	-	-	-	5	-	-
Toronto W04	6	\$1,509,000	\$251,500	\$239,500	5	14	98%	46
Toronto W05	9	\$2,064,000	\$229,333	\$270,000	16	48	96%	43
Toronto W06	1	\$539,500	\$539,500	\$539,500	3	5	100%	8
Toronto W07	-	-	-	-	-	-	-	-
Toronto W08	10	\$3,316,250	\$331,625	\$330,000	5	11	100%	27
Toronto W09	5	\$1,961,000	\$392,200	\$358,000	-	5	97%	23
Toronto W10	4	\$576,500	\$144,125	\$146,500	6	17	91%	37
<b>Toronto Central</b>	<b>53</b>	<b>\$23,843,445</b>	<b>\$449,876</b>	<b>\$386,000</b>	<b>45</b>	<b>99</b>	<b>99%</b>	<b>29</b>
Toronto C01	17	\$7,705,938	\$453,290	\$460,000	7	18	100%	30
Toronto C02	2	\$2,145,000	\$1,072,500	\$1,072,500	4	9	98%	69
Toronto C03	-	-	-	-	-	-	-	-
Toronto C04	-	-	-	-	2	2	-	-
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	4	\$1,421,800	\$355,450	\$350,900	2	7	99%	30
Toronto C08	-	-	-	-	-	4	-	-
Toronto C09	-	-	-	-	-	2	-	-
Toronto C10	2	\$856,500	\$428,250	\$428,250	1	2	99%	11
Toronto C11	2	\$452,019	\$226,010	\$226,010	1	5	99%	17
Toronto C12	2	\$1,718,088	\$859,044	\$859,044	3	6	96%	22
Toronto C13	1	\$264,000	\$264,000	\$264,000	-	2	102%	5
Toronto C14	7	\$4,028,000	\$575,429	\$647,500	8	17	98%	44
Toronto C15	16	\$5,252,100	\$328,256	\$335,000	17	25	99%	22
<b>Toronto East</b>	<b>56</b>	<b>\$14,842,100</b>	<b>\$265,038</b>	<b>\$279,000</b>	<b>59</b>	<b>140</b>	<b>98%</b>	<b>28</b>
Toronto E01	2	\$693,000	\$346,500	\$346,500	5	7	96%	27
Toronto E02	1	\$480,000	\$480,000	\$480,000	3	13	96%	19
Toronto E03	1	\$165,000	\$165,000	\$165,000	-	2	98%	44
Toronto E04	9	\$2,205,900	\$245,100	\$275,000	6	21	96%	17
Toronto E05	15	\$4,499,900	\$299,993	\$303,000	10	14	99%	22
Toronto E06	-	-	-	-	-	-	-	-
Toronto E07	3	\$981,500	\$327,167	\$289,000	3	13	98%	18
Toronto E08	5	\$1,392,500	\$278,500	\$317,500	5	14	98%	39
Toronto E09	5	\$965,900	\$193,180	\$166,000	7	18	94%	40
Toronto E10	6	\$1,390,900	\$231,817	\$213,250	5	11	99%	47
Toronto E11	9	\$2,067,500	\$229,722	\$230,000	15	27	97%	28

## SUMMARY OF EXISTING HOME TRANSACTIONS

CONDOMINIUM APARTMENT, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>1,306</b>	<b>\$430,979,520</b>	<b>\$330,000</b>	<b>\$300,000</b>	<b>1,554</b>	<b>4,349</b>	<b>98%</b>	<b>35</b>
<b>Halton Region</b>	<b>21</b>	<b>\$5,621,890</b>	<b>\$267,709</b>	<b>\$235,000</b>	<b>19</b>	<b>65</b>	<b>98%</b>	<b>46</b>
Burlington	6	\$1,431,500	\$238,583	\$230,000	3	11	98%	62
Halton Hills	1	\$304,000	\$304,000	\$304,000	4	10	95%	115
Milton	1	\$248,000	\$248,000	\$248,000	1	3	96%	31
Oakville	13	\$3,638,390	\$279,876	\$232,500	11	41	98%	35
<b>Peel Region</b>	<b>185</b>	<b>\$46,786,550</b>	<b>\$252,900</b>	<b>\$235,500</b>	<b>222</b>	<b>581</b>	<b>97%</b>	<b>34</b>
Brampton	30	\$5,968,750	\$198,958	\$198,125	38	132	97%	38
Caledon	1	\$439,000	\$439,000	\$439,000	-	1	98%	53
Mississauga	154	\$40,378,800	\$262,200	\$245,750	184	448	97%	34
<b>City of Toronto</b>	<b>943</b>	<b>\$331,091,542</b>	<b>\$351,104</b>	<b>\$320,000</b>	<b>1,126</b>	<b>3,157</b>	<b>98%</b>	<b>34</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>131</b>	<b>\$41,877,488</b>	<b>\$319,675</b>	<b>\$297,000</b>	<b>143</b>	<b>411</b>	<b>97%</b>	<b>32</b>
Aurora	4	\$1,262,900	\$315,725	\$268,450	2	13	95%	48
E. Gwillimbury	-	-	-	-	1	1	-	-
Georgina	-	-	-	-	-	1	-	-
King	-	-	-	-	1	10	-	-
Markham	46	\$14,322,100	\$311,350	\$295,250	69	157	98%	36
Newmarket	4	\$1,081,400	\$270,350	\$266,450	3	14	98%	23
Richmond Hill	32	\$9,808,088	\$306,503	\$292,500	27	79	97%	28
Vaughan	45	\$15,403,000	\$342,289	\$312,000	40	136	97%	30
Whitchurch-Stouffville	-	-	-	-	-	-	-	-
<b>Durham Region</b>	<b>23</b>	<b>\$4,906,050</b>	<b>\$213,307</b>	<b>\$192,750</b>	<b>40</b>	<b>105</b>	<b>97%</b>	<b>42</b>
Ajax	5	\$942,000	\$188,400	\$187,000	10	20	96%	19
Brock	-	-	-	-	-	-	-	-
Clarington	4	\$699,900	\$174,975	\$182,950	5	25	98%	40
Oshawa	2	\$491,500	\$245,750	\$245,750	4	19	95%	58
Pickering	6	\$1,163,750	\$193,958	\$194,375	15	20	97%	24
Scugog	-	-	-	-	-	1	-	-
Uxbridge	1	\$245,000	\$245,000	\$245,000	1	5	98%	40
Whitby	5	\$1,363,900	\$272,780	\$235,000	5	15	96%	84
<b>Dufferin County</b>	<b>2</b>	<b>\$549,500</b>	<b>\$274,750</b>	<b>\$274,750</b>	<b>2</b>	<b>23</b>	<b>96%</b>	<b>210</b>
Orangeville	2	\$549,500	\$274,750	\$274,750	2	23	96%	210
<b>Simcoe County</b>	<b>1</b>	<b>\$146,500</b>	<b>\$146,500</b>	<b>\$146,500</b>	<b>2</b>	<b>7</b>	<b>98%</b>	<b>5</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	-	-	-	-	1	1	-	-
Essa	-	-	-	-	-	-	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	1	\$146,500	\$146,500	\$146,500	1	6	98%	5

## SUMMARY OF EXISTING HOME TRANSACTIONS

CONDOMINIUM APARTMENT, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>1,306</b>	<b>\$430,979,520</b>	<b>\$330,000</b>	<b>\$300,000</b>	<b>1,554</b>	<b>4,349</b>	<b>98%</b>	<b>35</b>
<b>City of Toronto Total</b>	<b>943</b>	<b>\$331,091,542</b>	<b>\$351,104</b>	<b>\$320,000</b>	<b>1,126</b>	<b>3,157</b>	<b>98%</b>	<b>34</b>
<b>Toronto West</b>	<b>191</b>	<b>\$49,728,891</b>	<b>\$260,361</b>	<b>\$261,500</b>	<b>246</b>	<b>781</b>	<b>98%</b>	<b>37</b>
Toronto W01	10	\$3,782,400	\$378,240	\$377,500	20	57	100%	22
Toronto W02	9	\$2,756,000	\$306,222	\$277,500	11	26	99%	25
Toronto W03	6	\$1,345,500	\$224,250	\$246,500	5	12	98%	27
Toronto W04	11	\$1,855,901	\$168,718	\$155,000	20	59	96%	54
Toronto W05	19	\$3,191,700	\$167,984	\$144,000	26	98	97%	45
Toronto W06	39	\$12,675,310	\$325,008	\$307,000	72	234	97%	35
Toronto W07	2	\$837,000	\$418,500	\$418,500	3	5	98%	34
Toronto W08	52	\$15,751,180	\$302,907	\$293,050	38	113	98%	34
Toronto W09	15	\$2,313,000	\$154,200	\$126,000	20	64	95%	35
Toronto W10	28	\$5,220,900	\$186,461	\$168,500	31	113	97%	43
<b>Toronto Central</b>	<b>572</b>	<b>\$238,087,441</b>	<b>\$416,237</b>	<b>\$360,050</b>	<b>689</b>	<b>1,781</b>	<b>98%</b>	<b>32</b>
Toronto C01	203	\$83,143,059	\$409,572	\$367,700	259	761	98%	33
Toronto C02	25	\$23,756,536	\$950,261	\$480,000	39	116	98%	38
Toronto C03	9	\$3,522,500	\$391,389	\$380,000	8	23	97%	18
Toronto C04	10	\$4,464,000	\$446,400	\$403,000	12	40	99%	34
Toronto C06	5	\$1,526,990	\$305,398	\$308,500	5	26	99%	60
Toronto C07	43	\$13,065,800	\$303,856	\$310,000	45	87	98%	22
Toronto C08	72	\$29,724,703	\$412,843	\$396,250	75	191	99%	37
Toronto C09	12	\$6,893,400	\$574,450	\$511,000	6	17	99%	28
Toronto C10	18	\$8,162,600	\$453,478	\$425,500	12	39	97%	32
Toronto C11	17	\$4,000,700	\$235,335	\$210,000	19	42	97%	43
Toronto C12	5	\$4,240,000	\$848,000	\$755,000	7	23	97%	34
Toronto C13	30	\$8,742,500	\$291,417	\$270,000	26	61	98%	32
Toronto C14	81	\$30,806,988	\$380,333	\$355,000	76	184	98%	27
Toronto C15	42	\$16,037,665	\$381,849	\$360,000	100	171	98%	36
<b>Toronto East</b>	<b>180</b>	<b>\$43,275,210</b>	<b>\$240,418</b>	<b>\$220,000</b>	<b>191</b>	<b>595</b>	<b>98%</b>	<b>38</b>
Toronto E01	14	\$6,382,725	\$455,909	\$459,250	8	27	101%	20
Toronto E02	6	\$2,103,800	\$350,633	\$355,450	5	11	99%	36
Toronto E03	9	\$1,977,400	\$219,711	\$174,000	5	20	98%	19
Toronto E04	20	\$3,536,600	\$176,830	\$150,750	26	78	98%	52
Toronto E05	28	\$7,175,550	\$256,270	\$215,875	18	48	97%	29
Toronto E06	2	\$578,900	\$289,450	\$289,450	2	2	100%	6
Toronto E07	32	\$7,798,088	\$243,690	\$240,450	29	128	98%	39
Toronto E08	16	\$2,254,500	\$140,906	\$148,000	16	45	95%	47
Toronto E09	35	\$8,605,850	\$245,881	\$245,500	62	160	97%	36
Toronto E10	2	\$193,500	\$96,750	\$96,750	4	15	94%	142
Toronto E11	16	\$2,668,297	\$166,769	\$169,500	16	61	97%	46

## SUMMARY OF EXISTING HOME TRANSACTIONS

LINK, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>91</b>	<b>\$35,207,100</b>	<b>\$386,891</b>	<b>\$403,000</b>	<b>62</b>	<b>107</b>	<b>99%</b>	<b>24</b>
<b>Halton Region</b>	<b>3</b>	<b>\$1,139,000</b>	<b>\$379,667</b>	<b>\$403,000</b>	<b>1</b>	<b>3</b>	<b>94%</b>	<b>68</b>
Burlington	1	\$310,000	\$310,000	\$310,000	1	2	94%	56
Halton Hills	-	-	-	-	-	-	-	-
Milton	1	\$403,000	\$403,000	\$403,000	-	-	98%	59
Oakville	1	\$426,000	\$426,000	\$426,000	-	1	91%	89
<b>Peel Region</b>	<b>11</b>	<b>\$4,754,750</b>	<b>\$432,250</b>	<b>\$440,750</b>	<b>7</b>	<b>10</b>	<b>97%</b>	<b>17</b>
Brampton	3	\$1,154,000	\$384,667	\$369,000	2	2	98%	15
Caledon	1	\$358,000	\$358,000	\$358,000	-	1	97%	44
Mississauga	7	\$3,242,750	\$463,250	\$477,000	5	7	97%	14
<b>City of Toronto</b>	<b>9</b>	<b>\$3,803,450</b>	<b>\$422,606</b>	<b>\$450,000</b>	<b>6</b>	<b>8</b>	<b>98%</b>	<b>20</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>37</b>	<b>\$17,387,900</b>	<b>\$469,943</b>	<b>\$465,000</b>	<b>28</b>	<b>41</b>	<b>100%</b>	<b>24</b>
Aurora	-	-	-	-	1	2	-	-
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	1	\$292,000	\$292,000	\$292,000	-	1	99%	27
King	-	-	-	-	1	1	-	-
Markham	29	\$14,074,900	\$485,341	\$469,000	19	29	100%	22
Newmarket	2	\$680,000	\$340,000	\$340,000	2	2	102%	7
Richmond Hill	3	\$1,512,000	\$504,000	\$460,000	3	5	99%	25
Vaughan	2	\$829,000	\$414,500	\$414,500	2	1	98%	54
Whitchurch-Stouffville	-	-	-	-	-	-	-	-
<b>Durham Region</b>	<b>24</b>	<b>\$6,057,000</b>	<b>\$252,375</b>	<b>\$257,000</b>	<b>13</b>	<b>32</b>	<b>98%</b>	<b>23</b>
Ajax	-	-	-	-	1	3	-	-
Brock	-	-	-	-	-	-	-	-
Clarington	11	\$2,729,000	\$248,091	\$254,000	7	14	99%	21
Oshawa	4	\$863,000	\$215,750	\$219,500	1	3	98%	27
Pickering	-	-	-	-	2	2	-	-
Scugog	-	-	-	-	-	-	-	-
Uxbridge	-	-	-	-	-	1	-	-
Whitby	9	\$2,465,000	\$273,889	\$277,000	2	9	98%	25
<b>Dufferin County</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Orangeville	-	-	-	-	-	-	-	-
<b>Simcoe County</b>	<b>7</b>	<b>\$2,065,000</b>	<b>\$295,000</b>	<b>\$292,000</b>	<b>7</b>	<b>13</b>	<b>98%</b>	<b>29</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	6	\$1,806,000	\$301,000	\$294,500	4	9	98%	25
Essa	-	-	-	-	2	2	-	-
Innisfil	1	\$259,000	\$259,000	\$259,000	-	-	96%	51
New Tecumseth	-	-	-	-	1	2	-	-

SUMMARY OF EXISTING HOME TRANSACTIONS

LINK, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>91</b>	<b>\$35,207,100</b>	<b>\$386,891</b>	<b>\$403,000</b>	<b>62</b>	<b>107</b>	<b>99%</b>	<b>24</b>
<b>City of Toronto Total</b>	<b>9</b>	<b>\$3,803,450</b>	<b>\$422,606</b>	<b>\$450,000</b>	<b>6</b>	<b>8</b>	<b>98%</b>	<b>20</b>
<b>Toronto West</b>	-	-	-	-	-	-	-	-
Toronto W01	-	-	-	-	-	-	-	-
Toronto W02	-	-	-	-	-	-	-	-
Toronto W03	-	-	-	-	-	-	-	-
Toronto W04	-	-	-	-	-	-	-	-
Toronto W05	-	-	-	-	-	-	-	-
Toronto W06	-	-	-	-	-	-	-	-
Toronto W07	-	-	-	-	-	-	-	-
Toronto W08	-	-	-	-	-	-	-	-
Toronto W09	-	-	-	-	-	-	-	-
Toronto W10	-	-	-	-	-	-	-	-
<b>Toronto Central</b>	-	-	-	-	-	<b>1</b>	-	-
Toronto C01	-	-	-	-	-	-	-	-
Toronto C02	-	-	-	-	-	-	-	-
Toronto C03	-	-	-	-	-	-	-	-
Toronto C04	-	-	-	-	-	-	-	-
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	-	-	-	-	-	-	-	-
Toronto C08	-	-	-	-	-	-	-	-
Toronto C09	-	-	-	-	-	-	-	-
Toronto C10	-	-	-	-	-	-	-	-
Toronto C11	-	-	-	-	-	-	-	-
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	-	-	-	-	-	-	-	-
Toronto C14	-	-	-	-	-	-	-	-
Toronto C15	-	-	-	-	-	1	-	-
<b>Toronto East</b>	<b>9</b>	<b>\$3,803,450</b>	<b>\$422,606</b>	<b>\$450,000</b>	<b>6</b>	<b>7</b>	<b>98%</b>	<b>20</b>
Toronto E01	-	-	-	-	-	-	-	-
Toronto E02	-	-	-	-	-	-	-	-
Toronto E03	-	-	-	-	-	-	-	-
Toronto E04	-	-	-	-	-	-	-	-
Toronto E05	3	\$1,379,000	\$459,667	\$461,000	5	2	98%	6
Toronto E06	-	-	-	-	-	-	-	-
Toronto E07	4	\$1,640,200	\$410,050	\$406,500	-	4	98%	27
Toronto E08	-	-	-	-	-	-	-	-
Toronto E09	-	-	-	-	-	-	-	-
Toronto E10	1	\$392,250	\$392,250	\$392,250	-	-	97%	25
Toronto E11	1	\$392,000	\$392,000	\$392,000	1	1	98%	27

## SUMMARY OF EXISTING HOME TRANSACTIONS

ATTACHED/ROW/TOWNHOUSE, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>312</b>	<b>\$121,108,299</b>	<b>\$388,168</b>	<b>\$366,000</b>	<b>282</b>	<b>500</b>	<b>99%</b>	<b>27</b>
<b>Halton Region</b>	<b>46</b>	<b>\$17,803,694</b>	<b>\$387,037</b>	<b>\$372,950</b>	<b>39</b>	<b>62</b>	<b>98%</b>	<b>25</b>
Burlington	2	\$806,594	\$403,297	\$403,297	2	2	99%	23
Halton Hills	1	\$327,000	\$327,000	\$327,000	1	1	99%	7
Milton	23	\$7,841,200	\$340,922	\$341,000	18	18	98%	16
Oakville	20	\$8,828,900	\$441,445	\$452,450	18	41	98%	38
<b>Peel Region</b>	<b>56</b>	<b>\$19,886,490</b>	<b>\$355,116</b>	<b>\$343,000</b>	<b>59</b>	<b>91</b>	<b>98%</b>	<b>28</b>
Brampton	35	\$11,333,090	\$323,803	\$325,500	44	57	98%	29
Caledon	2	\$662,000	\$331,000	\$331,000	2	2	100%	5
Mississauga	19	\$7,891,400	\$415,337	\$405,000	13	32	98%	30
<b>City of Toronto</b>	<b>50</b>	<b>\$23,402,878</b>	<b>\$468,058</b>	<b>\$426,000</b>	<b>48</b>	<b>132</b>	<b>100%</b>	<b>27</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>101</b>	<b>\$42,923,049</b>	<b>\$424,981</b>	<b>\$420,000</b>	<b>72</b>	<b>102</b>	<b>99%</b>	<b>23</b>
Aurora	9	\$3,465,300	\$385,033	\$372,500	4	4	101%	12
E. Gwillimbury	5	\$1,419,000	\$283,800	\$287,000	3	3	99%	26
Georgina	3	\$719,000	\$239,667	\$237,000	2	1	99%	11
King	-	-	-	-	-	-	-	-
Markham	23	\$10,599,849	\$460,863	\$442,000	20	35	99%	19
Newmarket	8	\$2,803,500	\$350,438	\$360,000	5	4	99%	26
Richmond Hill	22	\$9,660,000	\$439,091	\$433,250	19	22	98%	23
Vaughan	26	\$12,447,000	\$478,731	\$470,000	18	32	98%	27
Whitchurch-Stouffville	5	\$1,809,400	\$361,880	\$357,000	1	1	98%	33
<b>Durham Region</b>	<b>53</b>	<b>\$15,570,313</b>	<b>\$293,779</b>	<b>\$270,000</b>	<b>51</b>	<b>90</b>	<b>98%</b>	<b>37</b>
Ajax	16	\$4,682,413	\$292,651	\$295,950	16	26	99%	30
Brock	-	-	-	-	-	2	-	-
Clarington	9	\$3,670,500	\$407,833	\$204,000	7	15	97%	54
Oshawa	4	\$666,500	\$166,625	\$191,750	5	6	98%	34
Pickering	6	\$1,698,900	\$283,150	\$287,500	8	14	98%	42
Scugog	-	-	-	-	-	-	-	-
Uxbridge	1	\$345,000	\$345,000	\$345,000	-	1	97%	14
Whitby	17	\$4,507,000	\$265,118	\$265,000	15	26	98%	35
<b>Dufferin County</b>	<b>2</b>	<b>\$561,000</b>	<b>\$280,500</b>	<b>\$280,500</b>	<b>-</b>	<b>2</b>	<b>98%</b>	<b>39</b>
Orangeville	2	\$561,000	\$280,500	\$280,500	-	2	98%	39
<b>Simcoe County</b>	<b>4</b>	<b>\$960,875</b>	<b>\$240,219</b>	<b>\$206,000</b>	<b>13</b>	<b>21</b>	<b>99%</b>	<b>33</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	1	\$345,000	\$345,000	\$345,000	2	2	99%	7
Essa	1	\$203,875	\$203,875	\$203,875	5	8	102%	29
Innisfil	2	\$412,000	\$206,000	\$206,000	2	3	98%	49
New Tecumseth	-	-	-	-	4	8	-	-

## SUMMARY OF EXISTING HOME TRANSACTIONS

ATTACHED/ROW/TOWNHOUSE, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>312</b>	<b>\$121,108,299</b>	<b>\$388,168</b>	<b>\$366,000</b>	<b>282</b>	<b>500</b>	<b>99%</b>	<b>27</b>
<b>City of Toronto Total</b>	<b>50</b>	<b>\$23,402,878</b>	<b>\$468,058</b>	<b>\$426,000</b>	<b>48</b>	<b>132</b>	<b>100%</b>	<b>27</b>
<b>Toronto West</b>	<b>17</b>	<b>\$8,113,500</b>	<b>\$477,265</b>	<b>\$460,000</b>	<b>13</b>	<b>58</b>	<b>100%</b>	<b>21</b>
Toronto W01	1	\$633,500	\$633,500	\$633,500	2	4	101%	7
Toronto W02	6	\$3,231,000	\$538,500	\$563,000	2	6	102%	14
Toronto W03	-	-	-	-	1	2	-	-
Toronto W04	4	\$1,389,500	\$347,375	\$340,750	1	6	99%	27
Toronto W05	2	\$759,000	\$379,500	\$379,500	1	3	98%	11
Toronto W06	2	\$1,030,500	\$515,250	\$515,250	2	8	100%	9
Toronto W07	1	\$460,000	\$460,000	\$460,000	1	4	98%	21
Toronto W08	1	\$610,000	\$610,000	\$610,000	2	23	98%	101
Toronto W09	-	-	-	-	-	1	-	-
Toronto W10	-	-	-	-	1	1	-	-
<b>Toronto Central</b>	<b>11</b>	<b>\$6,832,888</b>	<b>\$621,172</b>	<b>\$650,000</b>	<b>10</b>	<b>41</b>	<b>97%</b>	<b>40</b>
Toronto C01	1	\$825,000	\$825,000	\$825,000	2	17	92%	34
Toronto C02	-	-	-	-	-	2	-	-
Toronto C03	-	-	-	-	-	-	-	-
Toronto C04	1	\$601,000	\$601,000	\$601,000	1	5	100%	31
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	1	\$707,000	\$707,000	\$707,000	-	3	97%	47
Toronto C08	6	\$3,244,888	\$540,815	\$552,000	2	5	97%	53
Toronto C09	-	-	-	-	-	1	-	-
Toronto C10	1	\$790,000	\$790,000	\$790,000	-	-	99%	3
Toronto C11	-	-	-	-	1	1	-	-
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	-	-	-	-	1	-	-	-
Toronto C14	1	\$665,000	\$665,000	\$665,000	3	6	102%	9
Toronto C15	-	-	-	-	-	1	-	-
<b>Toronto East</b>	<b>22</b>	<b>\$8,456,490</b>	<b>\$384,386</b>	<b>\$364,000</b>	<b>25</b>	<b>33</b>	<b>101%</b>	<b>25</b>
Toronto E01	5	\$2,249,500	\$449,900	\$465,000	8	7	108%	7
Toronto E02	1	\$955,000	\$955,000	\$955,000	2	3	98%	83
Toronto E03	-	-	-	-	-	3	-	-
Toronto E04	-	-	-	-	1	3	-	-
Toronto E05	1	\$432,000	\$432,000	\$432,000	3	1	108%	7
Toronto E06	-	-	-	-	-	2	-	-
Toronto E07	1	\$318,000	\$318,000	\$318,000	1	2	95%	108
Toronto E08	3	\$1,098,990	\$366,330	\$375,000	-	1	100%	16
Toronto E09	-	-	-	-	1	2	-	-
Toronto E10	2	\$665,500	\$332,750	\$332,750	2	3	99%	40
Toronto E11	9	\$2,737,500	\$304,167	\$294,000	7	6	97%	21

SUMMARY OF EXISTING HOME TRANSACTIONS

CO-OP APARTMENT, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>8</b>	<b>\$1,654,000</b>	<b>\$206,750</b>	<b>\$197,000</b>	<b>4</b>	<b>24</b>	<b>93%</b>	<b>38</b>
<b>Halton Region</b>	-	-	-	-	-	-	-	-
Burlington	-	-	-	-	-	-	-	-
Halton Hills	-	-	-	-	-	-	-	-
Milton	-	-	-	-	-	-	-	-
Oakville	-	-	-	-	-	-	-	-
<b>Peel Region</b>	<b>1</b>	<b>\$184,000</b>	<b>\$184,000</b>	<b>\$184,000</b>	<b>2</b>	<b>3</b>	<b>98%</b>	<b>30</b>
Brampton	1	\$184,000	\$184,000	\$184,000	-	1	98%	30
Caledon	-	-	-	-	-	-	-	-
Mississauga	-	-	-	-	2	2	-	-
<b>City of Toronto</b>	<b>7</b>	<b>\$1,470,000</b>	<b>\$210,000</b>	<b>\$210,000</b>	<b>2</b>	<b>21</b>	<b>92%</b>	<b>39</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	-	-	-	-	-	-	-	-
Aurora	-	-	-	-	-	-	-	-
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	-	-	-	-	-	-	-	-
King	-	-	-	-	-	-	-	-
Markham	-	-	-	-	-	-	-	-
Newmarket	-	-	-	-	-	-	-	-
Richmond Hill	-	-	-	-	-	-	-	-
Vaughan	-	-	-	-	-	-	-	-
Whitchurch-Stouffville	-	-	-	-	-	-	-	-
<b>Durham Region</b>	-	-	-	-	-	-	-	-
Ajax	-	-	-	-	-	-	-	-
Brock	-	-	-	-	-	-	-	-
Clarington	-	-	-	-	-	-	-	-
Oshawa	-	-	-	-	-	-	-	-
Pickering	-	-	-	-	-	-	-	-
Scugog	-	-	-	-	-	-	-	-
Uxbridge	-	-	-	-	-	-	-	-
Whitby	-	-	-	-	-	-	-	-
<b>Dufferin County</b>	-	-	-	-	-	-	-	-
Orangeville	-	-	-	-	-	-	-	-
<b>Simcoe County</b>	-	-	-	-	-	-	-	-
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	-	-	-	-	-	-	-	-
Essa	-	-	-	-	-	-	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	-	-	-	-	-	-	-	-

## SUMMARY OF EXISTING HOME TRANSACTIONS

CO-OP APARTMENT, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>8</b>	<b>\$1,654,000</b>	<b>\$206,750</b>	<b>\$197,000</b>	<b>4</b>	<b>24</b>	<b>93%</b>	<b>38</b>
<b>City of Toronto Total</b>	<b>7</b>	<b>\$1,470,000</b>	<b>\$210,000</b>	<b>\$210,000</b>	<b>2</b>	<b>21</b>	<b>92%</b>	<b>39</b>
<b>Toronto West</b>	<b>4</b>	<b>\$520,000</b>	<b>\$130,000</b>	<b>\$110,000</b>	-	<b>6</b>	<b>92%</b>	<b>37</b>
Toronto W01	-	-	-	-	-	-	-	-
Toronto W02	-	-	-	-	-	1	-	-
Toronto W03	-	-	-	-	-	-	-	-
Toronto W04	-	-	-	-	-	-	-	-
Toronto W05	2	\$190,000	\$95,000	\$95,000	-	2	93%	40
Toronto W06	-	-	-	-	-	-	-	-
Toronto W07	-	-	-	-	-	1	-	-
Toronto W08	2	\$330,000	\$165,000	\$165,000	-	1	91%	35
Toronto W09	-	-	-	-	-	1	-	-
Toronto W10	-	-	-	-	-	-	-	-
<b>Toronto Central</b>	<b>2</b>	<b>\$650,000</b>	<b>\$325,000</b>	<b>\$325,000</b>	<b>2</b>	<b>12</b>	<b>95%</b>	<b>53</b>
Toronto C01	-	-	-	-	-	-	-	-
Toronto C02	1	\$345,000	\$345,000	\$345,000	-	2	93%	76
Toronto C03	-	-	-	-	-	1	-	-
Toronto C04	-	-	-	-	1	3	-	-
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	-	-	-	-	-	-	-	-
Toronto C08	-	-	-	-	-	-	-	-
Toronto C09	1	\$305,000	\$305,000	\$305,000	-	5	97%	30
Toronto C10	-	-	-	-	-	-	-	-
Toronto C11	-	-	-	-	-	-	-	-
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	-	-	-	-	-	-	-	-
Toronto C14	-	-	-	-	1	-	-	-
Toronto C15	-	-	-	-	-	1	-	-
<b>Toronto East</b>	<b>1</b>	<b>\$300,000</b>	<b>\$300,000</b>	<b>\$300,000</b>	-	<b>3</b>	<b>88%</b>	<b>21</b>
Toronto E01	-	-	-	-	-	-	-	-
Toronto E02	-	-	-	-	-	1	-	-
Toronto E03	-	-	-	-	-	-	-	-
Toronto E04	-	-	-	-	-	-	-	-
Toronto E05	-	-	-	-	-	-	-	-
Toronto E06	1	\$300,000	\$300,000	\$300,000	-	-	88%	21
Toronto E07	-	-	-	-	-	1	-	-
Toronto E08	-	-	-	-	-	-	-	-
Toronto E09	-	-	-	-	-	1	-	-
Toronto E10	-	-	-	-	-	-	-	-
Toronto E11	-	-	-	-	-	-	-	-

SUMMARY OF EXISTING HOME TRANSACTIONS

DETACHED CONDOMINIUM, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>6</b>	<b>\$2,225,000</b>	<b>\$370,833</b>	<b>\$365,000</b>	<b>8</b>	<b>22</b>	<b>97%</b>	<b>91</b>
<b>Halton Region</b>	<b>1</b>	<b>\$405,000</b>	<b>\$405,000</b>	<b>\$405,000</b>	<b>2</b>	<b>1</b>	<b>97%</b>	<b>61</b>
Burlington	1	\$405,000	\$405,000	\$405,000	1	-	97%	61
Halton Hills	-	-	-	-	-	-	-	-
Milton	-	-	-	-	-	-	-	-
Oakville	-	-	-	-	1	1	-	-
<b>Peel Region</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>5</b>	<b>-</b>	<b>-</b>
Brampton	-	-	-	-	-	2	-	-
Caledon	-	-	-	-	-	-	-	-
Mississauga	-	-	-	-	2	3	-	-
<b>City of Toronto</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>2</b>	<b>-</b>	<b>-</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE: </b>								
<b>York Region</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>-</b>
Aurora	-	-	-	-	-	-	-	-
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	-	-	-	-	-	-	-	-
King	-	-	-	-	-	-	-	-
Markham	-	-	-	-	-	1	-	-
Newmarket	-	-	-	-	-	-	-	-
Richmond Hill	-	-	-	-	-	-	-	-
Vaughan	-	-	-	-	-	-	-	-
Whitchurch-Stouffville	-	-	-	-	-	-	-	-
<b>Durham Region</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>-</b>
Ajax	-	-	-	-	-	1	-	-
Brock	-	-	-	-	-	-	-	-
Clarington	-	-	-	-	-	-	-	-
Oshawa	-	-	-	-	-	-	-	-
Pickering	-	-	-	-	-	-	-	-
Scugog	-	-	-	-	-	-	-	-
Uxbridge	-	-	-	-	-	-	-	-
Whitby	-	-	-	-	-	-	-	-
<b>Dufferin County</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Orangeville	-	-	-	-	-	-	-	-
<b>Simcoe County</b>	<b>5</b>	<b>\$1,820,000</b>	<b>\$364,000</b>	<b>\$350,000</b>	<b>3</b>	<b>12</b>	<b>97%</b>	<b>97</b>
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	-	-	-	-	-	-	-	-
Essa	-	-	-	-	-	-	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	5	\$1,820,000	\$364,000	\$350,000	3	12	97%	97

SUMMARY OF EXISTING HOME TRANSACTIONS

DETACHED CONDOMINIUM, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	6	\$2,225,000	\$370,833	\$365,000	8	22	97%	91
<b>City of Toronto Total</b>	-	-	-	-	1	2	-	-
<b>Toronto West</b>	-	-	-	-	-	1	-	-
Toronto W01	-	-	-	-	-	-	-	-
Toronto W02	-	-	-	-	-	-	-	-
Toronto W03	-	-	-	-	-	-	-	-
Toronto W04	-	-	-	-	-	-	-	-
Toronto W05	-	-	-	-	-	-	-	-
Toronto W06	-	-	-	-	-	-	-	-
Toronto W07	-	-	-	-	-	-	-	-
Toronto W08	-	-	-	-	-	1	-	-
Toronto W09	-	-	-	-	-	-	-	-
Toronto W10	-	-	-	-	-	-	-	-
<b>Toronto Central</b>	-	-	-	-	1	1	-	-
Toronto C01	-	-	-	-	1	1	-	-
Toronto C02	-	-	-	-	-	-	-	-
Toronto C03	-	-	-	-	-	-	-	-
Toronto C04	-	-	-	-	-	-	-	-
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	-	-	-	-	-	-	-	-
Toronto C08	-	-	-	-	-	-	-	-
Toronto C09	-	-	-	-	-	-	-	-
Toronto C10	-	-	-	-	-	-	-	-
Toronto C11	-	-	-	-	-	-	-	-
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	-	-	-	-	-	-	-	-
Toronto C14	-	-	-	-	-	-	-	-
Toronto C15	-	-	-	-	-	-	-	-
<b>Toronto East</b>	-	-	-	-	-	-	-	-
Toronto E01	-	-	-	-	-	-	-	-
Toronto E02	-	-	-	-	-	-	-	-
Toronto E03	-	-	-	-	-	-	-	-
Toronto E04	-	-	-	-	-	-	-	-
Toronto E05	-	-	-	-	-	-	-	-
Toronto E06	-	-	-	-	-	-	-	-
Toronto E07	-	-	-	-	-	-	-	-
Toronto E08	-	-	-	-	-	-	-	-
Toronto E09	-	-	-	-	-	-	-	-
Toronto E10	-	-	-	-	-	-	-	-
Toronto E11	-	-	-	-	-	-	-	-

SUMMARY OF EXISTING HOME TRANSACTIONS

CO-OWNERSHIP APARTMENT, DECEMBER 2011  
ALL TREB AREAS

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	<b>7</b>	<b>\$1,214,900</b>	<b>\$173,557</b>	<b>\$184,000</b>	<b>7</b>	<b>20</b>	<b>95%</b>	<b>58</b>
<b>Halton Region</b>	-	-	-	-	-	-	-	-
Burlington	-	-	-	-	-	-	-	-
Halton Hills	-	-	-	-	-	-	-	-
Milton	-	-	-	-	-	-	-	-
Oakville	-	-	-	-	-	-	-	-
<b>Peel Region</b>	-	-	-	-	-	-	-	-
Brampton	-	-	-	-	-	-	-	-
Caledon	-	-	-	-	-	-	-	-
Mississauga	-	-	-	-	-	-	-	-
<b>City of Toronto</b>	<b>7</b>	<b>\$1,214,900</b>	<b>\$173,557</b>	<b>\$184,000</b>	<b>7</b>	<b>20</b>	<b>95%</b>	<b>58</b>
<b>! TURN PAGE FOR CITY OF TORONTO TABLES OR CLICK HERE:</b>								
<b>York Region</b>	-	-	-	-	-	-	-	-
Aurora	-	-	-	-	-	-	-	-
E. Gwillimbury	-	-	-	-	-	-	-	-
Georgina	-	-	-	-	-	-	-	-
King	-	-	-	-	-	-	-	-
Markham	-	-	-	-	-	-	-	-
Newmarket	-	-	-	-	-	-	-	-
Richmond Hill	-	-	-	-	-	-	-	-
Vaughan	-	-	-	-	-	-	-	-
Whitchurch-Stouffville	-	-	-	-	-	-	-	-
<b>Durham Region</b>	-	-	-	-	-	-	-	-
Ajax	-	-	-	-	-	-	-	-
Brock	-	-	-	-	-	-	-	-
Clarington	-	-	-	-	-	-	-	-
Oshawa	-	-	-	-	-	-	-	-
Pickering	-	-	-	-	-	-	-	-
Scugog	-	-	-	-	-	-	-	-
Uxbridge	-	-	-	-	-	-	-	-
Whitby	-	-	-	-	-	-	-	-
<b>Dufferin County</b>	-	-	-	-	-	-	-	-
Orangeville	-	-	-	-	-	-	-	-
<b>Simcoe County</b>	-	-	-	-	-	-	-	-
Adjala-Tosorontio	-	-	-	-	-	-	-	-
Bradford West Gwillimbury	-	-	-	-	-	-	-	-
Essa	-	-	-	-	-	-	-	-
Innisfil	-	-	-	-	-	-	-	-
New Tecumseth	-	-	-	-	-	-	-	-

SUMMARY OF EXISTING HOME TRANSACTIONS

CO-OWNERSHIP APARTMENT, DECEMBER 2011  
CITY OF TORONTO MUNICIPAL BREAKDOWN

	Sales <sup>1</sup>	Dollar Volume <sup>1</sup>	Average Price <sup>1</sup>	Median Price <sup>1</sup>	New Listings <sup>2</sup>	Active Listings <sup>3</sup>	Avg. SP/LP <sup>4</sup>	Avg. DOM <sup>5</sup>
<b>TREB Total</b>	7	\$1,214,900	\$173,557	\$184,000	7	20	95%	58
<b>City of Toronto Total</b>	7	\$1,214,900	\$173,557	\$184,000	7	20	95%	58
<b>Toronto West</b>	1	\$82,900	\$82,900	\$82,900	2	5	86%	135
Toronto W01	-	-	-	-	-	1	-	-
Toronto W02	-	-	-	-	-	-	-	-
Toronto W03	-	-	-	-	-	-	-	-
Toronto W04	-	-	-	-	-	-	-	-
Toronto W05	1	\$82,900	\$82,900	\$82,900	1	2	86%	135
Toronto W06	-	-	-	-	1	2	-	-
Toronto W07	-	-	-	-	-	-	-	-
Toronto W08	-	-	-	-	-	-	-	-
Toronto W09	-	-	-	-	-	-	-	-
Toronto W10	-	-	-	-	-	-	-	-
<b>Toronto Central</b>	6	\$1,132,000	\$188,667	\$187,000	5	15	96%	45
Toronto C01	-	-	-	-	-	1	-	-
Toronto C02	-	-	-	-	-	-	-	-
Toronto C03	-	-	-	-	1	2	-	-
Toronto C04	3	\$544,000	\$181,333	\$184,000	2	7	96%	19
Toronto C06	-	-	-	-	-	-	-	-
Toronto C07	-	-	-	-	-	-	-	-
Toronto C08	-	-	-	-	-	-	-	-
Toronto C09	-	-	-	-	-	1	-	-
Toronto C10	-	-	-	-	-	1	-	-
Toronto C11	-	-	-	-	-	-	-	-
Toronto C12	-	-	-	-	-	-	-	-
Toronto C13	-	-	-	-	-	2	-	-
Toronto C14	3	\$588,000	\$196,000	\$190,000	-	-	97%	71
Toronto C15	-	-	-	-	2	1	-	-
<b>Toronto East</b>	-	-	-	-	-	-	-	-
Toronto E01	-	-	-	-	-	-	-	-
Toronto E02	-	-	-	-	-	-	-	-
Toronto E03	-	-	-	-	-	-	-	-
Toronto E04	-	-	-	-	-	-	-	-
Toronto E05	-	-	-	-	-	-	-	-
Toronto E06	-	-	-	-	-	-	-	-
Toronto E07	-	-	-	-	-	-	-	-
Toronto E08	-	-	-	-	-	-	-	-
Toronto E09	-	-	-	-	-	-	-	-
Toronto E10	-	-	-	-	-	-	-	-
Toronto E11	-	-	-	-	-	-	-	-

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PUBLIC

HISTORIC ANNUAL STATISTICS<sup>1,6,7</sup>

YEAR	SALES	AVERAGE PRICE
2000	58,343	\$243,255
2001	67,612	\$251,508
2002	74,759	\$275,231
2003	78,898	\$293,067
2004	83,501	\$315,231
2005	84,145	\$335,907
2006	83,084	\$351,941
2007	93,193	\$376,236
2008	74,552	\$379,347
2009	87,308	\$395,460
2010	85,845	\$431,276

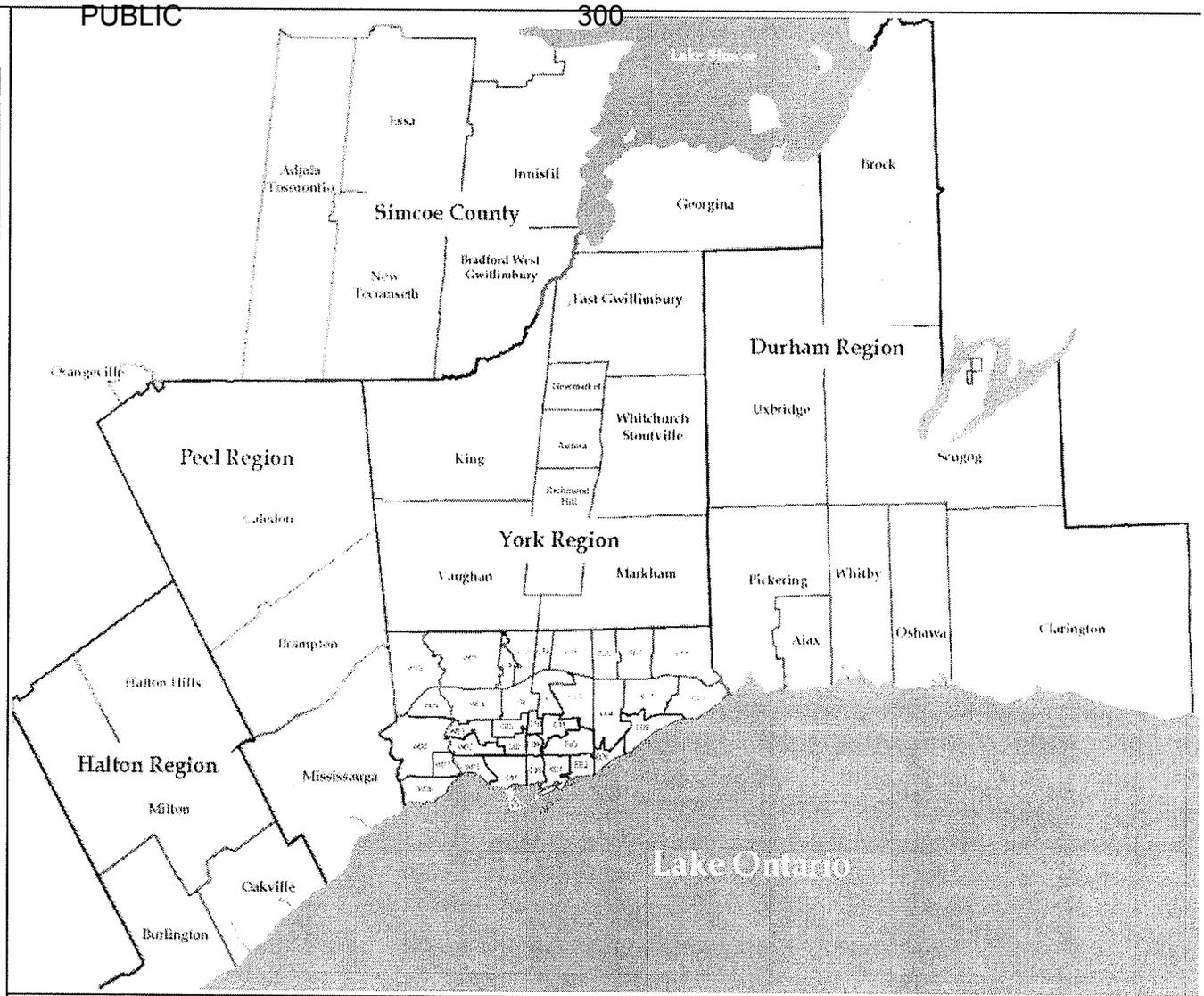
\*For historic annual sales and average price data over a longer time frame go to: [http://www.torontorealestateboard.com/market\\_news/market\\_watch/historic\\_stats/pdf/TREB\\_historic\\_statistics.pdf](http://www.torontorealestateboard.com/market_news/market_watch/historic_stats/pdf/TREB_historic_statistics.pdf)

2010 MONTHLY STATISTICS<sup>1,7</sup>

January	4,826	\$408,363
February	7,074	\$430,954
March	10,144	\$433,154
April	10,578	\$436,514
May	9,234	\$446,111
June	8,240	\$433,966
July	6,417	\$418,492
August	6,078	\$409,428
September	6,129	\$425,827
October	6,472	\$443,503
November	6,367	\$437,361
December	4,286	\$433,523
<b>Annual</b>	<b>85,845</b>	<b>\$431,276</b>

2011 MONTHLY STATISTICS<sup>1,7</sup>

January	4,199	\$425,762
February	6,058	\$453,329
March	8,988	\$456,221
April	8,778	\$476,802
May	9,767	\$485,408
June	9,960	\$474,268
July	7,685	\$458,919
August	7,335	\$450,828
September	7,427	\$464,080
October	7,446	\$475,550
November	6,986	\$479,160
December	4,718	\$451,436
<b>Year-to-Date</b>	<b>89,347</b>	<b>\$465,412</b>



NOTES

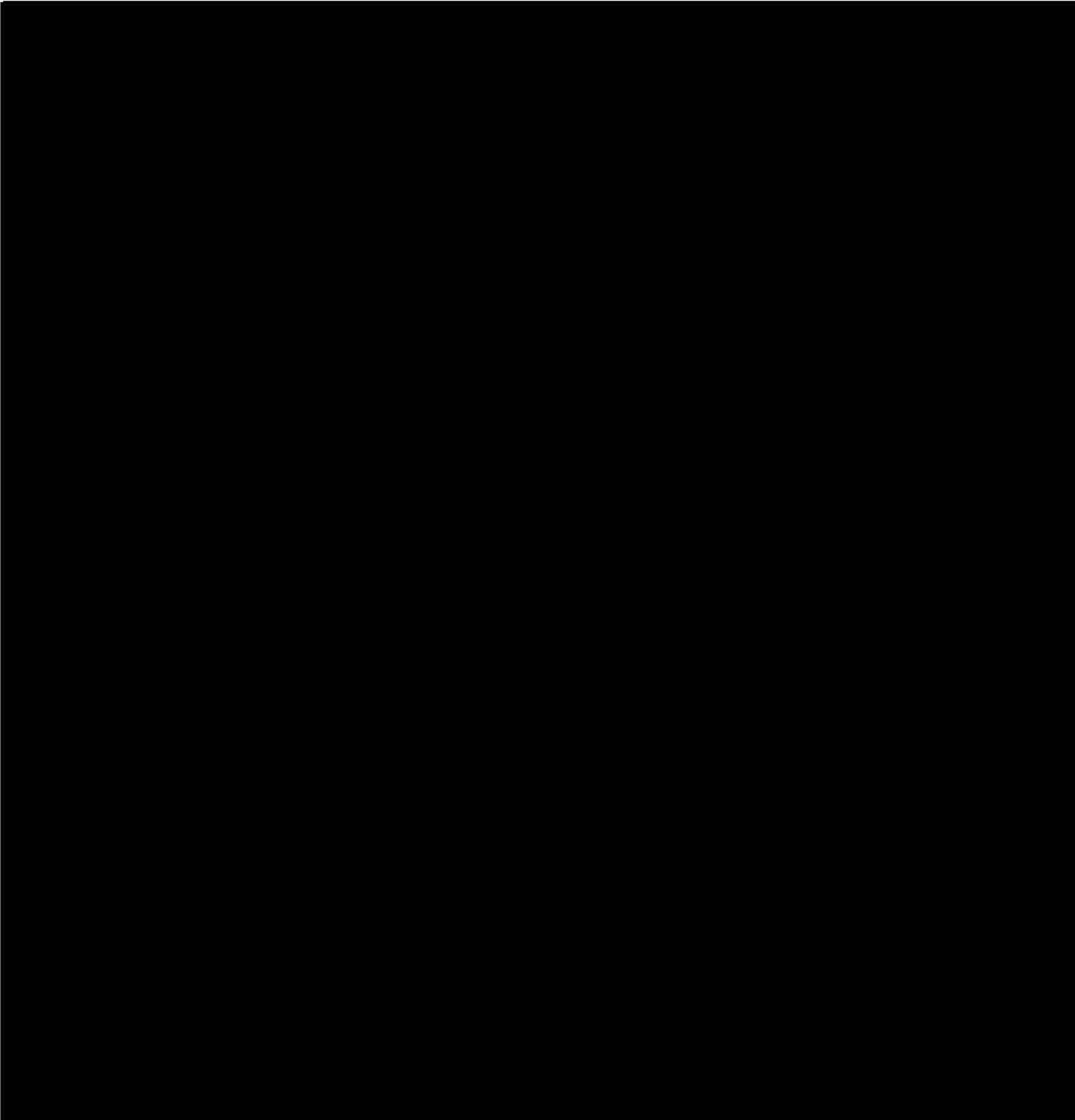
- <sup>1</sup>Sales, dollar volume, average sale prices and median sale prices are based on firm transactions entered into the TorontoMLS® system between the first and last day of the month/period being reported.
- <sup>2</sup>New listings entered into the TorontoMLS® system between the first and last day of the month/period being reported.
- <sup>3</sup>Active listings at the end of the last day of the month/period being reported.
- <sup>4</sup>Ratio of the average selling price to the average listing price for firm transactions entered into the TorontoMLS® system between the first and last day of the month/period being reported.
- <sup>5</sup>Average number of days on the market for firm transactions entered into the TorontoMLS® system between the first and last day of the month/period being reported.
- <sup>6</sup>Due past changes to TREB's service area, caution should be exercised when making historical comparisons.
- <sup>7</sup>Past monthly and year-to-date figures are revised on a monthly basis.
- <sup>8</sup>SNLR = Sales-to-New Listings Ratio. Calculated using a 12-month moving average (sales/new listings).
- <sup>9</sup>Mos. Inv. = Months of Inventory. Calculated using a 12-month moving average (active listings/sales).

# **EXHIBIT**

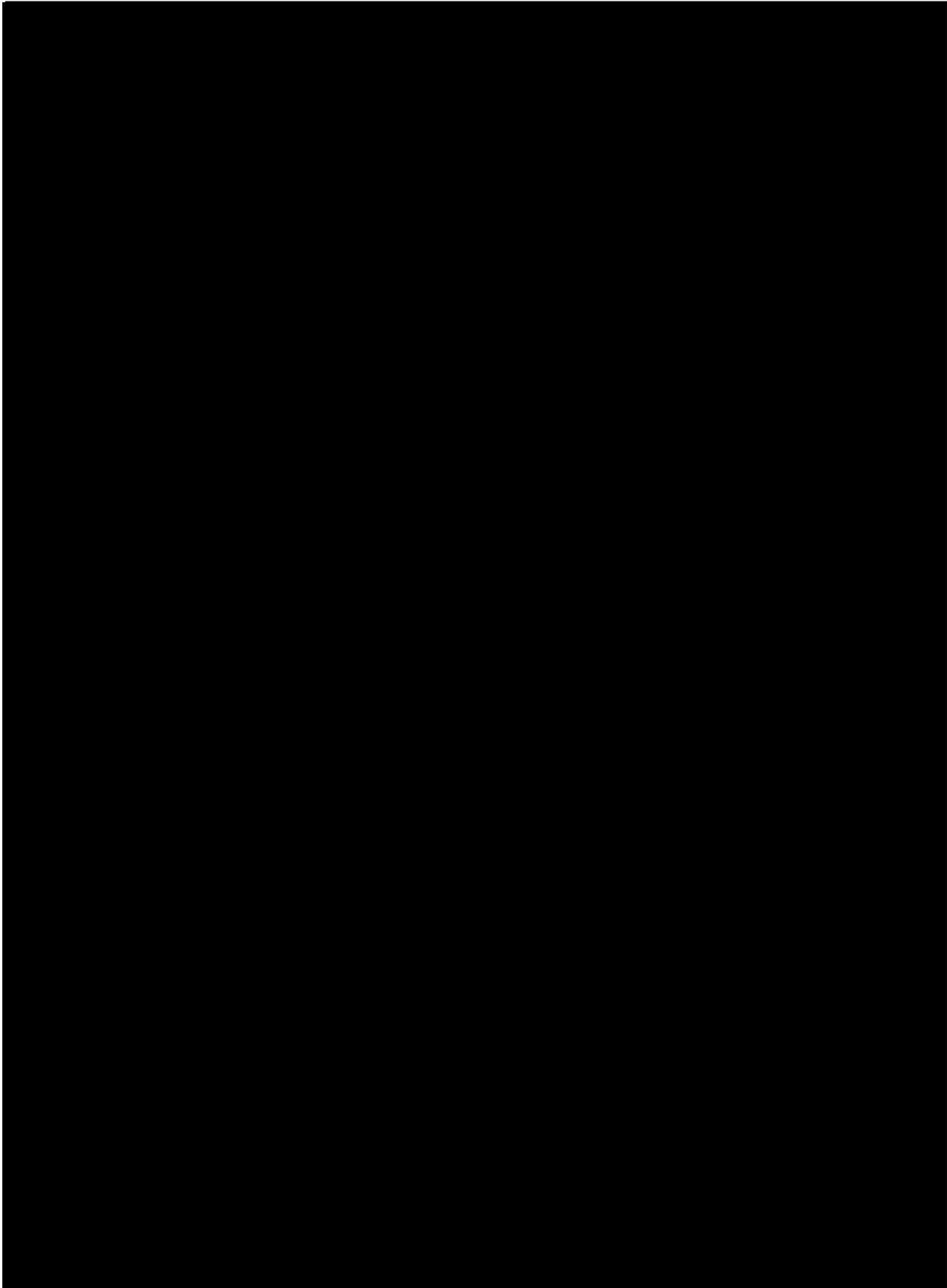
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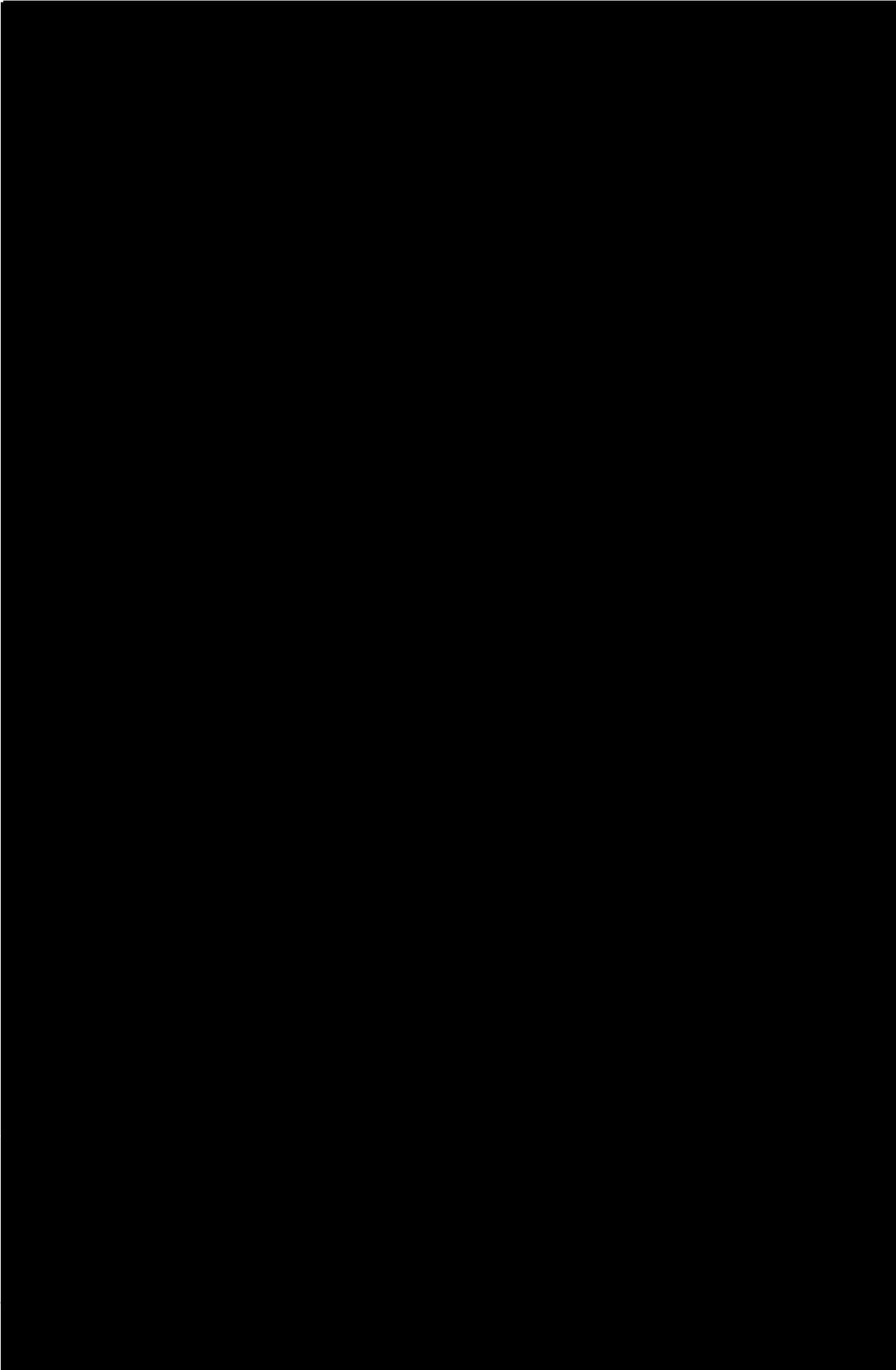
CREA/TREB CONTENT UPLOAD AGREEMENT

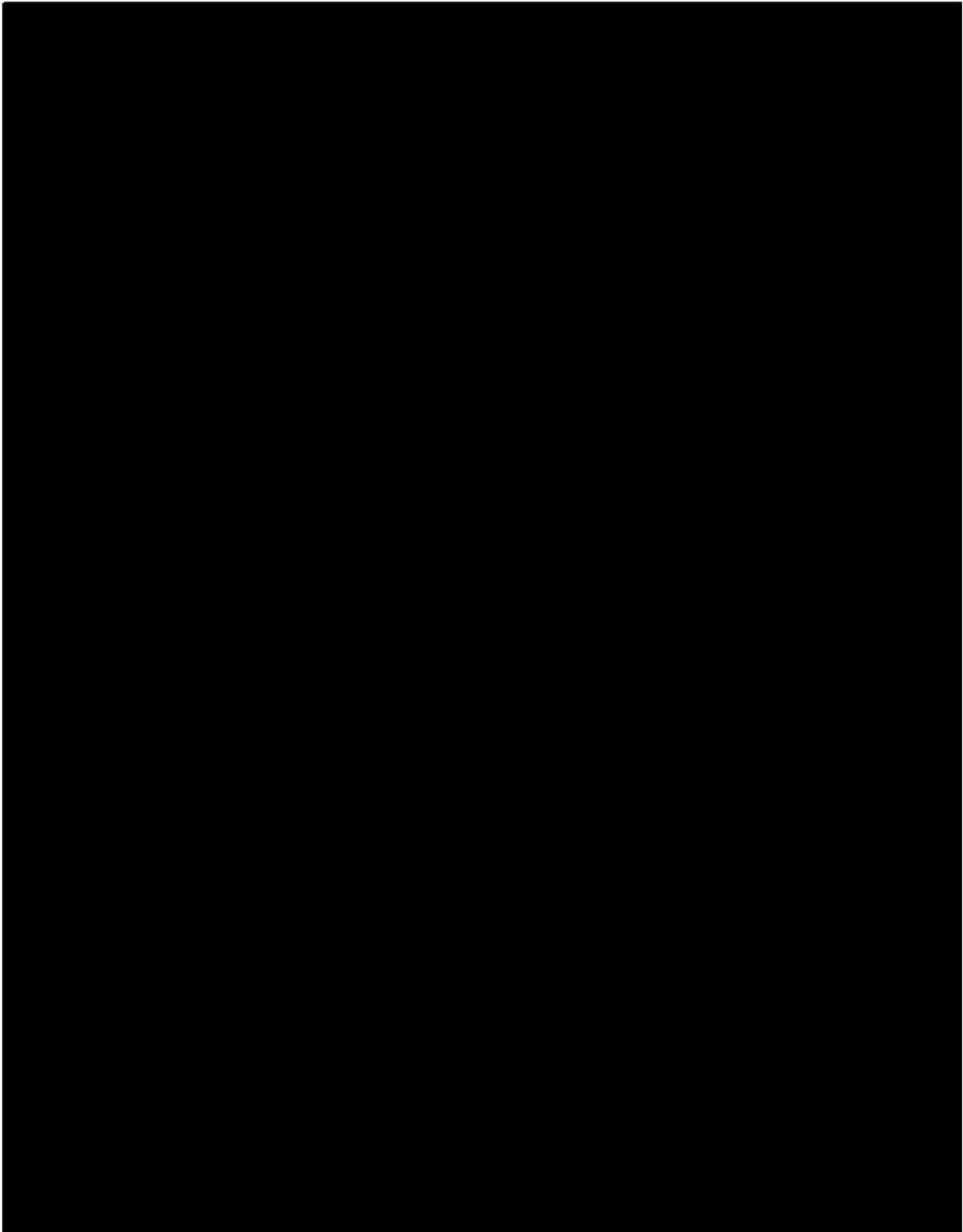
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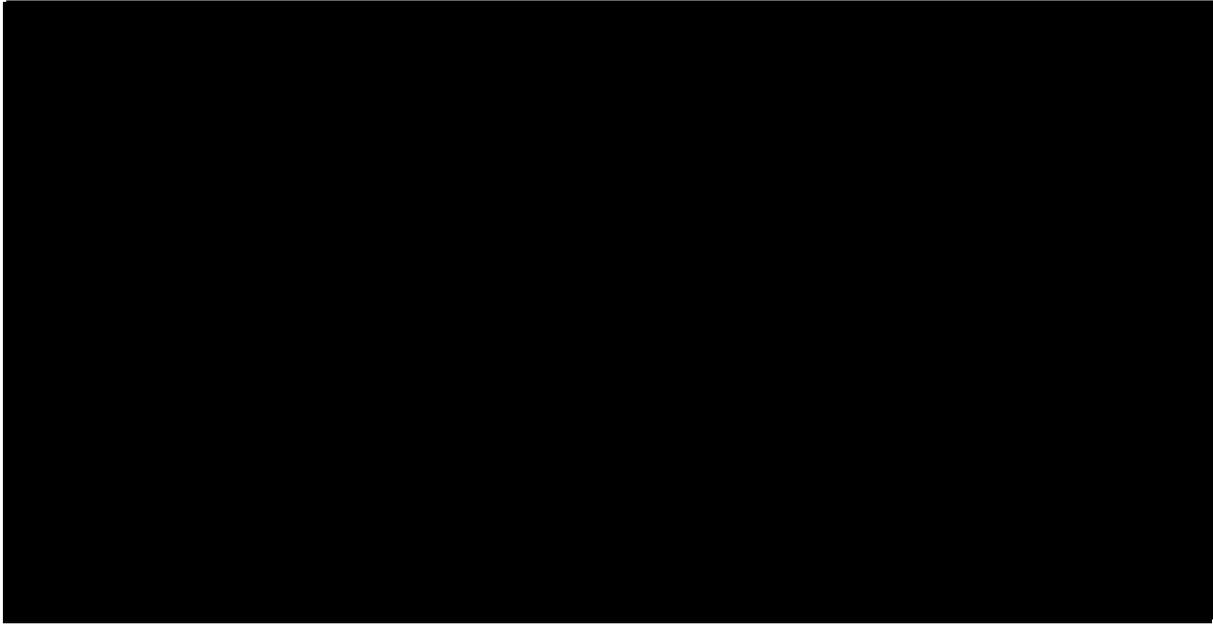


WITNESS: J. J. M. O'Connell  
CASE NAME: COC v TREB  
DATE: Apr 5/12  
PENNY E. LOWREY, RPR, CSR









THE CANADIAN REAL ESTATE ASSOCIATION

Per: [Signature]

Title: President Date: Dec 14/06

Per: [Signature]

Title: CEO Date: Dec 26/06

THE TORONTO REAL ESTATE BOARD

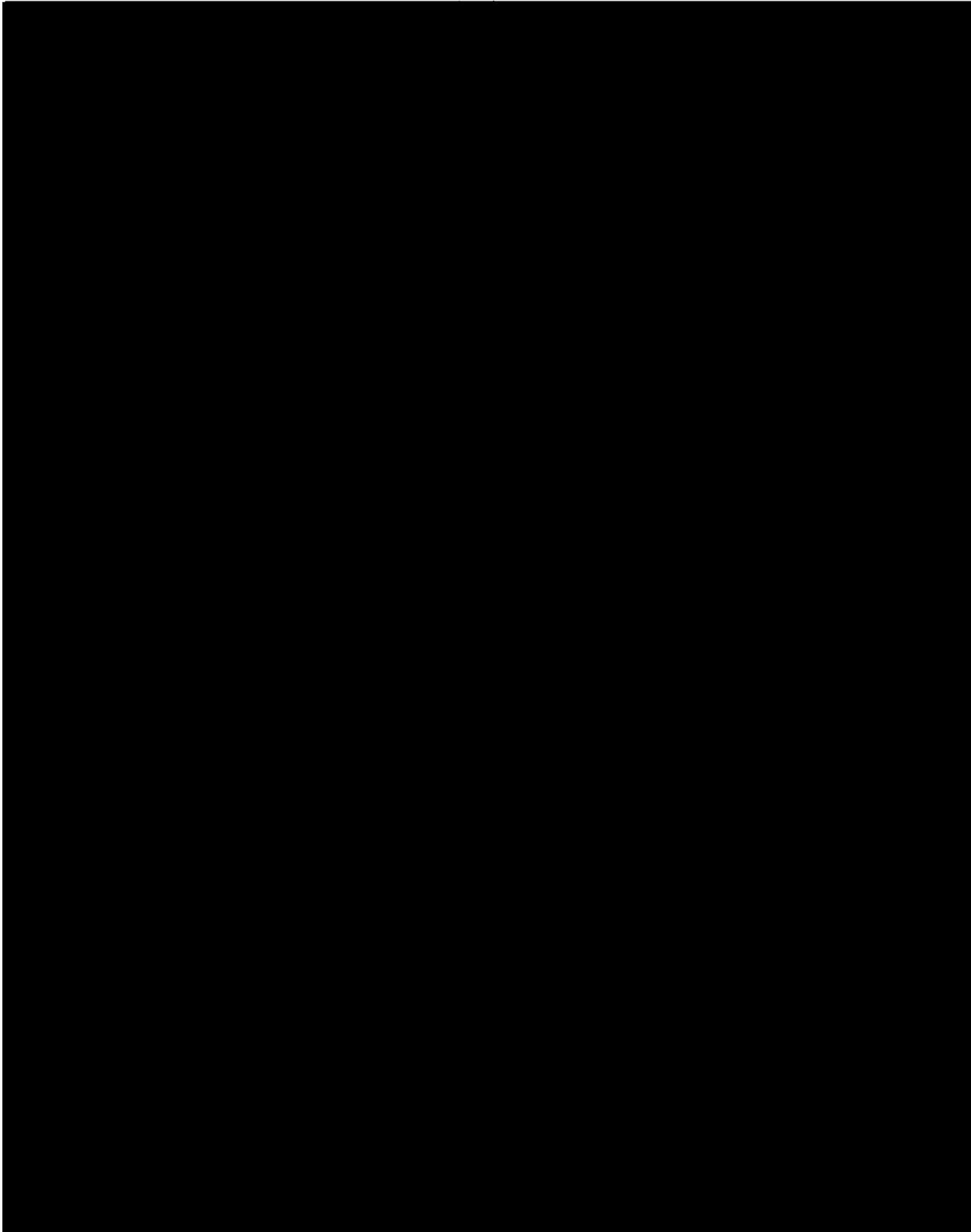
Per: [Signature]

Title: President Date: Nov. 15/2006

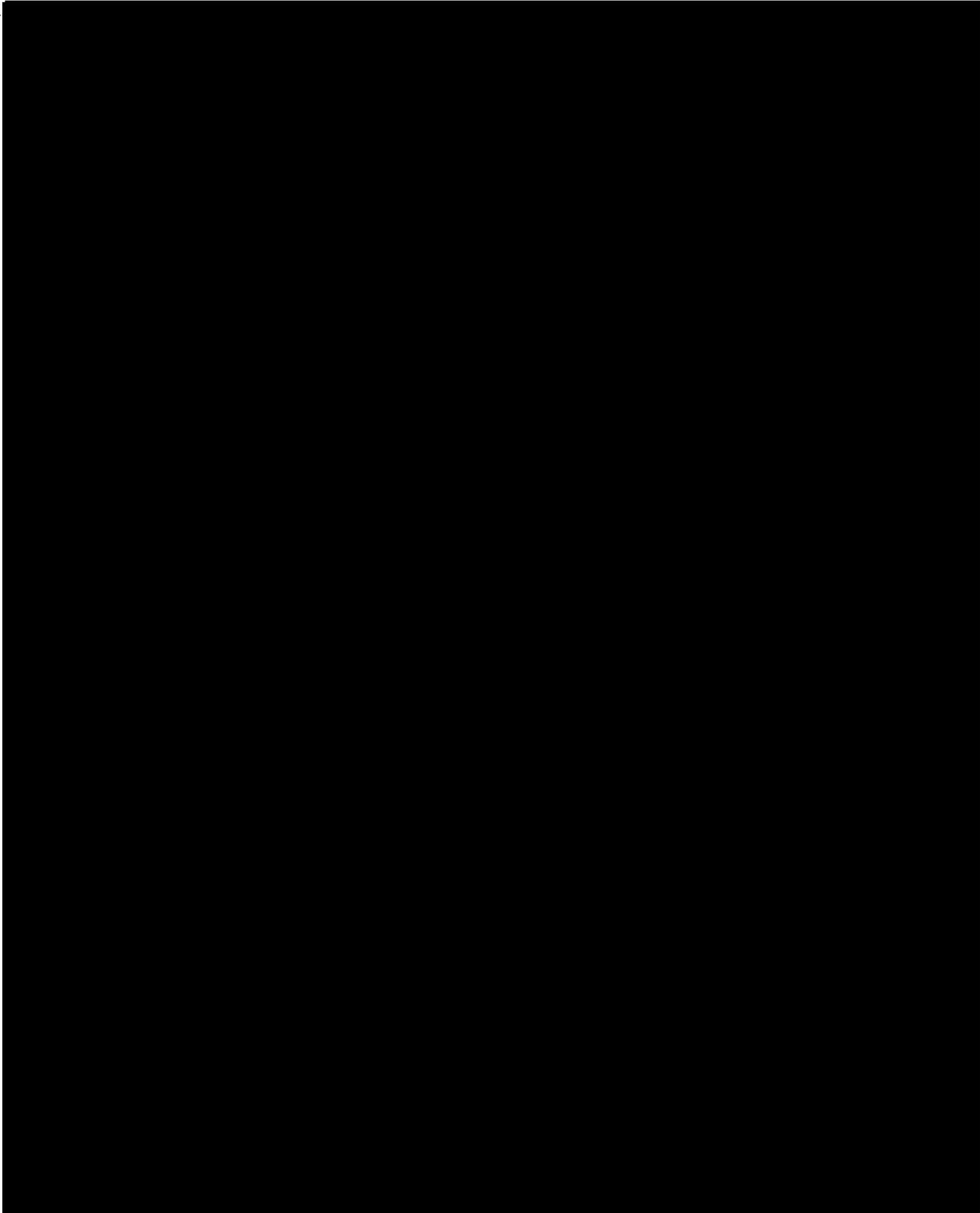
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Title: CEO Date: Nov 14/2006

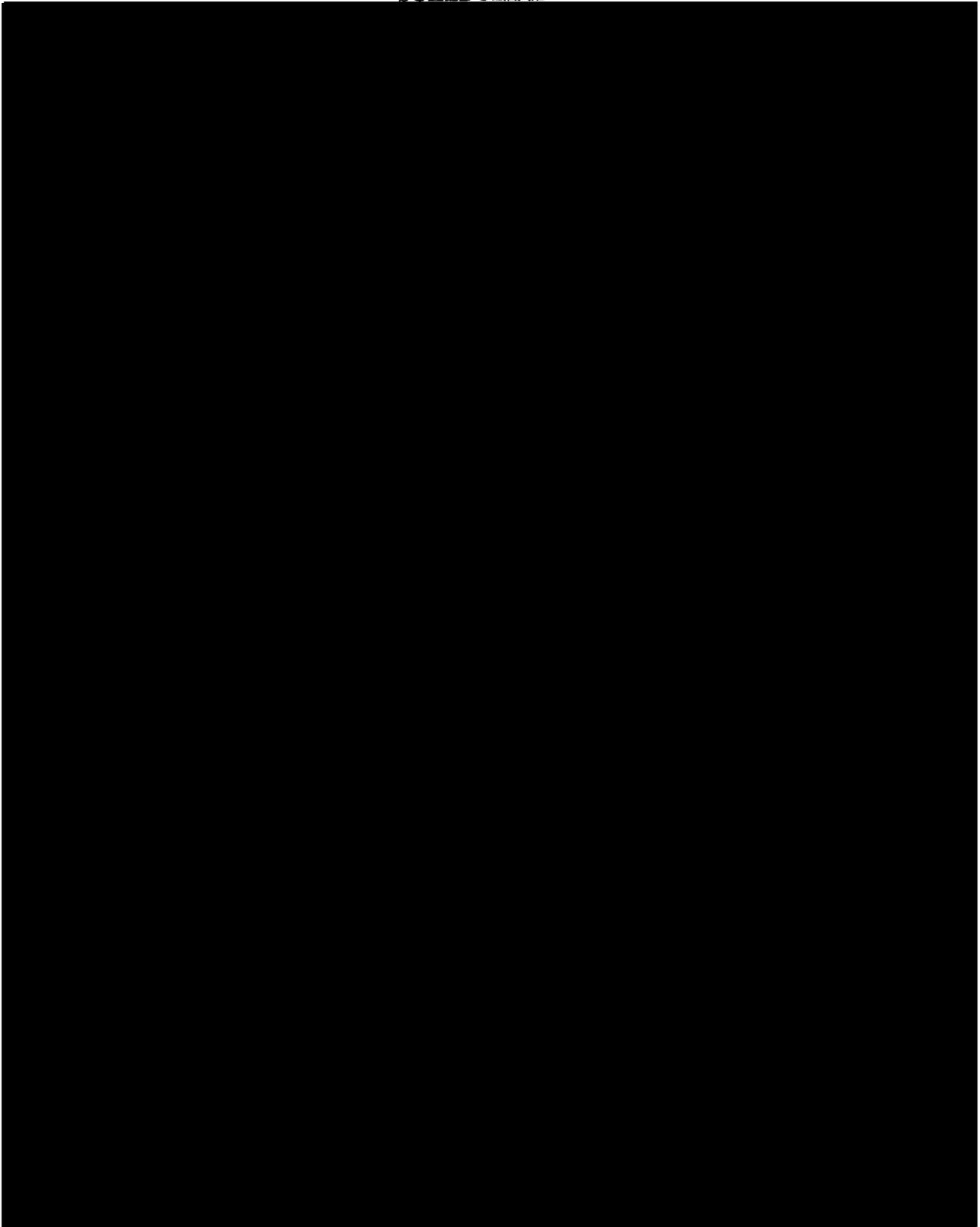
SCHEDULE A



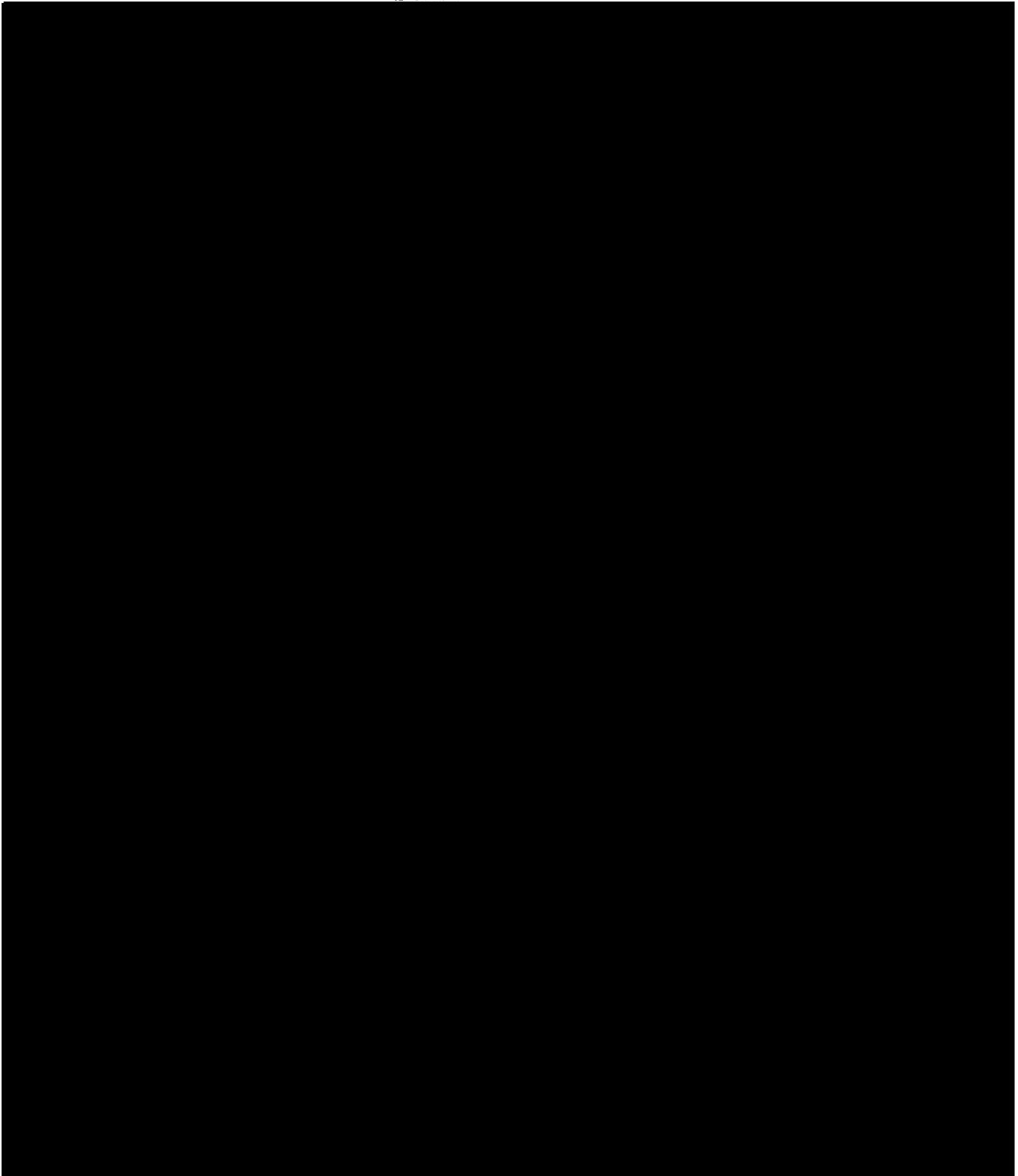
SCHEDULE A



SCHEDULE A



SCHEDULE A

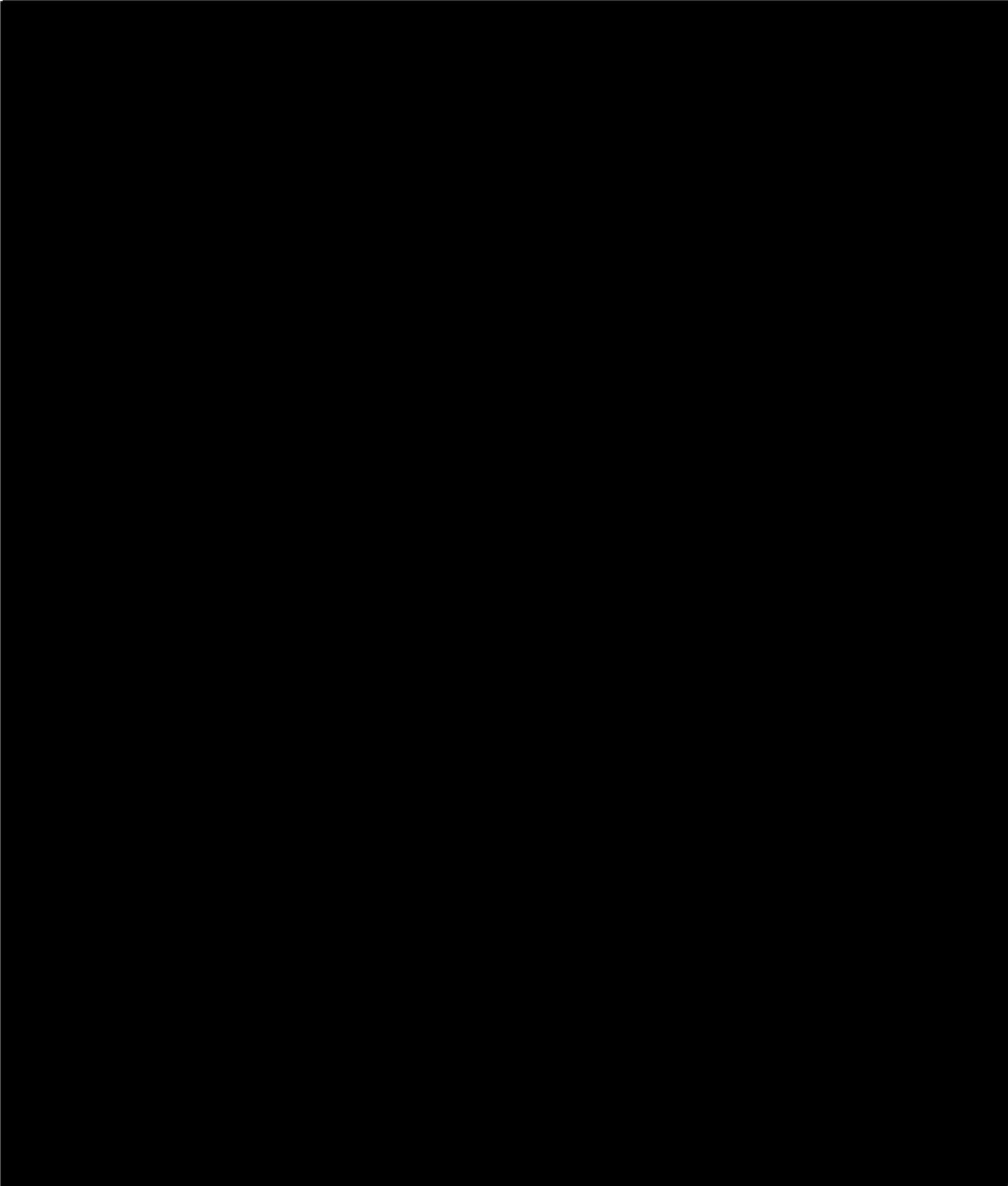


SCHEDULE A



**SCHEDULE B**

**Minimum or Mandatory Fields**



# **EXHIBIT**

# **S**



## INTERNET DATA EXCHANGE ("IDX") LICENSE AGREEMENT

### IMPORTANT: PLEASE READ CAREFULLY

**PLEASE REVIEW THE TERMS AND CONDITIONS OF THIS IDX LICENSE AGREEMENT (the "Agreement") CAREFULLY BEFORE INDICATING YOUR ACCEPTANCE BY SIGNING BELOW. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SIGN THIS AGREEMENT, IN WHICH CASE YOU WILL NOT BE PERMITTED TO ACCESS OR USE THE IDX SYSTEM OR SERVICES PROVIDED PURSUANT HERETO.**

This Agreement together with all materials referenced herein is a legal agreement between The Toronto Real Estate Board ("TREB" or the "Board"), a corporation incorporated pursuant to the laws of the Province of Ontario, and You (the "IDX Subscriber"). In consideration of the mutual undertakings contained in this Agreement, the parties agree as follows:

#### ARTICLE 1 GENERAL.

- 1.1 This Agreement sets out the requirements for the orderly and efficient operation of the IDX System (as hereinafter defined) and is intended to make the IDX Subscriber aware of what TREB deems to be both acceptable use and unacceptable use of the IDX System.
- 1.2 This Agreement should be read in conjunction with TREB Requirements (as hereinafter defined).
- 1.3 By using the IDX System, the IDX Subscriber agrees to and must comply with this Agreement.
- 1.4 The IDX Subscriber will be fully responsible for all access to the IDX System through its personal account.

#### ARTICLE 2 DEFINITIONS.

- 2.1 In this Agreement:

"Authenticator" means any handheld random password generator(s) that may be provided by TREB to IDX Subscriber from time to time;

"Authorized User Agreement" means the user agreement, as amended, restated or replaced from time to time, which governs, among other things, access to and use of the MLS® System;

"Board of Directors" means the Board of Directors of TREB;

"Confidential Information" has the meaning ascribed thereto in Section 7.1;

"IDX Data" means all or any part of the subset of data extracted by TREB from the MLS® Listings provided by the IDX Subscribers and which can be accessed by other IDX Subscribers through the IDX System;

"IDX Database" means the aggregation of the IDX Data as well as its assembly and arrangement that from time to time comprises the IDX System;

**"IDX Frame"** means the HTML or other code, as defined and/or provided by TREB as part of the IDX System from time to time in its sole discretion, that enables an IDX Subscriber to display the IDX Database on the Subscriber Website;

**"IDX Subscriber"** means You as set forth in the preamble of this Agreement; and **"IDX Subscribers"** means all participants in the IDX System pursuant to this Agreement, as same may be amended from time to time;

**"IDX System"** means the proprietary Internet-based service currently known as the Internet Data Exchange ("**IDX**"), and any successor or replacement service thereto owned and operated by or on behalf of TREB, and includes the IDX Database and the IDX Frame;

**"Internal Business Purposes"** means, subject to the conditions and restrictions in Article 5 hereof, the use of the IDX System and any IDX Data obtained therefrom for the sole purpose of assisting an IDX Subscriber to conduct a bona fide trade in real estate for clients or customers, namely the disposition or acquisition of or transaction in real estate by sale, purchase, agreement for purchase and sale, lease or rental and any offer or attempt to list real estate for such purpose;

**"Intellectual Property Rights"** mean: (a) any and all proprietary rights provided under patent, copyright (including moral rights) or trade-mark law or any other similar statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide a right in either hardware, software, documentation, confidential information, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of any of the foregoing; (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing and the rights to create and/or use derivative works of any of the foregoing; and (c) all licenses and waivers and benefits of waivers of the rights set out in (a) and (b) above, all future income and proceeds from the rights set out in (a) and (b) above, and all rights to damages and profits by reason of the infringement of any of the rights set out in (a) and (b) above;

**"MLS®"** is a registered trademark of The Canadian Real Estate Association;

**"MLS® Database"** means the aggregation or any part of the information, comments, opinions, statements, advice, descriptions, services, offers, data, files, links, ideas, software, images, graphics, audio clips, video clips, icons, or any other form of content or information, as well as its selection, assembly and arrangement, that from time to time comprise the MLS® System, and any successor or replacement service thereto;

**"MLS® Listing"** means any property listing record contained in the MLS® System and the data and information comprising such record;

**"MLS® Rules and Policies"** means the rules and policies enacted by TREB, as amended, restated or replaced from time to time, which govern, among other things, the operation and use of the MLS® System;

**"MLS® System"** means the proprietary Internet-based service currently known as the Multiple Listing Service® ("**MLS®**"), and any successor or replacement service thereto owned and operated by or on behalf of TREB;

**"Personal Information"** shall have the meaning attributed to such term in the *Personal Information and Electronic Documents Act* (Canada), as such legislation may be amended from time to time;

“**REBBA**” means the *Real Estate and Business Brokers Act, 2002* (Ontario) and the regulations thereunder, as such legislation may be amended from time to time;

“**Standards**” means the document(s) created and/or amended from time to time by the Board of Directors of TREB which sets out the minimum technological standards relating to the computer and software configuration and technology needed to access and use the MLS® System and the IDX System;

“**Subscriber Website**” means the website on which the IDX Subscriber uses the IDX Frame and displays the IDX Database;

“**TREB By-Laws**” means the By-Law or by-laws enacted by the Board of Directors of TREB, as amended, restated or replaced from time to time;

“**TREB Requirements**” means the agreements, rules, regulations, policies, guidelines and other documents which govern or regulate the access to and use of any software, computer system, or internet-based application owned by TREB or to which TREB provides access, and includes but is not limited to TREB’s Authorized User Agreement, the MLS® Rules and Policies, the TREB By-Laws, the Standards, and any other TREB documents by which the IDX Subscriber is bound, with respect to, among other things, privacy, network security, information or data security and/or the operation of the IDX System; as any of the foregoing may be amended and/or replaced from time to time.

### ARTICLE 3 IDX LISTINGS

- 3.1 The IDX Subscriber hereby acknowledges and agrees that by electing to participate in the IDX System, all or part of the IDX Data, as may be designated by TREB from time to time, may be included in the IDX System and may appear on any other IDX Subscriber’s Website in accordance with the terms and conditions of this Agreement.

### ARTICLE 4 LICENSE GRANT

- 4.1 License. Subject to the terms and conditions set forth herein, the IDX Subscriber is hereby granted a non-exclusive, non-transferable, limited license (without a right to sublicense), to add the IDX Frame to the Subscriber Website.
- 4.2 Changes to IDX System. Any updates, modifications or enhancements to the IDX System or the features or functionality thereof that are made available by TREB to the IDX Subscriber, shall be subject to the terms and conditions of this Agreement. TREB may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature of the IDX System, without notice to an IDX Subscriber or any liability to TREB, IDX Subscriber or any third party.

### ARTICLE 5 CONDITIONS AND RESTRICTIONS ON USE.

- 5.1 Compliance. When using the IDX System, the IDX Subscriber must comply with the terms of this Agreement, all of the TREB Requirements and all applicable laws and regulations.
- 5.2 Representation and Warranty. IDX Subscriber represents and warrants that the IDX Subscriber is a member of TREB that is: (i) a member of a type or class of “full” membership under TREB’s By-Laws; and (ii) in good standing in accordance with TREB’s By-Laws and REBBA.
- 5.3 Restrictions. Except as expressly authorized in this Agreement or by TREB in writing, IDX Subscriber shall not:

- (a) use the IDX System or any IDX Data for any purpose other than its Internal Business Purposes and, without limiting the generality of the foregoing, IDX Subscriber shall not use the IDX System or any IDX Data in connection with any website (other than the Subscriber's Website) or internet posting, advertising, unsolicited products or services, promotional material or any other display, distribution, publication or republication to the public or any group or third party;
- (b) assist, allow or permit any person or entity to gain access to the IDX System by or through the IDX Subscriber, its password and/or Authenticator or assigned personal accounts, or access or use the IDX System to provide service bureau, hosting or time-sharing services or to support the operations of any other person or entity;
- (c) use or attempt to use another IDX Subscriber's password and/or Authenticator or personal accounts to gain access to or use the IDX System;
- (d) fail to maintain reasonable security precautions to protect its password and/or Authenticator and personal accounts from unauthorized access, use or disclosure, or fail to notify TREB upon becoming aware of any unauthorized access to or use of its password and/or Authenticator or personal accounts and/or the IDX System;
- (e) attempt to circumvent any computer security measures or resource restrictions, or attempt to gain unauthorized access to operating systems or networks, including by obscuring or falsifying IDX Subscriber's identity;
- (f) use, copy, reproduce, republish, modify, alter, scrape or download the IDX Database, or merge IDX Data with other data, or publish IDX Data in any form, in whole or in part and, without limiting the foregoing, prohibited uses include "screen scraping", "database scraping" and any other activity intended to collect, store, reorganize or manipulate IDX Data produced by, or displayed on and/or through, the IDX System;
- (g) use the IDX System or IDX Data in a manner that is contrary to or in violation of TREB Requirements or applicable laws or regulations or any Intellectual Property Rights of any person or entity;
- (h) use the IDX System for purposes that could reasonably be expected to directly or indirectly cause excessive strain on the system, or unwarranted or unsolicited interference with other IDX Subscribers' use of the system;
- (i) use automated or robot software to directly or indirectly access the IDX System;
- (j) de-compile, reverse engineer, disassemble, modify or adapt the IDX System or any part thereof; or
- (k) use the IDX System to conduct any abusive practices including transmitting anything defamatory, threatening, hateful, harassing, vulgar, obscene, harmful, or invasive of anyone's privacy.

5.4 The terms of this Agreement shall not relieve IDX Subscriber of any of its obligations under the TREB Requirements unless expressly set forth herein.

- 5.5 IDX Subscriber is solely responsible, at its expense, for acquiring, servicing, maintaining, and updating all equipment, computers, software and communications services not owned or operated by or on behalf of TREB, that allow IDX Subscriber to access and use the IDX System in accordance with the terms hereof.
- 5.6 IDX Subscriber shall promptly notify TREB if IDX Subscriber becomes aware of any error, bug, or security breach in the IDX System or any unauthorized use of the IDX System or unauthorized use, reproduction or distribution of IDX Data. Subject to the foregoing, IDX Subscriber shall maintain all such information in confidence in accordance with the provisions of Article 7.
- 5.7 TREB reserves the right, but is not obligated, to monitor equipment, systems, networks and/or activity (including usage) of IDX Subscriber at any time and from time to time to ensure compliance with this Agreement and TREB Requirements. In addition, for security and network maintenance purposes, TREB is authorized, but not obligated, to monitor and access IDX System equipment, applications and systems and monitor network traffic and usage at any time and from time to time. IDX Subscriber agrees to render reasonable assistance and cooperation to TREB if so requested in connection with the foregoing.

#### ARTICLE 6 - INTELLECTUAL PROPERTY.

- 6.1 IDX System and IDX Data. The IDX System and IDX Data: (a) are proprietary and confidential to TREB, and/or its respective licensors, as the case may be; (b) are protected by copyright and other intellectual property laws of Canada and international treaties and conventions; and (c) shall remain the sole property of TREB and/or its licensors, as the case may be. Subject only to the license expressly granted by TREB in this Agreement, all right, title and interest, including Intellectual Property Rights, with respect to the IDX System and IDX Data shall remain the exclusive property of TREB and/or its licensors, as the case may be. IDX Subscriber shall not contest or dispute any of TREB's or any of its licensors', as applicable, right, title and/or interests in the IDX System or IDX Data nor take any action which negates, reduces or impairs any of the same.
- 6.2 Trademarks. IDX Subscriber shall not obtain through the terms of this Agreement any rights in connection with any trade-marks or service marks of TREB or any third party, including any marks relating to the IDX System. IDX Subscriber shall not remove or alter any trade-mark, logo, copyright, proprietary or other notices, symbols, disclaimers or other legends from the IDX Data or through the IDX System.

#### ARTICLE 7 CONFIDENTIAL INFORMATION.

- 7.1 Confidential Information. For the purposes herein, "Confidential Information" means any and all confidential and/or trade secret information, knowledge and/or data of every kind, including IDX Data, disclosed by TREB to IDX Subscriber pursuant hereto. TREB may mark Confidential Information "confidential" or "proprietary" but regardless of whether so marked or identified, any information that IDX Subscriber knew or should have known was considered confidential or proprietary by TREB will be considered Confidential Information.
- 7.2 Exclusions. Notwithstanding the foregoing, IDX Subscriber shall not have any obligation under this Article 7 with respect to any information, knowledge and/or data disclosed pursuant hereto to the extent same: (a) is or hereafter becomes part of the public domain through no wrongful act of IDX Subscriber; (b) is known to IDX Subscriber free of any obligation of confidentiality at the time of first disclosure hereunder; (c) is lawfully obtained by IDX Subscriber from a third party

without obligation of confidentiality and without knowledge of breach of any obligation of confidentiality to TREB; (d) is independently developed by IDX Subscriber; or (e) is disclosed pursuant to a court order or other legal compulsion; provided, however, that prior to any such disclosure, IDX Subscriber shall, unless legally prohibited, promptly notify TREB in writing of the requirement or request to disclose, and cooperate with TREB in protecting against or limiting the scope of any such disclosure.

- 7.3 Confidentiality. IDX Subscriber shall: (a) receive and maintain all Confidential Information received hereunder in confidence; (b) use Confidential Information received hereunder solely for the purposes of IDX Subscriber lawfully exercising the license and/or performing its obligations hereunder and for no other purpose whatsoever; and (c) use the same degree of care to protect Confidential Information received hereunder as IDX Subscriber itself uses to protect its own confidential information from unauthorized use, copying and/or disclosure, which standard shall be no less than reasonable care.
- 7.4 Ownership of Confidential Information. All Confidential Information will remain the exclusive property of TREB and/or its third party licensors, and IDX Subscriber will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein.
- 7.5 Cessation of Use/Return of Information. IDX Subscriber shall promptly cease all use of Confidential Information received hereunder upon any suspension or termination of its access to and use of the IDX System pursuant to this Agreement and shall promptly, by secure means, return all such Confidential Information to TREB or delete, erase and destroy all such Confidential Information and certify in writing to TREB that it has done so.

## ARTICLE 8 PRIVACY

- 8.1 Compliance with Privacy Laws. IDX Subscriber shall ensure that all Personal Information that may be collected by IDX Subscriber in connection with its access to and/or use of the IDX System or IDX Data will be collected, used, disclosed and maintained strictly in accordance with the requirements of applicable privacy legislation including the *Personal Information Protection and Electronic Documents Act* (Canada), as such legislation may be amended from time to time and the TREB Requirements.
- 8.2 Listings. Notwithstanding that IDX Data may be contained in a public registry or may have been made publicly available in some other forum or medium, including The Canadian Real Estate Association website currently located at [www.REALTOR.ca](http://www.REALTOR.ca), IDX Subscriber will at all times treat any personally identifiable information contained in the IDX System as Personal Information and will protect and safeguard such Personal Information from any collection, use or disclosure that is not expressly permitted by this Agreement.
- 8.3 Cessation of Use. IDX Subscriber shall cease all use of any and all Personal Information received pursuant to the IDX System upon any suspension or termination of IDX Subscriber's access to and use of the IDX System and IDX Data under the terms of this Agreement and shall promptly, by secure means, return all such Personal Information to TREB or delete, erase and destroy all such Personal Information and certify in writing to TREB that it has done so.
- 8.4 Consent. By agreeing to the terms of this Agreement and by accessing and using the IDX System, IDX Subscriber consents to the collection, use and disclosure of its Personal Information by TREB in accordance with TREB's privacy policy located at [http://communications2.torontomls.net/privacy/treb/treb\\_policy.htm](http://communications2.torontomls.net/privacy/treb/treb_policy.htm), including to the extent

necessary for TREB to communicate with IDX Subscriber and to administer and enforce this Agreement. IDX Subscriber acknowledges having read, understanding and agreeing to be bound such privacy policy.

#### ARTICLE 9 - LIMITATION OF LIABILITY.

- 9.1 DISCLAIMER. IDX SUBSCRIBER ACKNOWLEDGES THAT THE IDX SYSTEM AND IDX DATA ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY GUARANTEE, REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE OR NON-INFRINGEMENT AND THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE OR COURSE OF DEALING. TREB MAKES NO REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND ASSUMES NO LIABILITY WHATSOEVER WITH RESPECT TO THE ADEQUACY OF THE IDX SYSTEM OR IDX DATA FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO ITS ADEQUACY TO PRODUCE ANY PARTICULAR RESULT OR THAT THE IDX SYSTEM WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.
- 9.2 DISCLAIMER REGARDING IDX DATA. IDX SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE IDX DATA IS MADE AVAILABLE FROM THE MLS® DATABASE ON AN "AS IS" BASIS, WITHOUT ANY GUARANTEE, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, INCLUDING WITH RESPECT TO THE ACCURACY, CORRECTNESS, CURRENCY, RELIABILITY OR COMPLETENESS OF SUCH DATA OR WITH RESPECT TO THE USE OR THE RESULTS OF THE USE OF ANY SUCH DATA. IDX SUBSCRIBER FURTHER ACKNOWLEDGES AND AGREES THAT THE USE BY IT OF THE IDX SYSTEM IS DONE AT IDX SUBSCRIBER'S SOLE RISK. NEITHER TREB NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS WILL BE LIABLE TO IDX SUBSCRIBER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING ANY LOSS OF PROFITS OR REVENUE OR GOODWILL, OR INTERRUPTION OF BUSINESS IN ANY WAY ARISING OUT OF OR THAT MAY RESULT FROM ANY INACCURATE, INCORRECT, OR INCOMPLETE IDX DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.
- 9.3 Availability of IDX System. IDX Subscriber acknowledges that the operation and availability of systems used for accessing and interacting with the IDX System or to transmit IDX Data, including computer networks and the Internet, whether or not supplied by TREB or IDX Subscriber, can be unpredictable and may, from time to time, interfere with or prevent access and use or operation of the IDX System. IDX Subscriber further acknowledges that access to the IDX System may be temporarily unavailable for reasons including the conduct of any necessary maintenance or upgrades to the IDX System. TREB shall not in any way be responsible for any such interference with or prevention of access to and/or use of the IDX System.
- 9.4 LIMITATION OF LIABILITY. NEITHER TREB NOR ANY IT DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO IDX SUBSCRIBER OR TO ANY THIRD PARTY (INCLUDING IDX SUBSCRIBER'S CLIENTS OR CUSTOMERS) FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR OTHER DAMAGES OF ANY NATURE INCLUDING LOSS OF PROFITS OR REVENUE OR GOODWILL, OR INTERRUPTION OF BUSINESS IN ANY

WAY ARISING OUT OF OR RELATED TO THESE TERMS OF USE (OR ANY SUSPENSION OR TERMINATION HEREUNDER), THE PERFORMANCE OR NON-PERFORMANCE OF THE IDX SYSTEM AND/OR THE USE OF ANY IDX DATA MADE AVAILABLE PURSUANT THERETO, HOWSOEVER ARISING, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FUNDAMENTAL BREACH OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

- 9.5 THIRD PARTY WEBSITES, ETC. The IDX Data may include links to third party websites. TREB does not endorse the content contained in any third party website. TREB does not make any representation, warranty or condition, express or implied, of any kind regarding any third party website, including regarding the legality, accuracy, reliability, quality, completeness, timeliness, non-infringement, security, or suitability of any content on a third party website or whether or not any necessary consents required under applicable privacy laws for any aspect of any third party website have been properly obtained. TREB does not make any representation, warranty or condition, express or implied, regarding the merchantability and/or fitness for a particular purpose of any content, goods or services on or made available through any third party websites or that the operation of any third party website will be uninterrupted, free of error, viruses or any other harmful components. The content, goods and/or services available on or through any third party website is not under TREB's control and if IDX Subscriber chooses to access any third party website, IDX Subscriber does so entirely at its own risk.

#### ARTICLE 10 INDEMNITY

- 10.1 Indemnity. IDX Subscriber agrees to indemnify and hold harmless TREB and its directors, officers, employees and agents, from and against any and all claims, demands, suits, proceedings, actions, causes of action and/or liability, of any kind whatsoever, for any and all damages, losses, costs and/or expenses (including reasonable legal fees and disbursements) resulting from any and all breaches by IDX Subscriber of this Agreement.

#### ARTICLE 11 - SUSPENSION OR TERMINATION.

- 11.1 Suspension. In the event IDX Subscriber is in breach of this Agreement, or of any of the TREB Requirements, as determined by TREB in its sole discretion, TREB may immediately suspend without notice IDX Subscriber's access to and use of the IDX System. TREB may end a suspension by notice to IDX Subscriber.
- 11.2 Termination. Without limiting any other rights or remedies available to TREB under the terms of this Agreement, the TREB Requirements, at law or in equity, in the event that IDX Subscriber is in breach of:
- (a) any term or condition of this Agreement, which is not cured (if capable of being cured) within 10 days after notice from TREB;
  - (b) any representation, warranty, covenant, term or condition contained in the TREB Requirements, which is not cured within the applicable cure period, if any, as set forth in the TREB Requirements in respect of the specific breach; or
  - (c) any provisions contained in REBBA;

TREB may immediately terminate this Agreement and IDX Subscriber's access to and use of the IDX System, in which case IDX Subscriber shall comply with any applicable procedures and obligations contained herein and/or in the TREB Requirements.

- 11.3 Discontinuance of IDX System. In the event TREB, in its sole discretion, decides at any time not to continue to offer its members use of the IDX System, TREB may, without liability to IDX Subscriber or any third party, terminate this Agreement and IDX Subscriber's access to and use of the IDX System and any IDX Data.
- 11.4 Effect of Suspension or Termination; Survival. Upon any suspension or termination of this Agreement or IDX Subscriber's rights hereunder, any and all licenses and rights granted herein to IDX Subscriber to access and use the IDX System and any IDX Data shall immediately terminate. Suspension or termination pursuant to the terms of this Agreement shall not limit TREB from pursuing any other remedies available to it under the TREB Requirements, or at law or in equity, including, if applicable, injunctive relief. The following Articles shall survive the suspension or termination of this Agreement, regardless of the reasons for suspension or termination, in addition to any other provision herein which by law or by its nature should survive: Articles 6, 7, 8, 9, 10 and 11.

## ARTICLE 12 - GENERAL

- 12.1 Notices. Any notice, direction or other communication required or permitted to be given to TREB or IDX Subscriber hereunder shall be in writing and shall be sufficiently given if delivered personally, mailed by prepaid registered mail, or transmitted by fax or other form of recorded communication to such party as follows:
- (a) in the case of TREB, at:
- 1400 Don Mills Road  
Toronto, ON  
M3B 3N1  
Fax: 416-443-8129  
Email: johnd@trebnet.com
- Attention: John DiMichele, CIO
- (b) in the case of IDX Subscriber: at the IDX Subscriber's business address, facsimile number or email address last filed by IDX Subscriber with TREB, addressed to the attention of the IDX Subscriber.

Either party may change its address for service from time to time by notice given to the other party in accordance with this Agreement.

Notwithstanding the foregoing, IDX Subscriber hereby agrees and consents to the receipt of electronic legal notices regarding this Agreement upon access to the IDX System.

- 12.2 Entire Agreement. The terms of this Agreement, together with the TREB Requirements referred to herein, constitute the entire agreement between TREB and IDX Subscriber with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, promises, undertakings or collateral agreements, oral or written, among the parties with respect to the subject matter hereof other than those set forth or expressly referred to herein. In the event of a

conflict between this Agreement and any TREB Requirements, the provisions of this Agreement shall govern.

- 12.3 Amendment. TREB may, in its sole discretion, change, modify, add or delete portions of this Agreement at any time and from time to time without notice to IDX Subscriber by posting the then current version of this Agreement on TREB's website, the MLS® System and/or the IDX System.
- 12.4 Waiver. The failure by TREB to require or enforce the performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall be in writing signed by the waiving party and shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.
- 12.5 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or otherwise transferred, including by operation of law, by IDX Subscriber, without the prior written consent of TREB. TREB may assign its rights and obligations under this Agreement.
- 12.6 Enurement. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 12.7 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (excluding any conflict of laws principles). IDX Subscriber consents to the exclusive jurisdiction of the provincial and federal courts located in the Province of Ontario in connection with any action or proceeding to enforce, or arising out of, this Agreement.
- 12.8 Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or part thereof shall not in any way be affected or impaired.
- 12.9 Force Majeure. TREB shall not be responsible to IDX Subscriber or any third party for any failure or delay in performance due to circumstances or causes beyond its reasonable control, including any labour dispute, acts of God, natural disasters, fire, utility or communications failures, vandalism, war, acts of terrorism, riots, embargoes, or laws, regulations or orders of any governmental or regulatory entity.
- 12.10 Headings, Gender, Number and Including. The division of this Agreement into Articles and Sections and the use of headings are for purposes of reference only and shall not limit or otherwise affect the interpretation of this Agreement. In this Agreement, unless there is something in the subject matter or context inconsistent therewith, words importing a specific gender include all genders and words importing the singular include the plural and vice versa. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- 12.11 Language. This Agreement and any documents relating thereto have been prepared in the English language at the express request of the parties. Les parties ont exigé, et par les présentes confirment leur demande, que ce contrat soit rédigé en anglais seulement.

**IN WITNESS OF WHICH** the IDX Subscriber has duly executed this Agreement.

**Brokerage Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name:** ●

**Title:** Broker of Record

**Witness:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name:** ●

**Title:** ●

# **EXHIBIT**

# **T**

**Toronto Real Estate Board**  
PRIVACY POLICY

# Toronto Real Estate Board

## Policy on the Collection, Use and Disclosure of Personal Information "Privacy Policy"

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### 1. Objective & Scope of Policy

The Toronto Real Estate Board ("TREB" or "Board") is committed to advancing the interests of real estate sales people and brokers who comprise of TREB's membership. Members of TREB are also members of the Ontario Real Estate Association ("OREA") as well as the Canadian Real Estate Association ("CREA"). CREA approved a Privacy Code as a national standard at its annual meeting held in Montreal in October of 2001.

Consistent with the adoption of the CREA Privacy Code and with applicable law, TREB is dedicated to maintaining high standards of confidentiality with respect to information provided to it. This Policy Statement has been prepared to inform you of our policy and practices concerning the collection, use and disclosure of Personal Information provided to the Board.

This Policy Statement governs Personal Information collected from and about individuals who are Members and information regarding non-members that is provided to TREB for the purposes described below. It does not govern Personal Information the Board collects from and about our employees, the protection of which is governed by other applicable laws and internal TREB policies. This policy also does not cover aggregated data from which the identity of an individual cannot be determined. TREB retains the right to use aggregated data in any way that it determines appropriate.

This Policy Statement applies to all TREB employees as part of their work requirements as well as to TREB's Board of Directors and committee members.

Using contractual or other arrangements, the Board shall ensure that agents, contractors or third party service providers, who may receive Personal Information in the course of providing services to TREB as part of our delivery of services, protect that Personal Information in a manner consistent with the principles articulated in this Policy Statement.

In the event of questions about access to Personal Information; the collection, use, management or disclosure of Personal Information, or this Policy Statement or whether TREB is acting in a manner consistent with it, please contact:

Chief Privacy Officer  
Toronto Real Estate Board  
1400 Don Mills Road  
Toronto, ON M3B 3N1

E-mail: [vpalmer@trebnet.com](mailto:vpalmer@trebnet.com)  
Telephone number: 416-443-8150  
Fax: 416-443-8129

## 2. The Collection, Use & Disclosure of Personal Information

For the purposes of this Policy,

*"Personal Information" means any information, recorded in any form, about an identified individual, or an individual whose identity may be inferred or determined from the information.*

*"External Associate" means an individual who is not a Member or an employee of TREB. An External Associate may be an individual or an employee of an organization with which TREB has dealings in the normal course of fulfilling its mandate. Examples of external associates include independent contractors or service providers; employees of CREA, OREA or the Real Estate Council of Ontario; legal counsel and consultant.*

*"Member" means a salesperson or broker registered under the Real Estate and Business Brokers Act by the Real Estate Council of Ontario, who has been accepted for membership in TREB, while that individual is a member of TREB, and any individual who has been accepted for membership as an affiliate member or honorary member of TREB, while that individual is a member of TREB.*

Personal information about Members will be collected, to the extent possible, directly from the individual concerned.

Information within the Multiple Listing Service ("MLS<sup>®</sup>") system is considered to be Personal Information to the extent that it is or can be associated with an individual. To the extent possible, such information will be collected directly from the listing broker/salesperson.

TREB uses the personal information provided verbally or in writing by Members, upon application for membership (and which may be provided during the course of membership), and others, for different purposes to fulfil its mandate. These purposes include:

- Acting as a professional association in support of Members as REALTORS, including the administration of its by-laws and policies and ensuring compliance with same;
- Providing products and services to Members;
- Providing continuing education to Members and educational courses to those seeking to become Members and others;
- Administering and operating the MLS<sup>®</sup> system, including ensuring compliance with the rules and regulations governing the MLS<sup>®</sup> system;
- Administering and facilitating membership in OREA and CREA, including ensuring compliance with the by-laws, rules and regulations of those associations;
- Meeting any legal or regulatory requirement; and

- Such other purposes consistent with the foregoing purposes.

TREB's use of Personal Information is limited to the purpose of fulfilling the mandate of TREB or a purpose consistent with that purpose. Unless permitted by law or provided for in the application for membership, Board by-laws and/or Board rules, no Personal Information is collected about a Member without first obtaining the consent of the individual to the collection, use and dissemination of that information.

TREB may disclose Personal Information of Members to CREA and OREA and RECO for the purpose of fulfilling its mandate and to organizations that assist the Board in the course of fulfilling its mandate, including organizations that perform services on its behalf.

Personal Information will only be provided to organizations providing services to TREB if they agree to use such information solely for the purposes of providing services to TREB and under the instruction of TREB and, with respect to that information, to act in a manner consistent with the relevant principles articulated in this Policy Statement.

There are circumstances where the use and/or disclosure of Personal Information may be justified or permitted or where TREB is obliged to disclose information without consent. Such circumstances may include:

- Where required by law or by order of a tribunal;
- Where TREB believes, upon reasonable grounds, that it is necessary to protect the rights, privacy, safety or property of an identifiable person or group;
- Where it is necessary to establish or collect fees;
- Where it is necessary to permit TREB to pursue available remedies or limit any damages that the Board may sustain; or
- Where the information is public.

Where obliged or permitted to disclose information without consent, TREB will not disclose more information than is required.

### 3. Accuracy

TREB endeavours to ensure that any Personal Information provided by its Members and in its possession is as sufficiently accurate, current and complete as necessary for the purposes for which TREB uses that data. Information contained in files that have been closed is not actively updated or maintained. Information on listings is the responsibility of Members who provide it to the MLS® system.

## 4. Retention

TREB retains Personal Information as long as TREB believes it is necessary to fulfil the purpose for which it was collected. Currently, the principal place in which TREB holds Personal Information is in the Greater Toronto Area. TREB has in place a Records Retention Policy which outlines the procedures for the retention and subsequent disposition of TREB records including those records that contain Personal Information.

## 5. Security

TREB endeavours to maintain adequate physical, procedural and technical security with respect to its offices and information storage facilities so as to prevent any loss, misuse, unauthorized access, disclosure, or modification of Personal Information.

TREB further protects Personal Information by restricting access to Personal Information to those employees and External Associates that the management of TREB has determined need to know that information in order that TREB may provide its services. TREB has a policy under which employee misuse of Personal Information is treated as a serious offence for which disciplinary action may be taken.

In terms of communicating Personal Information, you may wish to note that there is no method of transmitting or storing data that is completely secure. While the physical characteristics of each are different, mail, telephone calls, faxes and transmissions over the Internet are all susceptible to possible loss, misrouting, interception and misuse of the information being communicated or transmitted.

As do many organizations, TREB attempts to strike a reasonable balance between security and convenience. In communicating with Members and others, TREB reserves the right to use a method of communication that is less secure than some of its less convenient alternatives. An example of this is e-mail. At this time, when we use e-mail, it is sent as unencrypted plain text. We do this because the Board believes that many of our Members and External Associates cannot readily process encrypted e-mail. This is done for their convenience but has the security concern that, if misrouted or intercepted, it could be read more easily than encrypted e-mail.

## 6. Visiting the TREB Public Web Sites

With respect to its public websites, TREB does not collect any information from site visitors. Cookies are not used although anonymous hit count statistics are generated.

Certain Member information (name, company name & company address, company phone number, email address) is presented on the [www.trebcommercial.com](http://www.trebcommercial.com) TREB public websites.

TREB has no control over the content of third party websites that individuals may access through hyperlinks at our websites.

## 7. Access to Personal information

TREB permits access to and review of Personal Information held by TREB about an individual by the individual concerned.

TREB reserves the right to decline to provide access to Personal Information where the information requested:

- a) Would disclose the Personal Information of another individual or of a deceased individual; or business confidential information that may harm TREB or the competitive position of a third party;
- b) Is subject to solicitor-client or litigation privilege;
- c) Could reasonably result in serious harm to the treatment or recovery of the individual concerned, serious emotional harm to the individual or another individual, or serious bodily harm to another individual; or
- d) May harm or interfere with law enforcement activities and other investigative or regulatory functions of a body authorized by statute to perform such functions;
- e) Is not readily retrievable and the burden or cost of providing would be disproportionate to the nature or value of the information; or
- f) Does not exist, is not held, or cannot be found by TREB.

Since confidentiality is integral in TREB's procedures, including such procedures as the arbitration of commission disputes and the investigation, prosecution and determination of complaints made against Members, access to personal information will also be declined where the person requesting same has consented, by virtue of membership in TREB and by being subject to TREB's by-laws and rules, to TREB's jurisdiction over such procedures as provided for in the by-laws and rules of TREB.

Where information will not or cannot be disclosed, the individual making the request will be provided with the reasons for non-disclosure.

TREB will not respond to repetitious or vexatious requests for access. In determining whether a request is repetitious or vexatious, it will consider such factors as the frequency with which information is updated, the purpose for which the information is used, and the nature of the information.

To guard against fraudulent requests for access, TREB will require sufficient information to allow it to confirm the identity of the person making the request before granting access or making corrections.

Where information will be disclosed, TREB will endeavor to provide the information in question within a reasonable time and no later than 60 days following the request. TREB may charge a minimal or nominal cost (e.g. photocopying, mail charges) to the individual making the request.

If an individual believes any Personal Information concerning that individual is not correct, that person may request an amendment of that information by sending a request to the person indicated in Section 1. TREB reserves the right not to change any Personal Information but may append any alternative text the individual concerned believes appropriate. An individual may also request that TREB delete an individual's Personal Information from the Board's system and records, except if such Personal Information is required to fulfil the Board's mandate or to meet legislative requirements. However, due to technical constraints and the fact that TREB backs up its systems, Personal Information may continue to reside in the Board's systems after deletion. For the same reason, Personal Information may also continue to reside in the MLS<sup>®</sup> system after deletion. Individuals, therefore, should not expect that their Personal Information would be completely removed from TREB or the MLS<sup>®</sup> systems in response to a request for deletion.

## 8. Amendment of TREB Practice and This Policy

This statement is in effect as of **January 1, 2004**. TREB will from time to time review and revise its privacy practices and this Policy Statement. In the event of any amendment, an appropriate notice will be posted and communicated to Members and others in an appropriate manner. Policy changes will apply to the information collected from the date of posting of the revised Policy Statement as well as to existing information held by TREB.

## 9. Information Regarding Former Members

TREB will only disclose Personal Information about former Members in accordance with this Policy Statement.

## 10. What You Consent And Agree To

When you provide TREB with Personal Information, you consent and agree to the following:

- The collection, use and disclosure of Personal Information from or about you as described in Section 2, and to your right to access and correct data as described in Section 7.*
- Your acceptance of the risks concerning the transmission of information to TREB as described in Section 5.*
- The amendment of this Policy Statement as described in Section 8.*

# **EXHIBIT**

# **U**

**Toronto Real Estate Board**  
ONGOING PRIVACY MANAGEMENT  
(PRIVACY REVIEW) POLICY

## Toronto Real Estate Board Ongoing Privacy Management (Privacy Review) Policy

### 1. Objectives & Scope of Policy

The Toronto Real Estate Board (TREB) is aware that its operations will evolve in the event of changes to:

- the mandate of the organization;
- the technology it employs; or
- the business processes it uses.

TREB has adopted this policy to ensure that the Board remains compliant with federal and/or provincial legislation as well as any requirements of the Canadian Real Estate Association, the Ontario Real Estate Association or the Real Estate Council of Ontario concerning personal information as it may or come to apply to TREB.

This Policy applies to all TREB employees as part of their work requirements as well as to TREB's Board of Directors and committee members.

Using contractual or other arrangements, the Board shall ensure that agents, contractors or third party service providers, who may receive Personal Information in the course of providing services to TREB, act in a manner consistent with this Policy.

The Chief Executive Officer and the Chief Privacy Officer are responsible for ensuring compliance with this Policy.

A "privacy compliance review" means that the Board will examine a proposed change by reviewing and applying the questions found in the TREB Privacy Impact Assessment Report to determine if a risk of non-compliance with privacy obligations may result from that proposed change.

Generally, minor changes to the scope of a service, business process or information handling practice will not trigger a privacy compliance review. What constitutes a major or minor change is a decision of the Board of Directors or the Chief Executive Officer and/or Chief Privacy Officer.

TREB will examine the privacy implications of any major change of its operations when the Board:

### *Administration Changes*

- Changes any TREB policy that applies to the collection, use and/or disclosure of personal information.
- Changes how it provides notice to individuals about their privacy rights under applicable legislation.
- Changes the means by which an individual may validate the accuracy of personal information held by, or challenge TREB's handling of, their personal information.

### *Service Changes*

- Proposes to create a new service offering to Members or the public.
- Makes significant changes to an existing service or business process.
- Moves an existing service or business process from a paper to an electronic format.
- Modifies computer systems in a way that affects the security policies and procedures used to manage and control access to personal information.

### *Information Collection Changes*

- Changes the way it collects personal information within an existing service or business process, including making changes to any of its standard forms.
- Proposes to collect personal information that it did not previously collect, whether directly or through third parties.
- Makes a change in the way TREB obtains the consent to collect, use and/or disclose personal information. An example would be where TREB used to collect such consent directly but proposes to now do so indirectly (through a third party).

### *Information Use/Disclosure Changes*

- Adds to or varies the purposes for which personal information was originally collected.
- Proposes to share personal information with an organization, other than those with which it shares information now.
- Changes the way it shares personal information.

## **2. Change Management Outcomes**

TREB will not knowingly make any major change in its policies, business processes or information handling practices without taking into account privacy compliance requirements.

In addition, any major change in TREB's policies, business processes or information handling practices will be examined by the Board's Chief Executive Officer and/or Chief Privacy Officer to determine whether it requires an amendment to the Board's Privacy Policy.

### 3. Amendment of Privacy Policy & Notice

If it is determined that a change in TREB's policies, business processes or information handling practices requires an amendment to TREB's Privacy Policy, such amendment will be made; notice of such will be communicated as provided for in section 8 of the Board's Privacy Policy; and the effect of the amendment will be as set out in section 8 of the Board's Privacy Policy.

In the case of TREB employees, notice of any change in the Board's policies, business processes or information handling practices involving their personal information, including any change in the Employee Privacy Policy, shall be directly and promptly communicated to them in a manner deemed most appropriate by the Chief Executive Officer and/or Chief Privacy Officer.

# **EXHIBIT**

## **V**

**Toronto Real Estate Board  
INFORMATION SECURITY POLICY**

# Toronto Real Estate Board Information Security Policy

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## 1.0 General

The Toronto Real Estate Board (“TREB” or “the Board”) has adopted this Information Security Policy to ensure that adequate protection measures are taken to assure the confidentiality and integrity of the information held by TREB and the security of the networks and computers used to store and access that information.

This Policy applies to Users with respect to their access to, and use of, TREB-held information as well as access to hardware, software or network facilities owned or controlled by TREB. It should be read in conjunction with the TREB Authorized User Agreement. With respect to employees, this Policy is also to be read in conjunction with and form a part of TREB’s *Employee Policy Manual*. All new employees and contractors shall receive a copy of this Policy upon employment or engagement.

In the event of questions about this Policy, please contact:

Von Palmer  
Chief Privacy Officer  
OR John DiMichele  
Chief Information Officer  
Toronto Real Estate Board  
1400 Don Mills Road  
Toronto, ON M3B 3N1

E-mail: [vpalmer@trebnet.com](mailto:vpalmer@trebnet.com)  
[johnd@trebnet.com](mailto:johnd@trebnet.com)  
Telephone: (416)443-8150 (Von)  
(416) 443-8166 (John)  
Fax: (416)443-8129

## 2.0 Definitions

"Availability" means information being accessible as required.

"Confidential Information" means Personal Information; TREB business, tax or accounting information; employee information and disciplinary files, and archived information pertaining to former members or employees.

"Confidentiality" means the restriction of access to information only to those having a business reason to have such access as authorized by the appropriate manager within TREB or the client concerned.

"Disruption of network communication" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes.

"Integrity" means the information in question has not been modified in an unauthorized manner.

"Internet communications" means existing and future communication protocols and services including but not limited to the World Wide Web; electronic mail ("e-mail"); Instant Messaging; Internet Relay Chat; any intranet that TREB establishes or participates in; any proprietary data transfer protocols utilized by TREB in communications with others; File Transfer Protocol, TELNET and Usenet news groups.

"Members" mean a sales agent, broker or other type of member of TREB.

"Personal Information" means any information, recorded in any form, about an identified individual, or an individual whose identity may be inferred or determined from the information.

"Security breaches" means accessing data of which the User is not an intended recipient or logging into a server or account that the User is not expressly authorized to access, unless these activities are within the scope of regular duties.

"User" means (1) an individual, whether an employee, officer, director, a sales agent, broker or other type of member of TREB who creates or accesses information on TREB-owned or controlled Computer System; (2) a computer program or application operating pursuant to an individual or organization (e.g. electronic agent).

## 3.0 Information Security Requirements

### 3.1. Privacy & Confidentiality

Users with access to Personal Information shall respect the confidentiality of that information and adhere to the requirements of TREB's *Privacy Policy* and TREB's *Employee Privacy Policy*.

Users with access to other types of Confidential Information shall respect the confidentiality of that information and not disclose such information unless specifically authorized to do so.

Each User that accesses information held by TREB, whether owned by the TREB or not, regardless of form (e.g. paper or electronic) or format, shall protect that information against accidental or deliberate disclosure or destruction. Any modification of such information shall be only as authorized and required for business reasons.

Confidential Information shall be:

- Physically protected through the use of locked cabinets or offices and/or technologically protected using Computer System access controls;
- Accessible for review by employees as authorized by TREB management;
- Corrected or marked with appropriate notation in the event inaccuracies in the information are identified; and
- Retained for such retention periods as required by law or as identified by TREB management.

### 3.2. TREB Property

All information and/or messages composed, sent or received using TREB's computers are the property of TREB and may be reviewed, audited, accessed and disclosed for any purpose considered appropriate by TREB management. **USERS SHOULD NOT HAVE ANY EXPECTATION OF PRIVACY WITH RESPECT TO SUCH MESSAGES.** See also Section 3.10 Monitoring below.

Unless contractual or licensing arrangements govern, any data or software downloaded using Internet communications into TREB computers becomes the property of TREB and may be retained, removed or destroyed at the sole discretion of TREB management.

### 3.3. Identification & Authentication

Each User shall be assigned a unique identifier ("User ID") and will be required to authenticate themselves prior to gaining access to TREB computers or networks. Users shall not log on to TREB computers using another User's User ID. **EACH USER SHALL BE RESPONSIBLE FOR ALL ACTIVITY CONDUCTED UNDER THEIR ASSIGNED USER ID.**

Associated with each User ID will be a password generated to authenticate a User prior to accessing any application, system, network or remote connection. A User shall adhere to the requirements of Annex A Password Standard. All default passwords and access codes on vendor-supplied hardware and software shall be changed prior to use by Users.

The System Administrator shall have a separate Administrator User ID and password. Administrator User IDs shall only be used for system administration purposes.

The Administrator's User ID and password shall be changed immediately upon (a) the installation of any system; and (b) immediately after use by service personnel. The administrator's password shall be documented and stored in a secure location.

Where non-specific User accounts are required, they shall be assigned to a specific User for accountability purposes. The purpose of the account shall be documented and the password associated with the account changed when a User who knows the password is no longer an employee or a contractor of TREB.

User IDs shall be deleted from a TREB computer upon the termination of a User's employment or, in the case of contractors, contract. User IDs that are inactive for thirty days shall be disabled and removed.

### 3.4. Use of TREB Computers

TREB shall provide employees and managers, and may (but is not required to) provide other Users, with workstations for the purposes of their activities with TREB. **USERS SHALL BE RESPONSIBLE AND ACCOUNTABLE FOR THEIR ACTIONS while using TREB hardware, software or networks, or components thereof, including desktop or laptop computers or personal digital assistants (PDAs) owned, leased or controlled by TREB including, but not limited to, the MLS® network.**

Users shall use TREB computers primarily for business purposes. Limited and reasonable personal use of the TREB computers is permitted provided such use:

- a. Is not for non-TREB commercial purposes or personal gain;
- b. Does not:
  - i) Adversely affect the primary business use of the computer or TREB network;
  - ii) Conflict with a TREB business objective or policy;
  - iii) Consume a large amount of TREB computer resources;
- c. Complies with applicable law.

TREB management shall be solely responsible for any determination as to what constitutes limited and reasonable personal use.

Under no circumstances is a User authorized to engage in any activity that is illegal under the laws of Ontario and Canada while utilizing the TREB computers.

Users shall not harm or destroy, or attempt to harm or destroy, hardware, software or data on any TREB computer, other than their own data in the course of editing such material.

Users shall not load, install or activate, or attempt to load, install or activate onto TREB computers any unauthorized hardware, including, but not limited to, modems, data scopes, line monitors, nodes, gateways or bridges of any kind.

Users of TREB-owned or controlled portable devices (e.g laptops, PDAs), if supplied with such equipment, shall not leave such equipment unattended when outside TREB offices. Information contained on such devices must be protected from unauthorized access using power-on passwords or passphrases and password or passphrase-enabled time-out or lock-out features.

### **3.5. Access to TREB Information or Computers**

User access to TREB information or to TREB computers shall be on an "as authorized" basis in order to accomplish TREB business objectives. Networks shall have routing controls to ensure connections and information flows do not have unauthorized access to TREB information. External users accessing the MLS® network (e.g. sales agents or brokers) shall be distinguishable from TREB employees during their use of TREB computer resources. Access by external users shall be provided only for the use of the MLS® network.

Any computer or portable device with a modem operating in "inbound mode active" (permitting external callers to connect to the device using that modem) shall not be simultaneously connected to both a TREB network and any external network.

### **3.6. Software**

Only software approved for deployment by TREB management is permitted on any TREB computer or network. Downloading software programs (e.g. screen savers, audio software and messaging software) from the Internet is not permitted. All other file types downloaded from the Internet must be scanned with anti-virus software before being stored on TREB computers. If a User has a business requirement to download software from the Internet or to otherwise load non-TREB standard software, Section 4.0 Exceptions to Policy will govern.

Virus detection software shall be installed and regularly updated on TREB computers and networks. Users are required to report any known or suspected virus incidents to the System Administrator.

Opening e-mail attachments with ".exe" or ".scr" extensions (including trial versions of software) without proper permission or authorization is not permitted.

Any application to be purchased, whether custom-developed or commercially available, shall have authentication and access controls. The application should ensure that, with respect to the information it stores, the application shall maintain the integrity of the data.

Users shall report any observed or suspected software malfunctions but shall not attempt to remove the software in question unless authorized to do so.

### **3.7. Internet Communications (Internet/Email Staff Policies)**

#### **Email, The Internet and The World Wide Web**

The Internet is comprised of a series of global electronic networks, which facilitate the exchange of information. Individual computers, located at different locations on these networks, "host" or contain information, which may be accessed by Internet users. Through the use of a modem, it is possible for a user to access the information contained on these host computers, and to send and receive Email messages. By clicking on a hypertext link contained in the document (usually a symbol or a line), users can jump to other documents or other websites.

#### **Use of Internet Services at Work**

The Internet may only be used by staff in accordance with the following rules:

A user must comply with all applicable laws and regulations at all times during use of the Internet. A user is prohibited from knowingly sending, receiving, downloading, copying or using information, data or material through the Internet which might violate any applicable law or regulation, including without limitation, information, data or material which (i) might violate obscenity or hate literature laws or (ii) is protected by copyright, trademark, or other intellectual property laws. An example of such material is an unauthorized bootlegged copy of software made available for downloading. Computer software may only be used in compliance with applicable license agreements.

Specifically prohibited uses of the Internet are the following:

- (i) **at any time**, to visit websites containing content that may be illegal within Canada or Ontario, or to download, copy, store or transmit such content;
- (ii) **at any time**, to visit websites containing content that is not suitable for viewing in a public environment (e.g. sites containing pornography, hate literature, or other unlawful material);
- (iii) **at any time**, to download files with names containing .exe or .scr, unless your computer has anti-virus software properly installed and operating;
- (iv) **at any time**, to communicate anything abusive about any individual, partnership, or company, or about any product or service provided by such individual, partnership or company;
- (v) **at any time**, to communicate anything abusive about any individual, partnership, or company, or about any product or service provided by such individual, partnership or company;
- (vi) **at any time**, in any way that may be seen as insulting, disruptive or offensive by other persons or harmful to morale. Examples of such conduct include sexually explicit images, cartoons or jokes; propositions or love letters; ethnic or racial slurs; gender specific comments, or any other communication, data, information or material that could be construed to be harassment, discriminatory or disparagement of others or that would offend someone on the basis of his or her sex, race, sexual orientation, age, national origin, religion, disability or political beliefs;
- (vii) **at any time**, to "spam the net", namely undertaking mass-mail broadcasts of Email or Usenet postings with the intent of sending unsolicited advertising or other information to other users of the Internet; and
- (viii) except during periods of permitted personal use, to access or use IRC programs or services. IRC means Internet Relay Chat, which is a means by which a person can, with specific computer software, contact an IRC "channel" (usually devoted to a particular topic), and engage in "live chat" with another party or parties. **In no event will users establish a chat function or "Instant Messaging" type functionality.**

Access to and use of the Internet is neither guaranteed, nor is it a right – it is a privilege provided by TREB that TREB may withdraw, or change in any manner at any time.

TREB reserves the right to delete and/or refuse to transmit, download, receive, copy or store any material, data or information which TREB finds to be objectionable without notice. Subject to compliance with applicable law, TREB reserves the right to monitor, at any time, any communications occurring through the Internet by staff howsoever occurring (including Email or File Transfer Protocol). **By using the Internet each user agrees that TREB, or TREB's representatives, may monitor any communications such that the user shall have no expectation or right to privacy with respect to such communications. TREB also reserves the right to monitor time spent and destinations visited using Internet browsers.**

The Internet is not a secure means of communication. Users are cautioned that communications may be intercepted, used, duplicated, and/or disclosed by unauthorized parties at any time or times. TREB shall bear no responsibility in connection therewith.

#### **Violations of this Policy**

TREB staff is advised that any violation of this Policy by a staff member may result in termination of the individual's access to, and use of the Internet. TREB staff is advised that individuals face possible personal civil or criminal liability for violation of any applicable law or regulation through misuse of any of the Internet services. Violation may also result in employment termination.

#### **Agreement by Each User of the Internet**

By accessing the Internet, and/or by using any of its services, each user agrees to act in accordance with the provisions of this Policy, and;

- (a) to be responsible for the actions and activities of any party who accesses the Internet using the name identification and password of the user as provided by TREB, whether or not such person used the identification and password with the user's consent or knowledge;
- (b) to indemnify and save harmless TREB and TREB's directors, officers, suppliers and authorized representatives (individually and collectively referred to as "TREB") from and against any and all claims, demands, costs, fees (including legal fees), expenses, losses, liabilities, suits, actions, proceedings, judgment or orders (individually and collectively referred to as "Claims") suffered or incurred by TREB to the extent such Claims are related to, or arise out of, the violation of any of the provisions of this Policy by such user, or the violation by such user of any applicable law or regulation or intellectual property right of any third party or parties, or otherwise; and
- (c) to promptly notify TREB immediately after such user becomes aware of any unauthorized use of such user's Internet identification name, password, or account number and to take such reasonable steps as are necessary to prevent any reoccurrence of such a nature.

#### **General**

This Policy shall not be deemed to be exhaustive and may be amended by TREB either in whole or in part at any time or times, as TREB considers appropriate. TREB reserves the right to require any and all users to acknowledge their receipt of this Policy, as well as their agreement to fully comply with the provisions of this Policy in writing at any time.

### 3.8. Physical Security

Computers located within TREB are to be located in areas that have appropriate physical security controls, including but not limited to, keys or combination locks, access logs and alarms. Users whose employment or contract is terminated shall return all keys assigned to them. A log of office keys shall be maintained by the Director of Member Development who shall also have responsibility for the issuance and retrieval of keys.

Storage media shall be protected from environmental threats such as temperature, humidity and magnetism. All media containing Confidential Information shall be sanitized or destroyed before release for disposal to ensure that data recovery from such media is not possible.

Equipment shall be not removed from the TREB offices or facilities without permission.

### 3.9. System Risk Management

Any new computer system or modification to existing TREB computers or network shall be assessed for risk prior to deployment. Such a risk assessment shall examine any potential consequences of a loss of confidentiality, integrity or availability of TREB information or other assets, and the realistic likelihood of a loss occurring in the light of prevailing threats and vulnerabilities, and the controls currently implemented. This risk assessment may be completed by the System Administrator or such person(s) as the Chief Executive Officer or Chief Information Officer believes appropriate to conduct such an assessment.

### 3.10. Monitoring

TREB reserves the right to monitor computers or networks to ensure compliance with this Policy. For security and network maintenance purposes, authorized individuals within TREB may monitor and access equipment, systems and network traffic at any time.

Such access may include:

- User level and/or system level access to any computing or communications device;
- Access to information (electronic, hardcopy, etc.) that may be produced, transmitted or stored on TREB computers or property;
- Access to work areas (offices, cubicles, storage areas, etc.).

For any externally accessed TREB computers important to the activities of TREB, at a minimum, the following information shall be recorded either electronically or manually:

- Login and logout attempts;
- All access rights and constraints; and
- All IP connections via the firewall

For TREB computers important to the storage of personal data for the conduct of TREB business, at a minimum, the following information shall be recorded either electronically or manually:

- System alerts or failures

The database/servers for all TREB computers important to the storage of personal data for the conduct of TREB business are stored in a locked computer/server room which requires an electronic key card for entry for which there are monitoring logs. All configuration changes to these servers are made strictly by the administrators to those servers for which the Director of Information Systems has a record.

Currently most of the critical applications that are important to the storage of personal data for the conduct of TREB business log deletion or updates to database records in the log tables designed for that purpose.

All logs, save for that of the firewall log which retains only time/date and IP address whether electronic or manual, must contain the date and time of the event and the User ID which caused the event and are to be reviewed, at a minimum, on a monthly basis.

Where a computer records information that is required to be logged and operates a clock, that computer's clock should be set, as required, to Standard Time or Daylight Savings Time in Ontario. Computer system clocks shall be checked every 60 days as to their accuracy.

Logs are to be protected against unauthorized changes or operational failures (e.g. logging media exhausted; failing to record events or overwriting itself).

Monitoring tools and systems audit processes are to be configured so as to only allow designated personnel to change such tools and processes.

Audit logs shall be archived monthly and retained according to TREB's *Records Retention and Destruction Policy*.

Security processes and controls are to be audited annually.

## 4.0 Exceptions to Policy

Exceptions to any policy requirement stated in Section 3 may be permitted if:

- An appropriate business reason is provided;
- The request is approved by the Chief Executive Officer; and
- The User making the request accepts all responsibility for any additional risk created by the exception.

## 5.0 Non-compliance With Policy

While records of communications can be created for monitoring and review purposes, TREB will not actively monitor the communications of Users. However, TREB may do so upon suspicion or evidence of a breach of any law or the TREB policy and any past communication may be examined in the course of an investigation of a security breach or in the course of disciplinary action. See Section 3.2.

Any User who disregards, disobeys, disables or circumvents any element of this Policy or any security mechanism, or who attempts to do so, shall be subject to disciplinary action, up to and including termination of employment or, in the case of contractors, termination of contracts. Users should also note that, if circumstances warrant, an incident may be referred to the appropriate authorities for prosecution.

TREB reserves the right to restrict any User's access to TREB information or computers.

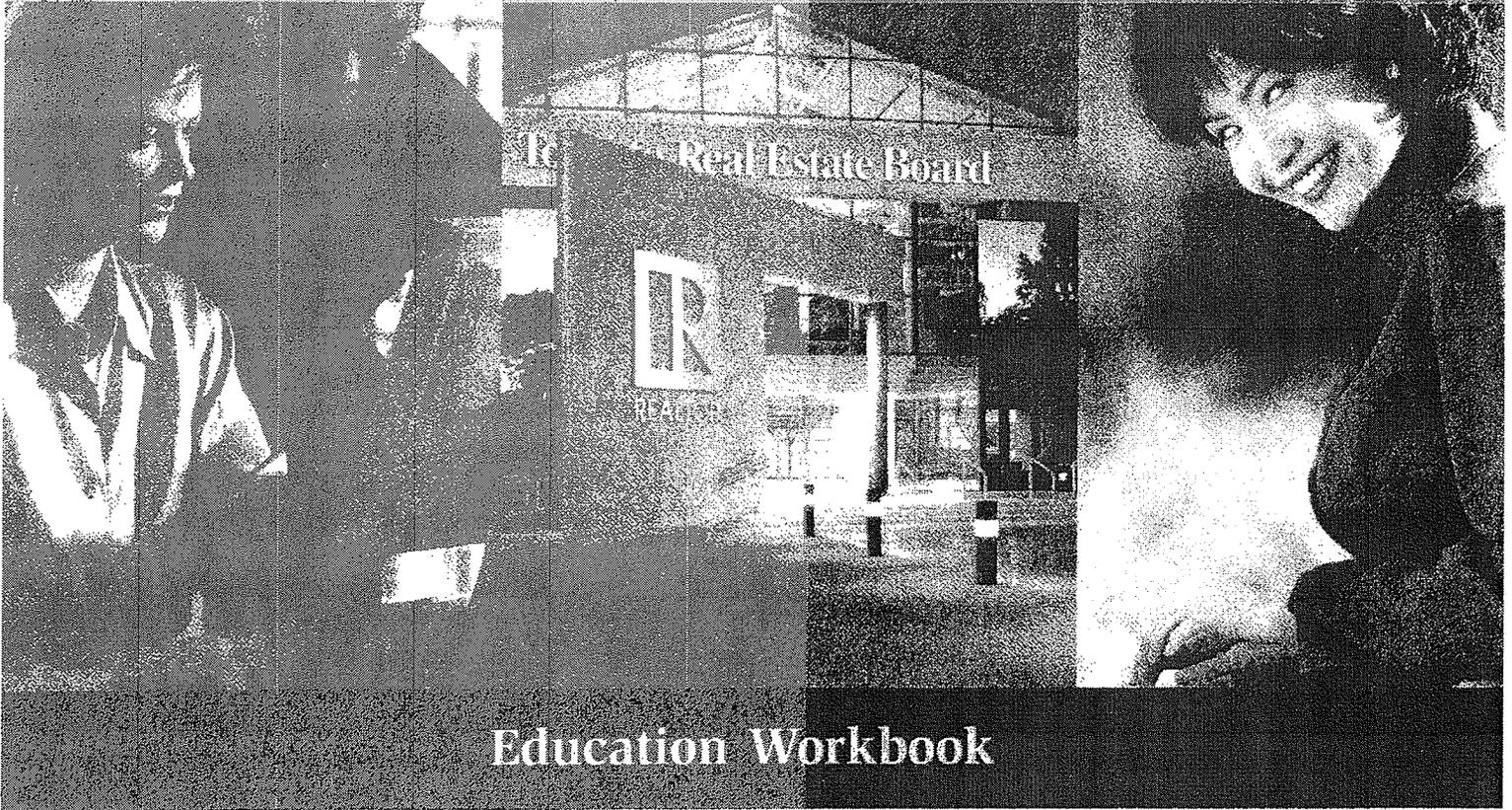
Agreements with external vendors or suppliers shall require compliance with this Policy in the event of use of TREB computers or networks by such vendors or suppliers, or employees or agents, thereof.

## Annex A – Password Standards

- 1) Passwords should never be written down or stored on-line.
- 2) Do not use the same password for TREB accounts as for other non-TREB accounts (e.g., personal ISP account).
- 3) Where possible, don't use the same password for different access needs within the TREB systems. For example, select a separate password to be used to access the MLS network.
- 4) All passwords are to be treated as sensitive, Board Confidential Information.
- 5) Do not hint at the format of a password in any conversation or communication (e.g., "my family name").
- 6) Do not use the "Remember Password" feature of applications (e.g., Eudora, Outlook, Netscape Messenger).
- 7) Do not reveal a password:
  - a) Over the phone to ANYONE;
  - b) In an email message;
  - c) In front of others;
  - d) To family members or co-workers; or
  - e) On questionnaires or forms.

# **EXHIBIT**

# **W**



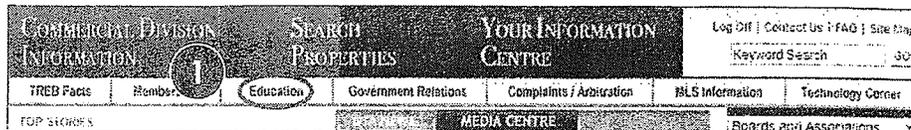
**Education Workbook**

**Complying with Privacy**

Presented by Mark Weisleder

# LOCATING EDUCATION INFORMATION ON TORONTOMLS

1) Once you have logged into TorontoMLS, click the Education button.



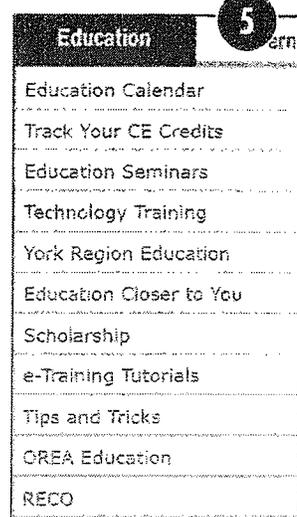
2) The Education landing page displays the handy month-at-a-glance Education Calendar.

3) A colour coded legend shows courses being held at TREB, Ledgers Education Centre, Magna Centre, and the three satellite computer labs in Newmarket, Mississauga and Markham.



4) The calendar can display information by the month, week or day and in various formats. Use the filter option to display certain locations, e.g., TREB only, or the Ledgers and Magna Centres in Newmarket only.

5) Hovering your mouse over the Education button displays other valuable education information options such as Track Your CE Credits, Education Seminars, Technology Training, York Region Education, Education Closer to You, Scholarship, e-Training Tutorials, Tips and Tricks, CREA Education, RECO



See the back inside cover of this workbook for Suggested Education Course Streams. This list is intended to help you select content specific courses.

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**Complying with Privacy**

**Presented by Mark Weisleder**

**IMPORTANT NOTE** The information and sample documents contained in these seminar materials are being provided to Ontario's REALTORS® as best-practices guidelines for privacy compliance.

This information and sample documents are based on the activities, policies and procedures (especially regarding the collection, use and disclosure of personal information) of REALTORS® and non-REALTOR® employees of several brokerage firms in Ontario. While brokerage firms and REALTORS® in Ontario conduct many of the same activities and use similar processes in the collection, use and disclosure of personal information, not everything that is contained in these materials and sample documents will apply equally to every Ontario brokerage firm and REALTOR®. Therefore, it is critical that each Ontario brokerage firm and REALTOR® ultimately review and amend its own activities, policies and procedures (especially regarding the collection, use and disclosure of personal information) in order to become privacy compliant.

As with any new legislation, it is expected that as REALTORS® continue to work with their new privacy compliant policies and procedures, there may be issues that arise, common to all Ontario REALTORS®, that were not contemplated in the creation of these materials or sample documents. These further issues will be dealt with as they are brought to OREA's attention and additional information will be provided to Ontario's REALTORS® in response to same. REALTORS® are encouraged to regularly check the Privacy Compliance area in the Legal section of the Members Only portion of the OREA website for further information and updates on privacy compliance issues.

Since the Personal Information Protection and Electronic Documents Act is a new and relatively unprecedented law, REALTORS® are strongly urged to seek the assistance of their firm's solicitor in order to ensure that they become privacy compliant.

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## MODULE 1: INTRODUCTION

Federal privacy legislation applied to real estate firms in Ontario as of January 1, 2004. Many REALTORS® who have heard or read about privacy or reviewed what the Ontario Real Estate Association, (“OREA”) or the Canadian Real Estate Association (“CREA”) has provided to date are anxious about the impact on their sales/marketing activities. This Guide has been developed to assist firms, brokerages and sales representatives as they search for answers to the possible implications of the application of Part 1 of the *Personal Information Protection and Electronic Documents Act*. The Guide is deliberately meant to be a concise document and if further information or answers are required, OREA will make other resources available to its members.

This document is based on interviews with individuals holding different positions in different firms and actual decisions released by the Privacy Commissioner’s office since the legislation was enacted. The objective of the interviews was to determine personal information associated with their activities in order to create a representative profile of activities of real estate professionals involved in the purchase/sale of property and “deal administration”. The interviews involved both urban and rural firms in order to present as balanced a view as possible. In the analysis of data flows, an attempt is made to summarize the “life cycle” of personal information involved in that business process and identify those who access or use the information. This permits a factual basis for an analysis to determine privacy best practices.

After examining what personal information is involved, the current practices are checked against the ten principles outlined in the Canadian Standards Association (“CSA”) Code. This Code reflects the concepts found in federal and provincial legislation and can act as a suitable proxy to benchmark what real estate firms and brokers will be obliged to do in January.

The ten CSA Model Code principles are:

• Accountability	• Accuracy
• Identifying purposes	• Safeguards
• Limiting collection	• Openness
• Consent	• Individual access
• Limiting use, disclosure and retention	• Challenging compliance

After examining these representative Firm/Broker practices as well as practical examples for each of the 10 CSA principles, a series of recommendations as to how Firms, brokers and sales representatives can best manage personal information are provided. The main goal of privacy legislation is to prevent unwanted personal invasions of your privacy without your permission. What is the most common example of personal invasions of your privacy that you experience on an almost daily basis? You may have answered “telemarketers” who seem to call you every night at your home, trying to sell you something.

---

*Notes*

Well how did these telemarketers get your number in the first place? Someone initially went through the entire phone book, calling people to try and sell them something. If someone purchased something, they were placed on a list. This list of buyers was then sold to other telemarketers, as it had a lot of value. The point was, there was nothing preventing a company from doing this, with your own very personal information, without your permission.

Now with the introduction of Privacy Laws, including the introduction of the National Do Not call List, there are restrictions against companies selling or doing anything with this kind of personal information without the permission of the individual person. This document is to be used in conjunction as part of a package with other checklists and model documents that are also provided by OREA.

## THE CONCEPT OF "PERSONAL INFORMATION"

Part 1 of the *Personal Information Protection and Electronic Documents Act* defines personal information as follows:

*"personal information" means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization. (Emphasis added.)*

It is clear from the language of this definition of "personal information" that the "identifiability" of an individual is the critical element to the applicability of the legislation. This means that personal information may include information that may be linked to an individual. For a REALTOR®, this may include an address and a sale price even if owner's name is not associated with it. The reason for this is that an address can easily be associated with a name. If that occurs, then a sale price may also be associated with a name. The easier it is to associate information with an individual; the more that information is to be considered "personal information".

Generally, personal information is data that:

- (1) permits someone to learn something;
- (2) that relates to a natural person; and
- (3) permits the identification of that person.

This element of "identifiability" separates personal "facts" from the notion of personal "information". There is a distinction between "personal facts" and "personal information".

As a further example, a person's license plate would be personal information as you can use it to identify the individual. The make a model of the car that the person drives would not be personal information as you could not identify that particular person just by knowing this information.

As a further illustration, a question has arisen as to whether a person's business email address is personal information. A complaint was made to the Privacy Commissioner when employee business email addresses were taken from a company's web site and then used for solicitation purposes without their permission. The Privacy Commissioner ruled that this was in fact a violation of their privacy rights, as they had only given their addresses for the sole purpose of being contacted relative to company matters as shown on the website itself.

When we examine many of the issues affecting salespeople who deal with personal information on a daily basis, we should all ask ourselves the following question: With what we are thinking of doing, are we any different than telemarketers, bothering individual people at home without their permission? This should help you determine the correct course of action in always obtaining permission before you use someone's personal information in your every day practice as a REALTOR®.

We will also have to keep in mind that in addition to Privacy concerns, some situations will also require additional compliance with the applicable RECO obligations under the REBBA2002 Code of Ethics.

To further emphasize this distinction, one may have a large amount of information or "facts" about an individual but as long as the person's identity is not known and cannot be ascertained from an examination of that information then it does not constitute personal "information"; this constitutes personal "facts". *This is because the individual is not identified or identifiable.* The creation or storage of "facts" without a connection with an identity is characterized as "anonymization" or making information anonymous.

What constitutes "personal information" or "sensitive personal information" (the latter being a subset of the former) has a variety of meanings to different people. For example, there is no specific definition of "sensitive" data but the following may be considered as a partial list:

- physical or mental health or condition;
- financial information;
- membership in a trade union;
- sexual orientation;
- religious beliefs or other beliefs of a similar nature;
- racial or ethnic origin;
- political opinions; or
- the commission or alleged commission of a offence (and disposition thereof).

It is important to emphasize to REALTORS® that, for the purposes of Canadian privacy legislation and the CREA Privacy Code, **personal information is any information about an identifiable individual** (this includes both sensitive personal information and non-

sensitive personal information). This may appear as a broad, perhaps even "vague" concept. In fact, that was the intention of the governments that enacted the legislation, reflecting a policy to provide protection of personal information in a broad set of circumstances.

## **PERSONAL INFORMATION AND REALTORS®**

The object of this Part is to explore, in general terms, the types of personal information collected by REALTORS® during the course of their business activities. While the "titles" will likely vary from Firm to Firm, the following "individuals" were interviewed as to their practices concerning personal information.

- Broker-Owner (Rural)
- Associate Broker/Manager (Urban)
- Sales Representative (Urban – Medium volume of Ends per year)
- Sales Representative (Urban – Small volume of Ends per year)
- Sales Representative (Rural)
- Operations Accountant
- Deal Administrator
- Bookkeeper

The intent of the exercise was to not only follow a "deal" from beginning to end – a purchase as well as a sale – but also examine the relationship between a Firm and an individual REALTOR® in order to assess how personal information was treated.

Generally, with respect to the personal information held by a Firm, there may be four categories of files kept:

1. Personal information on REALTORS® held by Firms;
2. Personal information on employees held by Firms;
3. Personal information on third parties (investment property owners/tenants) held by Firms; and
4. Personal information on vendors and/or purchasers held by the Firm and the REALTOR®.

Personal information may include financial information.

## **BUYING**

The majority of transactions considered involved residential real estate although in some instances lots have been bought or sold. Most work comes from either referrals (past clients or friends of past clients, etc.) or through the practice of "farming" (e.g. making cold calls, sending materials to targeted neighborhoods; or generalized bulk mailings based on postal codes).

In meeting clients, basic contact information is obtained (e.g. name, telephone number, e-mail address) which is kept in a notebook or file folder until the matter becomes an active file. Generally information is collected directly from the client concerned. A REALTOR®

may also maintain the information in Personal Digital Assistants (PDAs). In initial meetings, the REALTOR® explains the buyer/broker relationship and shows the client a form that explains the agency relationship and also explains that they have to sign a buyer representation agreement. If not, the REALTOR® must act in the interest of the seller. When acting for a client, information provided to the REALTOR® is considered confidential (see however FILE Handling section below).

When making appointments to visit houses, the REALTOR® will call the brokerage's office (to whom the home is listed) but likely won't give the name of the potential buyer to the brokerage. Appointments to visit houses are made by an office receptionist or secretary calling the client to book an appointment. Confirmations of visits are made to the real estate office which provides it to the salesperson. Lock box numbers are never given to a REALTOR® directly but provided to their office.

Where there is a question as to the financial ability of a client to purchase a property, a REALTOR® will want some evidence from a bank to confirm that the client has been pre-approved. Since banks are conscious of providing information about clients, this may simply entail bank personnel confirming that the client is approved to a certain rate.

Following the viewing and selection of an appropriate property, which may involve the collection of personal information about personal preferences, price ranges or limits, an offer is prepared. If accepted, a deposit cheque is obtained and a copy of the agreement is sent to the client and vendor's broker. MLS® listing information is updated as required, usually within 24 hours. Copies of all agreements (i.e. buyer representation agreement, purchase/sell agreement, etc.) are sent to the "deal administrator". This could be simply an office secretary, an administrative person in a small office or a large administrative center. In some instances, a copy of the agreement is sent to the buyer's bank.

The REALTOR® may keep "copies" in a "shadow" file kept either in an office or home office. This may be in a locked cabinet but could easily be in a desk drawer or in a cardboard storage box. The most common retention period is seven years although all but one of the individuals interviewed did not know why that retention time frame was chosen. Information from successful as well as unsuccessful deals may be retained. In one instance, files are permanently maintained. The disposition of "old" files varies. Some may be shredded, others burned, while still others may simply be placed in permanent storage.

## **SELLING**

As an initial step, the REALTOR® obtains a list of comparable properties in the neighbourhood or area in question and discusses them with the client for the purpose of determining a listing price. This is usually followed by the execution of the listing agreement. The REALTOR® may collect information about the property both for the SPIS disclosure statement as well as the MLS® listing. This information is usually placed in the listing file.

In the course of conducting open houses, a REALTOR® will ask viewers to voluntarily sign-in and leave a phone number. This information is kept in the property file. In some

instances, a REALTOR® may use the sign-in sheet as a means to solicit new clients. Information concerning showings is stored in the REALTOR's file. In some offices, during the course of selling the property, information about visits/showings is readily obtainable since a computer program (Quick Office Commander) can generate a print-out with information on who visited (salesperson who was showing, when, etc).

After an agreement is "firm", the REALTOR® provides all necessary documentation to the "deal administrator" and stores a duplicate file until after the deal closes – unless a complication arises that delays closing or terminates a transaction (e.g. inability to waive a condition). This storage may be in a locked cabinet or a desk drawer. Information held in a PDA may be periodically deleted, especially in those instances where the relationship with a potential client never developed (e.g. the salesperson refused to work with the client) or where it deteriorated (e.g. sale expectations resulted in the termination of the relationship prior to the sale of the property). In those instances where a deal was successful, client information will be retained for a considerable period of time.

REALTORS® may go back to inactive files for information about past clients but this appears to be triggered by a client call and the information is sought to refresh the REALTOR(R)'s memory.

## **DEAL ADMINISTRATION**

A client file is generally seen by the REALTOR® and the deal administration "office" which may range from the simplicity of a single office secretary to the sophistication of a large back-office "hub". The client file may also be seen by another salesperson who handles the file when the listing or buyer's representative is away on vacation. Usually, the client file consists of only the client name and telephone number.

"Deal administration" involves the administrative processing of "firm" agreements for the purchase and sale of a property. It generally involves a degree of coordination concerning the handling of outstanding conditions; the collection/transmission of property documentation; the processing of commission invoices; preparation of trade records and the issuance of commission cheques. In some instances, deal administration may be more broadly defined on the buying end to involve preparation of an offer for a REALTOR®.

"Deal" files are generally organized on a property basis. Client documents processed in deal administration range from contact information to formal agreements and agency forms to legal documents such as surveys, formal waivers, etc. No database is kept on clients per se. Information requests are generally referred back to the REALTOR® in question with little information other than what is required for the transaction. This would include information for trade records: such as names of buyer/seller; particulars of sale; REALTOR®'s name; lawyer's name. Usually a "paper" file and electronic file of the deal will exist.

Banks may sometimes contact the deal administration office for information. In one instance, the office in question had an informal practice of authenticating the Bank official by asking questions concerning the transaction.

Firms also keep files for approximately seven years although no formal document retention policies exist in the firms interviewed.

## **MARKETING**

Marketing activities involving personal information generally revolves around contact information (name, mailing address) to send out Christmas cards, newsletters or calendars to clients. In some instances, this may involve retaining the spouse's name as well as the principle client contact.

Some REALTORS® use "Just Sold" or "Just Listed" flyers usually within a couple of weeks after closing or listing. Some flyers contain address information; others indicate a neighborhood; some further indicate price.

Some REALTORS® operate web sites marketing the properties they have listed or sold. Clients sign a form when listing their property that acknowledges the right to posting on the Internet. There will be a service agreement with the web hosting company (which may be the Internet provider) but the agreement may or may not cover what that service provider can do with the information. In some instances the "sold property" information may be old (in one instance, a sold property on a web site was found to be three years old).

Advertising is centered on properties and is placed in newspapers or specific purpose magazines or broadsheets.

Most marketing is left to individual agents or franchisers (brand marketing) although generic advertising or local sponsorships may occur. Some Firms will conduct direct marketing ("Just Solds") where a house is sold that may include a picture of the property and the address.

One Firm interviewed offers a loyalty program in which case the name of the client, loyalty program number, and trade number is sent to the franchiser in order to ensure delivery of points to the client. No other client information is provided.

## **FIRM/REALTOR® RELATIONSHIPS**

People generally start their careers as REALTORS® through a career night where an Office Manager or Owner may meet with potential REALTORS® to explain education and licensing process as well as potential income/expenses. The potential REALTOR® may only submit a basic application form or resume once he or she is registered in the Real Estate course. The Owner/Manager may keep in contact and offer assistance with the course with the contact information kept in a computer.

Close to the end of the "course process", the Owner/Manager may conduct a more formal interview to collect more detailed information. If the person is a candidate for "hiring", application forms will be completed (e.g. local real estate board) and training commenced. No background checks are performed in light of the fact that REALTORS® undergo a RECO licensing process. Files on employees and independent contractors are kept under lock in the

Firm office. Generally, only management may have access to such "personnel" files.

Firms generally provide some guidance to REALTORS® in terms of policy, sometimes in the form of a Handbook which contains a variety of information. No Firm interviewed had a privacy policy for clients or employees. None had a specific security policy although security procedures were generally noted.

Once the potential REALTOR® receives his or her licence, Board registration follows after which the REALTOR® has "Practising" status. All licences and renewal letters are sent to the Firm, which reminds the REALTOR® of the renewal timeframe. If the REALTOR® does not renew his or her license, the Firm may inform RECO. If Board fees are not paid the Board will inform the Firm at which point the REALTOR® is suspended from the Firm until the matter is rectified. Continuing education credits are usually not tracked by the Firm.

Employee performance reviews occur on a periodic basis, at least annually. Personnel information is retained in the employee file – generally for as long as the individual is employed with the Firm.

In the event there is a complaint involving a REALTOR, the Manager will either address the complaint by telephone or in a meeting involving the REALTOR (unless the client does not want the REALTOR present). "Non-serious" complaints (e.g.: "My house has not sold!") are noted but not kept in the REALTOR's file unless the client sends something in writing. "Serious complaints" would trigger a meeting with the client where the roles of the various bodies having jurisdiction are explained (e.g. a Board, RECO). In some instances, the client seeks monetary compensation and then the Manager will address the issue based on the circumstances.

In the event there is any legal claim, REALTORS® generally notify the Firm, which obtains a copy of the Statement of Claim and forwards it to the insurance company.

When a REALTOR® leaves the business, he or she contacts the broker owner, in which case the REALTOR® may be released from their contract in order to either leave the business or transfer to another broker's office. Clients may be contacted to see if they require the services of another broker, and since real estate is based on personal relationships, the client may accept the offer; move with the REALTOR® or obtain a reference from another source for a different REALTOR®.

## **ADMINISTRATION**

Payroll management varies depending on the size of the Firm. It may be done in-house or through the use of a payroll service provider. In the former instance, it may also be done by cheque, in which case the Firm keeps no REALTOR® financial information (e.g. direct deposit).

Depending on the size of the firm, benefits may or may not be offered to employees. In one instance, where benefits were provided, employee information was provided to the

benefits administrators (e.g. Great West Life; Sun Life)

Personal information and Production reports of REALTORS® will generally be provided to the Firm franchisee since franchise fees may be based on performance and access to software may be done on a "per seat" basis. REALTORS® may receive franchise-wise awards based on their performance.

Records of Employment and tax information (i.e. T-4, T4A slips) are prepared and stored together in some instances. In one instance, an administrator prepared HST quarterly reports and expense reports for the REALTORS® although no copies of such documents are kept in the REALTORS®' personal file. In another instance, the administration office provides an informal payroll service to REALTORS® with respect to their own employees (i.e. sales assistants).

One practice that may occur is the use of a "cash advance" system offered by reputable companies such as Real Estate Financial (REF). In essence, REALTORS®, between the time a deal becomes "firm" and its closing, may apply for an advance on the commission to be paid upon closing. In some instances a copy of the trade record may be provided to the financing company along with the advance request form.

## **SECURITY**

In terms of using information technology, Firms generally had access controls in place (e.g. management having access to all information; administrative staff having access to some). Where networks were used, firewalls were generally deployed. In some instances, wireless networks are used but the security of such networks has not yet been addressed.

Computer systems are backed-up, although this generally consists of accounting software. Lone Wolf software is generally used for administration purposes and is also backed-up. Storage of the backups varies but in some instances off-site removal was done daily.

In terms of physical security, arrangements vary from cabinets that may be accessible by any REALTOR® to strict access control rules (including cleaning during office hours only). In some instances, motion sensors were installed in storage rooms; in other instances the storage facility may be an offsite basement or an office attic. There is no specific procedure for the removal of files on computers. It appears to be done periodically on an as-needed basis, sometimes according to the personal preference of the staff person with the electronic file.

Passwords are commonly used and kept confidential although no formal password policy exists.

## **PROPERTY MANAGEMENT**

Related but distinct from the purchase and sale of real estate is the fact that some Firms do engage in property management activities on behalf of clients who have purchased investment properties. Files may generally be sorted by name of property, which contain owner information and may or may not include tenant information. If not in the property

file, there may be individual files on tenants that may include information about credit checks, references and past landlord checks although in the one instance where this activity occurred, if the applicant was not accepted then the application form was destroyed.

## **GENERAL SUMMARY**

For the most part, the treatment of personal information by Firms and REALTORS® represent the typical treatment of such information by small and medium-sized businesses in Canada. In order to provide a general summary of what firms will need to do to comply with the Privacy Act, the following is an overall guideline:

## **PRIVACY OFFICER**

Each organization must appoint a Privacy Officer, to implement the firm's privacy policy, train staff on privacy compliance issues and respond to questions and requests from the public on privacy issues.

## **IDENTIFYING PURPOSES AND OBTAINING CONSENT**

Firms and Salespeople will have to ensure that they explain to clients and customers the reason why personal information is being collected and obtain their consent to such use.

## **RETENTION & SECURITY**

Firms and individual REALTORS® must ensure that they protect and safeguard any personal information in their possession and should retain this information only as long as it is legally required.

## MODULE 2: PRINCIPLES

### MODEL CODE FOR THE PROTECTION OF PERSONAL INFORMATION

(the 10 privacy principles set out in Schedule 1 to the *Personal Information Protection and Electronic Documents Act*)

#### PRINCIPLE 1 - ACCOUNTABILITY

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

#### PRINCIPLE 2 - IDENTIFYING PURPOSES

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

#### PRINCIPLE 3 - CONSENT

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

#### PRINCIPLE 4 - LIMITING COLLECTION

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

#### PRINCIPLE 5 - LIMITING USE, DISCLOSURE, AND RETENTION

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

#### PRINCIPLE 6 - ACCURACY

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

#### PRINCIPLE 7 - SAFEGUARDS

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

#### PRINCIPLE 8 - OPENNESS

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

<sup>1</sup> Note: Each of these 10 principles has a number of sub-paragraphs. The reader is strongly urged to review the sub-paragraphs to each of the 10 principles, online, at [http://www.parl.gc.ca/36/2/parlbus/chambus/house/bills/government/C-6/C-6\\_4/sche1E.html](http://www.parl.gc.ca/36/2/parlbus/chambus/house/bills/government/C-6/C-6_4/sche1E.html)

**PRINCIPLE 9 - INDIVIDUAL ACCESS**

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

**PRINCIPLE 10 - CHALLENGING COMPLIANCE**

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

**THE CREA PRIVACY CODE**

(a practical application of the 10 privacy principles)<sup>2</sup>

This section takes a look at each of these principles, providing examples and explanations as to how they impact your daily practice as a REALTOR®. By understanding each of these Privacy principles, together with the examples provided, you will not only have a guideline as to how to safely manage the personal information in your possession, but also how to use Privacy laws to assist you in more effectively marketing your services to your clients.

**PRINCIPLE 1 – ACCOUNTABILITY**

Members are responsible for the proper management of all personal information under their control, and shall designate one or more persons to be accountable for compliance.

Each Firm has to designate someone to have the overall responsibility for Privacy management, to ensure that everyone in the Firm is aware of their Privacy obligations and to ensure that the Firm's Privacy Policy is communicated to all salespeople, clients and employees of the Firm. Sample policies have been prepared by both OREA and CREA. The Privacy Officer can be a broker, salesperson or employee of the Firm. The Privacy Officer is also responsible to communicate to all employees of the Firm how personal information is to be protected and safeguarded at all times, whether it is information coming into the office via fax machine, stored in filing cabinets or available on the Firm's computer systems.

It is important that every employee understands your Privacy Policies. For example, if someone calls your office and inquires what a given property sold for the night before, you are not permitted to disclose this information without your client's permission. By disclosing this information, you will not only upset your client, you will also have probably lost the opportunity to turn this inquiry into a potential new client. That is why all employees need to be trained not to disclose this type of personal information and to pass the inquiry on to the appropriate salesperson to follow up with the inquiring customer.

<sup>2</sup> Note: Each of these 10 principles in the CREA Privacy Code has a number of sub-paragraphs. The reader is strongly urged to review the sub-paragraphs to each of the 10 principles, at REALTOR Link, at <http://www.REALTORlink.ca/dms/docview.asp?docid=030690022&cid=1098010&sid=146736&bid=CREA&L=E&dmsid=2903783bcc63aa8872e17bd1e&folderid=991161204>

## **PRINCIPLE 2 – IDENTIFYING THE PURPOSES OF PERSONAL INFORMATION**

Members shall identify the purposes of collecting information before or at the time the information is collected.

Salespeople are required to tell anyone from whom they are collecting personal information the reason for the collection, either before or at the time the information is collected, and they can only use the personal information for that very same reason. An example is the Open House sign in sheet. If you tell a visitor to your open house that the reason they must sign the sign-in sheet is for security reasons, then you cannot use the information to call the visitor at their home. In reality, you are no different than the telemarketer who is bothering you during dinner. But if you explain to the visitor that the reason for the signature is so that you will follow up with them later or so that you can send them further information about your products and services, then you are not bothering them and can go right ahead. In fact, this Privacy Principle is really just simple courtesy, in explaining why you need information from a potential customer or client.

Can you market to expired listings? Unless the permission is given in the listing agreement, then the answer is no. This was the decision of the Privacy Commissioner, after receiving a complaint in 2004 from a consumer who alleged that a salesperson used information from the listing to contact the seller after the listing expired. The salesperson argued that they got the seller's number out of the phone book, which is publicly available information. The Privacy Commissioner, however, determined that even though the seller had authorized this information to be placed on the board's MLS® system, and even though his home number was listed in the telephone directory, it still did not give anyone the right to use this part of the information, i.e. when the listing would expire, without the seller's consent. As a result of this decision, listing agreements across the country have been modified to permit sellers to either give or refuse permission for other salespeople to contact them after their listing expires.

The principle to remember here is that just because personal information is available in a public database, it does not mean you can use it without anyone's permission if it is for a different purpose than intended. As a further example, just because the sale price of a home may be available to anyone at the public registry offices, it does not give salespeople the right to publish or advertise this information without the consent of the affected consumer.

Can you send out cards advertising that you have just sold a specific property or the sale price that the property sold for? This is not only personal information, but also falls under the REBBA 2002 advertising guidelines. Between the time the property sold and closing, you need the seller's permission to advertise that you sold the property. If you want to advertise the price the property sold for, at any time, then you need the consent of both the buyer and the seller.

Can you market to someone who has a For Sale by Owner sign on the property? If they are selling the property by themselves, without any assistance from a registered brokerage, then the answer is that you can still contact the person, but it is advisable to follow common

sense guidelines such as not contacting the owner right away in order to give them time to learn that the sales process is far from easy. If the sign includes the words "No agents" then that should be respected. If the seller has had his listing information posted onto the MLS® system by another registered brokerage, then the RECO rules against soliciting a client of another brokerage apply, unless there is express consent. If, for example, in the MLS® listing, under the brokerage remarks section, it indicates that you can approach the seller directly for showings, commission or offer presentation, then this is what you are permitted to do, as there is express consent given. However, this does not permit you to offer other marketing services to someone else's client.

### **PRINCIPLE 3 – OBTAINING CONSENT**

The knowledge and consent of the consumer are required for the collection, use or disclosure of personal information except where inappropriate.

Besides explaining the reason you are collecting personal information, you must obtain the consent of the person as well. This consent can be verbal, written or implied. The more sensitive the information, the more advisable it is to obtain written consent. As an example, in the standard listing agreement, the seller, in clause 11, gives their written consent for the listing salesperson to use all personal information about the property for the purpose of marketing and selling the property in any manner whatsoever, whether through the MLS® system or through any electronic media. The same is found in clause 8 of the standard buyer representation agreement, to permit a buyer salesperson to use the buyer's personal information to help find them a suitable property.

When someone signs a sign in sheet at your open house, if you explain the reason for their signature right on the form, then the consumer consents to your use when they sign the form itself.

What about your Client Christmas card or mailing lists that were obtained without any consent? Can you continue to use it to send out cards or newsletters to clients? For these lists, it is generally accepted that the clients have given their implied consent for you to continue sending the same type of information that you have in the past, provided that you also provide them the opportunity to opt out of receiving your newsletter in the future by contacting you at a specified phone number or email address. You cannot, however, use this list for a new purpose, such as providing this list to a moving company without your client's permission. Again, this is simple common courtesy, to obtain permission from anyone before you cause any marketing directly to them.

### **PRINCIPLE 4 – LIMITING COLLECTION OF PERSONAL INFORMATION**

Members shall limit the collection of personal information to that which is necessary for the purposes identified.

Only collect personal information if you really need it. For example, do not collect a client's SIN number unless you expect the client to earn over \$50 in interest on any deposit, such that your firm will have to issue a T5 form for income tax. Otherwise, do not collect this information as there is a real risk that if the information is mishandled in any way, it could lead to an identity theft or similar issues for your clients.

### **PRINCIPLE 5 – LIMITING USE, DISCLOSURE AND RETENTION OF PERSONAL INFORMATION**

Members shall use or disclose personal information only for the reason it was collected, except with the consent of the consumer or as required by law.

At first glance this seems easy to understand; that we should only disclose personal information if we have the permission of our client, or if it is required by a police or similar investigation. However, this provision has wider application. Let's say a seller tells you that the property has a material latent defect, such as cracks in the foundation, or adverse neighbourhood conditions, such as a pedophile who is living on the street, but instructs you not to disclose this to any buyer, saying this is "personal information." The law is clear that this type of information must be disclosed, by both the seller as well as the REALTOR®. Nondisclosure will probably lead to potential legal as well as disciplinary proceedings under the Real Estate Council of Ontario. The answer to your seller here must be that this information will have to be disclosed to any potential buyer or buyer representative. If the seller insists that you not disclose this information, you should think very carefully as to whether you should continue to represent this seller.

### **PRINCIPLE 6 – ACCURACY OF PERSONAL INFORMATION**

Members shall keep personal information as accurate, complete, current and relevant as necessary for its identified purpose.

If you are providing property management services and third parties are relying on your information, it is very important that all personal information be kept up to date and accurate in all respects.

### **PRINCIPLE 7 – PROTECTING INFORMATION**

Members shall protect personal information with safeguards appropriate to the sensitivity of the information.

It is common sense that when you are entrusted with the personal information of clients, you should be doing your best to protect this information from being released to third parties. This is especially true given the recent phenomenon of identity theft and the fraudulent duplication of SIN numbers, credit and debit cards to defraud consumers and financial institutions.

As such, all employees need to be made aware of the importance of maintaining the confidentiality and security of personal information. Sensitive personal information should only be accessible to those who need to know it. All sensitive information should be safely locked in filing cabinets and all information on computers should be password protected. Fax machines should not be kept in an open environment. Fax cover sheets should always be used when sending important agreements. Destroy personal information when you no longer need it, and preferably by shredder, if it is indeed sensitive personal information. The Privacy Commissioner has ruled that when information is indeed sensitive, it should be shredded as opposed to just being put out as paper garbage. This also makes common sense, as identity thieves often comb through paper garbage looking for this same type of personal information.

If you have any sensitive client information on your own Blackberry or similar personal Digital Assistant, make sure that the information is deleted when it is no longer needed or properly stored on a secure outside memory card.

In this regard, Firms should have policies as to how long they will retain paper or electronic files or information, having regard to any income tax or legal requirements.

When you have agreements with third party service providers, such as cleaning services that clean your offices, or companies that you purchase lists from, you must ensure that these companies also have complied with all Privacy obligations. You may want to consider having the cleaning services sign a confidentiality agreement regarding all information in your premises. Any third party providing you with any calling list must provide you with proof that they have the authority to provide you with any personal information and that the information was compiled in accordance with these same Privacy rules and obligations, including the provisions of the National Do Not Call List.

### **PRINCIPLE 8 – OPENNESS CONCERNING POLICIES AND PRACTICES**

Members shall make readily available to consumers specific information about their policies and practices relating to the management of personal information.

It is a good idea to proactively communicate your privacy policy to any potential new client. By demonstrating that you value their personal information, this is an example of how you care about your clients, which is what clients expect from you.

On your website, it is a good idea to have an immediate link to your privacy policy, especially if you are requesting consumers to fill in their personal contact information when they are, for example, searching for properties of interest. All advertising in social media must respect the laws of Privacy and the REBBA 2002 Obligations regarding advertising. For example, you cannot advertise what a property sold for on your website without the consent of both the buyer and the seller.

It may be advisable to include in your privacy policy a statement indicating that your seller agrees to your marketing the successful sale of their property, so that you obtain the consent to advertise from your seller immediately. You can then request that the buyer acknowledge this policy at the time an offer is presented, or sign a separate acknowledgement at the time the offer is prepared. It should not be included as a separate clause in the agreement itself.

### **PRINCIPLE 9 – CONSUMER ACCESS TO PERSONAL INFORMATION**

Upon request, members shall inform a consumer of the existence, use and disclosure of his or her personal information and shall give the individual access to that information.

Consumers are permitted access to whatever information of theirs that you have in your files. In most cases, real estate Firms do not keep in their files any personal information that is not

already available in the client's lawyer's files. As a result, you should not receive many requests from clients to review their personal information. However, in the event that you do receive such a request, you should do your best to make certain that the request is satisfied in a timely manner.

**PRINCIPLE 10 – CHALLENGING COMPLIANCE**

A consumer shall be able to address a challenge concerning compliance with the above principles to the designated accountable person or persons in the member office.

Privacy Managers are empowered to address any question or concern raised by the public regarding your Firm's privacy policies. You should ensure that any complaint is addressed in a timely manner, to avoid the consumer taking his complaint directly to the Privacy Commissioner's office.

## MODULE 3: CONSENT

### THE NATURE OF CONSENT

One of the fundamental principles of privacy law is the **need**, in most cases, for **consent** by the **individual whose personal information** is in question.

This **applies** not only between the **individual concerned and the “collector” of the information** but also between the **collector and any third party** that may be provided access to that information.

“Consent” means consent for the collection, use and disclosure of personal information, and may be read as meaning “informed consent”.

### IMPORTANT ELEMENTS OF CONSENT

- Consent is the **giving of assent or approval** for the **collection, use or disclosure of personal information** about an **identifiable individual** for a **specific purpose**.
- Consent need not be explicit **but may be implicit**.
- In terms of evidence, it need not be in writing but **may be given orally or expressed through conduct**. Conduct, though, does not mean the mere lack of explicit objection. There must be some positive act, even if it is simply a decision to decline when presented with an opportunity to “opt out” of the sharing of personal information with third parties.
- Subject to some limited exceptions, **consent may be withdrawn**. This means that **consent** is not only an act but also a **continuous process**.
- The **primary purpose for collection of information must be stated**.
- Should that **purpose change** then **consent** is to be **confirmed** so as to also **apply to any new purpose**. Implied consent also includes being permitted to continue cold calling people from the phone book. However, you must comply with the telemarketing rules which can be found at the front of the phone book, which provide certain times when calls or faxes can be made or sent. Mass mail drops are also still permissible, if they are not targeted to specific addresses. Consumers can further limit calls and faxes by registering at the Canadian National Do Not Call List, which began operation at the end of September, 2008, so it is imperative that if you are contemplating using either of these methods in your marketing plans, that you ensure that you and any third party service provider assisting you is in full compliance with these telemarketing rules, while at all times respecting the privacy of anyone who has registered information on the Do Not Call List. What about taking pictures of a seller’s chattels and fixtures while you are doing a home inspection, for the purpose of making sure that there is no confusion at closing? Is there implied consent from the seller, due to the fact that many home inspector’s also take pictures of chattels and fixtures during the inspection? The privacy commissioner has indicated that because some of this information, such as whether these are expensive appliances, could be deemed personal information, then consent should be requested in advance if the buyer wants to take the

pictures.

- **Adequate information about the purposes** for collection, ongoing use and possible disclosure must be provided in order **to permit an informed consent**. The standard of adequacy, in this regard, is generally considered to be what a "reasonable person" would want to know to make a decision regarding consent.

An example of informed express consent has to do with providing a Comparative Market Analysis to your buyer or seller clients. Under both section 11 of the Listing Agreement and section 8 of the Buyer Representation Agreement, the seller and buyer agree that the final sale price of their property may be compiled by the local MLS® boards and used by REALTORS® and appraisers for the purpose of conducting a Comparative Market Analysis for buyer and seller clients.

- In seeking consent, one must also be mindful of the **capacity of an individual** to give consent. The "subject" of the personal information generally gives consent since the provider and the "subject" of the personal information is usually the same. However, this need not be the case. It is possible that "subjects" may lack the legal or mental capacity to provide consent. For example, a parent may give consent for a minor child. Legal exceptions exist to deal with cases where there is an incapacity to give consent. For the REALTOR®, this means that when he/she obtains information he/she must ensure that not only has consent been obtained, but that the person collecting consent is satisfied that the person giving the consent had the legal capacity to do so. Given the high degree of personal interaction, this check is easily done by REALTORS®. If there is ever any question as to the capacity of any client, the family lawyer should be consulted before proceeding any further.
- Consent is **not the same as authorization**. Consent is a more general concept involving two parties: the provider of the information and the recipient where permission is given to collect, use and disclose the personal information in question. One "consent" may cover all uses and disclosures, indefinitely, and need not specify the particular information to be used or disclosed, nor the recipients of disclosed information. However, there is a requirement to **communicate the purpose for which the information is to be used or disclosed and the purpose must be reasonable**.
- The concept of "**knowledge and consent**" – constituting **informed consent** - is found throughout Canadian privacy legislation. Provided for the convenience of readers who are interested in examining relevant provisions, Annex A contains specific statutory examples that illustrate this point. These requirements also provide exceptions that mitigate the need for consent in certain circumstances. Annex B provides examples of such exceptions.
- Privacy legislation does not exist in a vacuum; it fits within the existing legal framework in Canada. The **statutory exceptions to the need for consent** for the collection, use and disclosure of personal information **reflect the policy view** that consent requirements must be **balanced against other important societal interests**.
- **Exceptions exist for each of the three phases of information handling: collection, use and disclosure.**

**CONSENT MANAGEMENT****PRELIMINARY CONSIDERATIONS**

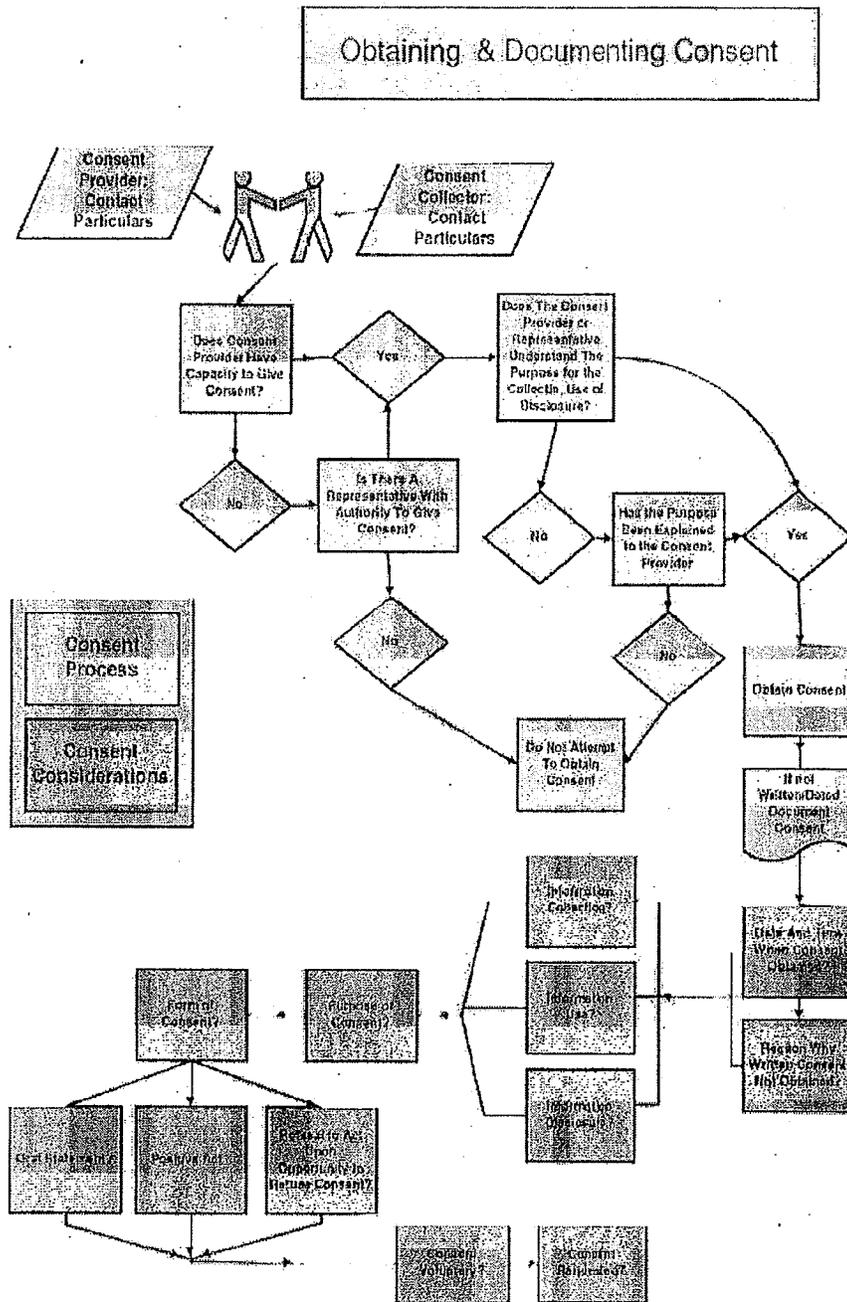
If the answer to any of the following four questions is yes, then the Firm should follow the process described in the table below.

- Is the Firm collecting “personal information” for the first time? **Or**
- Is the Firm going to use previously collected “personal information” for a purpose other than the purpose for which it was originally collected? **Or**
- Is the Firm going to disclose previously collected “personal information”? **Or**
- If consent to disclosure has been previously obtained, is the Firm going to disclose the previously collected “personal information” for a purpose other than the purpose for which it was collected?

## THE CONSENT PROCESS

1.	Identify the "subject" and "provider" of personal information – they may not be the same and different parties trigger different consent considerations.
2.	Determine if the Firm needs personal "identifying" information, keeping in mind facts about an individual do not constitute personal information until they are associated with an individual or one can derive the identity of the individual from those facts.
3.	If the determination in Step 2 is "no", and consent cannot be easily obtained, avoid the collection of identifying information.
4.	If the determination in Step 3 is "yes", and the collection of identifying information is necessary, determine if the individual concerned has the capacity to provide an informed consent.
5.	If there is no capacity, determine if there is an authorized representative who may provide the consent.
6.	If there is capacity, or an authorized representative has been identified, identify the purpose(s) for which the information is to be used, explain that consent for collection is required and the consequences of not providing consent.
7.	Obtain the consent, preferably signed (this applies whether the consent "document" is in paper or electronic form). Unless a legislative exception applies or the facts of a particular matter dictate, the collection, use or disclosure of "sensitive information" should always be signed (whether in paper or electronic form).
8.	If the consent is not in paper or electronic form, document the collection of consent (see Consent Checklist on page 30).
9.	Store the consent documentation in paper or electronic form. Ensure that it is stored with or linked to the personal information.

# CONSENT PROCESS DIAGRAM



**CONSENT MECHANISMS** This page addresses the subject of the “when” and “how” to obtain consent where it has been determined that consent is necessary. As a general rule, consent should be obtained at or prior to the time of collection after the purpose has been disclosed to the individual concerned. When that cannot be done, then consent should be obtained at the earliest possible time.

Generally, consent should be obtained:

➤ Upon a request for information from a Client:

- i) In the case of a telephone call or personal contact, by documenting the call or conversation;
- ii) In the case of an Internet enquiry, (i) by including a statement that submission constitutes consent; and (ii) by designing the process, or making mandatory the clicking of an icon to indicate that submission constitutes consent.

➤ Upon Application:

i) Of prospective REALTORS®:

- (a) Require signed consent before acceptance of formal application to be a REALTOR®.

ii) Of individuals seeking employment:

- (a) Require signed consent to be submitted with application for employment.

➤ Upon agreement with third party service provider to provide services to Firm:

i) Even if no personal information is exchanged, insert consent-related provisions in all agreements at time of initial signing or upon renewal.

- Upon execution of a listing agreement or buyers agency agreement.

- Upon execution of a specific consent form:

i) In the case of “sensitive” information, where no legal exception applies, have an employee execute a specific consent document prior to the collection, use or disclosure of such information.

**CONSENT CHECKLIST**

1. Who is the person obtaining the consent?  
\_\_\_\_\_  
\_\_\_\_\_
  
2. What are the contact particulars of the person obtaining consent?  
(a) Telephone number \_\_\_\_\_  
(b) E-mail address \_\_\_\_\_
  
3. Who is the person providing consent ("Consent Provider")?  
\_\_\_\_\_  
\_\_\_\_\_
  
4. What are the contact particulars of the Consent Provider?  
(a) Address \_\_\_\_\_  
(b) Telephone number, and \_\_\_\_\_  
(c) E-mail address \_\_\_\_\_
  
5. When was subject of consent addressed?  
(a) Date \_\_\_\_\_ and  
(b) Time \_\_\_\_\_
  
6. Why was it not possible to obtain an explicit written consent from the Consent Provider?  
\_\_\_\_\_
  
7. With respect to personal information, does the consent pertain to its  
 Collection,  
 Use, or  
 Disclosure?
  
8. What is the purpose of the  
 Collection, \_\_\_\_\_  
\_\_\_\_\_  
  
 Use, or \_\_\_\_\_  
\_\_\_\_\_

Disclosure? \_\_\_\_\_  
\_\_\_\_\_

9. What is the form of the consent by the Consent Provider?

- An oral statement,
- A positive act, or
- A refusal to act when presented with means to indicate a refusal to consent.

10. Was the consent

- Volunteered, or
- Requested?

11. Does the Consent Provider have the capacity to give consent?

\_\_\_\_\_

12. If the individual does not have capacity, is there a representative?

\_\_\_\_\_

13. Does the representative have the authority to give consent?

\_\_\_\_\_

\_\_\_\_\_

14. Does the Consent Provider understand that he or she may withdraw consent at a later time?

\_\_\_\_\_

\_\_\_\_\_

15. What are the consequences of the Consent Provider withdrawing consent?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. Does the Consent Provider understand the consequences if they withhold consent?

\_\_\_\_\_

\_\_\_\_\_

17. Are there any other pertinent facts to note?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## CONSENT & EXISTING INFORMATION

**CONSIDERATION #1 FOR EXISTING PERSONAL INFORMATION** Under the CSA Code (which is incorporated into the Personal Information Protection and Electronic Documents Act) and the CREA Privacy Code<sup>1</sup>, the retention of personal information is to be limited to the period of time for which it is required to fulfill the purpose for which it was collected.

**Therefore, the current stock of personal information held in a brokerage firm's or individual REALTOR®'s records will have to be "culled" to remove personal information no longer required – either by its destruction or anonymization.**

**CONSIDERATION #2 FOR EXISTING PERSONAL INFORMATION** Following this, the question then becomes one of whether consent is required with respect to the use and disclosure of personal information retained *after all personal information for which no purpose exists has been removed.*

In Canada, legislation does not have retroactive effect unless a statute expressly states that it does. This principle of statutory interpretation applies at the federal and provincial level. No privacy legislation in Canada has such an express "retroactive" provision.

The effect of the application of this principle is that the brokerage firm or REALTOR® does not need to obtain consent for the information obtained prior to the application of legislation that has come into force. **This means that the brokerage firm or REALTOR® need not obtain consent (or ensure the attainment of consent) for personal information in its possession prior to January 1, 2004 (which should only be personal information for which there is still a purpose for the firm or REALTOR to have in its possession – see consideration #1). Please note that the foregoing statements apply only to the "collection" of personal information.**

**CONSIDERATION #3 FOR EXISTING PERSONAL INFORMATION** However, the legislation would still apply to the "use" and "disclosure" of the personal information which was collected prior to January 1, 2004, for which there still exists a purpose for the brokerage firm or REALTOR to have it in their possession (and, of course, for the collection, use and disclosure of all personal information collected after January 1, 2004).

<sup>1</sup> Principle 5.3 of CREA Privacy Code - Members shall keep personal information only as long as it remains necessary or relevant for the purposes identified or as required by law.

At this point a further distinction is to be made between “active” and “inactive” information. Unless it is an active file, it is questionable whether any personal information is used or disclosed (which “loops back” to a question as to why the firm or REALTOR needs to retain the information – see consideration #1). **If personal information from an inactive file is used or disclosed then consent for such use or disclosure is required (of course, the same also applies to active files).**

If there is no use or disclosure of personal information, then consent is not required.

Regardless of whether the information is in an active or inactive file, if it is used or disclosed but in an anonymized form (e.g. historical data for research reports) then consent is not required.

Similarly, where a legislative exception applies, consents are not required regardless of how long the personal information is stored by the firm or REALTOR®.

## **ANNEX A: SELECTED PROVISIONS INDICATING CONSENT IS REQUIRED**

This Annex contains excerpts from privacy legislation in Canada and the CREA Privacy Code dealing with the subject of consent with respect to the collection, use and disclosure of personal information.

### **CANADA**

#### **PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT, S.C. 2000, C. 5**

##### **Section 5, Schedule 1**

5. (1) Subject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.

(2) The word "should", when used in Schedule 1, indicates a recommendation and does not impose an obligation.

(3) An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

#### **SCHEDULE 1 OF PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT, S.C. 2000, C. 5**

##### **(SECTION 5)**

#### **PRINCIPLES SET OUT IN THE NATIONAL STANDARD OF CANADA ENTITLED MODEL CODE FOR THE PROTECTION OF PERSONAL INFORMATION, CAN/CSA-Q830-96**

**4.3 Principle 3 - Consent** The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Note: In certain circumstances personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent. For example, seeking consent may be impractical for a charity or a direct-marketing firm that wishes to acquire a mailing list from another organization. In such cases, the organization providing the list would be expected to obtain consent before disclosing personal information.

- 4.3.1** Consent is required for the collection of personal information and the subsequent use or disclosure of this information. Typically, an organization will seek consent for the use or disclosure of the information at the time of collection. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use (for example, when an organization wants to use information for a purpose not previously identified).
- 4.3.2** The principle requires "knowledge and consent". Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.
- 4.3.3** An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.
- 4.3.4** The form of the consent sought by the organization may vary, depending upon the circumstances and the type of information. In determining the form of consent to use, organizations shall take into account the sensitivity of the information. Although some information (for example, medical records and income records) is almost always considered to be sensitive, any information can be sensitive, depending on the context. For example, the names and addresses of subscribers to a newsmagazine would generally not be considered sensitive information. However, the names and addresses of subscribers to some special-interest magazines might be considered sensitive.
- 4.3.5** In obtaining consent, the reasonable expectations of the individual are also relevant. For example, an individual buying a subscription to a magazine should reasonably expect that the organization, in addition to using the individual's name and address for mailing and billing purposes, would also contact the person to solicit the renewal of the subscription. In this case, the organization can assume that the individual's request constitutes consent for specific purposes. On the other hand, an individual would not reasonably expect that personal information given to a health-care professional would be given to a company selling health-care products, unless consent were obtained. Consent shall not be obtained through deception.

- 4.3.6 The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive. Consent can also be given by an authorized representative (such as a legal guardian or a person having power of attorney).
- 4.3.7 Individuals can give consent in many ways. For example:
- (a) an application form may be used to seek consent, collect information, and inform the individual of the use that will be made of the information. By completing and signing the form, the individual is giving consent to the collection and the specified uses;
  - (b) a checkoff box may be used to allow individuals to request that their names and addresses not be given to other organizations. Individuals who do not check the box are assumed to consent to the transfer of this information to third parties;
  - (c) consent may be given orally when information is collected over the telephone; or
  - (d) consent may be given at the time that individuals use a product or service.
- 4.3.8 An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal.

## THE CREA PRIVACY CODE

**Principle 3 – Obtaining Consent** The knowledge and consent of the consumer are required for the collection, use, or disclosure of personal information, except where inappropriate.

- 3.1 Each member will make all reasonable efforts to ensure consumers understand how personal information will be used and disclosed by the organization.
- 3.2 Consent can be expressed orally (when information is collected over the telephone), in writing or electronically. The signing by a consumer of a representation agreement containing the disclosures set out under Principle 2 shall be considered written consent for those identified purposes.
- 3.3 Generally, the member will seek consent to use and disclose personal information at the time it collects it. However, that consent may be sought after the information has been collected, but before it is used or disclosed for a new purpose.
- 3.4 Express consent should be obtained whenever practical. However, consent may be implied for the collection, use and disclosure of personal information in accordance with the known expectations of a particular individual or in terms of what a reasonable person in similar circumstances would likely believe necessary, or where express consent is not practical and where the information would not, in the circumstances, be considered sensitive.

- 3.5 Consent may be given by a consumer, where appropriate, through an authorized representative such as a person with a power of attorney.
- 3.6 An individual may withdraw consent at any time subject to legal or contractual restrictions and reasonable notice. The organization shall inform the consumer of the implications of such withdrawal.
- 3.7 Members shall not refuse to represent a consumer for the reason only that the consumer has refused to provide consent for the collection or use of certain information unless that information is required to properly represent the consumer.
- 3.8 Consent to the collection, use or disclosure of personal information is not required in those circumstances set out in section 7 of the *Personal Information Protection and Electronic Documents Act*. Members may develop policies specifically dealing with these circumstances.

## **ANNEX B: SELECTED PROVISIONS CONCERNING EXCEPTIONS**

This Annex contains excerpts from privacy legislation in Canada dealing with the subject of **exceptions** to obtaining consent with respect to the collection, use and disclosure of personal information.

CANADA

### **PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT, S.C. 2000, C. 5**

#### Section 7

7. (1) For the purpose of clause 4.3 of Schedule 1 and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

- (a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;
- (b) it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province;
- (c) the collection is solely for journalistic, artistic or literary purposes; or
- (d) the information is publicly available and is specified by the regulations.

**(Note: The reason why a newspaper is permitted to publish the price that individual properties sell for without any permission is because of this exception 7.(1) (c) under Privacy Laws. For REALTORS®, you will have to obtain the permission of sellers as well as buyers in order to publish this same information.)**

(2) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if

- (a) in the course of its activities, the organization becomes aware of information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;
- (b) it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;
- (c) it is used for statistical, or scholarly study or research, purposes that cannot be achieved without using the information, the information is used in a manner that will ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;
  - (c.1) it is publicly available and is specified by the regulations; or
- (d) it was collected under paragraph (1)(a) or (b).

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent

of the individual only if the disclosure is

- (a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;
- (b) for the purpose of collecting a debt owed by the individual to the organization;
- (c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

- (i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,
- (ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law, or
- (iii) disclosure is requested for the purpose of administering any law of Canada or a province;

(d) made on the initiative of the organization to an investigative body, a government institution or a part of a government institution and the organization

- (i) has reasonable grounds to believe that the information relates to a breach of an agreement or a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or
- (ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

- (i) one hundred years after the record containing the information was created, and
- (ii) twenty years after the death of the individual whom the information is about;
- (h.1) of information that is publicly available and is specified by the regulations;
- (h.2) made by an investigative body and the disclosure is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province; or
- (i) required by law.

(4) Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection (2).

(5) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in any of the circumstances set out in paragraphs (3)(a) to (h.2).

## MODULE 4: PRIVACY POLICY

SAMPLE FORM - PAGE 1

**[Firm Name]**

### Policy On the Collection, Use and Disclosure Of Personal Information "Privacy Policy"

#### 1. OBJECTIVE & SCOPE OF POLICY

**[Firm Name]** is committed to respecting your privacy and has prepared this Policy to inform you of our policy and practices concerning the collection, use and disclosure of Personal Information.

This Policy governs Personal Information collected from and about  
(i) individuals who are or may become Clients of **[Firm Name]** and  
(ii) individuals or organizations with whom **[Firm Name]** works with.

Using contractual or other arrangements, **[Firm name]** shall ensure that agents, contractors or third party service providers, who may receive Personal Information in the course of providing services to **[Firm name]** as part of our delivery of real estate services, protect that Personal Information in a manner consistent with the principles articulated in this Policy.

This Policy does not cover aggregated data from which the identity of an individual cannot be determined. **[Firm Name]** retains the right to use aggregated data in any way that it determines appropriate.

In the event of questions about: (i) access to your Personal Information; (ii) **[firm name]**'s collection, use, management or disclosure of Personal Information; or (iii) this Policy; please contact:

**[Name or Title, address, email address, telephone #]**

#### 2. THE COLLECTION, USE & DISCLOSURE OF PERSONAL INFORMATION

For the purposes of this Policy:

*"Client" means an individual who may or has purchased [Firm Name] real estate or services to buy or purchase real estate;*

*"Personal Information" means any information, recorded in any form, about an identified individual, or an individual whose identity may be inferred or determined from such information.*

**Your provision of Personal Information to [Firm Name] means that you agree and consent that we may collect, use and disclose your Personal Information in accordance with this Privacy Policy. If you do not agree with these terms, you are requested not to provide any Personal Information to [Firm Name] or a Broker or Sales Representative working with [Firm Name]. Unfortunately, certain services can only be offered if you provide Personal Information and consequently, if you choose not provide us with any required Personal Information, [Firm Name] may not be able to offer you those services.**

This office only collects personal information necessary to effectively market and sell the property of sellers; to locate, assess and qualify properties for buyers and to otherwise provide professional and competent real estate services to clients.

**[Firm Name]**, Brokers or sales representatives may use personal information for

commission management purposes (e.g. commission financing, commission dispute resolution).

**[Firm Name]**'s use of Personal Information is limited to these purposes. **[Firm Name]** does not sell, trade, barter or exchange for consideration any Personal Information it has obtained. Unless permitted by law, no personal information is collected about an individual without first obtaining the consent of the individual to the collection, use and dissemination of that information.

Personal information will be collected, to the extent possible, directly from the individual concerned.

**[Firm Name]** does not knowingly collect Personal Information from anyone under the age of 18, especially children under 13, and does not use such information if **[Firm Name]** discovers that it is has been provided by a minor.

Personal Information may also be transferred to another company in the event of a change of ownership of all or part of **[Firm Name]**.

**[Firm Name]** may disclose Personal Information of Clients to organizations that perform services on its behalf. This will only be done if such organizations agree to use such information solely for the purposes of providing services to **[Firm Name]** and, with respect to that information, to act in a manner consistent with this Policy.

Please note that there are circumstances where the use and/or disclosure of Personal Information may be justified or permitted or where **[Firm Name]** is obliged to disclose information *without* consent. Such circumstances may include:

- Where required by law or by order or requirement of a court, administrative agency or other governmental tribunal;
- Where **[Firm Name]** believes, upon reasonable grounds, that it is necessary to protect the rights, privacy, safety or property of an identifiable person or group;
- Where it is necessary to establish or collect monies owing to **[Firm Name]**;
- Where it is necessary to permit **[Firm Name]** to pursue available remedies or limit any damages that **[Firm Name]** may sustain; or
- Where the information is public.

Where obliged or permitted to disclose information without consent, **[Firm Name]** will not disclose more information than is required.

### 3. ACCURACY

**[Firm Name]** endeavours to ensure that any Personal Information provided by Clients and in its possession is as accurate, current and complete as necessary for the purposes for which **[Firm Name]** uses that data. Information contained in files that have been closed is not actively updated or maintained.

### 4. RETENTION

**[Firm Name]** retains Personal Information as long as **[Firm Name]** believes it is necessary to fulfil the purpose for which it was collected and Firm legal or business requirements.

## 5. SECURITY

**[Firm Name]** endeavours to maintain adequate physical, procedural and technical security with respect to its offices and information storage facilities so as to prevent any loss, misuse, unauthorized access, disclosure, or modification of Personal Information.

**[Firm Name]** further protects Personal Information by restricting access to it to those Employees and Contractors that the management of **[Firm Name]** has determined need to know that information in order that **[Firm Name]** may provide services to Clients.

## 6. ACCESS TO PERSONAL INFORMATION

**[Firm Name]** permits access to and review of Personal Information held by **[Firm Name]** about an individual by the individual concerned.

If an individual believes any Personal Information concerning that individual is not correct, that person may request an amendment of that information by sending a request to the person indicated in Section 1 of this Policy. **[Firm Name]** reserves the right not to change any Personal Information but will append any alternative text the individual concerned believes appropriate. Where not required to be retained by the Firm, an individual may also request that **[Firm Name]** delete an individual's Personal Information from **[Firm Name]**'s system and records. However, due to constraints of computer technology and the fact that **[Firm Name]** backs up its systems, Personal Information may continue to reside in **[Firm Name]**'s systems after deletion. Individuals, therefore, should not expect that their Personal Information would be completely removed from **[Firm Name]** systems in response to an accepted request for deletion.

**[Firm Name]** reserves the right to decline access to Personal Information where the information requested:

- a) Would disclose the Personal Information of another individual or of a deceased individual;
- b) Would disclose business confidential information that may harm **[Firm Name]** or the competitive position of a third party;
- c) Is subject to solicitor-client or litigation privilege;
- d) Could reasonably result in: (i) serious harm to the treatment or recovery of the individual concerned;  
(ii) serious emotional harm to the individual or another individual; or (iii) serious bodily harm to another individual;
- e) May harm, or interfere with, law enforcement activities and other investigative or regulatory functions of a body authorized by statute to perform such functions;
- f) Is not readily retrievable and the burden or cost of providing would be disproportionate to the nature or value of the information; or g) Does not exist, is not held, or cannot be found by **[Firm Name]**.

Where information will not or cannot be disclosed, the individual making the request will be provided with the reasons for non-disclosure.

Where information will be disclosed, **[Firm Name]** will endeavor to provide the information in question within a reasonable time and no later than 30 days following the request.

**[Firm Name]** will not respond to repetitious or vexatious requests for access. In determining whether a request is repetitious or vexatious, it will consider such factors as the frequency with which information is amended, the purpose for which the information is used, and the nature of the information.

To guard against fraudulent requests for access, **[Firm Name]** will require sufficient information to allow it to confirm the identity of the person making the request before granting

access or making corrections.

## **7. AMENDMENT OF PRACTICES AND THIS POLICY**

This statement is in effect as of [insert date]. [Firm Name] will from time to time review and revise its privacy practices and this Policy. In the event of any amendment, an appropriate notice will be communicated to Clients and others in an appropriate manner.

## MODULE 5: SAMPLE FORMS – EMPLOYEES & CONTRACTORS

SAMPLE FORM - PAGE 1

### **[Firm Name]**

## Policy On the Collection, Use and Disclosure Of Personal Information of Employees and Contractors “Contractor / Employee Privacy Policy”

### 1.0 OBJECTIVE & SCOPE OF POLICY

This Policy governs the collection, use and disclosure of Personal Information by **[Firm Name]** from and about individuals who are, or seek to be, employed by or associated with **[Firm Name]**. This Policy also applies to any independent Contractors working for the firm (e.g. Brokers, Brokers' assistants).

This Policy Statement applies to **[Firm Name]** not only as an organization but also to each individual as a Contractor, an Employee or prospective Employee, as a condition of employment or association with **[Firm Name]**, with respect to the Personal Information of other Employees or Contractors.

This statement is in effect as of **[date to be inserted]**. **[Firm Name]** will from time to time review and revise its privacy practices and this Policy. In the event of any amendment, Employees / Contractors will receive appropriate notice as soon as possible following the amendment. Policy changes will apply to the information collected from the date of the revised Policy as well as to existing Personal Information about Employees and Contractors held by **[Firm Name]**.

In the event an Employee or Contractor has questions about (a) access to Personal Information; (b) the collection, use, management or disclosure of Personal Information; or (c) this Policy, that Employee or Contractor should contact **[Name or title of appropriate contact to be inserted]**.

### 2.0 THE COLLECTION, USE & DISCLOSURE OF PERSONAL INFORMATION

For the purposes of this Policy,

*“Aggregated Information” means any information, recorded in any form, about more than one individual where the identity of the individuals is not known and cannot be inferred from the information.*

*“Employee” means an individual seeking to be employed, currently employed or formerly employed by **[Firm Name]** in a management or non-management capacity.*

*“Contractor” means any individual associated with **[Firm Name]** and who is not an employee of the Firm (e.g. Brokers, Brokers' assistants);*

*“Personal Information” means any information, recorded in any form, about an identified individual, or an individual whose identity may be inferred or determined from the information.*

**[Firm Name]** collects and maintains different types of Personal Information from Employees and Contractors, including:

- (a) Identification information such as an Employee / Contractor name, home address, telephone, personal email address, date of birth, Employee / Contractor identification number and marital status;
- (b) Employment/Independent Contract information such as an Employee or Contractor's salary or commission, job title, resumes, applications, copies of school, college and university diplomas,

background verification information, employment references;  
(c) Financial information such as bank account numbers, where required for direct deposit purposes and tax related information; and  
(d) Other information necessary to **[Firm Name]**'s business purposes, which may be voluntarily disclosed in the course of an individual's application and employment or association with **[Firm Name]**.

**[Firm Name]** collects Personal Information through a variety of means and from different sources, including Personal Information that:

- Employees and Contractors provide (i) in conversations, in correspondence or through application and other forms; or (ii) using **[Firm Name]**'s office and computer equipment and software, including e-mail and Internet applications
- **[Firm Name]** receives from third parties, such as individuals or organizations who provide test results or references; and

**[Firm Name]** may collect Personal Information about Employees and Contractors in the course of any monitoring activities. See Section 5 below for further information concerning monitoring.

**[Firm Name]** uses the information provided verbally or in writing by individuals upon their application for employment or association with (and/or which may be provided during the course of employment or association by **[Firm Name]**), for different purposes in the management and administration of the relationship between **[Firm Name]** and that individual.

The purpose for the use (as well as the initial collection and possible disclosure) of Personal Information is for the administration, planning and management of an individual's relationship with **[Firm Name]** and includes, but is not limited to:

- a) Determining eligibility for initial employment or association, including the verification of references and qualifications;
- b) Administering commissions or pay and benefits;
- c) If applicable, administering franchisor award programs;
- d) Processing of employee work-related claims (e.g. worker compensation, insurance claims, etc.)
- e) Establishing training and/or development requirements;
- f) Assessing qualifications for a particular assignment, job or task;
- g) Gathering evidence for disciplinary action, should it be necessary;
- h) Establishing a contact point in the case of an emergency (next of kin);
- i) Complying with applicable labour or employment statutes;
- j) Compiling directories; k) Ensuring the security of company-held information; and
- l) For such other purposes as is required for the administration of relationships with employees or contractors by **[Firm Name]**.

**[Firm Name]** does not sell, trade, barter or exchange for consideration Personal Information about any Employee or Contractor.

There are circumstances where the use and/or disclosure of Personal Information may be justified or permitted or where **[Firm Name]** is obliged to disclose information without consent. Such circumstances may include:

- Where required by law or by order of a court, administrative agency or other governmental tribunal;
- Where **[Firm Name]** believes, upon reasonable grounds, that it is necessary to protect the rights, privacy, safety or property of an identifiable person or group;
- Where required, to determine or administer Employee / Contractor pay and benefits;
- Where it is alleged that the person concerned is: guilty of a criminal offence; civilly liable

- in a legal action; or guilty of professional misconduct;
- Where it is necessary to permit **[Firm Name]** to pursue available remedies or limit any damages that it may sustain; and
- Where the information is public.

Where obliged or permitted to disclose information without consent, **[Firm Name]** will not disclose more information than is required.

**[Firm Name]** may disclose Personal Information of Employees and Contractors to organizations that assist **[Firm Name]** by performing services on its behalf. Personal Information will only be provided to such organizations if they agree to use such information solely for the purposes of providing services to **[Firm Name]** and under the instruction of **[Firm Name]** and, with respect to that information, to act in a manner consistent with the relevant principles articulated in this Policy.

Personal Information may also be subject to transfer to another company in the event of a change of ownership of all or part of **[Firm Name]**.

### 3.0 ACCURACY & RETENTION OF INFORMATION

**[Firm Name]** endeavours to ensure that any Personal Information in its possession is as accurate, current and complete as necessary for the purposes for which **[Firm Name]** uses that information.

**[Firm Name]** retains Personal Information about Employees and Contractors as long as **[Firm Name]** believes it is necessary to fulfill the purpose for which it was collected and Firm legal or business requirements. Personal Information is retained in an Employee or Contractor's personnel file for:

- The term of his or her employment or association with the Firm;
- Until such Personal Information is superseded, in which cases such "obsolete" Personal Information is destroyed;
- Seven (7) years following such employment or association; and
- As required to comply with statutory or other legal purposes.

### 4.0 SECURITY

**[Firm Name]** endeavours to maintain adequate physical, procedural and technical security with respect to its offices and information storage facilities so as to prevent any loss, misuse, unauthorized access, disclosure, or modification of an Employee or Contractor's Personal Information.

As part of those precautions, **[Firm Name]** restricts access to an Employee or Contractor's Personal Information to those Employees, Contractors and others (i.e. individuals or organizations providing services to **[Firm Name]**) that it determines need to know that information in order that **[Firm Name]** may conduct its activities.

If any Employee or Contractor misuses the Personal Information of another Employee or Contractor, this will be considered as a serious offence for which, in the case of an employee, disciplinary action may be taken, up to and including termination of employment, or, in the case of a Contractor, termination of the relationship between that individual and the Firm if the circumstances warrant such action. If any individual or organization providing services to **[Firm Name]** misuses the Personal Information of an Employee or Contractor – provided for the purpose of providing services to **[Firm Name]** - this will be considered a serious issue for which action may be taken, up to and including termination of the service agreement between **[Firm Name]** and that individual or organization, if the circumstances warrant such action.

## 5.0 MONITORING

**[Firm Name]** provides Employees and Contractors with computers, telephones and related office and communication equipment as well as software applications.

In the course of conducting business, **[Firm Name]** may monitor Employee and Contractor activities and its property. To illustrate what monitoring means, Employee and Contractor e-mail applications will normally contain the e-mails they have sent and received. Back-ups and archives may also contain copies of e-mails that Employees and Contractors have deleted. The e-mail system is the property of **[Firm Name]** and Employees and Contractors may send and receive personal e-mail on the understanding that such e-mail is not private or confidential. **[Firm Name]** reserves the right to monitor the e-mail system, whether the mail is sent/received/created regardless of whether a personal password is used.

**[Firm Name]** may monitor its computer resources to ensure that damage to or illegal use of those resources is limited (e.g. damage caused by viruses). It may monitor the physical premises to ensure that only authorized personnel access the Firm's offices or certain areas within **[Firm Name]** offices. It does these things so as to ensure the efficient use of its systems and equipment, to protect **[Firm Name]** property and to ensure compliance with applicable laws and **[Firm Name]** policies. Access rights to Employee and Contractor e-mail boxes and logs will be restricted to those with the responsibility for administering **[Firm Name]**'s Information Technology systems. Such access will be as limited as possible.

This section is not meant to suggest that Employees and Contractors will be continually monitored or their actions subject to constant surveillance. It is meant to bring to attention the fact that such monitoring may occur and may result in the collection of Personal Information from Employees or Contractors (e.g. through their use of **[Firm Name]**'s resources). **When using [Firm Name] equipment or resources Employees and Contractors should not have any expectation of privacy with respect to their use of such equipment or resources.** Any collection of Personal Information held or used in the course of monitoring will not be more than is necessary for the purpose of the monitoring.

Monitoring is or will be done on an "as required" basis and will be in proportion to the risks that **[Firm Name]** faces. **[Firm Name]** will conduct any monitoring in the least intrusive way possible.

## 6.0 ACCESSING AND UPDATING PERSONAL INFORMATION

**[Firm Name]** permits the reasonable right of access and review of Personal Information about an Employee or Contractor held by the Company. If an Employee or Contractor believes the information about them is not correct, the Employee or Contractor may request an amendment of that information by making a request to [name or title of individual]. **[Firm Name]** reserves the right not to change any Personal Information but will append any alternative text the individual concerned believes to be appropriate.

Where information will be disclosed to an Employee or Contractor, **[Firm Name]** will endeavor to provide the information in question within a reasonable time and no later than 30 days following the request.

To guard against fraudulent requests for access or corrections, **[Firm Name]** may require sufficient information to allow it to confirm that the person making the request is authorized to do so before granting access or making corrections. This may occur, for example, where an authorized representative seeks information about a former or deceased Employee or Contractors or where law enforcement authorities seek information about an Employee or Contractor.

**[Firm Name]** reserves the right to decline to provide access to Personal Information where the information requested:

1. Would disclose:
  - a. Personal Information, including opinions, about another individual or about a deceased individual; or
  - b. Trade secrets or other business confidential information that may harm **[Firm Name]** or competitive position of a third party or interfere with contractual or other negotiations of **[Firm Name]** or a third party;
2. Is subject to solicitor-client or litigation privilege;
3. Is not readily retrievable and the burden or cost of providing would be disproportionate to the nature or value of the information;
4. Does not exist, is not held, or cannot be found by **[Firm Name]**;
5. Could reasonably result in (i) serious harm to the treatment or recovery of the individual concerned,
  - (ii) serious emotional harm to the individual or another individual, or (iii) serious bodily harm to another individual; or
6. May harm, or interfere with, law enforcement activities and other investigative or regulatory functions of a body authorized by statute to perform such functions.

Where information will not or cannot be disclosed, the individual making the request will be provided with the reasons for non-disclosure. **[Firm Name]** will not respond to repetitious or vexatious requests for access.

## MODULE 6 DOCUMENT RETENTION CHECKLIST

Document	Retention Period	Comments
<b>Electronic Documents</b>		
E-mail	6 months	<ul style="list-style-type: none"> <li>• Must delete e-mail from in-box and archives;</li> <li>• Attempt to keep majority of e-mail related to business issues;</li> <li>• Key e-mails pertaining to deals are to be printed and stored in the deal file.</li> <li>• Do not store or transfer company related e-mail on non-work related computers;</li> <li>• E-mails pertaining to the work performance of an employee/Realtor are to be printed and stored in the employee's workspace.</li> </ul>
Voice Mail	Transitory in nature and may be deleted at will	<ul style="list-style-type: none"> <li>• <b>HOWEVER</b>, some messages may need to be transcribed or otherwise saved depending on their importance in a particular matter.</li> </ul>
Web page files	1 year	<ul style="list-style-type: none"> <li>• Includes any pages saved from Web sites onto an employee's or contractor's computer</li> </ul>
Text/Formatted Files (e.g. Word/WordPerfect)	1 year	<ul style="list-style-type: none"> <li>• Delete all personal files containing and those considered unnecessary or outdated;</li> <li>• Vital files should be printed and stored in the employee's or contractor's workspace.</li> </ul>
Spreadsheets	1 year	<ul style="list-style-type: none"> <li>• Spreadsheets needed for tax reasons to be kept for 7 years.</li> </ul>
Presentations	1 year	<ul style="list-style-type: none"> <li>• To be deleted when no longer of use or after one year, whichever is the earliest.</li> </ul>

Document	Retention Period	Comments
Electronic Documents		
PDF Documents	1 year	• To be deleted when no longer of use or after one year, whichever is the earliest.
Paper Documents Text/Formatted Files (e.g. letters) Forms	7 years	

### SUSPENSION OF THE DESTRUCTION OR DISPOSAL OF RECORDS

There are some instances where records must be held beyond the established retention period because of a complaint against an employee or independent contractor of *[Firm Name]*, a privacy request, an audit, litigation, or the possibility of litigation that either does or may involve *[Firm Name]*. *[Firm Name]* will suspend the application of a record retention schedule to a record or class of records:

- 1) Upon becoming aware of an allegation, claim, audit, investigation or pending claim, audit or investigation directed at *[Firm Name]*;
- 2) Where required by law or by order of a tribunal;
- 3) Where it is necessary to permit *[Firm Name]* to pursue available remedies or limit any damages that it may sustain; and
- 4) Upon written notice of the commencement against a *[Firm Name]* employee or Independent contractor of:
  - a) a judicial proceeding;
  - b) an administrative, regulatory or professional investigation;
  - c) a proceeding arising from an administrative, regulatory or professional investigation; or
  - d) an investigation by law enforcement or national security authorities;

The *[Responsible Individual]* will create a list of records, or classes of records, for which destruction is to be suspended and attach any supporting rationale that can explain the reason for suspension. The list should provide as many details of the records to be frozen as required. Once notification of the requirement to suspend destruction or disposal is received from the *[Responsible Individual]*, managers and employees will retain the affected records and suspend their destruction until appropriate notification to the contrary is received.

## **MODULE 7: SUMMARY FOR BROKERS/SALESPEOPLE BROKERS/OWNERS/MANAGERS**

### **YOU NEED TO KNOW:**

**YOUR FIRM IS RESPONSIBLE** for all personal information collected by your salespeople (Principle 1, Privacy Code)

**YOU ARE REQUIRED TO AMEND YOUR CURRENT OFFICE POLICIES** to incorporate provisions which comply with the Privacy Code ( "Sample Office Policies for Realty Firms" and "Making Privacy Work in Your Office")

**AN INDIVIDUAL IN YOUR OFFICE MUST BE DESIGNATED THE PRIVACY COMPLIANCE OFFICER** (Principle 1, Privacy Code). This person is responsible for implementing the privacy policies, training staff and responding to questions from members of the public.

**ENSURE THAT LISTING AND BUYER REPRESENTATION AGREEMENTS** used by your office contain privacy disclosures. Many provincial associations have already incorporated such disclosures into their forms. If not, see sample clauses in "Making Privacy Work in Your Office". Make sure your office uses only approved forms.

**ALL PERSONAL INFORMATION IN YOUR OFFICE MUST BE ADEQUATELY PROTECTED** to ensure that it is not lost, stolen, copied or modified without permission (Principle 7, Privacy Code). The level of protection depends on the sensitivity of the information, but should include locked filing cabinets and computer passwords. You also must have a record retention and destruction program.

**CLEAN OUT YOUR FILES.** Destroy files which serve no purpose and do not need to be retained in accordance with a record retention program. Cull the files that are necessary to be retained and remove useless and irrelevant information that would not have been collected under an effective privacy policy.

**YOUR FIRM MUST BE READY TO ADVISE CONSUMERS OF YOUR PRIVACY POLICIES** (Principle 8, Privacy Code and see the Brochure). Brochures in the waiting room, Privacy Code on wall serve this purpose.

**CONSUMERS MUST BE ABLE TO ACCESS PERSONAL INFORMATION** your office is holding on them (Principle 9, Privacy Code ; "Sample Office Policies For Realty Firms" and "Making Privacy Work in Your Office"). The office must have in place a process to accommodate these requests, and information must be provided at minimal or no cost. Principle 9, Privacy Code includes a sample procedure. Consumers have the right to correct any inaccurate information.

**TRAIN YOUR STAFF AND SALESPEOPLE ON HOW THE PRIVACY POLICIES WORK.** Implement regular updating privacy sessions. Training is absolutely essential. All office representatives should understand the privacy policies. All salespersons should be specifically trained to: disclose to consumers the uses information will be put to at the time it is collected; obtain the informed consent of the consumer to those uses; collect only the information necessary for the transaction; only use and disclose the information as they said they would.

**CONSUMERS MUST BE ABLE TO COMPLAIN TO THE OFFICE** that the Principles of the Code have not been adhered to (Principle 10, Privacy Code). The Privacy Compliance Officer must address any complaints and try to resolve them. If unsuccessful, the consumer must be advised of where the complaint can be directed.

**PRIVACY UPDATES WILL BE POSTED ON REALTOR Link™ ([www.REALTORlink.ca](http://www.REALTORlink.ca)).  
PLEASE CHECK THAT SITE ON A REGULAR BASIS TO FIND OUT WHAT'S NEW  
IN PRIVACY.**

## **SALESPERSONS -- DO:**

• **FAMILIARIZE YOURSELF WITH THE PRIVACY POLICIES OF YOUR OFFICE.** Every realty office must implement privacy policies. These policies, however, are only as effective as the people operating under them. You cannot effectively put these policies into practice if you don't know what they say or what they mean. Read and understand the policies. Ask questions.

• **ADVISE CLIENTS WHAT YOU WILL BE DOING WITH THE PERSONAL INFORMATION YOU ARE COLLECTING** (Principle 2, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Understand that there are two separate aspects to this disclosure. Consumers must understand that you use the information to market the property and you also give the information to the real estate board operating the MLS® system. The board then has specific uses for the information. Always be completely transparent as to what you are doing with the information. Ensure that the listing and buyer agency forms you are using contain disclosure clauses which explain these uses in more detail. Familiarize yourself with these clauses.

**GET THE CONSENT OF THE CLIENT TO THE USES DISCLOSED** (Principle 3, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Familiarize yourself with the different types of consent – express (written or oral) and implied. Ensure that when you are sending information to any third party you are doing so with the proper consents.

**COLLECT ONLY THE INFORMATION YOU NEED TO EFFECTIVELY REPRESENT THE CLIENT IN THE TRANSACTION** (Principle 4, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Direct your minds to this issue when you are collecting information. Only essential information, necessary for the transaction, is to be collected. Create a list for your own use of the usual required information.

**USE AND DISCLOSE THE INFORMATION ONLY IN A MANNER CONSISTENT WITH THE REASON IT WAS COLLECTED** (Principle 5, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). You are collecting the information to market the property for sellers and to locate and qualify properties for buyers. Use it to do that and nothing else. If you do anything else with it (mailing lists, selling names to third parties etc...), get the express consent of the client to that use.

**TAKE REASONABLE STEPS TO ENSURE THE INFORMATION IS AS ACCURATE AS POSSIBLE WHEN YOU COLLECT IT** (Principle 6, Privacy Code). As much as possible, collect information from the person who has the first-hand knowledge, not some third party. Always verify public property information with the public source.

All of the discussion above can be summarized like this: Tell them what you're going to do with the information, get their consent to do that, just collect the information you need to do what you said, and then only do with it what you said you were going to do with it.

**DO NOT:**

**ASSUME THAT BECAUSE PRIVACY DISCLOSURES ARE IN THE CONTRACT YOU DON'T HAVE TO EXPLAIN ANYTHING ABOUT PRIVACY TO THE CLIENT.** Tell them to read the clause and ask you anything they don't understand. Give them a copy of the privacy brochure. Discuss the issue of privacy with them.

**ASSUME THAT YOU HAVE IMPLIED CONSENT** for any use that is not clearly and obviously related to the transaction. Any other uses, no matter how "harmless" or non-invasive require the express consent of the client.

**MARKET BACK TO YOUR CLIENT** or send unsolicited materials to them unless they have agreed to be on a list of that nature.

**SHARE PERSONAL INFORMATION WITH ANY THIRD PARTIES** without the consent of the individual. Don't sell or rent mailing lists. Don't give your clients' names to other service providers (movers, lawyers, building inspectors, etc...) so they can try to sell their services.

**RESOURCE MATERIALS**

1. The CREA Privacy Code (view the complete code at [www.REALTORlink.ca](http://www.REALTORlink.ca))
2. CREA brochure – *YOUR PRIVACY and the Real Estate Transaction* (view at [www.orea.com](http://www.orea.com))
3. Role of the Privacy Commissioner of Canada and Complaints to the Privacy Commissioner of Canada (from *Your Privacy Responsibilities* – *A Guide to Canada's Personal Information Protection and Electronic Documents Act*, which can be found at [http://www.privcom.gc.ca/information/guide\\_e.asp](http://www.privcom.gc.ca/information/guide_e.asp).)
4. OREA privacy pamphlet(s) and REALTOR Edge article(s) on privacy compliance (found in the Privacy Compliance area in the Legal section of the new OREA website at [www.orea.com](http://www.orea.com))

## FREQUENTLY ASKED QUESTIONS

### A. Introduction

As of January 1, 2004 all Ontario REALTORS® need to comply with the requirements of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), the federal government's new privacy legislation. Are you ready to comply?

With the passing of the deadline for privacy compliance, many REALTORS® have questions about their individual compliance requirements. Everything you need to know about privacy compliance is available through a number of resources, including: an OREA continuing education seminar entitled, *Complying with Privacy*, a new Privacy Compliance area of the My OREA - Legal section of the OREA website, [www.orea.com](http://www.orea.com); OREA's Privacy Code and REALTOR Privacy Toolkit available on REALTOR Link [www.REALTORlink.ca](http://www.REALTORlink.ca); and the federal Privacy Commissioner's website at [www.privcom.gc.ca](http://www.privcom.gc.ca).

The within Privacy FAQ document will be continuously updated. The updates will be posted in new Privacy Compliance area of the My OREA - Legal section of the OREA website, [www.orea.com](http://www.orea.com).

Since this document is divided into various topics, the questions and answers that were added in 01/2004 are indicated with a **01/2004** beside the question. The new questions and answers that have been added to the 02/2004 version of this Privacy FAQ document are indicated with a **NEW** beside the question.

REALTORS® are asked to submit their own general privacy questions via email to [privacy@orea.com](mailto:privacy@orea.com) for possible inclusion in this Privacy FAQ document on the OREA website. While it will be impossible to respond to each question on an individual basis, the answers to the questions that apply to and benefit the general membership will appear in this FAQ document.

#### Disclaimer:

The information provided in this Privacy FAQ document is not intended as legal advice or opinion. It should not be a substitute for professional consultation.

Since the *Personal Information Protection and Electronic Documents Act* is a new and relatively unprecedented law, REALTORS are strongly urged to seek the assistance of their firm's solicitor in order to ensure that they become privacy compliant.

It is emphasized that the material in this document is for educational purposes only.

#### Important Note:

The information contained in this document is being provided to Ontario's REALTORS® as best-practices guidelines for privacy compliance. Much of this information is based on the activities, policies and procedures (especially regarding the collection, use and disclosure of personal information) of REALTORS® and non-REALTOR® employees of several brokerage firms in Ontario. While brokerage firms and REALTORS® in Ontario conduct many of the same activities and use similar processes in the collection, use and disclosure of personal information, not everything that is contained in this document may apply equally to every Ontario brokerage firm and REALTOR®. Therefore, it is critical that each Ontario brokerage firm and REALTOR® ultimately review and amend its own activities, policies and procedures (especially regarding the collection, use and disclosure of personal information) in order to become privacy compliant.

REALTORS are encouraged to regularly check the My OREA-Legal-Privacy Compliance section of the OREA website for further information and updates on privacy compliance issues.

### B. The Act and the Codes

#### Question #1: What is the purpose of the Act?

*Answer:* PIPEDA protects an individual's right to privacy in regards to their personal information. Under this new law no one can make use of a person's personal information without that person's consent.

#### Question #2: What is "personal information", according to PIPEDA?

*Answer:* The definition of "personal information" in PIPEDA is very broad and very general. Personal information means - "information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization". Basically, any information that can identify an individual is considered to be personal information (for example, it doesn't have to be a name; an address can be used to identify someone). The exception in the definition is called "business card" information. However, in some instances, business email may be deemed to be personal information.

#### Question #3: How is personal information protected?

*Answer:* All organizations collecting personal information will be required to put in place policies and procedures which give effect to the ten principles of privacy which are set out in Schedule 1 to PIPEDA.

#### Question #4: Where do these principles come from and how do they work?

*Answer:* The ten privacy principles are based on the "Model Code for the Protection of Personal Information", which was developed by the Canadian Standards Association in 1996. This Model Code was formulated based on extensive input from the business sector and was intended to establish guidelines which protected information, while at the same time being business-friendly.

The ten principles of privacy, when taken together, define the key business obligations and the key consumer rights in terms of protection of personal information. In a nutshell, the principles require the company collecting information to inform the consumer as to what uses are going to be made of the information and to obtain the informed consent of the individual for the collection, use and distribution of that information.

The general rule is that no one else can make use of a person's personal information without that person's consent. An individual has a right of access to their personal information and has a right to have it corrected, if necessary.

**Question #5: Are there any exceptions?**

PIPEDA does provide for a few exceptions to the general requirement of obtaining an individual's consent. Some groups, such as law enforcement agencies and journalists, have a lawful or investigative need to collect, use and disclose personal information without having to obtain the consent of concerned individuals. For these reasons, some of the exemptions include:

- personal information collected solely for journalistic, artistic or literary purposes; (What this means is that a newspaper can publish a "What they got" section in the Newspaper, indicating the sold price of a property, without the consent of the buyer or seller, even though this is personal information. A salesperson cannot advertise a sold price anywhere without the permission of both the buyer and the seller.
- if the action clearly benefits the individual or if obtaining permission could infringe on the information's accuracy;
- where such data can contribute to a legal investigation or aid in an emergency where peoples' lives or safety can be at stake;
- if disclosure aids come in times of emergency, matters of legal investigation, or facilitates the conservation of historically important records.

**Question #6: How does the CREA Privacy Code fit into all of this?**

In October 2001, the CREA Assembly approved a Privacy Code for REALTORS® and organized real estate. CREA's Privacy Code takes the principle from the CSA Code, contained in PIPEDA, and gives them a more practical application for REALTORS, boards and associations. The CREA Privacy Code can be found on the REALTOR® Link website, [www.REALTORlink.ca](http://www.REALTORlink.ca), in the CREA section, under Legal – Privacy. It is also contained in the *Privacy Toolkit for REALTORS®* CD-ROM that CREA sent to all firms and boards in the summer of 2002.

**Question #7: Will PIPEDA conflict with the requirements of REBBA 2002? Will one Act over-ride the other?**

*Answer:* There are exceptions in PIPEDA for complying with the law. For example, section 7(3) of PIPEDA states that an organization may disclose personal information without the knowledge and consent of the individual if the disclosure, is, among other things, required by law (section 7(3)(i)).

**Question #8: Does REBBA 2002 address privacy?**

*Answer:* Privacy is dealt with under PIPEDA; REBBA 2002 deals with real estate brokerage and real estate sales. REALTORS® are required to comply with the *Income Tax Act*, the *Competition Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, among others, and none of those are addressed in REBBA 2002.

**01/2004 Question #9: What is RECO's role in privacy and PIPEDA?**

*Answer:* Privacy compliance in Ontario is governed by the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which is a law passed by the federal government. PIPEDA is administered by the Office of the Privacy Commissioner of Canada - [http://www.privcom.gc.ca/index\\_e.asp](http://www.privcom.gc.ca/index_e.asp) - which is also the office to which privacy complaints are to be made. Just as RECO does not administer the many other laws that REALTORS are required to comply with, such as the *Income Tax Act*, the *Competition Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, among others, RECO does not administer PIPEDA.

**NEW Question #10: Does RECO's publication of its CCD discipline and appeal hearing decisions violate a registrant's privacy rights under PIPEDA?**

*Answer:* PIPEDA applies to organizations that collect, use or disclose personal information in the course of commercial activities. Personal information is information about an identifiable person but does not include names, titles and business address of employees or businesses. RECO is a regulatory and investigative body and, as such, does not collect, use or disclose personal information in the course of commercial activities. PIPEDA's provisions are therefore not applicable to RECO. RECO regulates the real estate industry in the public interest. The publications are part of the regulation process. The CCD decisions published on the RECO website are public information. They are the decisions of a statutory tribunal reached after open public hearings and are therefore exempt under section 7 of the PIPEDA.

**01/2004 Question #11: Does it matter if the individuals we're dealing with are Clients or Customers?**

*Answer:* No, they all have rights under PIPEDA, as consumers.

## C. Managing Personal Information

**Question #1: Will this change the way REALTORS® do business?**

*Answer:* Yes. The following are just some examples of the changes that will need to be implemented.

- REALTORS® will need to follow the privacy policies put forth by their brokerage firm (a sample privacy policy is contained in the OREA *Complying with Privacy* continuing education seminar materials).
- The individual REALTOR® will be accountable for the protection of personal information under his or her control and a brokerage firm will be responsible for all personal information collected by the firm and by the REALTORS® and other employees within the firm.
- Every firm must designate an individual as the Privacy Compliance Officer. That person will be responsible for implementing the firm's privacy policies, training staff on privacy compliance issues and responding to questions and requests from the public on privacy matters.

**Question #2: What about my old transaction files, from the last few years, which contain all of the information that I collected on each transaction that I completed?**

*Answer:* If there is still business or legal purpose for keeping the information contained in those files, you may continue to keep it. Make sure that it is adequately protected with safeguards appropriate to the sensitivity of the information. Also, that personal information cannot be used or disclosed for anything other than the original purpose, for which consent was obtained, without the need for further consent.

However, if there is personal information in those files that you have no further business or legal purpose for keeping (for example, the list of people who attended the open house), that personal information should be destroyed.

**01/2004 Question #3: How long can I keep my sold files? There is some information which I could use in the future when the property is re-sold.**

*Answer:* See Question #2 and Answer above.

**01/2004 Question #4: I didn't specifically ask my client, three years ago, can I keep your name and address in my data base so that I can update you on the market every once in a while or send you a birthday card, if that's what I've been doing for the last three years and the client has never indicated that he/she wants me to stop, can't I, at this point, rely on the notion of implied consent and continue to send this person the same type of information that I've been sending him/her for the last three years, but now with a notice saying that if he/she no longer wishes to receive this information, please call/write/or e-mail, and I will remove him/her from the data base?**

*Answer:* Although it cannot be said with absolute certainty given the lack of any guidance or interpretation on the issue of personal information collected originally without consent, prior to January 1, 2004, a strong argument can be made that you can continue to carry on with this practice, if the conduct in question also occurred prior to January 1, 2004. In other words, sending out these market updates or birthday cards is part of a pattern of activity for which consent may be implied by the conduct of the person concerned prior to January 1, 2004. However, it is important to include the notice saying that if the person no longer wishes to receive this information, please call/write/or e-mail, and he/she will be removed from the data base and he/she will no longer receive such mailings.

**[Note: Please see more information on "opt-out" consent and examples of "opt-out" language in Section D. The Consent Requirement, Question #5]**

**01/2004 Question #5: I plan on using my client's existing personal information for a new purpose (i.e. a purpose that was not part of the original consent when I first obtained the personal information). What do I need to do?**

*Answer:* Further consent must be obtained before that information is used or disclosed for the new purpose and a record of this additional consent should be documented. The client must be given the purpose for which this new consent is needed and the purpose must be reasonable.

**Question #6: What if I obtain someone's personal information from a third party?**

*Answer:* REALTORS® and firms will need to obtain assurances from the third party that the information was collected, used and disclosed in compliance with PIPEDA. Also, if REALTORS® share information with a third party, they will first need to obtain the client or customer's consent to sharing that information and they will also need to ensure the third party will comply with PIPEDA in regards to the use and disclosure of that information. For example, a REALTOR® cannot provide a list of recent homebuyers to a local moving company without asking for the homebuyers' consent to do that first and without obtaining assurances from that moving company that it will collect, use or disclose that personal information in compliance with PIPEDA.

**Question #7: Can I provide the local moving company with a list of my clients' names, addresses and phone numbers?**

*Answer:* You are not able to provide lists of your sellers or buyers to moving companies, or lawyers, the welcome wagon lady, or even your franchise's "concierge service" without first obtaining the consent of each individual buyer or seller.

Consent doesn't always need to be in writing. For non-sensitive personal information - a name or an address or a telephone number - you can get that consent verbally, but you should make a note of it somewhere in your file. On the other hand, consent to collect, use or disclose sensitive personal information, such as a person's financial situation, should be obtained in writing.

When you are asking for consent, you have to identify the purpose for which you need that consent and you can only use that personal information for that purpose. For example, if your buyers have consented to you disclosing their name, address and telephone number to your franchise's concierge service, you can't also disclose it to the local moving companies or the local lawyers. Create a "consent list" of those service providers who you normally provide such information to, or those service providers that your clients usually ask you about, and then have your clients check off those service providers and sign the bottom of the list to show that they've consented.

**NEW Question #8: I am ready to retire from the real estate business. I want to sell the assets of the brokerage firm to another real estate brokerage [or, to Broker X, who will start a new brokerage firm] [or, to Broker Y, who already has a brokerage]. The assets to be sold would include the firm's database which contains, among other things, my clients' and customers' names, addresses, phone numbers, etc. Can I do this without the need to obtain consent of everyone who is in that database?**

*Answer:* It is recommended that the firm's privacy policy address the issue of a transfer of personal information because of a change in all or part of the business by including appropriate language. Note that the sample firm privacy policy, which is provided in the *Complying with Privacy* continuing education seminar materials, contains a provision which states - "Personal Information may also be transferred to another company in the event of a change of ownership of all or part of [Firm Name]."

In addition, the firm should ensure that the prospective buyer agrees that, until after the deal is completed, the use and disclosure of the information by the prospective buyer is restricted to those purposes that relate to the sale of the brokerage, including a determination whether or not to proceed with deal. The prospective buyer should also agree to keep this information in a confidential and privacy compliant manner (ie. the standard requirements imposed on 3rd parties to whom personal information is provided), including: only using the information for the stated purpose; keeping it secure; restricting access to and further disclosure of the information; cooperating with any access requests; and returning or destroying it upon request or if the transaction is not completed.

**NEW 1st Corollary to Question #8: But how about that part of the database that contains personal information collected before the firm instituted its privacy policy?**

*Answer:* The idea of "consent" applies to three aspects of a brokerage's handling of personal information: its collection, use and disclosure. With respect to information *collected* prior to January 1, 2004, since the Act did not apply to brokerages then, there is no requirement to go back and obtain

consent to the collection of that information. With respect to its *use* and *disclosure* after January 1, 2004, there is a need to *have* consent. There is no definitive answer as to whether one needs to "go back" and get consent.

It is likely that the initial provision of the personal information had a "context" (i.e. the person knew the reason for which it was collected and how it might be used in such a context, it can be argued that there exists an "implied consent", in which case one need not go back to get consent for the disclosure to and use by the buyer of the brokerage - provided that the buyer's use and disclosure are consistent with the purpose of the initial collection]. It is also arguable that a change in ownership is not a change in "use" or a "new use". Consumers know that businesses are bought and sold. It is not an unreasonably foreseeable occurrence when one considers what businesses do. However, if the new owners change the actual use or disclosure of the information, that would require new consent. But that would be the case even if the original owners of the firm used or disclosed the personal information for a different purpose than originally provided for. [Note: Question #4 in Section C. Managing Personal Information, deals with some of the same concepts as this question and answer]

**NEW 2nd Corollary to Question #8: But how about the database of an individual REALTOR® who wants out of the business and wants to sell his/her database to another REALTOR®? It doesn't appear that the firm privacy policy would apply to that situation?**

*Answer:* The provision contained in the firm privacy policy deals with the change of ownership of the firm; not an individual REALTOR® selling his/her own personal database. For that sale, the REALTOR® would need to obtain the consent of those individuals in the database about whom the REALTOR® has personal information that is not exempt (i.e. something more than "business card information" and something more than name, address and telephone number that could be obtained from a public telephone directory).

**Question #9: What if I want to send follow-up and other promotional materials to the people who attended my seller's open house?**

*Answer:* Somewhere on the sign in sheet where the people attending the open house are writing their names and perhaps addresses and/or phone numbers, should be noted all of the purposes for which that personal information will be used and to whom that information will be disclosed - for example: to provide follow up material on this property and also general promotion material about the Listing Brokerage and the listing salesperson. There should be a place on the sheet where the people who are providing their names and addresses will be able to indicate that they don't want you to use their personal information for some or all of those purposes or they don't want you to disclose their personal information to some or all of the proposed recipients.

Abide by their wishes. Do not use that personal information for any purpose other than what was consented to. Do not disclose that personal information to anyone other than what was consented to.

As always, protect that personal information with safeguards appropriate to its sensitivity and destroy it when it is no longer needed for its identified purposes or for legal requirements.

**1st Corollary to Question #9: What if the seller wants to see the names (and addresses) of the people who attended their open house for security reasons?**

*Answer:* Add that purpose (security reasons) and that recipient (the seller) to the sign in sheet, as one of purposes and one of the disclosures that will be made of their personal information. However, you should carefully discuss with the seller what should be done if someone does not consent to this disclosure for this purpose (this is a little different than just making sure you don't send marketing information to this person). If the seller would not want someone to be in their house without knowing their name and address, that needs to be made clear to the person who has refused to give their consent to this (consequences of not giving consent must be provided). Be very careful in how you deal with this situation since you need to make sure that the truly is the only reason why the person is not being permitted to view the home and that the person clearly understands that that is the only reason he/she is being denied entry (otherwise, there could be possible Code of Ethics concerns and/or Human Rights concerns).

**2nd Corollary to Question #9: What if the listing brokerage also carries on an insurance brokerage, or a travel agency. Can the personal information from the open house lists be used to market insurance or travel information to these people?**

*Answer:* Only if that was a stated purpose/stated disclosure on the sign in sheet and that stated purpose/stated disclosure was consented to.

**Question #10: Can we ask a buyer or tenant for their Social Insurance Number?**

- 1 The Social Insurance Number is required, for income tax reporting purposes, in the following circumstances - If someone pays interest income of \$50.00 or more in a year to a Canadian resident, the payer needs to report payment of such income to the government (CCRA) and need to issue a T-5, regarding the payment of that interest. A SIN number is required in order to report the payment of the interest income to CCRA and to issue a T-5 tax receipt. (Please speak with your firm's accountant regarding the specific details)
- 2 Therefore, in these circumstances there is a valid reason for asking for the buyer's SIN number. Obtaining this information from the buyer is necessary for the tax reporting requirements regarding the interest earned on the deposit. Therefore, it is not in contravention of PIPEDA.
- 3 As with any personal information, the buyer should be told why the Listing Brokerage needs that SIN number; the SIN number should be kept secure; the SIN number should only be disclosed for the purpose that it was obtained (that is, to report the interest income to CCRA and to issue a T-5); and the SIN number should only be kept for as long as it is needed for a business or legal (tax) reason.
- 4 It is also appropriate to ask a potential tenant for their SIN in order to do a credit check. If the tenant refuses to provide it, which is their right well, then it is also permitted to ask the tenant for other banking information, in order to conduct the appropriate credit check in advance.

**Question #11: Insurance companies are starting to ask for all sorts of information about things such as electrical service, square footage, etc. Although this is all information that is contained in the listing, should the REALTOR® be providing it directly to the insurance company if the insurance company asks for it? Is that personal information that should not be disclosed without consent?**

*Answer:* It is personal information when it's provided together with an address (or a name and an address). It is the buyer's insurance company asking for this information, after the buyer and seller have entered into an agreement of purchase and sale.

The OREA standard form buyer agency agreement (Form 300 - 01/2004) provides:

**8. USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating,

assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Broker in connection with the purchase or prospective purchase of the property.

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes.

[underlining added for emphasis only]

The buyer's insurance company is a third party retained by the buyer to assist in the transaction. If the call is initiated by the insurance company, the buyer agent should check with the buyer to make sure that this is, indeed, the buyer's insurance company.

As to the concern that, prior to closing, this is still the seller's personal information and it is the Cooperating Brokerage (buyer representative) who is providing this information to the buyer's insurer, the OREA standard form listing agreement (Form 200 – 01/2004) provides:

**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the Brokerage and/or the real estate board deems appropriate in connection with the listing, marketing and selling of real estate.

[underlining added for emphasis only]

The Listing Brokerage has provided this information to the Cooperating Brokerage, who in turn has provided it to the buyer, for the purpose of the sale. When explaining this clause to the seller, in order to ensure "informed consent", the Listing Brokerage should advise the seller, among other things, that at some point in the transaction potential buyers and their representatives (Cooperating Brokerages) will be disclosing this property information, so that the buyer can arrange for: a home inspection; insurance; a mortgage, etc., all in order to facilitate the purchase.

The OREA standard form agreement of purchase and sale (Form 100 – 01/2004) provides:

**8. TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of ....., 20..., (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (.....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

[underlining added for emphasis only]

In addition there is a sample condition clause dealing with insurance, which may be inserted into the Agreement of Purchase and Sale:

#### **INSUR 1 - Condition - Obtaining Insurance**

This offer is conditional on the Buyer obtaining insurance for the property satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

The seller knows and has agreed that the buyer needs to provide information about the property to the insurance company (and the bank, for mortgage purposes; and the home inspector, for the inspection, etc.). The seller knows and has agreed that the buyer has that information. The seller knows and has agreed that the Cooperating Brokerage has that information. Because the seller knows and has agreed that the buyer needs to provide information about the property to the insurance company (or bank, or home inspector) it is reasonable to imply a consent on the part of the seller that such information can be disclosed to the insurance company. The fact that this is done by the Cooperating Brokerage on the instructions of the buyer does not affect this consent provided by the seller to the buyer.

To be extra cautious, the Cooperating Brokerage should ask the Listing Brokerage for permission to disclose this information, on behalf of the buyer, for insurance (and other) purposes and should make a note to file that the Listing Brokerage's consent was requested and given.

### **D. The Consent Requirement**

**QUESTION #1: What about that testimonial letter from three years ago that I have in my marketing kit – the letter that shows my former client name and address or the property address?**

**Answer:** If you got that client's consent to use it for your marketing purposes, you still have a business reason to have it in your possession and you're still using it for the purpose for which they gave you their consent. But, if you never obtained their consent to use their testimonial letter for your marketing purposes, the best thing would be to go back and get their consent to do so. You can't assume that they gave you their consent just because they sent you the letter. They may have just wanted you to know how happy they were with your services. Alternatively, remove their name and address and any other personal information from that letter before you use it for your marketing purposes. If you do that, get rid of the original letter, the one that contains the personal information, if there's no business or legal reason to keep it.

**Question #2: What types of consent can I obtain?**

*Answer:* Consent can be express or implied. Express consent is actually obtained from the person – either in person, by phone, by mail, by response card, by e-mail, or over the Internet, etc. Express consent should be obtained whenever practical. If the personal information is considered sensitive (e information relating to a person's health, finances, religious or other beliefs, sexual orientation, etc.), obtaining express written consent is always the best approach. When obtaining verbal consent, it should be documented somewhere in the file.

Consent can be implied when it can be reasonably assumed the individual would expect the information to be disclosed. For example, when giving a furniture store an address for the delivery of a new couch, it can be reasonably assumed that the furniture store would need to disclose that personal information (the address) to the trucking company that actually makes the delivery. Implied consent should not be relied upon for sensitive personal information

**01/2004 Question #3: How do I get express consent to collect, use or disclose personal information?**

*Answer:* It can be obtained verbally. If it is obtained verbally, it would be helpful to make a note of that conversation. If the personal information is considered sensitive (eg. information relating to a person's health, finances, religious or other beliefs, sexual orientation, etc.) it is better to obtain that consent in writing.

**01/2004 Question #4: When can I use "opt out" consent (ie. I have your implied consent to continue to send you these materials about our products and services unless you tell me you *don't* want me to continue) in my mailings to clients and customers?**

*Answer:* The Office of the Privacy Commissioner of Canada has, in several decisions, established certain conditions that must be met in order for an organization to justify reliance upon the opt-out form of consent. They are summarized as follows:

- 1 The personal information must be clearly non-sensitive in nature and context.
- 2 The information-sharing situation must be limited and well-defined as to the nature of the personal information to be used or disclosed and the extent of the intended use or disclosure.
- 3 The organization's purposes must be limited and well-defined, stated in a reasonably clear and understandable manner, and brought to the individual's attention at the time the personal information is collected.
- 4 The organization must establish a convenient procedure for easily, inexpensively, and immediately opting out of, or withdrawing consent to, secondary purposes and must notify the individual of this procedure at the time the personal information is collected.

The full decision can be found on the website of the Office of the Privacy Commissioner of Canada, at [http://www.privcom.gc.ca/cf-dc/2003/cf-dc\\_030806\\_02\\_e.asp](http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030806_02_e.asp). OREA will continue to monitor the decisions made by the Privacy Commissioner and will update this FAQ if and when necessary.

**01/2004 Question #5: Are there any examples of "opt out" language that we can use in mailings?**

*Answer:* This is a drafting issue, specific to the business. The form of "opt out" notice to be used should be established by the firm and should be consistent throughout the firm. One example is:

"We may, from time to time, communicate with you about our services. Please write to us at [address] or call [telephone number] or e-mail us at [e-mail address] if you do not wish to receive information from us about our services. In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future."

If this is printed on a form to be returned to the firm, then it could be combined with a check-box indicating consent to receive further information.

Another example is:

"At xxxxx we respect your privacy. If you wish to be removed from our mailing list for this publication or have any questions about our collection, use or disclosure of personal information, you may contact us at -----, Or, please check the box below and return to our attention at [address] or email to [email address]. In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future."

I wish to be taken off your mailing list for XXXXXXXXXXXXX"

Another example is:

"As a client or customer of \_\_\_\_\_, you may, from time to time, receive communications from the firm about our various products and services. If you do not wish to receive information from us about these various products and, please check the box below and mail it to \_\_\_\_\_; or fax it to \_\_\_\_\_; or simply call us at \_\_\_\_\_; or e-mail us at \_\_\_\_\_.

In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future.

I do not wish to receive information from \_\_\_\_\_ about your various products and services."

**Question #6: Do I need my clients' consent to use their personal information in order to sell their house, including listing it on the MLS® system?**

*Answer:* Yes, you do. It's taken care of for you in the OREA standard form listing agreement (Form 200 – 01/2004). There are consents already built into that standard form and so if someone wants to use your services to sell their house, they will need to give you the consent to use the information they've provided and distribute it to cooperating brokerages, potential buyers and of course to the board, to put it on the MLS® system. If they won't give you their consent to post this information on the MLS® system, then it can't be an MLS® listing. It will have to be an exclusive listing – but, that's already the case, even now.

One further thing to note - consent means "informed consent". Tell potential clients all about the MLS® system and the role of cooperating brokerages, and what information will need to be disclosed to the board, other REALTORS® and potential buyers in order to sell their house. Make sure that they understand what's going to happen with their personal information in order for you to be able to sell their house, including posting it on the MLS® system. Also, provide them with a copy of your firm's privacy policy (that should be included in every REALTOR®'S marketing kit) as well as the 2-page brochure called *Privacy and the Real Estate Transaction*, which explains to the public how the privacy law relates to real estate transactions and which

can be found in the CREA Privacy Toolkit available on REALTOR® Link [www.REALTORlink.ca](http://www.REALTORlink.ca).

**01/2004 Question #7: Most people don't read their Listing Agreement. What should I do?**

*Answer:* They should read it; direct them to it; explain it simply. That's something that every REALTOR® should have been doing even before PIPEDA. It is critical that the seller understands what will be happening with their personal information throughout the transaction and within the MLS® system.

**01/2004 Question #8: Do I need to explain my firm's privacy policy to each and every client or customer? What about the CREA Privacy Code brochure *Privacy and the Real Estate Transaction*?**

*Answer:* The privacy policy sets the parameters for the collection, use and disclosure and provides a means to establish the "informed" aspect of the consent, since consent must be an "informed consent". The idea is to say, in essence, "if you provide us with personal information, the act of providing it constitutes your consent to our collection, use and disclosure of your personal information in accordance with our privacy policy." Delivery of the privacy policy provides the basis to say that the consent was informed.

You should ensure that the client or customer reviews the firm's privacy policy and that you are able to respond to any questions that the individual may have regarding the policy or your firm's collection, use or disclosure of their personal information. In addition, explain how you do business and get their informed consent for the use of their personal information for the purposes you tell them about. The CREA Privacy Code brochure is an additional tool for REALTORS® to use to assist clients and customers to understand the privacy issue, how it applies to a real estate transaction and how REALTORS® and organized real estate are responding to meet the requirements of the new legislation.

**01/2004 Question #9: Can I market to someone whose listing shows up as "expired" on our board's MLS® system?**

*Answer:* No, you cannot use the information obtained from an expired listing on the board's MLS® system to market to that person. The general rule is you can't collect, use or disclose a person's personal information without their consent.

When that seller signed the listing agreement to submit the now-expired listing to MLS® he/she consented to the use of their personal information by the listing brokerage, cooperating brokerages and by the board for certain specified purposes (see section 11 of the OREA standard form listing agreement Form 200 – 01/2004).

**NEW Question #10: If I see a newspaper ad, or web-ad, or a lawn sign - can I phone, e-mail, walk-up to the door of a FSBO to: a) market my services? b) inquire about the property for a Buyer client?, c) preview the home?**

*Answer:* Using information from an FSBO advertisement or lawn sign to make contact with the owner is not a privacy issue. The person made that information available in the ad or on the lawn sign for the purpose of being contacted by persons who are interested in buying the property.

Whether you make contact for the purpose of marketing your services, inquiring about the property for a Buyer client, or previewing the home, the seller may refuse to deal with you. But that's not a privacy issue, that's just up to the property owner. And, as a matter of courtesy, if the ad says "no agents please" you would no doubt respect the wishes of the owner, as you would have even in pre-privacy days.

Regarding the use of the personal information contained in a telephone directory, please see questions #16 and #17 below.

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*Answer:* If the seller has a client relationship with the posting brokerage, then it would be a violation of Section 7 of the REBBA 2002 Code of Ethics to approach the client of another brokerage to offer additional marketing services. Typically, the posting brokerage will have indicated in the broker remark section of the listing as to when a co-operating brokerage can contact the seller, for example for showings, commissions or offer negotiations. This is the only consent that the posting brokerage has provided. As such, any contact with the posting brokerage's client to provide other services, such as running an open house for them, would be a violation of PIPEDA and REBBA 2002.

**NEW Question 10b) What if the seller who has posted a listing approaches me to assist them with marketing their property?**

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*Answer:* Sold price after "closing" appears in a public registry, and is considered to fall within the definition of "publicly available" under the federal privacy legislation. However, the uses of this information must still be consistent with the reason it appears in the public registry – i.e. confirmation of ownership or sold price.

Otherwise, disclosure of sold price from the MLS® system has to be consistent with the consent provided by the individual that can be identified with the information. You have to fall back on the "Use and Distribution of Information" clause in the Listing and Buyer Agency Agreements (section 11 of the OREA standard form listing agreement – Form 200 – 01/2004 and section 8 of the OREA standard form buyer agency agreement – Form 300 – 01/2004) and the related MLS rules requiring that such consents be obtained for MLS listings.

So, prior to closing, disclosure of the sold price to "anyone" has to be consistent with the listing, marketing and sale or lease of the property as allowed for in the "Use and Distribution of Information" provisions in the Listing Agreement or Buyer Representation Agreement. This could involve disclosure to other REALTORS® if consistent with these uses but not to the public or other customers and clients without independently obtaining consent from the seller and the buyer for such purposes.

**NEW Question #12: Is there a problem with the listing broker revealing to other REALTORS® the sale price of an exclusive listing?**

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**NEW Question #13: Can REALTORS® distribute flyers or other advertising material to the public indicating sold price or photo or address of a recently sold property before or after closing date?**

*Answer:* Sold price associated with an address or photo may easily be associated with a name making it personal information. The consent language in the "Use and Distribution of Information" clause in the Listing and Buyer Representation Agreements (section 11 of the OREA standard form listing agreement – Form 200 – 01/2004 and section 8 of the OREA standard form buyer Representation agreement -Form 300 – 01/2004) authorizes the use and disclosure of price as it relates to the listing, marketing and sale or lease of the property. The consent language in these forms does not permit Members to use that information to market their services to others.

The fact that such information may become "public information" i.e. following registration in a land registry does not alter this conclusion since the regulations to the federal privacy legislation is clear that the collection, use and disclosure of such registry information must relate directly to the purpose for which the information appears in the registry – ownership verification, notice of sale price. It is questionable as to whether this purpose relates directly to a purpose of marketing to others. Therefore, consent for such marketing purposes should be expressly obtained from the individual identified by such information before REALTORS® distribute flyers to the public indicating "sold" price and photo or address of a property.

Indicating that a property has sold (without any amount indicated) accompanied by a picture, becomes problematic if the identity of the owner can be discerned from the photo (i.e. the house is recognized as being owned by person X) because this would place it in the category of "personal information". To the extent that it is not personal information then the practice is permissible in relation to PIPEDA. However, since the question of whether the "photo plus address" is personal information is dependent upon who is viewing the picture (i.e. who recognizes the property as belonging to Person X) we would caution that obtaining consent would be advisable since the use and disclosure of personal information without consent would violate PIPEDA.

In addition to PIPEDA concerns, REALTORS® should be aware of a recent RECO CCD decision, posted on the RECO website on December 29, 2006, at [http://www.reco.on.ca/ccd\\_discipline\\_Slu-Pilarski-ReMax.htm](http://www.reco.on.ca/ccd_discipline_Slu-Pilarski-ReMax.htm), in which the RECO discipline panel held that a registrant was in breach of Rules 1(2), 1(5), 10, 21, 46 of the RECO Code, for a number of advertising infractions, including "Advertising properties as sold without obtaining the written consent of the buyers to do so."

If you have not independently obtained consent from the individual(s) that are identifiable from the property information (by address or photo) and wish to distribute flyers or other advertising material indicating a property has sold, it may be best for you to aggregate the information. For example - "Recently sold 6 homes in this subdivision for an average price of \$300,000" OR "Recently sold 8 condos in this 3-building complex for an average price of \$200,000" OR "Recently sold 4 homes on this street for an average 97% of list price". The larger the number of properties referred to and the bigger the subject-area, the less likely is the possibility that the information could be linked to an identifiable individual.

The "sold" sign in front of a property communicates the fact that the property has been sold – a reasonable and logical purpose given a sign had been used to advertise the property for sale. People driving by the property would only see that information. Placing that "sold" information in a flyer would involve communicating/disclosing it to people who may not otherwise know about the property. Also the purpose of placing "sold" on a sign on a lawn is different from the purpose of placing it in a flyer.

**NEW Question #14: Can I send out "Just Sold" cards or indicate "SOLD for x% of asking"?**

*Answer:* Same as answer for Question #13 above.

**01/2004 Question #15: Can REALTORS® still provide a Comparative Market Analysis (CMA) service to their clients or customers using listing and sale information from the board's MLS® system?**

*Answer:* The "Use and Distribution of Information" clauses found in OREA Standard Form listing and buyer agency agreements allow real estate boards to post and retain MLS® listing information, including historical MLS® data, on the MLS® system (including sale or lease information). This information is for use by its Members as allowed for by these clauses and the MLS® rules of the real estate board. The historical uses of information on the system are usually for comparative market analysis (CMA) and valuation purposes and that is why current and historical data is essential to the operation of the MLS® system.

The current OREA standard form listing agreement (Form 200 – 01/2004) provides: **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property.

The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the Brokerage and/or real estate board deems appropriate in connection with the listing, marketing and selling of real estate. [underlining added for emphasis only]

This would clearly provide the consent needed from the seller for Members to generate CMAs as an appropriate use in connection with the listing,

assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Broker in connection with the purchase or prospective purchase of the property.

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes.  
[underlining added for emphasis only]

The buyer's insurance company is a third party retained by the buyer to assist in the transaction. If the call is initiated by the insurance company, the buyer agent should check with the buyer to make sure that this is, indeed, the buyer's insurance company.

As to the concern that, prior to closing, this is still the seller's personal information and it is the Cooperating Brokerage (buyer representative) who is providing this information to the buyer's insurer, the OREA standard form listing agreement (Form 200 – 01/2004) provides:

**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media: compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the Brokerage and/or the real estate board deems appropriate in connection with the listing, marketing and selling of real estate.

[underlining added for emphasis only]

The Listing Brokerage has provided this information to the Cooperating Brokerage, who in turn has provided it to the buyer, for the purpose of the sale. When explaining this clause to the seller, in order to ensure "informed consent", the Listing Brokerage should advise the seller, among other things, that at some point in the transaction potential buyers and their representatives (Cooperating Brokerages) will be disclosing this property information, so that the buyer can arrange for: a home inspection; insurance; a mortgage, etc., all in order to facilitate the purchase.

The OREA standard form agreement of purchase and sale (Form 100 – 01/2004) provides:

**8. TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the ..... day of ....., 20...., (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the property, that its present use (.....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

[underlining added for emphasis only]

In addition there is a sample condition clause dealing with insurance, which may be inserted into the Agreement of Purchase and Sale:

#### **INSUR 1 - Condition - Obtaining Insurance**

This offer is conditional on the Buyer obtaining insurance for the property satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller not later than \_\_\_\_\_ p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property, if necessary, for any inspection of the property required for the fulfillment of this condition. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein.

The seller knows and has agreed that the buyer needs to provide information about the property to the insurance company (and the bank, for mortgage purposes; and the home inspector, for the inspection, etc.). The seller knows and has agreed that the buyer has that information. The seller knows and has agreed that the Cooperating Brokerage has that information. Because the seller knows and has agreed that the buyer needs to provide information about the property to the insurance company (or bank, or home inspector) it is reasonable to imply a consent on the part of the seller that such information can be disclosed to the insurance company. The fact that this is done by the Cooperating Brokerage on the instructions of the buyer does not affect this consent provided by the seller to the buyer.

To be extra cautious, the Cooperating Brokerage should ask the Listing Brokerage for permission to disclose this information, on behalf of the buyer, for insurance (and other) purposes and should make a note to file that the Listing Brokerage's consent was requested and given.

#### **D. The Consent Requirement**

**QUESTION #1: What about that testimonial letter from three years ago that I have in my marketing kit – the letter that shows my former client's name and address or the property address?**

**Answer:** If you got that client's consent to use it for your marketing purposes, you still have a business reason to have it in your possession and you're still using it for the purpose for which they gave you their consent. But, if you never obtained their consent to use their testimonial letter for your marketing purposes, the best thing would be to go back and get their consent to do so. You can't assume that they gave you their consent just because they sent you the letter. They may have just wanted you to know how happy they were with your services. Alternatively, remove their name and address and any other personal information from that letter before you use it for your marketing purposes. If you do that, get rid of the original letter, the one that contains the personal information, if there's no business or legal reason to keep it.

**Question #2: What types of consent can I obtain?**

*Answer:* Consent can be express or implied. Express consent is actually obtained from the person – either in person, by phone, by mail, by response card, by e-mail, or over the Internet, etc. Express consent should be obtained whenever practical. If the personal information is considered sensitive (eg. information relating to a person's health, finances, religious or other beliefs, sexual orientation, etc.), obtaining express written consent is always the best approach. When obtaining verbal consent, it should be documented somewhere in the file.

Consent can be implied when it can be reasonably assumed the individual would expect the information to be disclosed. For example, when giving a furniture store an address for the delivery of a new couch, it can be reasonably assumed that the furniture store would need to disclose that personal information (the address) to the trucking company that actually makes the delivery. Implied consent should not be relied upon for sensitive personal information

**01/2004 Question #3: How do I get express consent to collect, use or disclose personal information?**

*Answer:* It can be obtained verbally. If it is obtained verbally, it would be helpful to make a note of that conversation. If the personal information is considered sensitive (eg. information relating to a person's health, finances, religious or other beliefs, sexual orientation, etc.) it is better to obtain that consent in writing.

**01/2004 Question #4: When can I use "opt out" consent (ie. I have your implied consent to continue to send you these materials about our products and services unless you tell me you *don't* want me to continue) in my mailings to clients and customers?**

*Answer:* The Office of the Privacy Commissioner of Canada has, in several decisions, established certain conditions that must be met in order for an organization to justify reliance upon the opt-out form of consent. They are summarized as follows:

- 1 The personal information must be clearly non-sensitive in nature and context.
- 2 The information-sharing situation must be limited and well-defined as to the nature of the personal information to be used or disclosed and the extent of the intended use or disclosure.
- 3 The organization's purposes must be limited and well-defined, stated in a reasonably clear and understandable manner, and brought to the individual's attention at the time the personal information is collected.
- 4 The organization must establish a convenient procedure for easily, inexpensively, and immediately opting out of, or withdrawing consent to, secondary purposes and must notify the individual of this procedure at the time the personal information is collected.

The full decision can be found on the website of the Office of the Privacy Commissioner of Canada, at [http://www.privcom.gc.ca/cf-dc/2003/cf-dc\\_030806\\_02\\_e.asp](http://www.privcom.gc.ca/cf-dc/2003/cf-dc_030806_02_e.asp). OREA will continue to monitor the decisions made by the Privacy Commissioner and will update this FAQ if and when necessary.

**01/2004 Question #5: Are there any examples of "opt out" language that we can use in mailings?**

*Answer:* This is a drafting issue, specific to the business. The form of "opt out" notice to be used should be established by the firm and should be consistent throughout the firm. One example is:

"We may, from time to time, communicate with you about our services. Please write to us at [address] or call [telephone number] or e-mail us at [e-mail address] if you do not wish to receive information from us about our services. In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future."

If this is printed on a form to be returned to the firm, then it could be combined with a check-box indicating consent to receive further information.

Another example is:

"At xxxxx we respect your privacy. If you wish to be removed from our mailing list for this publication or have any questions about our collection, use or disclosure of personal information, you may contact us at ----- Or, please check the box below and return to our attention at [address] or email to [email address]. In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future."

I wish to be taken off your mailing list for XXXXXXXXXXXXX"

Another example is:

"As a client or customer of \_\_\_\_\_, you may, from time to time, receive communications from the firm about our various products and services. If you do not wish to receive information from us about these various products and, please check the box below and mail it to \_\_\_\_\_; or fax it to \_\_\_\_\_; or simply call us at \_\_\_\_\_; or e-mail us at \_\_\_\_\_.

In the event that you contact us with this request, all reasonable efforts will be taken to ensure that you will not receive any communications from us in the future.

I do not wish to receive information from \_\_\_\_\_ about your various products and services."

**Question #6: Do I need my clients' consent to use their personal information in order to sell their house, including listing it on the MLS® system?**

*Answer:* Yes, you do. It's taken care of for you in the OREA standard form listing agreement (Form 200 – 01/2004). There are consents already built into that standard form and so if someone wants to use your services to sell their house, they will need to give you the consent to use the information they've provided and distribute it to cooperating brokerages, potential buyers and of course to the board, to put it on the MLS® system. If they won't give you their consent to post this information on the MLS® system, then it can't be an MLS® listing. It will have to be an exclusive listing – but, that's already the case, even now.

One further thing to note - consent means "informed consent". Tell potential clients all about the MLS® system and the role of cooperating brokerages and what information will need to be disclosed to the board, other REALTORS® and potential buyers in order to sell their house. Make sure that they understand what's going to happen with their personal information in order for you to be able to sell their house, including posting it on the MLS® system. Also, provide them with a copy of your firm's privacy policy (that should be included in every REALTOR®'S marketing kit) as well as the 2-page brochure called *Privacy and the Real Estate Transaction*, which explains to the public how the privacy law relates to real estate transactions and which

can be found in the CREA Privacy Toolkit available on REALTOR® Link [www.REALTORlink.ca](http://www.REALTORlink.ca).

**01/2004 Question #7: Most people don't read their Listing Agreement. What should I do?**

*Answer:* They should read it; direct them to it; explain it simply. That's something that every REALTOR® should have been doing even before PIPEDA. It is critical that the seller understands what will be happening with their personal information throughout the transaction and within the MLS® system.

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Indicating that a property has sold (without any amount indicated) accompanied by a picture, becomes problematic if the identity of the owner can be discerned from the photo (i.e. the house is recognized as being owned by person X) because this would place it in the category of "personal information". To the extent that it is not personal information then the practice is permissible in relation to PIPEDA. However, since the question of whether the "photo plus address" is personal information is dependent upon who is viewing the picture (i.e. who recognizes the property as belonging to Person X) we would caution that obtaining consent would be advisable since the use and disclosure of personal information without consent would violate PIPEDA.

In addition to PIPEDA concerns, REALTORS® should be aware of a recent RECO CCD decision, posted on the RECO website on December 29, 2004 at [http://www.reco.on.ca/ccd\\_discipline\\_Siu-Pilarski-ReMax.htm](http://www.reco.on.ca/ccd_discipline_Siu-Pilarski-ReMax.htm), in which the RECO discipline panel held that a registrant was in breach of Rules 1(2), 1(5), 10, 21, 46 of the RECO Code, for a number of advertising infractions, including "Advertising properties as sold without obtaining the written consent of the buyers to do so."

If you have not independently obtained consent from the individual(s) that are identifiable from the property information (by address or photo) and wish to distribute flyers or other advertising material indicating a property has sold, it may be best for you to aggregate the information. For example - "Recently sold 6 homes in this subdivision for an average price of \$300,000" OR "Recently sold 8 condos in this 3-building complex for an average price of \$200,000" OR "Recently sold 4 homes on this street for an average 97% of list price". The larger the number of properties referred to and the bigger the subject-area, the less likely is the possibility that the information could be linked to an identifiable individual.

The "sold" sign in front of a property communicates the fact that the property has been sold – a reasonable and logical purpose given a sign had been used to advertise the property for sale. People driving by the property would only see that information. Placing that "sold" information in a flyer would involve communicating/disclosing it to people who may not otherwise know about the property. Also the purpose of placing "sold" on a sign on a lawn is different from the purpose of placing it in a flyer.

**NEW Question #14: Can I send out "Just Sold" cards or indicate "SOLD for x% of asking"?**

*Answer:* Same as answer for Question #13 above.

**01/2004 Question #15: Can REALTORS® still provide a Comparative Market Analysis (CMA) service to their clients or customers using listing and sale information from the board's MLS® system?**

*Answer:* The "Use and Distribution of Information" clauses found in OREA Standard Form listing and buyer agency agreements allow real estate boards to post and retain MLS® listing information, including historical MLS® data, on the MLS® system (including sale or lease information). This information is for use by its Members as allowed for by these clauses and the MLS® rules of the real estate board. The historical uses of information on the system are usually for comparative market analysis (CMA) and valuation purposes and that is why current and historical data is essential to the operation of the MLS® system.

The current OREA standard form listing agreement (Form 200 – 01/2004) provides: **USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokerage salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property.

The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the Brokerage and/or real estate board deems appropriate in connection with the listing, marketing and selling of real estate. [underlining added for emphasis only]

This would clearly provide the consent needed from the seller for Members to generate CMAs as an appropriate use in connection with the listing,

marketing and selling/leasing of real estate. Providing clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, *without* revealing the actual price for those properties is not in question.

Regarding the ability to provide clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, *including* revealing the actual price for those properties is less settled at the current time.

Although it cannot be said with absolute certainty given the lack of precedents or case law on the ultimate interpretation of many aspects of PIPEDA, a strong argument can be made that the words "conduct comparative market analyses" contained in the consent clause of the OREA standard form listing agreement can be interpreted broadly enough to include the essential part of "conducting a CMA", that is, providing that information to a prospective seller or prospective buyer.

The issue of whether the consent of the buyer of the property was obtained or needed to be obtained is based on a three-pronged combination of arguments. First, the consent was provided in the appropriate clause contained in the OREA Standard Form Buyer Representation Agreement or Buyer Customer Service Agreement (see clause below); second, in using CMAs when buying their property through the MLS® system, the buyer implicitly consents that their property information on the MLS® system may also be used for similar CMA purposes; and thirdly, the sale price ultimately becomes publicly available information by appearing in a public registry.

The current OREA standard form buyer representation agreement (Form 300 – 01/2004) and the current OREA buyer customer service agreement (Form 310 – 01/2004) provides: **USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property. The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes, and for such other use of the information as the Brokerage and/or real estate board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses. [underlining added for emphasis only]

**01/2004 Question #16: My name, address, phone number and postal code is in the phone book. Can people use that?**

*Answer:* Yes. Personal information consisting of the name, address and telephone number of a subscriber that appears in a telephone directory that is available to the public, where the subscriber can refuse to have the personal information appear in the directory (i.e. where subscribers can have unlisted numbers) is exempt, by virtue of the regulations to PIPEDA. However, that exemption does not include someone creating a new book from that information and disclosing it to others.

**NEW Question #17a: Can I do "cold calling" from the phone book or does the National Do Not Call List apply?**

*Answer:* If a person has registered with the Canada National Do Not Call List, then you cannot call them unless you have a prior business relationship with them. This applies to all phone and fax numbers. There are now millions of numbers registered with the National Do Not Call List. You are permitted to contact a number on the National Do Not Call list if you had completed a real estate transaction for that person within the previous 18 months or if the person had made an inquiry of your office or website within the past 6 months. Therefore, if a person registers their information at your website, you are permitted to contact them, even if their number is on the National Do Not Call list. Brokerages must also maintain an internal Do Not Call List. There may be penalties assessed against the salesperson and the brokerage if a complaint is made. The penalties are \$1,500 per violation against an individual and \$15,000 per violation against a corporation.

**01/2004 Question #18: Can I do a mail drop?**

*Answer:* If it is general, unaddressed there are no problems, subject to the content.

**NEW Question #18a, can I market to an entire postal code if it may include an expired listing?**

*Answer:* If it is to an entire postal code, and the material contains a statement that it is not meant to solicit a listing, then it is permissible. You are not permitted to target a specific street that may have an expired listing on it. You should consider including a statement on such advertising that it is not intended to solicit any listing.

**Question #19: What if I need to disclose a client's personal information to FINTRAC, because I'm required to by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*?**

*Answer:* There is an exception in PIPEDA for the disclosure of personal information without the knowledge or consent of the individual if the disclosure is required by law.

**01/2004 Question #20: Can I tell a new landlord about the tenants' arrears and history (the tenants are individuals in an apartment building, not corporations in a commercial building)?**

*Answer:* Not without the tenants' consent if you're going to somehow identify (by name or by suite number) the tenants in arrears. You should try and obtain this consent in the tenant's rental application form. Even if the tenant has consented, you need to ensure that the recipient of the information will deal with that information in a privacy compliant manner, including keeping it secure.

**NEW: Question #21: Can I take pictures of a seller's chattels and fixtures without consent?**

*Answer:* According to a Privacy Commissioner decision, chattels and fixtures could disclose someone's personal information, for example, if it is an expensive appliance, it could disclose what this person could afford to spend. As such, it is recommended that consent be obtained before a buyer takes any pictures of chattels and fixtures when inspecting a property.

**NEW: Question #22: Are there any Privacy restrictions when you are acting in multiple offers?**

*Answer:* When you are acting for a seller in multiple offers, you must disclose the following to any buyer salesperson: 1) The total number of offers received; 2) Whether any offers are coming from your own listing brokerage; 3) whether there is any commission discount associated with any offer; and 4) whether the same buyer brokerage has submitted more than one offer. These rules do not apply if you are buying a property from a private seller. You may want to consider requesting a private seller to sign a confidentiality agreement if you are concerned or consider shortening the irrevocable period when acting for a buyer from a private seller.

**NEW: Question #23: Do Privacy restrictions apply when advertising in social media?**

*Answer:* Privacy restrictions apply no matter what medium you are advertising in. For example, if you are advertising the sold price of any property in any social media, whether on your website, facebook or twitter pages, then you must follow all of the principles discussed in questions 11-15 above. If you are asking visitors to your website to complete any section where they will be providing you with their personal information, then you should have a link on the same page to your privacy policy, so that you disclose how you will be using this information with the consent of the consumer.

**NEW: Question #24: What happened in the case of Century 21 v Zoocasa and was this a privacy issue?**

*Answer:* Zoocasa scraped property listing information from the Century 21 website onto its own website, and added its own information about the entire neighbourhood where the listing may be located. This included street level photography, neighbourhood descriptions, schools and demographic information. It also included advertisements for products and services to consumers who accessed the website. Century 21 had a "terms of use" policy on its site which clearly indicated that their listing information could not be used for any other commercial purpose. Century 21 claimed that Zoocasa violated these terms of service as well as Canadian copyright law when it placed these listings on its own private website. The court agreed. Although the damages awarded were not significant, the legal principles are very important. Terms of use agreements on a company website will be enforced against those using your website, even if they have not clicked an "I accept" button.

**NEW Question #25: Is a bank appraisal considered personal information or can the consumer request a copy?**

*Answer:* A consumer can request a copy of their appraisal report from a lender. However, parts of the appraisal report, including the name and contact information for the appraiser and information about other properties, do not have to be disclosed to the consumer.

**NEW Question #26: Can an insurance company request the details of your tenant's insurance?**

*Answer:* The lender is permitted to ask for this information if it is for the purpose of assessing risk. If the tenant does not have their own insurance, then the risk to the landlord's insurer is much higher as they cannot bring a claim against a tenant's insurer if the damage was indeed caused by the tenant by someone who the tenant was responsible for.

**NEW Question #27: Can a condominium corporation request the lease details of anyone renting a unit in a condominium?**

*Answer:* Under section 83 of the Condominium Act, an owner must provide the condominium corporation the name of every tenant, the address of the owner and a copy or summary of the lease agreement.

**NEW Question #28: Can you provide the details of an agreement of purchase and sale to a commission advance company or do you require the consent of the buyer and seller?**

*Answer:* The sale price indicated in any agreement of purchase and sale is personal information and consent must be obtained in order to disclose this information to a third party such as a commission advance company. In the sample Privacy policy included in this material, this consent is stated in section 2.

**NEW Question #29: Recently I received an insurance renewal from one company and a letter from another insurance company, both requiring my signed consent. At the end of the request, they state that should I choose not to sign the consent form, they may not be able to continue insuring me. Can they do this?**

*Answer:* Section 4.3 of Schedule 1 to PIPEDA is the general principle dealing with the need to obtain informed consent to the collection, use and disclosure of personal information. It provides as follows:

**Principle 3 – Consent**

"The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate."

Subsection 4.3.3 of Principle 3 states that –

"An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfill the explicitly specified and legitimate purposes." [underlining added for emphasis only]

A similar provision is contained in subsection 3.7 of Principle 3 of the CREA Privacy Code -

"Members shall not refuse to represent a consumer for the reason only that the consumer has refused to provide consent for the collection or use of certain information unless that information is required to properly represent the consumer." [underlining added for emphasis only]

PIPEDA recognizes that, to a certain extent, products or services cannot be provided if the needed consent to collect, use or disclose certain personal information is not given. For example, as a REALTOR®, you would not be able to accept a listing as an MLS® listing if the seller did not provide the requisite consent to post the information on MLS® and to give the board the ability to collect, retain, use and disclose that information for certain purposes.

The sample firm privacy policy contained in the *Complying with Privacy* continuing education seminar materials, and also located in the My OREA-Legal-Privacy Compliance section of the OREA website, contains the following paragraph:

"Your provision of Personal Information to [Firm Name] means that you agree and consent that we may collect, use and disclose your Personal Information in accordance with this Privacy Policy. If you do not agree with these terms, you are requested not to provide any Personal Information to [Firm Name] or a Brokerage or Sales Representative working with [Firm Name]. Unfortunately, certain services can only be offered if you provide Personal Information and consequently, if you choose not provide us with any required Personal Information, [Firm Name] may not be able to offer you those services." [underlining added for emphasis only]

If you feel uncomfortable with what the insurance company is asking you to consent to, call the company's privacy officer to inquire about and

discuss the matter.

### E. The Complaint Process and Liability Concerns

**Question #1: What is the liability of the Privacy Officer, or the Broker/Owner/ Manager of the firm for non-compliance with PIPEDA?**

*Answer:* Apart from a very few sections of the Act (sections 28, 8(8) and 27.1(1) of PIPEDA), non-compliance is viewed in terms of the organization, not an individual. Upon the receipt of a complaint about an organization, the Privacy Commissioner will investigate and ultimately prepare a report that contains his findings and recommendation, any settlement reached by the parties, a request that the organization advise the Commissioner of steps taken to implement his recommendations (section 13(1) of PIPEDA).

A review of the Commissioner's decisions to date, which can be found on the Privacy Commissioner's website, at [http://www.privcom.gc.ca/cf-dc/2003/index2-3\\_e.asp](http://www.privcom.gc.ca/cf-dc/2003/index2-3_e.asp), will show the types of findings and recommendations made by the Commissioner.

If a complainant is not happy with the Commissioner's decision, the complainant may apply to court. The court may, in addition to any other remedies it may give: order an organization to correct its practices; order an organization to give notice of action taken to correct its practices; and award damages to the complainant. (section 16(1) of PIPEDA).

More information on the complaint process can also be found on the Privacy Commissioner's website, at [http://www.privcom.gc.ca/information/guide\\_e.asp#017](http://www.privcom.gc.ca/information/guide_e.asp#017).

More information on the court process can also be found on the Privacy Commissioner's website, at [http://www.privcom.gc.ca/information/guide\\_e.asp#018](http://www.privcom.gc.ca/information/guide_e.asp#018).

**Question #2: Does the E & O insurance cover any of this?**

*Answer:* You would have to check with your E&O insurer.

01/2004 Question #3: Will the Privacy Commissioner respond to anonymous complaints? *Answer:* Although the Privacy Commissioner's website, [http://www.privcom.gc.ca/fs-fi/02\\_05\\_d\\_11\\_e.asp](http://www.privcom.gc.ca/fs-fi/02_05_d_11_e.asp), does not specifically address the issue of anonymous complaints, it does state that individuals should contact that Privacy Commissioner's Office if they feel that an organization has violated their privacy rights. Lodging a complaint with is free of charge and the Privacy Commissioner's office will assist individuals throughout the process. The office has requested that complaints not be made by e-mail. It would appear from this description of the complaint process that the person making the complaint would have to identify himself/herself.

### F. Relevant Consent Clauses contained in certain OREA Standard Forms

Section 11 of the OREA standard form listing agreement (Form 200 – 01/2004)

**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokers, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which may include other brokers, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the brokerage and/or the real estate board deems appropriate in connection with the listing, marketing and selling of real estate.

Section 8 of the OREA standard form buyer agency agreement (Form 300 – 01/2004)

**8. USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property.

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes and for such other use of the information as the Brokerage and/or real estate board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses.

Paragraph within the OREA buyer customer service agreement (Form 310 – 01/2004): **USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property.

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes and for such other use of the information as the Brokerage and/or real estate board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses.

## Biography

### Mark Weisleder, LL.B, REI

**Mark Weisleder** is a real estate lawyer, author and speaker. Mark has been developing courses and speaking for real estate associations, boards and private brokerages since 1984 on topics such as Real Property Law, RECO Real Estate Updates, Privacy Law, Building Customer Loyalty and Customer Relationship Management. Previously Mark was a partner at the Toronto law firms Minden, Gross and Thomson, Rogers and as in house counsel to Bell Mobility. In private practice Mark specialized in corporate commercial and real estate matters acting for entrepreneurs and developers. At Bell Mobility, Mark was first in-house counsel and then the general manager for customer experience, responsible for the retail experience at Bell World as well as call centre support.

Mark has authored the top selling industry book, "Real Estate Salespeople, Beware!" and, "Put the Pen Down! What Homebuyers and Sellers need to Know before signing on the Dotted Line", and he is also a weekly columnist in *The Toronto Star* -- Real Estate News Section.

You can contact Mark at [mark@markweisleder.com](mailto:mark@markweisleder.com)

# SUGGESTED EDUCATION COURSE STREAMS

## TECHNOLOGY – Hands-on Classes

### 1. Basic Computer Skills

- Basic Computer Literacy (*mouse skills, considerations before making a purchase*)
- Windows Fundamentals
- Introduction to Email in Windows Live/Hotmail
- Word 2007 Fundamentals (*writing letters*)
- Internet Basics

### 2. TorontoMLS Training

- TorontoMLS Fundamentals Full Day Practice Lab
- TorontoMLS Contacts & CAA
- TorontoMLS Add/Edit (*with permission of Broker or Manager*)
- TorontoMLS Tips & Tricks Parts 1, 2, 3, 4, and 5 (*seminars*)

### 3. Enhancing Your Listings

- Managing and Enhancing Your Digital Photos
- TorontoMLS Add/Edit (*with permission of Broker or Manager*)

### 4. Managing and Enhancing Your Communication with Clients

- Personal Management in Microsoft Outlook 2007
- Creating Feature Sheets in Publisher 2007
- Getting Started with Blogging
- Newsletters for Print & Email in Publisher 2007
- Mail Merge Using Office 2007
- Creating a Listing Presentation in PowerPoint 2007 (*Advanced*)
- Creating a Buyer Rep Presentation in PowerPoint 2007 (*Advanced*)
- Excel 2007 for REALTORS®
- Working with Statistics in TorontoMLS (*Advanced*)

### 5. A Better Understanding of the Value, Property Details and Ownership of Clients' Properties

- TorontoMLS Contacts & CAA
- Land Registry and Assessment Data
- Working with Statistics in TorontoMLS (*Advanced*)

### 6. Finding and Using Statistics & Economic Commentaries

- TorontoMLS Fundamentals Full Day Practice Lab
- TorontoMLS Tips & Tricks Parts 3 and 5 (*seminars*)
- Newsletters for Print & Email in Publisher 2007
- Creating a Listing Presentation in PowerPoint 2007 (*Advanced*)
- Creating a Buyer Rep Presentation in PowerPoint 2007 (*Advanced*)
- Working with Statistics in TorontoMLS (*Advanced*)
- Land Registry and Assessment Data

### 7. Managing Your Distribution of Forms & Comments

- Working with WEBForms™

## BUSINESS TECHNOLOGY

- A Social Media Primer
- BlackBerry® for Advanced Users
- Creating Self-Serve Virtual Tours
- Databases 101
- Excel 2007 for REALTORS® (*hands-on computer lab*)
- Wireless BlackBerry® Training

## NEW REALTOR®

- A Comprehensive Review of MLS® Rules 2006
- Advertising Practices for Success and Compliance
- An Overview of Standard Forms
- Code of Ethics Under REBBA
- Communicating in the 21st Century – What's Changed?
- Disclosure and the Real Estate Professional
- Etiquette: Business Behaviour for the Real Estate Professional
- Keeping the Deal Together
- Money Laundering and Grow Houses
- Multiple Offers: The Seller, The Buyer and You
- Negotiation for REALTORS® Workshop
- Open House Safety and Personal Information Protection for Clients and REALTORS®
- Preventing Real Estate Fraud
- Real Estate Forms in Plain Language
- Sensible Practices to Avoid Risk and Liability

### HANDS-ON COMPUTER LABS

- TorontoMLS Fundamentals Full Day Practice Lab
- Land Registry and Assessment Data
- Personal Management in Microsoft Outlook 2007
- Working with WEBForms™
- Working with Statistics in TorontoMLS (*Advanced*)

## CONDOMINIUM

- Buying a New Condominium: Legal Issues for Salespeople
- Condominium Purchase
- Condominiums: What Every Good Salesperson Should Know

## PROFESSIONAL & ETHICAL STANDARDS

- Building Loyal Customers: Avoiding Legal/Discipline Proceedings
- Code of Ethics Under REBBA

## LEGAL ISSUES

- Advertising Practices for Success and Compliance
- Boundary Rights – Fence Lines, Title Disputes and Related Issues
- Complying with Privacy Workshop
- Legal Concerns for Residential Rental Properties
- Legal Forum Live
- Money Laundering and Grow Houses
- Multiple Offers: The Seller, The Buyer and You
- Preventing Real Estate Fraud
- Second Suites in Homes and Student Lodging Houses
- Sensible Practices to Avoid Risk and Liability
- Think in Legal Terms: Stay Out of Trouble
- Title Insurance
- Wills and Estate Planning

## ENVIRONMENTAL ISSUES

- Environmental Conditions – Dangers Found in Residential Properties
- Hidden Health Hazards in the Home
- Home Energy Efficiency
- Identification of Environmental Risk – Residential or Commercial
- Radon Gas: What You Need to Know and How it Affects the Future of Real Estate Transactions
- Stigma and Property: Detection, Disclosure and Cure
- Understanding the Green Energy Act, Resale/New Home Building Labelling and Climate Change

## COMMERCIAL

- Commercial Agency
- ICI Green Building and LEED® Intensive
- Identification of Environmental Risk – Commercial
- Multi-Residential – The Ins and Outs
- Negotiating Strategies for Commercial Leasing
- Stigmatized Properties: The New Approach to Brownfields

### HANDS-ON COMPUTER LABS

- Searching in TorontoMLS – Commercial
- Land Registry and Assessment Data

Consult the Commercial Division Information tab on the TorontoMLS home page. Select the Upcoming Events tab.

## BROKER/MANAGER SERIES

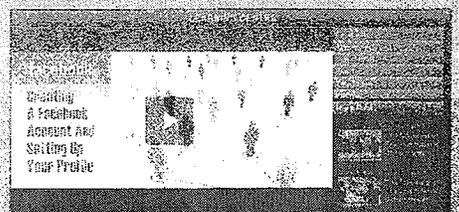
While all education categories apply, the following topics are suggested as specifically of interest to Brokers and Managers.

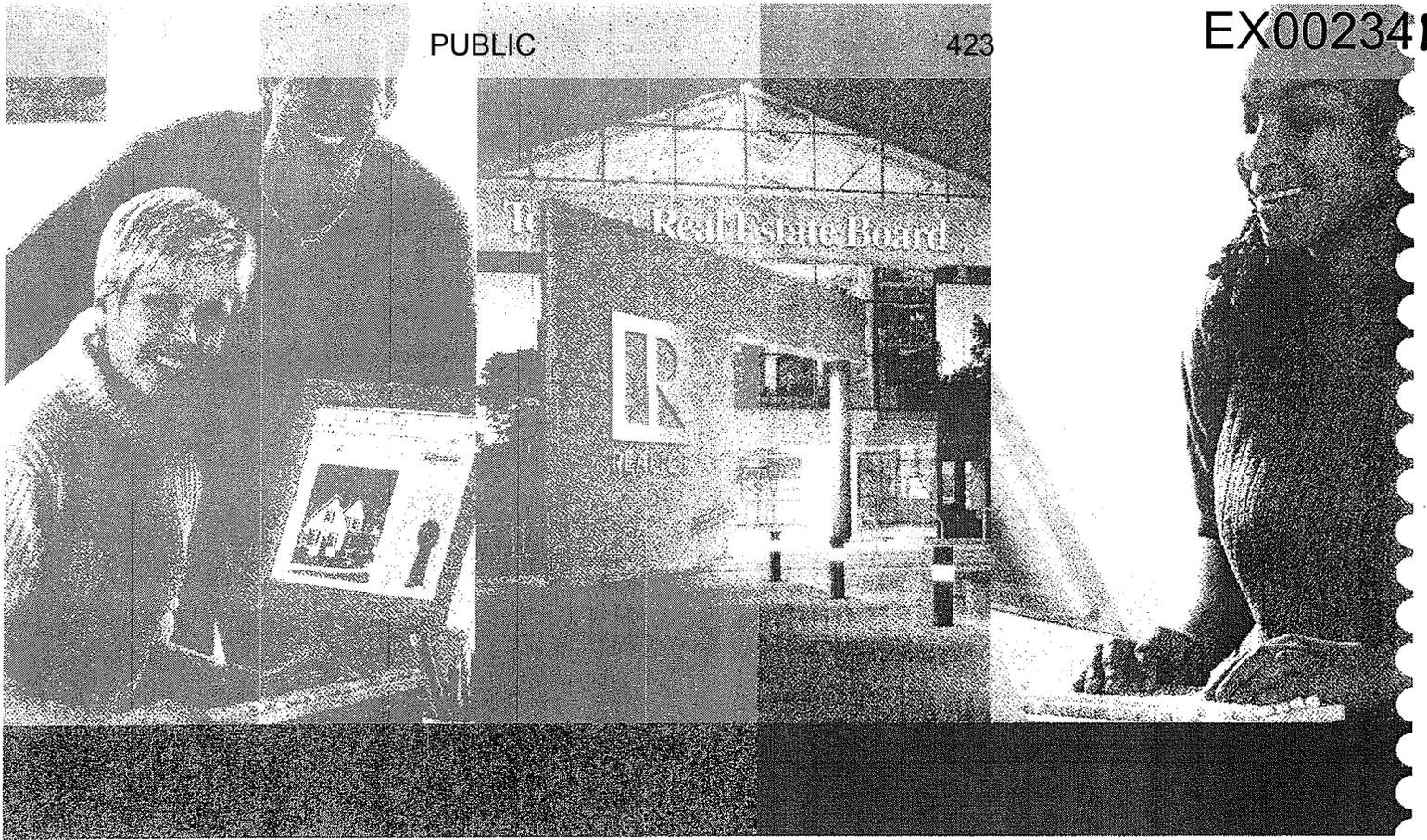
- Advertising Practices for Success and Compliance
- Agency Practice
- Broker of Record/Manager breakfast information sessions
- Brokerage Initiatives for Success (for Salespeople & Brokers of Record)
- Building Loyal Customers: Avoiding Legal/Discipline Proceedings
- Code of Ethics Under REBBA
- Communicating in the 21st Century – What's Changed?
- Complying with Privacy Workshop
- Disclosure and the Real Estate Professional
- Member Forums
- Money Laundering and Grow Houses
- Multiple Offers: The Seller, The Buyer and You
- Preventing Real Estate Fraud
- Property Disclosure: Duties of the Seller and the Listing Agent
- Real Estate Forms in Plain Language
- Realistic Buyer Representation
- Sensible Practices to Avoid Risk and Liability
- The Agreement of Purchase and Sale – Tips and Traps
- Title Insurance
- TorontoMLS Add/Edit (*hands-on computer lab*)

## TorontoMLS Learning Centre e-Tutorials

Access the e-Tutorials via the Learning Centre on the TorontoMLS home page. Topics include:

- Facebook
- Touchbase
- WirelessMLS
- Office Space Calculator
- Calculating Realty Taxes
- Data Integrity Service (DIS)
- How to Use an Authenticator
- Managing CE credits in Manage My Profile
- RealEstateNewHomes and RealEstateCommercial
- Graphing in PowerPoint and more.





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# **EXHIBIT**

# **X**

**1. Can REALTORS still provide a Comparative Market Analysis (CMA) service to their clients or customers using listing and sale information from the Board's MLS system?**

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**Answer:** The "Use and Distribution of Information" clauses found in OREA Standard Form listing and buyer agency agreements allow real estate boards to post and retain MLS listing information, including historical MLS® data, on the MLS system (including sale or lease information). This information is for use by its Members as allowed for by these clauses and the MLS rules of the real estate board. The historical uses of information on the system are usually for comparative market analysis (CMA) and valuation purposes and that is why current and historical data is essential to the operation of the MLS® system.

The current OREA standard form listing agreement adopted by TREB provides:  
**USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Broker for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokers, salespersons and others who may assist in the sale of the Property; such other use of the seller's personal information as is consistent with listing and marketing of the Property. **The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Broker into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may:** distribute the information to any persons authorized to use such service which may include other brokers, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; **compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses;** and make such other use of the information as the board deems appropriate in connection with the listing, marketing and selling of real estate.

This would clearly provide the consent needed from the seller for Members to generate CMAs as an appropriate use in connection with the listing, marketing and selling/leasing of real estate. Providing clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, without revealing the actual price for those properties is not in question.

Regarding the ability to provide clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, including revealing the actual price for those properties is less settled at the current time.

Although it cannot be said with absolute certainty given the lack of precedents or case law on the ultimate interpretation of many aspects of PIPEDA, a strong argument can be made that the words "conduct comparative market analyses" contained in the consent clause of the OREA standard form listing agreement can be interpreted broadly enough to include the essential part of "conducting a CMA", that is, providing that information to a prospective seller or prospective buyer. **A CMA**

**should be treated as a confidential document between the salesperson and the seller/prospective buyer. It should contain a written statement regarding a requirement for confidentiality and safekeeping of the document. Be mindful of providing a CMA to just anyone -- it should not be released to the general public.**

The issue of whether the consent of the buyer of the property was obtained or needed to be obtained is based on a three-pronged combination of arguments. First, the consent was provided in the appropriate clause contained in the OREA Standard Form Buyer Agency Agreement or Buyer Customer Service Agreement (see clause below); second, in using CMAs when buying their property through the MLS system, the buyer implicitly consents that their property information on the MLS system may also be used for similar CMA purposes; and thirdly, the sale price ultimately becomes publicly available information by appearing in a public registry.

The current OREA standard form buyer agency agreement adopted by TREB and the current OREA buyer customer service agreement provides:

**USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Broker for such purposes that relate to the real estate services provided by the Broker to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Broker in connection with the purchase or prospective purchase of the property.

**The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Broker may be retained and disclosed by the Broker and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes.**

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**2 (a). Can I disclose the sold price of any property to anyone?**

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**Answer:** Sold price after "closing" appears in a public registry, and is considered to fall within the definition of "publicly available" under the federal privacy legislation. However, the uses of this information must still be consistent with the reason it appears in the public registry ie confirmation of ownership or sold price.

Otherwise, disclosure of sold price from the MLS system has to be consistent with the consent provided by the individual that can be identified with this information. You have to fall back on the "Use and Distribution of Information" clause in the Listing and Buyer Agency Agreements and the related MLS rules requiring that such consents be obtained for MLS listings. So, prior to closing, disclosure of the sold price to "anyone" has to be consistent with the listing, marketing and sale or lease of the property as allowed for in the "Use and Distribution of Information" provisions in the Listing Agreement or Buyer Agency Agreement. This could involve disclosure to other

REALTORS if consistent with these uses but not to the public or other customers and clients without independently obtaining consent from the seller for such a purpose.

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**2 (b). Should our administrative assistants still be disclosing the "sold price" over the phone to other agents; should they know it at all; should they still be disclosing the condition (if sold conditionally) to other agents?**

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**Answer:** They should only know the "sold price" if they need to have it in order to perform tasks assigned to them. Those tasks should be consistent with the "Use and Distribution of Information" provisions in the Listing or Buyer Agency Agreement. They can disclose the condition if it is for a purpose covered by the "Use and Distribution of Information" consent.

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**3. Can REALTORS distribute flyers or other advertising material to the public indicating sold price or photo or address of a recently sold property before or after closing date?**

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**Answer:** Sold price associated with an address or photo may easily be associated with a name making it personal information. The consent language in the "Use and Distribution of Information" clause in the MLS Listing and Buyer Agency Agreements authorizes the use and disclosure of price as it relates to the listing, marketing and sale or lease of the property. The consent language in these forms does not permit Members to use that information to market their services to others.

The fact that such information may become "public information" i.e. following registration in a land registry does not alter this conclusion since the regulations to the federal privacy legislation is clear that the collection, use and disclosure of such registry information must relate directly to the purpose for which the information appears in the registry ownership verification, notice of sale price. It is questionable as to whether this purpose relates directly to a purpose of marketing to others. Therefore, consent for such marketing purposes should be expressly obtained from the individual identified by such information before REALTORS distribute flyers to the public indicating "sold" price and photo or address of a property.

Indicating that a property has sold (without any amount indicated) accompanied by a picture, becomes problematic if the identity of the owner can be discerned from the photo (i.e. the house is recognized as being owned by person X) because this would place it in the category of "personal information". To the extent that it is not personal information then the practice is permissible in relation to PIPEDA. However, since the question of whether the "photo plus address" is personal information is dependent upon who is viewing the picture (i.e. who recognizes the property as belonging to Person X) we would caution that obtaining consent would be advisable since the use and disclosure of personal information without consent would violate PIPEDA.

In addition to PIPEDA concerns, REALTORS should be aware of a recent RECO CCD decision, posted on the RECO website on December 29, 2003, at [http://www.reco.on.ca/ccd\\_discipline\\_Siu-Pilarski-ReMax.htm](http://www.reco.on.ca/ccd_discipline_Siu-Pilarski-ReMax.htm), in which the RECO

discipline panel held that a registrant was in breach of Rules 1(2), 1(5), 10, 21, 46 of the RECO Code, for a number of advertising infractions, including "Advertising properties as sold without obtaining the written consent of the buyers to do so."

If you have not independently obtained consent from the individual(s) that are identifiable from the property information (by address or photo) and wish to distribute flyers or other advertising material indicating a property has sold, it may be best for you to aggregate the information. For example - "Recently sold 6 homes in this subdivision for an average price of \$300,000" OR "Recently sold 8 condos in this 3-building complex for an average price of \$200,000" OR "Recently sold 4 homes on this street for an average 97% of list price". The larger the number of properties referred to and the bigger the subject-area, the less likely is the possibility that the information could be linked to an identifiable individual.

The "sold" sign in front of a property communicates the fact that the property has been sold a reasonable and logical purpose given a sign had been used to advertise the property for sale. People driving by the property would only see that information. Placing that "sold" information in a flyer would involve communicating/disclosing it to people who may not otherwise know about the property. Also the purpose of placing "sold" on a sign on a lawn is different from the purpose of placing it in a flyer.

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**4. Can I send out "Just Sold" cards or indicate "SOLD for x% of asking"?**

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**Answer:** Same as answer for Question 3 above.

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**5. Do I put an opt out provision on these cards (or flyers) if I send them out regularly?**

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**Answer:** It would be a good idea to do so.

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**6. Can REALTORS use seller contact information from expired listings for marketing / prospecting uses ie to market to someone whose listing shows up as expired on the Board's MLS system?**

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**Answer:** In our view, the "Use and Distribution of Information" language found in the MLS Listing Agreement does not permit the use of such information for marketing / prospecting purposes. Unless there is a clear disclosure of this purpose in the listing agreement (or some other document) and the seller has given his or her informed consent to that use, the answer is no. Additional consent would be needed for such uses.

So you cannot use the information obtained from an expired listing on the board's MLS system to market to that person. The general rule is you can't collect, use or disclose a person's personal information without their consent. When that seller signed the listing agreement to submit the now-expired listing to MLS he/she

consented to the use of their personal information by the listing broker, cooperating brokers and by the board for certain specified purposes (see section 11 of the OREA standard form listing agreement Standard Form #200). Those specified purposes and that consent do not include having other Members use that information in order to market their services to the seller.

CREA is cautioning that clauses allowing REALTORS to contact sellers on expired listings might still be problematic. Not only must consent be obtained, but the use of the information collected must qualify as "reasonable" in terms of purposes for which the information was collected. The existence of a consent clause such as this in a listing agreement does not necessarily guarantee the consent will be valid. PIPEDA imposes a 2-pronged test. Not only must the consent of the individual be obtained, the use itself must be "reasonable" in terms of the purpose for which the information was collected. It is not clear whether obtaining the consent of the seller to be contacted by other REALTORS on the expiry of the listing would meet this test -- at least in the context of a listing agreement.

PIPEDA deals only with the personal information of individuals. If the seller is a corporate body or a partnership, the information is not "personal information" and no consent would be required.

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**7. What do I have to put on my website and do I have to put it on every page or just where they are signing up for information?**

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**Answer:** Placing your office privacy policy on your web site and then a link on each page to that privacy policy is recommended.

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**8. Would it be sufficient to link to the Company website which contains a privacy policy?**

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**Answer:** As long as it's clear that the concerned REALTOR has adopted this privacy policy as his / her own.

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**9. What do I have to put on sign-in sheets at my Open Houses?**

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**Answer:** This all depends on the uses of the information collected on the sign-in sheet. Somewhere on the sheet, where the people attending the open house are writing their names, addresses and/or phone numbers, should be noted all of the purposes for which that personal information will be used and to whom that information will be disclosed for example "To provide follow up material on this property and also general promotion material about the Listing Broker and the listing salesperson". There should be a place on the sheet where the people who are providing their names and addresses will be able to indicate that they don't want you to use their personal information for some or all of those purposes or they don't want you to disclose their personal information to some or all of the proposed recipients.

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**10. Can I still cold call from the phone book or from the reverse directory linked to TorontoMLS or from similar resources?**

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**Answer:** Yes, since this is "publicly available" information and you are simply using information to contact individuals.

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**11. Can I still door knock to solicit business from potential seller?**

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**Answer:** There is no collection, use or disclosure of personal information involved in the mere act of door knocking .

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**12. What wording should go on my regular mailings (or newsletters) to my client list?**

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**Answer:** This is a drafting issue specific to the business. It would be good business practice to include an opt-out provision (that they can return or contact number to call) should they wish to no longer receive your regular mailings. For e.g.

At xxxxx we respect your privacy. If you wish to be removed from our mailing list for this publication or have any questions about our collection, use or disclosure of personal information, you may contact us at ----- . Or, please check the box below and return to our attention at ADDRESS or email to EMAIL ADDRESS.

[ ] I wish to be taken off your mailing list for XXXXXXXXXXXXX

It would also be a good idea to do this with every mailing.

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**13. If the client asks for interest on their deposit, do I have to tell them where their money is being invested?**

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**Answer:** This is not a privacy (PIPEDA) question.

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**14. If our company is using their own Buyer's Contract (not OREA's) what wording should I use?**

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**Answer:** You can use wording from one of three sources that have such clauses specifically for Buyer's contracts: a) [www.realtorlink.ca](http://www.realtorlink.ca) in the Privacy Toolkit section there is a document titled "privacy clauses" b) Clause #8 (Use and Distribution of Information) from the OREA Buyer Agency Agreement c) TorontoMLS in the privacy

compliance corner under the CREA Privacy section there is a REALTOR Privacy Toolkit pdf document where you can find clauses in the "Making Privacy Work" section.

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**15. What's TREB's position on "seller" requests to remove listings from the MLS system?**

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**Answer:** TREB's Rules and Regulations prohibit the deletion of MLS Listing information from TREB's MLS Online System unless TREB is notified in writing that the address shown on the MLS Listing Agreement is incorrect and/or the MLS Listing is invalid.

TREB requires its Member REALTORS to advise and obtain the principal's (seller in this case) authorization that TREB may compile, retain and distribute the listing information and may compile, retain and publish any statistical analyses including historical MLS data based on such information. Our REALTOR Members must also obtain the consent of their principals in order for TREB to collect, use and disclose the listing, sale/lease and purchase information regarding the property and the transaction on the MLS system and within TREB's MLS database.

When sellers sign the MLS Listing Agreement, they agree to allow this ongoing use of listing and sales information -- see the "Use and Distribution of Information" section of the MLS Listing Agreement. This section is a contractual obligation, which TREB considers a fundamental part of the MLS listing agreement. Removal of the MLS listing information would seriously and adversely impact the usefulness of MLS historical information. Such historical information is essential to the operation of the MLS system so REALTOR Members can continue to provide comparative market analysis and valuations to customers and clients.

TREB takes its responsibilities with respect to personal information very seriously. However, the ability for individuals to withdraw their consent for the collection, use and disclosure of personal information is qualified. One of the provisions of Schedule 1 of the Personal Information Protection and Electronic Documents Act (PIPEDA) states:

"An individual may withdraw consent at any time, **subject to legal or contractual restrictions and reasonable notice**. The organization shall inform the individual of the implications of such withdrawal."

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**16. How does the privacy act (PIPEDA) prevent me from requesting a buyer's home address when offers are being considered?**

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**Answer:** The privacy act (PIPEDA) does not restrict you as a REALTOR® from requesting personal information about an individual, such as home address, as long as it for purposes that a reasonable person would consider appropriate in the circumstances. If the purpose is reasonable, then the collection of such information may occur provided the individual concerned provides his/her consent for its

collection and use. Whether requesting a home address is reasonable will depend upon the circumstances of the transaction.

You must tell the individual concerned why you are requesting the information and how you will use it. If that person then provides the information, that act itself is sufficient to constitute consent.

However, under the privacy act, the individual may refuse to consent to the collection and use of their personal information. If the requested personal information (home address) is necessary to proceed with the transaction, then you would inform the person concerned of the consequences if the personal information is not provided. Those consequences could possibly include the fact that the seller may not be able to proceed with the transaction.

Where the individual concerned is not represented by a real estate broker or salesperson, then it would be reasonable to request that potential buyer's home address. It is also reasonable for a REALTOR®, when considering whether to represent an individual as a buyer's agent, to request a home address in order to "know your customer".

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**17. One of the questions registrants most commonly ask the Real Estate Council of Ontario (RECO) is about its position on advertising sold properties -- often regarding the use of sold cards and the advertising of the price or terms of an agreement.**

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**Answer:** "Sold" cards, must comply with the Real Estate and Business Brokers Act (a Salesperson's proper identification with regards to advertising).

The broker or salesperson should also get permission to use the asking price and/or the picture and/or the address, as applicable. Very often listing agreements contain these permissions.

If a price is shown, it would have to clearly indicate that it is the asking price.

It is not permissible to show the asking price with reference to a percentage achieved in the sale, as the sold price could be determined mathematically, which would reveal a term of an agreement.

Consent required depends on the timing of the distribution of the sold card and the party who is sending the sold cards. RECO provides the following guidelines:

**Property sold but transaction is not closed**

Sold cards (**no price**) being distributed / Consent required:

- By Seller's Salesperson / Seller consent
- By Buyer's Salesperson / Seller and Buyer consent

Sold cards (**price and terms**) being distributed / Consent required:

- By Seller's Salesperson / Seller and Buyer consent
- By Buyer's Salesperson / Seller and Buyer consent

**Property sold and Transaction has closed**

Sold cards (**no price**) being distributed / Consent required:

- By Seller's Salesperson / Buyer (new owner) consent
- By Buyer's Salesperson / Buyer (new owner) consent

Sold cards (**price and terms**) being distributed / Consent required:

- By Seller's Salesperson / Buyer (new owner) consent
- By Buyer's Salesperson / Buyer (new owner) consent

# **EXHIBIT**

# **Y**



Listing Agreement Authority to Offer for Sale



EXCLUSIVE

This is a Multiple Listing Service® Agreement

OR Exclusive Listing Agreement

(Seller's Initials)

(Seller's Initials)

BETWEEN:

BROKERAGE:

(the "Listing Brokerage") Tel.No. (.....)

SELLER(S):

(the "Seller")

In consideration of the Listing Brokerage listing the real property for sale known as.....

(the "Property")

the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent, commencing at 12:01 a.m. on the..... day of..... 20..... until 11:59 p.m. on the..... day of..... 20..... (the "Listing Period")

Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if a MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Real Estate and Business Brokers Act (2002), if the Listing Period exceeds six months, the Listing Brokerage must obtain the Seller's initials:

(Seller's Initials)

to offer the property for sale at a price of:

Dollars (CDN\$).....

Dollars

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the property.

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Listing Agreement ("Authority" or "Agreement"), "Seller" includes vendor, a "buyer" includes a purchaser, or a prospective purchaser and a "real estate board" includes a real estate association. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of.....% of the sale price of the Property or..... for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement OR such other terms and conditions as the Seller may accept. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone on the Seller's behalf within..... days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property. Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission. All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. FINDERS FEES: The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

INITIALS OF LISTING BROKERAGE:

(.....)

INITIALS OF SELLER(S):

(.....)



**11. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the appropriate MLS® system(s), and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the appropriate MLS® system(s). The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the MLS® database is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may, during the term of the listing and thereafter, distribute the information in the MLS® database to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical MLS® data and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and selling of real estate during the term of the listing and thereafter.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling: ○ ○

**Does** **Does Not**

consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.

**12. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.

**13. CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.

**14. ELECTRONIC COMMUNICATION:** This Listing Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.

**15. SCHEDULE(S):**.....and data form attached hereto form(s) part of this Agreement.

**THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.**

(Authorized to bind the Listing Brokerage)..... DATE..... (Name of Person Signing).....

**THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME AND I ACKNOWLEDGE THIS DATE I HAVE SIGNED UNDER SEAL AND HAVE RECEIVED A TRUE COPY OF THIS AGREEMENT.** Any representations contained herein or as shown on the accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

(Signature of Seller)..... DATE..... (Seal)..... (Tel. No.).....

(Signature of Seller)..... DATE..... (Seal).....

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees that he/she will execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse)..... DATE..... (Seal).....

**DECLARATION OF INSURANCE**

The broker/salesperson..... (Name of Broker/Salesperson).....

hereby declares that he/she is insured, as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

..... (Signature(s) of Broker/Salesperson).....

4. **REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with information explaining agency relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Customer Service. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage), and to offer to pay the co-operating brokerage a commission of .....% of the sale price of the Property or..... (indicate any incentive or +/- adjustment)

..... out of the commission the Seller pays the Listing Brokerage. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage listing other properties that may be similar to the Seller's Property without any claim by the Seller of conflict of interest. The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the property. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage, said commission to be disbursed in accordance with the Commission Trust Agreement.

**MULTIPLE REPRESENTATION:** The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will obtain the Seller's written consent to represent both the Seller and the buyer for the transaction at the earliest practicable opportunity and in all cases prior to any offer to purchase being submitted or presented.

The Seller understands and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer, including a requirement to disclose all factual information about the Property known to the Listing Brokerage.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the Property will be disclosed to both Seller and buyer to assist them to come to their own conclusions.

**Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.**

**MULTIPLE REPRESENTATION AND CUSTOMER SERVICE:** The Seller understands and agrees that the Listing Brokerage also provides representation and customer service to other sellers and buyers. If the Listing Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Listing Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Listing Brokerage's relationship to each seller and buyer.

5. **REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period, the Seller agrees to pay the Listing Brokerage the amount of commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.

6. **MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.

7. **WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.

8. **INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement or the accompanying data form. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.

9. **FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the Seller's spouse has executed the consent hereinafter provided.

10. **VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

INITIALS OF LISTING BROKERAGE:

\_\_\_\_\_

INITIALS OF SELLER(S):

\_\_\_\_\_





# Buyer Representation Agreement Authority for Purchase or Lease



## This is an Exclusive Buyer Representation Agreement

**BETWEEN:**

**BROKERAGE:** ..... Tel.No. (.....)

**ADDRESS:** .....

..... Fax.No. (.....)  
hereinafter referred to as the Brokerage.

**AND:**

**BUYER(S):** ..... hereinafter referred to as the Buyer,

**ADDRESS:** .....

The Buyer hereby gives the Brokerage the **exclusive and irrevocable authority** to act as the Buyer's agent

**commencing at** ..... a.m./p.m. on the ..... day of ..... 20.....

**and expiring at 11:59 p.m.** on the ..... day of ..... 20..... (Expiry Date).

{ Buyer acknowledges that the time period for this Agreement is negotiable between the Buyer and the Brokerage, however, in accordance with the Real Estate and Business Brokers Act of Ontario (2002), if the time period for this Agreement exceeds six months, the Brokerage must obtain the Buyer's initials. }

○  
(Buyer's Initials)

for the purpose of locating a real property meeting the following general description:

Property Type (Use): .....

Geographic Location: .....

**The Buyer hereby warrants that the Buyer is not a party to a buyer representation agreement with any other registered real estate brokerage for the purchase or lease of a real property of the general description indicated above.**

- 1. DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Buyer Representation Agreement ("Authority" or "Agreement"), "Buyer" includes purchaser and tenant; a "seller" includes a vendor, a landlord or a prospective seller, vendor or landlord and a "real estate board" includes a real estate association. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, and a lease includes any rental agreement, sub-lease or renewal of a lease. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, Buyer shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the property.
- 2. COMMISSION:** In consideration of the Brokerage undertaking to assist the Buyer, the Buyer agrees to pay commission to the Brokerage as follows: If, during the currency of this Agreement, the Buyer enters into an agreement to purchase or lease a real property of the general description indicated above, the Buyer agrees the Brokerage is entitled to receive and retain any commission offered by a listing brokerage or by the seller. The Buyer understands that the amount of commission offered by a listing brokerage or by the seller may be greater or less than the commission stated below. The Buyer understands that the Brokerage will inform the Buyer of the amount of commission to be paid to the Brokerage by the listing brokerage or the seller at the earliest practical opportunity. The Buyer acknowledges that the payment of any commission by the listing brokerage or the seller will not make the Brokerage either the agent or sub-agent of the listing brokerage or the seller.

**INITIALS OF BROKERAGE:**

○

**INITIALS OF BUYER(S):**

○



If, during the currency of this Agreement, the Buyer enters into an agreement to purchase or lease any property of the general description indicated above, the Buyer agrees that the Brokerage is entitled to be paid a commission of.....% of the sale price of the property or

The Buyer agrees to pay directly to the Brokerage any deficiency between this amount and the amount, if any, to be paid to the Brokerage by a listing brokerage or by the seller. The Buyer understands that if the Brokerage is not to be paid any commission by a listing brokerage or by the seller, the Buyer will pay the Brokerage the full amount of commission indicated above.

The Buyer agrees to pay the Brokerage such commission if the Buyer enters into an agreement within ..... days after the expiration of this Agreement (Holdover Period) to purchase or lease any real property shown or introduced to the Buyer from any source whatsoever during the term of this Agreement, provided, however, that if the Buyer enters into a new buyer representation agreement with another registered real estate brokerage after the expiration of this Agreement, the Buyer's liability to pay commission to the Brokerage shall be reduced by the amount paid to the other brokerage under the new agreement.

The Buyer agrees to pay such commission as described above even if a transaction contemplated by an agreement to purchase or lease agreed to or accepted by the Buyer or anyone on the Buyer's behalf is not completed, if such non-completion is owing or attributable to the Buyer's default or neglect. Said commission, plus any applicable taxes, shall be payable on the date set for completion of the purchase of the property or, in the case of a lease or tenancy, the earlier of the date of occupancy by the tenant or the date set for commencement of the lease or tenancy. All amounts set out as commission are to be paid plus applicable taxes on such commission.

3. REPRESENTATION: The Buyer acknowledges that the Brokerage has provided the Buyer with written information explaining agency relationships, including information on Seller Representation, Sub-Agency, Buyer Representation, Multiple Representation and Customer Service. The Brokerage shall assist the Buyer in locating a real property of the general description indicated above and shall represent the Buyer in an endeavour to procure the acceptance of an agreement to purchase or lease such a property.

The Buyer acknowledges that the Buyer may not be shown or offered all properties that may be of interest to the Buyer. The Buyer hereby agrees that the terms of any buyer's offer or agreement to purchase or lease the property will not be disclosed to any other buyer. The Buyer further acknowledges that the Brokerage may be entering into buyer representation agreements with other buyers who may be interested in the same or similar properties that the Buyer may be interested in buying or leasing and the Buyer hereby consents to the Brokerage entering into buyer representation agreements with other buyers who may be interested in the same or similar properties without any claim by the Buyer of conflict of interest. The Buyer hereby appoints the Brokerage as agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase or lease a property negotiated by the Brokerage.

MULTIPLE REPRESENTATION: The Buyer hereby acknowledges that the Brokerage may be entering into listing agreements with sellers of properties the Buyer may be interested in buying or leasing. In the event that the Brokerage has entered into or enters into a listing agreement with the seller of a property the Buyer may be interested in buying or leasing, the Brokerage will obtain the Buyer's written consent to represent both the Buyer and the seller for the transaction at the earliest practicable opportunity and in all cases prior to any offer to purchase or lease being submitted or presented.

The Buyer understands and acknowledges that the Brokerage must be impartial when representing both the Buyer and the seller and equally protect the interests of the Buyer and the seller in the transaction. The Buyer understands and acknowledges that when representing both the Buyer and the seller, the Brokerage shall have a duty of full disclosure to both the Buyer and the seller, including a requirement to disclose all factual information about the property known to the Brokerage.

However, The Buyer further understands and acknowledges that the Brokerage shall not disclose:

- that the seller may or will accept less than the listed price, unless otherwise instructed in writing by the seller;
- that the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
- the motivation or personal information about the Buyer or seller, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the Buyer should offer or the price the seller should accept; and
- the Brokerage shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Brokerage concerning potential uses for the property will be disclosed to both Buyer and seller to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Buyer understands and agrees that the Brokerage also provides representation and customer service to other buyers and sellers. If the Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Brokerage's relationship to each seller and buyer.

4. REFERRAL OF PROPERTIES: The Buyer agrees that during the currency of this Buyer Representation Agreement the Buyer will act in good faith and work exclusively with the Brokerage for the purchase or lease of a real property of the general description indicated above. The Buyer agrees that, during the currency of this Agreement, the Buyer shall advise the Brokerage immediately of any property of interest to the Buyer that came to the Buyer's attention from any source whatsoever, and all offers to purchase or lease submitted by the Buyer shall be submitted through the Brokerage to the seller. If the Buyer arranges a valid agreement to purchase or lease any property of the general description indicated above that came to the attention of the Buyer during the currency of this Agreement and the Buyer arranges said agreement during the currency of this Agreement or within the Holdover Period after expiration of this Agreement, the Buyer agrees to pay the Brokerage the amount of commission set out above in Paragraph 2 of this Agreement, payable within (5) days following the Brokerage's written demand therefor.

5. INDEMNIFICATION: The Brokerage and representatives of the Brokerage are trained in dealing in real estate but are not qualified in determining the physical condition of the land or any improvements thereon. The Buyer agrees that the Brokerage will not be liable for any defects, whether latent or patent, to the land or improvements thereon. All information supplied by the seller or landlord or the listing brokerage may not have been verified and is not warranted by the Brokerage as being accurate and will be relied on by the Buyer at the Buyer's own risk. The Buyer acknowledges having been advised to make their own enquiries to confirm the condition of the property.

6. FINDERS FEE: The Buyer acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Buyer consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.

INITIALS OF BROKERAGE:

(Empty oval for Brokerage initials)

INITIALS OF BUYER(S):

(Empty oval for Buyer initials)

- 7. **CONSUMER REPORTS:** The Buyer is hereby notified that a Consumer Report containing credit and/or personal information may be referred to in connection with this Agreement and any subsequent transaction.
- 8. **USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property.  
The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes and for such other use of the information as the Brokerage and/or board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses.
- 9. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any provisions added to this Agreement, shall constitute the entire Agreement between the Buyer and the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 10. **ELECTRONIC COMMUNICATION:** This Buyer Representation Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Buyer by electronic means shall be deemed to confirm the Buyer has retained a true copy of the Agreement.
- 11. **SCHEDULE(S):** ..... attached hereto form(s) part of this Agreement.

**THE BROKERAGE AGREES TO REPRESENT THE BUYER IN LOCATING A REAL PROPERTY OF THE GENERAL DESCRIPTION INDICATED ABOVE IN AN ENDEAVOUR TO OBTAIN THE ACCEPTANCE OF AN AGREEMENT TO PURCHASE OR LEASE A PROPERTY ON TERMS SATISFACTORY TO THE BUYER.**

..... DATE.....  
(Authorized to bind the Brokerage) (Name of Person Signing)

**THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME AND I ACKNOWLEDGE THIS DATE I HAVE SIGNED UNDER SEAL AND HAVE RECEIVED A TRUE COPY OF THIS AGREEMENT.** Any representations contained herein are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

..... DATE.....  
(Signature of Buyer) (Seal) (Tel. No.)

..... DATE.....  
(Signature of Buyer) (Seal)

**DECLARATION OF INSURANCE**

The broker/salesperson.....  
(Name of Broker/Salesperson)

hereby declares that he/she is insured as required by the Real Estate and Business Brokers Act (REBBA) and Regulations.

.....  
(Signature(s) of Broker/Salesperson)



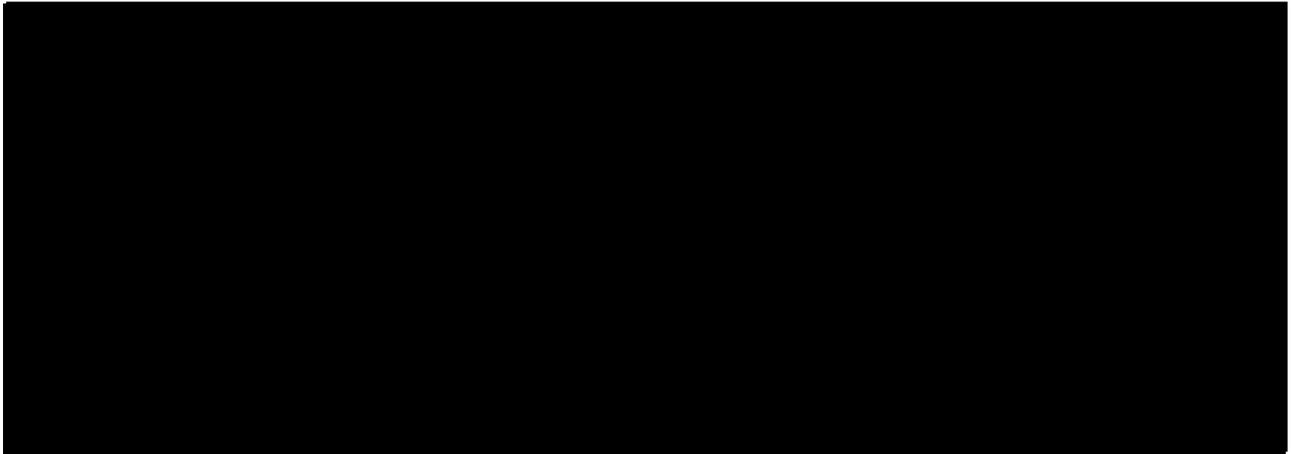
# **EXHIBIT**

## **Z**

The Toronto Real Estate Board  
Board of Directors Meeting Minutes  
Held at Arriba Restaurant  
Tuesday, July 8, 2008

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**PRIVATE & CONFIDENTIAL**



# **EXHIBIT**

## **AA**



# TORONTO REAL ESTATE BOARD

## 2010/2011 Strategic Plan



Confirming our strategic framework and 2010-2011 leadership priorities

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## 1. INTRODUCTION

As TREB begins our 91<sup>st</sup> year of operation, we seek to build on the many accomplishments achieved since our inception. The clarity of focus, articulated in this Strategic Plan is a result of dialogue with our Board of Directors and Senior Management Team in July 2010. This plan will chart the course for TREB to strengthen the value we provide to Members and thereby serve our purpose as a Membership-driven Association.

As the environment in which we operate becomes increasingly complex and competitive, we face a variety of challenges – both general and specific. The challenges that have inspired the strategic focus outlined in this plan include:

- Continued economic uncertainty.
- Challenges to the propriety nature of our MLS system.
- Lawsuits.
- Lawyers are trading in real estate without a real estate license.
- Poor public perception.
- Increased volume of paperwork demanded of agents.
- Taxation and bureaucracy have increased costs.
- Cultural differences in how business is being done.
- Member's apathy.
- A risk that we think – “*this is how things have always been done*” and don't change as a result.
- Not all agents are ethical.
- We have gotten away from mentoring within our industry.
- Increased expectations with respect to technology and applications for Members
- We are not able to reach all Members – many email addresses are not up to date.

Nonetheless, we look to the future with optimism. Together we are prepared to work hard and to do what is necessary to secure a strong and proud future for TREB and our Members.

2. CONFIRMING OUR MISSION STATEMENT

Our mission statement is a declaration of our core purpose and is intended to inspire and guide decision-making.

The current leadership team sees no reason to change this fundamental sense of core purpose, though a minor editorial suggestion was made and is highlighted here.

**Our Core Purpose**

*Advancing the continuing success of our Membership*

**Our Mission**

*To be a primary professional resource providing, protecting and promoting the continuing real estate success of all members.*

3. A RENEWED COMMITMENT TO OUR CORE VALUES

Over the years, TREB has evolved to meet the changing needs of its Members. At every decision-point, our flexibility has been grounded in our fundamental commitment to our core values. This unwavering commitment continues to inform our current focus.

**TREB's Core Values**

*Integrity: Principled, fair and honest actions, sensible and responsible business and fiscal policies.*

*Leadership: Visionary, progressive and innovative decisions; forward thinking, flexible and informed judgements.*

*Professionalism: High standards that advance the industry and ensure well organized, high quality association services.*

*Responsiveness: Member focused and Member friendly; effective communication, respect for the individuality of our Members and accountable to them.*

*Value: Provide Member value/return on investment (ROI) in a productive and fiscally responsible manner.*

*Environment: In planning all future activities TREB takes into consideration the welfare of our environment and future generations.*

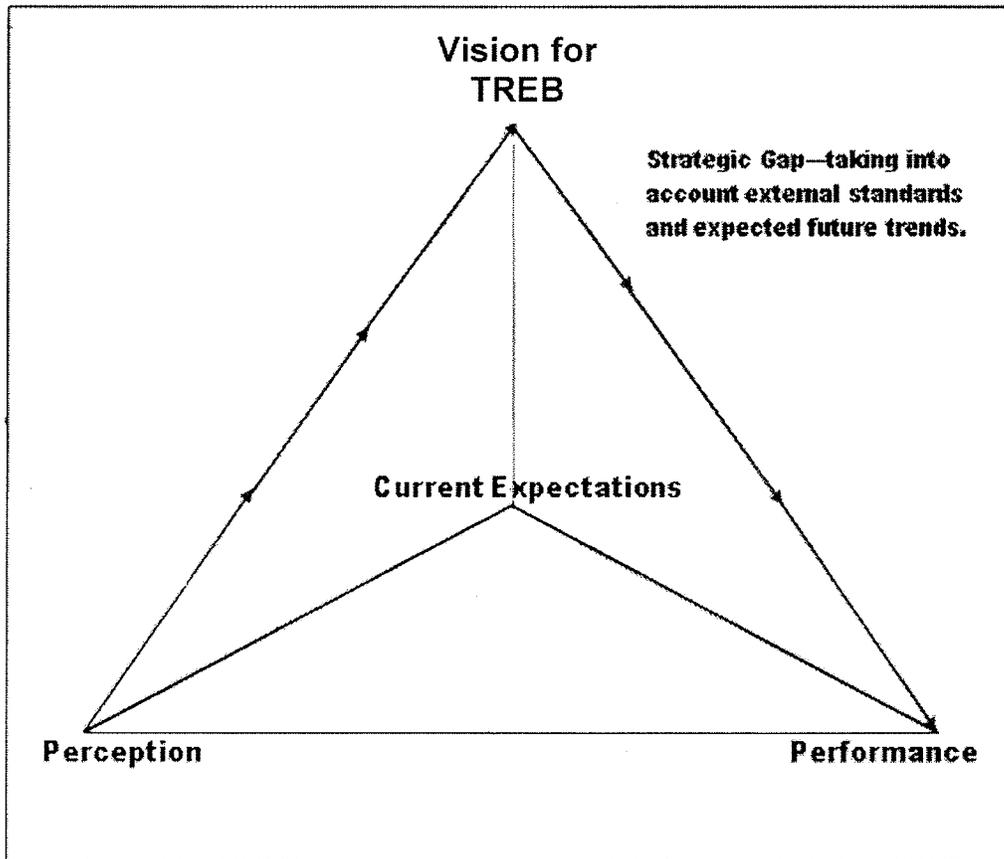
4. OUR UPDATED VISION PROVIDES CLARITY OF FOCUS: *The Top of the Red Triangle.*

Over the course of our planning session, we used the diagram below to illustrate the difference between operational and strategic planning.

In this diagram, the small inside triangle (The “Black Triangle”) highlights the dynamics of operational planning. TREB has been working diligently to meet the current expectations of its Members, staff and other stakeholders. This is important work. The larger outside triangle (The “Red Triangle”) illustrates the opportunity provided by strategic planning: By considering external standards and expected future trends, our focus moves from the current expectations we have of ourselves, and others have of us, to a vision of future success.

As a result, our focus is not, 'How do we meet current expectations?' but instead, 'How do we advance?' 'How do we lead?'

In our planning session, we used this diagram to encourage the Board and Senior Management Team to consider new ways of delivering information and service to our Members consistent with expectations that have evolved over time. That is, to move beyond the "current expectations" that we and others have of us.



Using this diagram for inspiration, the group highlighted the importance of:

- Empowering our Members
- Being increasingly proactive in our efforts to "protect" our Members
- Making sure that we remain relevant to Members and providing information and services that are not available elsewhere.
- Seeing and seizing new opportunities wherever possible.
- Recognizing that the capability of technology means that increasingly, our Members will expect us to provide them with "instant" access to advice and answers.
- We need the public to understand the value in using a REALTOR® far outweighs the cost involved and that REALTORS® need to think of themselves as being there for more than just the relatively simple buy/sell transaction.

## 5. STRATEGIC FOCUS 2010-2011

Any organization's success is typically proportional to its ability to focus. Accordingly, in this plan we focus on strategies within three guiding commitments consistent with our Mission: *To provide, protect and promote our Members continuing real estate success.* Furthermore, these strategies have been inspired by our updated Vision for TREB as well as by the key issues we currently face. The strategies we will undertake are provided below in no particular order. Each is important; furthermore, it is the interrelationship among and between them that will promote greater effectiveness as an Association.

The CEO will develop an operational plan to support the implementation of these goals. He, and his management team, will report at each 6 month interval on efforts to achieve these goals. Furthermore, an annual review will be completed and additional strategies developed as these strategies are achieved.

<p><b>Our Commitment to Members - "To PROVIDE"</b></p>
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TREB Members will have convenient access to a reliable resource of essential information as well as educational products and services available in both face-to-face and virtual formats. TREB Members will be able to access useful knowledge, expert advice, and effective technology solutions to respond to current and anticipated needs.

## OBJECTIVES:

1. High quality and useful education, training and outreach programs are available to Members.
2. Members are aware of, have access to, and are satisfied with TREB information.
3. Ample opportunities are available to Members for two-way communication.
4. Members are engaged and participate in TREB programs and activities.

## STRATEGIES FOR 2010-2011

1. **Access to Information and Education**
  - a. Provide more offsite information/education for Members.
  - b. Expand services and knowledge base of Education/Outreach/GRC to effectively communicate to Members.
  - c. Ensure that course subject matters meet the needs of Members in all areas.
  - d. Increase buyer representation training with related materials and promotion. Assist Members to promote BRS to the public.
  - e. Encourage Member awareness of the benefits of "Green"
2. **MLS® System Tools and Statistics**
  - a. Consider how to add new services to TorontoMLS on a continuous and planned basis.
  - b. Empower our Members by providing cutting edge tools (e.g. MLS, IDX Download, VOW's, Syndication)
  - c. Provide Members with localized statistics for a system of revised logical trading districts in easily understood format for Members, consumers and the media; provide more readily available statistics.

3. **Member Communication and Feedback**
  - a. Create a vehicle for responding to Member's inquiries with instant answers/advice etc. Consider use of Social Media to increase Member feedback and dialogue and enhance two-way communication. Listen to Members and learn what they need by participating in brokerage sales meetings, breakfast clubs etc. Continue to survey Members electronically and through other feedback mechanisms regarding key preferences and needs
  - b. Explore electronic delivery of outreach content and expansion of outreach program with more delivery.
  - c. Continue communication to Members by increased use of video, e-training modules, direct e-mail and other technologies such as "just-in-time" seminars, FAQs based on TREB Pres Questions, and information releases in "bite- sized" format.
  
4. **Strengthening our community**
  - a. Create a sense of community.
  - b. Maintain the good quality and quantity of information flow at Member meetings and conduct more regional Member forums on topics of interest. Maximize offering of educational credits in conjunction with meetings.

Our commitment to Members - To "PROTECT"

TREB Members will enjoy regulatory and consumer confidence in the REALTORS® specialized knowledge, high professional standards, technological sophistication, productivity, and contribution to the community's economy and culture.

**OBJECTIVES:**

1. A commitment to strategic use of Member and consumer marketing research (including focus groups, interviews, written and web surveys, participation tracking, Brokers Breakfasts, Member Forums, brain storming sessions, etc.).
2. Effective and coordinated communication and collaboration on issues of interest to TREB with RECO, OREA and CREA where appropriate.
3. Effective communication with GTA Municipal politicians and staff and associated stakeholders e.g. Building Industry and Land Development. (BILD)
4. Strong relationships with key media provide regular, high-quality and positive coverage of real-estate issues and topics that is based on accurate statistics and reliable information.
5. The value of a REALTOR® is clear to all such that Members maintain a key position in real estate transactions.

**STRATEGIES FOR 2010-2011**

1. **Strengthen TREB's relationships within organized real estate**
  - a. We need to enhance our relationships with OREA, CREA and RECO and seek to clarify our respective roles within organized real estate in order to avoid overlap of services and mandates.
  - b. Increase advocacy role with RECO and encourage Members to be more involved.
2. **Strengthen our Perceived Value**
  - a. Educate and promote to the public the value of using Members' professional services.
3. **Strengthen our effectiveness in Advocacy and Lobbying**
  - a. Enhance/increase lobbying efforts on issues that directly affect/impact TREB Members e.g. lawyers, trading, incorporation, environmental issues etc.
  - b. Lobby the province on an ongoing basis on the Act and/or RECO rules. Furthermore, we need to lobby all levels of government to facilitate the home buying process (e.g. CMHC inclusion of commission in buyer mortgage loan qualification; provincial legislation that puts disclosure onus on the seller.)
  - c. Re-structure GRC to develop and strengthen relationships with local politicians at all levels, in all TREB municipalities.
  - d. Continue to nurture the system of regional PAC representation and activity for the benefit of TREB Members in "905" areas and promote participation in OREA's RPAC and TREB's GR communication network on TorontoMLS.
  - e. Continue to implement a new municipal election strategy and political outreach plan.

**Our commitment to Members -To "PROMOTE"**

TREB will be an inclusive organization offering a valuable and enjoyable individual Membership experience and professional community with attractive benefits for current, past and future Members.

**OBJECTIVES:**

1. Promote value-added benefits of Membership.
2. Provide more opportunities where Member interaction promotes networking and the development of business relationships.
3. Encourage REALTOR® involvement in community causes such as homeless programs, charities, REALTORS Care Foundation, environmental issues, and quality of life.

**STRATEGIES FOR 2010-2011**

1. **External or Public Communication Plan**
  - a. Re-brand ourselves as an Association of REALTORS® representing the GTA.
  - b. Promote the security of the MLS system to the public.
  - c. Improve the image of REALTORS®

- d. Continue the advertising campaign to consumers and use the public website to reinforce the message. Engage the public with message regarding value of using a GTA REALTOR® to enhance neighbourhood information.
  - e. Continue to recognize and encourage the contributions of Members in community activities and good works. Use public website and publicity in local media to promote and acknowledge.
2. **Member participation in Board Governance**
- a. Significantly increase participation of younger Members on committees and on the Board of Directors.
  - b. Promote value and specific benefits/services of Board Membership.
3. **Member Communication**
- a. Improve communication with Members, the public and organized real estate.
4. **REALTOR® QUEST**
- a. Maintain REALTOR® QUEST as a complimentary benefit for Membership. Improve logistics regarding delivery of food (ticketed). Provide larger education venues.
5. **CONCLUSION**

Successful organizations recognize and celebrate their past achievements while striving to innovate based on a view of future strength and success. We are proud of TREB's history and of the many significant accomplishments we have achieved. Our successes in the past are the foundation on which we will build a strong future. We have ambitious plans for the year ahead and every confidence that we will achieve the goals we have collectively set for ourselves.

# **EXHIBIT**

## **BB**

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**From:** Don Richardson <don@trebnet.com>  
**Sent:** Friday, March 25, 2011 12:35 PM  
**To:** hfuller@trebnet.com; ettorec@idirect.com; dpatterson@kingsburycommercial.com; homes@karareed.ca; mrisi@trebnet.com; esage@sagerealestate.ca; chris@slightham.com; tim@remaxultimate.com  
**Cc:** johnd@trebnet.com; sgreensword@trebnet.com; don@trebnet.com  
**Subject:** VOW Task Force Meeting - Thursday, March 31, 2011  
**Attachments:** image001.jpg; VOW Catchall.pdf; Agenda\_March\_31\_2011.doc; MANDATE.doc; NAR\_VOW\_Policy\_2009.pdf; NAR MLS Rules Doc.doc; NAR revised Definition of Participation.pdf; NAR VOW\_FAQs.pdf

Thank you on behalf of Task Force Chair Heather Fuller for agreeing to be part of TREB's VOW Task Force.

Attached is the agenda for the first meeting which is to take place at 10:00 a.m. on Thursday, March 31<sup>st</sup> at the TREB offices.

**Don Richardson**  
Chief Executive Officer

**Toronto Real Estate Board**  
Serving Greater Toronto REALTORS®  
[www.TorontoRealEstateBoard.com](http://www.TorontoRealEstateBoard.com)

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## 2010/2011 VOW Task Force

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*Toronto Real Estate Board*

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## Agenda

VOW Task Force Meeting  
Thursday, March 31, 2011  
TREB Offices, Room A, 10:00 a.m.

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1. Call to Order Chair

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2. Chair's Remarks Chair

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3. Mandate Attachment

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4. Description and History of VOWs John Di Michele  
(Attachment)

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5. Proposal re: Task Force Process

Chair – Discussion

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6. Next Meeting

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7. Adjournment

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*Toronto Real Estate Board*

**MANDATE - VOW TASK FORCE**

To investigate and recommend to the Board of Directors, the feasibility of TREB adopting a VOW Policy.

**Policy governing use of MLS data in connection with  
Internet brokerage services offered by MLS Participants  
("Virtual Office Websites")**

**I. Definitions and Scope of Policy.**

1. For purposes of this Policy, the term Virtual Office Website ("VOW") refers to a Participant's Internet website, or a feature of a Participant's Internet website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS data, subject to the Participant's oversight, supervision, and accountability.

a. A Participant may designate an Affiliated VOW Partner ("AVP") to operate a VOW on behalf of the Participant, subject to the Participant's supervision and accountability and the terms of this Policy.

b. A non-principal broker or sales licensee, affiliated with a Participant, may, with the Participant's consent, operate a VOW or have a VOW operated on its behalf by an AVP. Such a VOW is subject to the Participant's supervision and accountability and the terms of this Policy.

c. Each use of the term "Participant" in this Policy shall also include a Participant's non-principal brokers and sales licensees (with the exception of references in this section to the "Participant's consent" and the "Participant's supervision and accountability," and in section III.10.a, below, to the "Participant acknowledges"). Each reference to "VOW" or "VOWs" herein refers to all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an AVP.

2. The right to display listings in response to consumer searches is limited to display of MLS data supplied by the MLS(s) in which the Participant has participatory rights. This does not preclude a firm with offices participating in different MLSs from operating a master website with links to such offices' VOWs.

3. Participants' Internet websites, including those operated for Participants by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange ("IDX") function).

4. The display of listing information on a VOW does not require separate permission from the Participant whose listings will be available on the VOW.

5. Except as permitted in Sections III and IV, MLSs may not adopt rules or regulations that conflict with this Policy or that otherwise restrict the operation of VOWs by Participants.

**II. Policies Applicable to Participants' VOWs.**

1. A Participant may provide brokerage services via a VOW that include making MLS active

listing data available, but only to consumers with whom the Participant has first established a lawful consumer-broker relationship, including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter "Registrants"). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).

2. A Participant's VOW must obtain the identity of each Registrant and obtain each Registrant's agreement to Terms of Use of the VOW, as follows:

- a. A Registrant must provide his or her name and a valid email address. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in subsection c below). The Registrant may be permitted to access the VOW only after the Participant has verified that the email address provided is valid and that Registrant received the Terms of Use confirmation.
- b. The Registrant must supply a user name and a password, the combination of which must be different from those of all other Registrants on the VOW, before being permitted to search and retrieve information from the MLS database via the VOW. The user name and password may be established by the Registrant or may be supplied by the Participant, at the option of the Participant. An email address may be associated with only one user name and password. The Registrant's password and access must expire on a date certain but may be renewed. The Participant must at all times maintain a record of the name and email address supplied by the Registrant, and the username and current password of each Registrant. Such records must be kept for not less than 180 days after the expiration of the validity of the Registrant's password. If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of the data or a violation of MLS rules related to use by one or more Registrants, the Participant shall, upon request, provide to the MLS a copy of the record of the name, email address, user name, current password, and audit trail, if required, of any Registrant identified by the MLS to be suspected of involvement in the violation.
- c. The Registrant must be required affirmatively to express agreement to a "Terms of Use" provision that requires the Registrant to open and review an agreement that provides at least the following:
  - i. That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;
  - ii. That all data obtained from the VOW is intended only for the Registrant's personal, non-commercial use;
  - iii. That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;
  - iv. That the Registrant will not copy, redistribute, or retransmit any of the data or

information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property;

- v. That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

After the Registrant has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant.

The Terms of Use agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW.

- d. An agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.
3. A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about properties displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.
4. A Participant's VOW must protect the MLS data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping" or other unauthorized accessing, reproduction, or use of the MLS database.
5. A Participant's VOW must comply with the following additional requirements:
- a. No VOW shall display listing or property address of any seller who have affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.
  - b. A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that conforms to the form attached to this Policy as Appendix A. The Participant shall retain such forms for at least one year from the date they are signed.

c. With respect to any VOW that:

- (i) allows third-parties to write comments or reviews about particular listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular listings, or
- (ii) displays an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing,

the VOW shall disable or discontinue either or both of those features as to the seller's listing at the request of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Except for the foregoing and subject to subparagraph (d), a Participant's VOW may communicate the Participant's professional judgment concerning any listing. Nothing shall prevent a VOW from notifying its customers that a particular feature has been disabled "at the request of the seller."

d. A VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments about the accuracy of any data or information that is added by or on behalf of the VOW operator beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The VOW operator shall correct or remove any false data or information relating to a specific property upon receipt of a communication from the listing broker or listing agent for that property explaining why the data or information is false. However, the VOW operator shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

e. Each VOW shall refresh MLS data available on the VOW not less frequently than every 3 days.

f. Except as provided elsewhere in this Policy or in MLS rules and regulations, no portion of the MLS database may be distributed, provided, or made accessible to any person or entity.

g. Every VOW must display a privacy Policy that informs Registrants of the ways in which information obtained from them will be used.

h. A VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, or whether the listing broker is a Realtor®.

6. A Participant who intends to operate a VOW must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with this Policy and any other applicable MLS rules or policies.

7. A Participant may operate more than one VOW itself or through an AVP. A Participant who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

### **III. Policies Applicable to Multiple Listing Services.**

1. A Multiple Listing Service shall permit MLS Participants to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of state law and this Policy.
2. An MLS shall, if requested by a Participant, provide basic “downloading” of all MLS non-confidential listing data, including without limitation address fields, listings types, photographs, and links to virtual tours. Confidential data includes only that which Participants are prohibited from providing to customers orally and by all other delivery mechanisms. They include fields containing the information described in paragraph IV(1) of this Policy, provided that sold data (i.e., listing information relating to properties that have sold) shall be deemed confidential and withheld from a download only if the actual sales prices of completed transactions are not accessible from public records. For purposes of this Policy, “downloading” means electronic transmission of data from MLS servers to a Participant’s or AVP’s server on a persistent basis. An MLS may also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.
3. This Policy does not require an MLS to establish publicly accessible sites displaying Participants’ listings.
4. If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 above except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet.
5. An MLS may pass on to those Participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its “downloading” capacity to enable such Participants to operate VOWs.
6. An MLS may require that Participants (1) utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by the MLS, and/or (2) maintain an audit trail of Registrants’ activity on the VOW and make that information available to the MLS if the MLS has reason to believe that any VOW has caused or permitted a breach in the security of the data or a violation of applicable MLS rules.
7. An MLS may not prohibit or regulate display of advertising or the identification of entities on VOWs (“branding” or “co-branding”), except to prohibit deceptive or misleading advertising or co-branding. For purposes of this provision, co-branding will be presumed not to be deceptive or misleading if the Participant’s logo and contact information (or that of at least one Participant, in the case of a VOW established and operated by or for more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.
8. Except as provided in this Policy, an MLS may not prohibit Participants from enhancing their VOWs by providing information obtained from sources other than the MLS, additional

technological services (such as mapping functionality), or information derived from non-confidential MLS data (such as an estimated monthly payment derived from the listed price), or regulate the use or display of such information or technological services on any VOW.

9. Except as provided in generally applicable rules or policies (such as the Realtor® Code of Ethics), an MLS may not restrict the format of data display on a VOW or regulate the appearance of VOWs.

10. Subject to the provisions below, an MLS shall make MLS listing data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Participant. An MLS shall make MLS listing data available to an AVP under the same terms and conditions as those applicable to Participants. No AVP has independent participation rights in the MLS by virtue of its right to receive data on behalf of a Participant, or the right to use MLS data except in connection with operation of a VOW for a Participant. AVP access to MLS data is derivative of the rights of the Participant on whose behalf the AVP is downloading data.

a. A Participant, non-principal broker or sales licensee, or AVP may establish the AVP's right to receive and use MLS data by providing to the MLS a writing in which the Participant acknowledges its or its non-principal broker's or sales licensee's selection of the AVP to operate a VOW on its behalf.

b. An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a Participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in (g), below), except to the extent that the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a Participant.

c. An MLS may not place data security requirements or restrictions on use of MLS listing data by an AVP that are not also imposed on Participants.

d. An MLS must permit an AVP to download listing information in the same manner (e.g., via a RETS feed or via an FTP download), at the same times and with the same frequency that the MLS permits Participants to download listing information.

e. An MLS may not refuse to deal directly with an AVP in order to resolve technical problems with the data feed. However, the MLS may require that the Participant on whose behalf the AVP is operating the VOW participate in such communications if the MLS reasonably believes that the involvement of the Participant would be helpful in order to resolve the problem.

f. An MLS may not condition an AVP's access to a data feed on the financial terms on which the AVP provides the site for the Participant.

g. An MLS may require Participants and AVPs to execute license or similar agreements sufficient to ensure that Participants and AVPs understand and agree that data provided by the MLS may be used only to establish and operate a VOW on behalf of the Participant and not for any other purpose.

h. An MLS may not (i) prohibit an AVP from operating VOWs on behalf of more than one Participant, and several Participants may designate an AVP to operate a single VOW for them collectively, (ii) limit the number of entities that Participants may designate as AVPs for purposes of operating VOWs, or (iii) prohibit Participants from designating particular entities as AVPs except that, if an AVP's access has been suspended or terminated by an MLS, that MLS may prevent an entity from being designated an AVP by another Participant during the period of the AVP's suspension or termination.

i. Except as stated below, an MLS may not suspend or terminate an AVP's access to data (a) for reasons other than those that would allow an MLS to suspend or terminate a Participant's access to data, or (b) without giving the AVP and the associated Participant(s) prior notice and the process set forth in the applicable provisions of the MLS rules for suspension or termination of a Participant's access. Notwithstanding the foregoing, an MLS may immediately terminate an AVP's access to data (a) if the AVP is no longer designated to provide VOW services to any Participant, (b) if the Participant for whom the AVP operates a VOW ceases to maintain its status with the MLS, (c) if the AVP has downloaded data in a manner not authorized for Participants and that hinders the ability of Participants to download data, or (d) if the associated Participant or AVP has failed to make required payments to the MLS in accordance with the MLS's generally applicable payment policies and practices.

11. An MLS may not prohibit, restrict, or impede a Participant from referring Registrants to any person or from obtaining a fee for such referral.

#### **IV. Requirements That MLSs May Impose on the Operation of VOWs and Participants.**

1. An MLS may impose any, all, or none of the following requirements on VOWs but may impose them only to the extent that equivalent requirements are imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms:

a. A Participant's VOW may not make available for search by or display to Registrants the following data intended exclusively for other MLS Participants and their affiliated licensees:

- i. Expired, withdrawn, or pending listings.
- ii. Sold data unless the actual sales price of completed transactions is accessible from public records.
- iii. The compensation offered to other MLS Participants.
- iv. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- v. The seller(s) and occupant(s) name(s), phone number(s) and email address(es), where available.

- vi. Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.
  - b. The content of MLS data that is displayed on a VOW may not be changed from the content as it is provided in the MLS. MLS data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS data display on VOWs or display of fewer than all of the listings or fewer authorized data fields.
  - c. There shall be a notice on all MLS data displayed indicating that the data is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may also include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.
  - d. Any listing displayed on a VOW shall identify the name of the listing firm in a readily visible color, and reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.
  - e. The number of current or, if permitted, sold listings that Registrants may view, retrieve, or download on or from a VOW in response to an inquiry may be limited to a reasonable number. Such number shall be determined by the MLS, but in no event may the limit be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.
  - f. Any listing displayed on a VOW shall identify the name of the listing agent.
2. An MLS may also impose the following other requirements on the operation of VOWs:
  - a. Participants displaying other brokers' listings obtained from other sources, e.g., other MLSs, non-participating brokers, etc. shall display the source from which each such listing was obtained.
  - b. A maximum period, no shorter than 90 days and determined by the MLS, during which Registrants' passwords are valid, after which such passwords must be changed or reconfirmed.
3. An MLS may not prohibit Participants from downloading and displaying or framing listings obtained from other sources, e.g., other MLSs or from brokers not participating in that MLS, etc., but may require either that (i) such information be searched separately from listings obtained from other sources, including other MLSs, or (ii) if such other sources are searched in conjunction with searches of the listings available on the VOW, require that any display of listings from other sources identify such other source.

## EFFECTIVE DATE:

MLSs have until not later than [90 DAYS AFTER ENTRY OF THE FINAL JUDGMENT] to adopt rules implementing the foregoing policies and to comply with the provisions of section III above, and (2) Participants shall have until not later than 180 days following adoption and implementation of rules by an MLS in which they participate to cause their VOW to comply with such rules.

See Appendix A for Seller Opt-Out Form

**Appendix A  
Seller Opt-Out Form**

1.[Check one]

a. [Check here] I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet; or

b. [Check here] I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

\_\_\_\_\_  
initials of seller

**Model Virtual Office Website (VOW) Rules for MLSs**

**Note: Adoption of Sections 19.1 through 19.14 is required.**

**Section 19.1 (a):** A Virtual Office Website (“VOW”) is a Participant’s Internet website, or a feature of a Participant’s website, through which the Participant is capable of providing real estate brokerage services to consumers with whom the Participant has first established a broker-consumer relationship (as defined by state law) where the consumer has the opportunity to search MLS Listing Information, subject to the Participant’s oversight, supervision, and accountability. A non-principal broker or sales licensee affiliated with a Participant may, with his or her Participant’s consent, operate a VOW. Any VOW of a non-principal broker or sales licensee is subject to the Participant’s oversight, supervision, and accountability.

**(b)** As used in Section 19 of these Rules, the term “Participant” includes a Participant’s affiliated non-principal brokers and sales licensees – except when the term is used in the phrases “Participant’s consent” and “Participant’s oversight, supervision, and accountability”. References to “VOW” and “VOWs” include all VOWs, whether operated by a Participant, by a non-principal broker or sales licensee, or by an Affiliated VOW Partner (“AVP”) on behalf of a Participant.

**(c)** “Affiliated VOW Partner” (“AVP”) refers to an entity or person designated by a Participant to operate a VOW on behalf of the Participant, subject to the Participant’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the MLS by virtue of its right to receive information on behalf of a Participant. No AVP has the right to use MLS Listing Information except in connection with operation of a VOW on behalf of one or more Participants. Access by an AVP to MLS Listing Information is derivative of the rights of the Participant on whose behalf the AVP operates a VOW.

**(d)** As used in Section 19 of these Rules, the term “MLS Listing Information” refers to active listing information and sold data provided by Participants to the MLS and aggregated and distributed by the MLS to Participants.

**Section 19.2 (a):** The right of a Participant’s VOW to display MLS Listing Information is limited to that supplied by the MLS(s) in which the Participant has participatory rights. However, a Participant with offices participating in different MLSs may operate a master website with links to the VOWs of the other offices.

**(b)** Subject to the provisions of the VOW Policy and these Rules, a Participant’s VOW, including any VOW operated on behalf of a Participant by an AVP, may provide other features, information, or functions, e.g. Internet Data Exchange (“IDX”).

**(c)** Except as otherwise provided in the VOW Policy or in these Rules, a Participant need not obtain separate permission from other MLS Participants whose listings will be displayed on the Participant’s VOW.

**Section 19.3 (a):** Before permitting any consumer to search for or retrieve any MLS Listing Information on his or her VOW, the Participant must take each of the following steps:

**(i)** The Participant must first establish with that consumer a lawful broker-consumer relationship (as defined by state law), including completion of all actions required by state law in connection with providing real estate brokerage services to clients and customers (hereinafter “Registrants”). Such actions shall include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

**(ii)** The Participant must obtain the name of, and a valid email address for, each Registrant. The Participant must send an email to the address provided by the Registrant confirming that the Registrant has agreed to the Terms of Use (described in

subsection (d) below). The Participant must verify that the email address provided by the Registrant is valid and that the Registrant has agreed to the Terms of Use.

**(iii)** The Participant must require each Registrant to have a user name and a password, the combination of which is different from those of all other Registrants on the VOW. The Participant may, at his or her option, supply the user name and password or may allow the Registrant to establish its user name and password. The Participant must also assure that any email address is associated with only one user name and password.

**(b)** The Participant must assure that each Registrant's password expires on a date certain but may provide for renewal of the password. The Participant must at all times maintain a record of the name, email address, user name, and current password of each Registrant. The Participant must keep such records for not less than 180 days after the expiration of the validity of the Registrant's password.

**(c)** If the MLS has reason to believe that a Participant's VOW has caused or permitted a breach in the security of MLS Listing Information or a violation of MLS rules, the Participant shall, upon request of the MLS, provide the name, email address, user name, and current password, of any Registrant suspected of involvement in the breach or violation. The Participant shall also, if requested by the MLS, provide an audit trail of activity by any such Registrant.

**(d)** The Participant shall require each Registrant to review, and affirmatively to express agreement (by mouse click or otherwise) to, a "Terms of Use" provision that provides at least the following:

**(i)** That the Registrant acknowledges entering into a lawful consumer-broker relationship with the Participant;

**(ii)** That all information obtained by the Registrant from the VOW is intended only for the Registrant's personal, non-commercial use;

(iii) That the Registrant has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW;

(iv) That the Registrant will not copy, redistribute, or retransmit any of the information provided except in connection with the Registrant's consideration of the purchase or sale of an individual property;

(v) That the Registrant acknowledges the MLS's ownership of, and the validity of the MLS's copyright in, the MLS database.

(e) The Terms of Use Agreement may not impose a financial obligation on the Registrant or create any representation agreement between the Registrant and the Participant. Any agreement entered into at any time between the Participant and Registrant imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

(f) The Terms of Use Agreement shall also expressly authorize the MLS, and other MLS Participants or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS rules and monitoring display of Participants' listings by the VOW. The Agreement may also include such other provisions as may be agreed to between the Participant and the Registrant.

**Section 19.4:** A Participant's VOW must prominently display an e-mail address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a consumer can contact the Participant to ask questions, or get more information, about any property displayed on the VOW. The Participant, or a non-principal broker or sales licensee licensed with the Participant, must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW.

**Section 19.5:** A Participant's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", and other unauthorized use of MLS Listing Information. A Participant's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by the MLS.

(NOTE: MLSs may adopt rules requiring Participants to employ specific security measures, provided that any security measure required does not impose obligations greater than those employed by the MLS.)

**Section 19.6 (a):** A Participant's VOW shall not display listings or property addresses of any seller who has affirmatively directed the listing broker to withhold the seller's listing or property address from display on the Internet. The listing broker shall communicate to the MLS that the seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as email, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

**(b)** A Participant who lists a property for a seller who has elected not to have the property listing or the property address displayed on the Internet shall cause the seller to execute a document that includes the following (or a substantially similar) provision:

**Seller Opt-Out Form**

1. Please check either Option a or Option b

a.  I have advised my broker or sales agent that I do not want the listed property to be displayed on the Internet.

OR

b.  I have advised my broker or sales agent that I do not want the address of the listed property to be displayed on the Internet.

2. I understand and acknowledge that, if I have selected option a, consumers who conduct searches for listings on the Internet will not see information about the listed property in response to their search.

\_\_\_\_\_  
initials of seller

**(c)** The Participant shall retain such forms for at least one year from the date they are signed, or one year from the date the listing goes off the market, whichever is greater.

**Section 19.7 (a):** Subject to subsection (b), a Participant's VOW may allow third-parties (i) to write comments or reviews about particular listings or display a hyperlink to such comments or reviews in immediate conjunction with particular listings, or (ii) display an automated estimate of the market value of the listing (or hyperlink to such estimate) in immediate conjunction with the listing

(b) Notwithstanding the foregoing, at the request of a seller the Participant shall disable or discontinue either or both of those features described in subsection (a) as to any listing of the seller. The listing broker or agent shall communicate to the MLS that the seller has elected to have one or both of these features disabled or discontinued on all Participants' websites. Subject to the foregoing and to Section 19.8, a Participant's VOW may communicate the Participant's professional judgment concerning any listing. A Participant's VOW may notify its customers that a particular feature has been disabled "at the request of the seller."

**Section 19.8:** A Participant's VOW shall maintain a means (e.g., e-mail address, telephone number) to receive comments from the listing broker about the accuracy of any information that is added by or on behalf of the Participant beyond that supplied by the MLS and that relates to a specific property displayed on the VOW. The Participant shall correct or remove any false information relating to a specific property within 48 hours following receipt of a communication from the listing broker explaining why the

data or information is false. The Participant shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

**Section 19.9:** A Participant shall cause the MLS Listing Information available on its VOW to be refreshed at least once every three (3) days.

**Section 19.10:** Except as provided in these rules, the NATIONAL ASSOCIATION OF REALTORS® VOW Policy, or any other applicable MLS rules or policies, no Participant shall distribute, provide, or make accessible any portion of the MLS Listing Information to any person or entity.

**Section 19.11:** A Participant's VOW must display the Participant's privacy policy informing Registrants of all of the ways in which information that they provide may be used.

**Section 19.12:** A Participant's VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, and whether the listing broker is a REALTOR®.

**Section 19.13:** A Participant who intends to operate a VOW to display MLS Listing Information must notify the MLS of its intention to establish a VOW and must make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with these Rules, the VOW Policy, and any other applicable MLS rules or policies.

**Section 19.14:** A Participant may operate more than one VOW himself or herself or through an AVP. A Participant who operates his or her own VOW may contract with an AVP to have the AVP operate other VOWs on his or her behalf. However, any VOW

operated on behalf of a Participant by an AVP is subject to the supervision and accountability of the Participant.

**Note: Adoption of Sections 19.15 –19.19 is at the discretion of the MLS. However, if any of the following sections are adopted, an equivalent requirement must be imposed on Participants' use of MLS Listing Information in providing brokerage service through all other delivery mechanisms.**

**Section 19.15:** A Participant's VOW may not make available for search by, or display to, Registrants any of the following information:

- a. Expired, withdrawn, or pending ("under contract") listings.
- b. The compensation offered to other MLS Participants.
- c. The type of listing agreement, i.e., exclusive right to sell or exclusive agency.
- d. The seller's and occupant's name(s), phone number(s), or e-mail address(es).
- e. Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property.
- f. Sold information

**(Important Note:** If sold information is publicly accessible in the jurisdiction of the MLS, Subsection 19.15 (f) must be omitted.)

**Section 19.16:** A Participant shall not change the content of any MLS Listing Information that is displayed on a VOW from the content as it is provided in the MLS. The Participant may, however, augment MLS Listing Information with additional information not otherwise prohibited by these Rules or by other applicable MLS rules or policies as long as the source of such other information is clearly identified. This rule does not restrict the format of display of MLS Listing Information on VOWs or the

display on VOWs of fewer than all of the listings or fewer than all of the authorized information fields

**Section 19.17:** A Participant shall cause to be placed on his or her VOW a notice indicating that the MLS Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by the MLS. A Participant's VOW may include other appropriate disclaimers necessary to protect the Participant and/or the MLS from liability.

**Section 19.18:** A Participant shall cause any listing that is displayed on his or her VOW to identify the name of the listing firm and the listing broker or agent in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the median typeface used in the display of listing data.

**Section 19.19:** A Participant shall limit the number of listings that a Registrant may view, retrieve, or download to not more than \_\_\_ current listings and not more than \_\_\_ sold listings in response to any inquiry.

(Note: The number of listings that may be viewed, retrieved, or downloaded should be specified by the MLS in the context of this rule but may not be fewer than 100 listings or 5% of the listings in the MLS, whichever is less.)

**Note: Adoption of Sections 19.20–19.25 is at the discretion of the MLS. It is not required that equivalent requirements be established related to other delivery mechanisms.**

**Section 19.20:** A Participant shall require that Registrants' passwords be reconfirmed or changed every \_\_\_ days.

(Note: The number of days passwords remain valid before being changed or reconfirmed must be specified by the MLS in the context of this rule and cannot be

shorter than 90 days. Participants may, at their option, require Registrants to reconfirm or change passwords more frequently.)

**Section 19.21:** A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf. However, a Participant may not display on any such VOW deceptive or misleading advertising or co-branding. For purposes of this Section, co-branding will be presumed not to be deceptive or misleading if the Participant's logo and contact information (or that of at least one Participant, in the case of a VOW established and operated on behalf of more than one Participant) is displayed in immediate conjunction with that of every other party, and the logo and contact information of all Participants displayed on the VOW is as large as the logo of the AVP and larger than that of any third party.

**Section 19.22:** A Participant shall cause any listing displayed on his or her VOW that is obtained from other sources, including from another MLS or from a broker not participating in the MLS, to identify the source of the listing.

**Section 19.23:** A Participant shall cause any listing displayed on his or her VOW obtained from other sources, including from another MLS or from a broker not participating in the MLS, to be searched separately from listings in the MLS.

**Section 19.24:** Participants and the AVPs operating VOWs on their behalf must execute the license agreement required by the MLS.

**Section 19.25:** Where a seller affirmatively directs their listing broker to withhold either the seller's listing or the address of the seller's listing from display on the Internet, a copy of the seller's affirmative direction shall be provided to the MLS within 48 hours.

(11.03.08)

### Revised Definition of MLS Participation For Inclusion in Association and MLS Bylaws

**Section 3—Participation:** Any REALTOR® of this or any other Board who is a principal, partner, corporate officer, or branch office manager acting on behalf of a principal, without further qualification, except as otherwise stipulated in these bylaws, shall be eligible to participate in Multiple Listing upon agreeing in writing to conform to the rules and regulations thereof and to pay the costs incidental thereto.\* However, under no circumstances is any individual or firm, regardless of membership status, entitled to Multiple Listing Service “membership” or “participation” unless they hold a current, valid real estate broker’s license and ~~are capable of offering and accepting offer or accept compensation~~ to and from other Participants or are licensed or certified by an appropriate state regulatory agency to engage in the appraisal of real property.\*\* Use of information developed by or published by a Board Multiple Listing Service is strictly limited to the activities authorized under a Participant’s licensure(s) or certification and unauthorized uses are prohibited. Further, none of the foregoing is intended to convey “participation” or “membership” or any right of access to information developed by or published by a Board Multiple Listing Service where access to such information is prohibited by law. (Amended 11/08)

Note: Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. “Actively” means on a continual and on-going basis during the operation of the Participant's real estate business. The “actively” requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.

The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website (“VOW”) (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant “actively endeavors during the operation of its real estate business” to “offer or accept cooperation and compensation” only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.

The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants. (Adopted 11/08)

**FAQs on the VOW Policy and the Model VOW Rules****Updated August, 2009****Timeline / Implementation**

Q 1.1 What does our MLS need to do – and when – to comply with the new VOW policy?

MLSs need to adopt the new VOW policy, model rules implementing that policy and the amendment to Section 3 or 4 of the model bylaws, which defines MLS “Participation”. Adoption must occur in the 90 day period beginning November 18, 2008, when the settlement of the case brought by the Department of Justice was made final by the court.

Q 1.2 Will NAR review our VOW-specific MLS rules as part of the compliance process?

No. Once Associations of REALTORS® or their MLSs adopt the model VOW rules they will submit a completed “MLS VOW Certification of Compliance” to NAR. Except as to options specifically described in the Model VOW rules, MLSs may not make modifications to those rules, so, generally, no individual review of an MLS’s VOW rules will be necessary.

Q 1.3 If our MLS never adopted VOW-specific rules, must we now adopt the model VOW rules?

Yes. Every MLS owned or operated by one or more association of REALTORS® must adopt the revised VOW policy, model VOW rules, and amendment to the definition of MLS Participation.

Q 1.4 Do we have to adopt both the model VOW rules and the VOW policy itself?

Yes. Every MLS owned or operated by one or more associations of REALTORS® must adopt both the model VOW rules and the VOW policy.

**General**

Q 2.1 How is “listing information” defined?

As defined in the Final Judgment, “‘Listing Information’ means all records of residential properties (and any information related to those properties) stored or maintained by a multiple listing service”.

Q 2.2 Does the VOW policy impose a cap on the fees for VOW data feeds?

No, except that fees charged may not exceed the reasonably estimated costs incurred in adding or enhancing its downloading capacity to enable Participants, subscribers or Affiliated VOW Partners to operate VOWs.

Q 2.3 Will NAR provide software that automatically monitors participants’ VOWS for compliance with the VOW rules?

No, NAR has not developed such software.

**Participants and Subscribers - Rights and Obligations**

Q 3.1 Can MLS Participants "opt-out" of having their listings shown on the VOW sites of other Participants?

No. The policy does not provide for broker opt-outs.

Q 3.2 Our state regulators have taken the position that Internet display of listing information is advertising, and that listing brokers' consent to display their listings on other brokers' sites is required. How does this impact the "no opt-out" aspect of the VOW policy?

To the extent that state law or regulation requires that MLS Participants have the right to "opt out" of having their listings shown on the VOW sites of other Participants, those requirements of law or regulation take precedence over NAR policy.

Q 3.3 Can sales-associates and non-principal brokers have their own VOWs?

Yes, subject to the Participant's consent, supervision and accountability.

Q 3.4 Can the MLS limit the right to operate VOWs to MLS Participants only (and not permit subscribers to have their own VOWs)?

No. Whether or not subscribers (sales-associates and non-principal brokers) may have their own VOWs is left to the sole discretion of their principal broker.

Q 3.5 Our MLS participates in a reciprocal data-sharing agreement with other MLSs. Under the agreement, participants in the other MLSs receive the same information our participants receive, and the offers of cooperation and compensation are extended to all Participants of all of the MLSs. Can we limit the right to use the listing information our MLS generates to the VOWs of our Participants and subscribers? Must we include listings from the other MLSs in the VOW feed we provide to Participants and subscribers to our MLS?

Participants and subscribers are entitled to display on their VOWs all of the listings they are eligible to receive pursuant to their participation in the MLS, including any listings that are available to them as a result of a reciprocal data-sharing agreement with another MLS.

Q 3.6 Can I exclude listings from display on my VOW where the listing broker offers less cooperative compensation than I'm willing to work for?

Yes. VOWs can exclude listings from display based on objective criteria including, but not limited to, geography, list price, type of property, cooperative compensation offered by the listing broker, or whether the listing broker is a REALTOR®.

Q 3.7 I belong to a large regional MLS. I am not familiar with, and don't market or sell in some areas the MLS services. Can I exclude listings in those areas from display on my VOW?

Yes. As noted above, geography is an objective criterion for categorizing listings, and for excluding them from display on VOWs.

Q 3.8 I'm a broker in Illinois. A Participant in an MLS in Arizona gave me permission to display her Arizona listings on my website. Can I do this under the VOW policy?

If you are a Participant in the Arizona MLS, you have the same right to display listings in the Arizona MLS as any other Participant. If you are not a Participant in the Arizona MLS, then the VOW policy doesn't apply to your use of listings from that MLS because you are not entitled to use those listings in any event. The Arizona broker may authorize you to display *her* listings on your VOW, but she must supply them to you directly and you cannot simply take those listings from the Arizona MLS unless that MLS expressly permits you to do that.

- Q 3.9 If a seller withholds consent for the listing of her property to be published in the MLS and the Participant takes an "office exclusive" listing, can the Participant display information about the seller's property on the Participant's VOW?

Yes.

- Q 3.10 Section 19.21 of the model VOW rules provides, in part: A Participant may display advertising and the identification of other entities ("co-branding") on any VOW the Participant operates or that is operated on his or her behalf". If an MLS does not adopt Section 19.21, does that mean VOW operators may not advertise or "co-brand" on their VOWs?

No. Section III.7 of the VOW Policy precludes an MLS from prohibiting or regulating advertising on a VOW except to prohibit deceptive or misleading advertising or co-branding. The first sentence of Section 19.21 simply restates this right of a Participant operating a VOW to display advertising or co-branding, but Section III.7 of the VOW Policy gives Participants that right even absent this language. The balance of the text of Section 19.21 is the heart of this rule. It establishes the MLS's authority to discipline a Participant who advertises or co-brands in a deceptive or misleading manner, and provides a presumption "standard" for Participants to follow to insure that their advertising or co-branding will not be deemed deceptive or misleading. (added 1.27.09)

### Sellers' Rights

- Q 4.1 Can sellers "opt-out" of display of their property listings on VOWs?

Sellers may "opt-out" of having their property listing displayed on any Internet sites or, alternatively sellers can "opt-out" of having their property address displayed on any Internet sites. Sellers may not opt out of having their listings shown on some, but not all, VOW sites. This means that if a seller opts out of having his listing or property address displayed on VOWs, the listing (or property address) cannot be displayed on IDX sites, third-party aggregators' sites or elsewhere on the Internet. (revised 12.24.08)

- Q 4.2 Can sellers direct that their listings appear on third-party aggregators' websites (e.g. Realtor.com) but not on other Participants' VOWs?

No. As noted in Question 4.1, if sellers withhold consent for display of their property or display of their property address on the Internet, display on VOW, IDX and on third-party aggregators' sites is likewise precluded. (revised 12.24.08)

- Q 4.3 Can a seller require that any VOW displaying their property not show an automated valuation of the property in connection with the listing? What about blogging, that is, showing comments of third parties about the property in connection with the display of the property listing on VOW?

Sellers can direct that automated valuation and/or blogging features of VOWs be disabled or discontinued with respect to their properties.

- Q 4.4 If a seller wants a VOW to turn off automated valuation or blogging of their property, how do they make the VOW do that?

Sellers who wish to have automated valuation and/or blogging features of VOWs disabled or discontinued with respect to their properties should communicate that request to their listing broker, who will in turn transmit that request to the MLS.

- Q 4.5 Can the listing input process include “yes/no” “checkboxes” regarding the seller’s right to withhold consent for AVM or blogging on his listing shown on a VOW (e.g. “AVM - yes/no”, “Blogging - yes/no”)?

Yes. Also see Question 11.1 detailing the RETS Advisory Board’s recommendations regarding implementation. (revised 12.24.08)

- Q 4.6 Can MLSs adopt rules to ensure sellers’ requests that automated valuation features or blogging on VOWs be turned off are met on a timely basis?

Yes.

- Q 4.7 Can sellers require that false information about their property be deleted from VOWs? How?

If a seller believes that information appearing on a VOW about his property is false, he should share that concern with the listing broker who, in turn, will bring the false information to the attention of the VOW operator, with an explanation as to why the information is false. The VOW operator will then have an obligation to remove any false information.

- Q 4.8 If a seller won’t permit information about his property to be displayed on other Participants’ VOWs but wants it marketed on the listing firm’s website, can a Participant accept the listing? Can it be submitted for inclusion in the MLS?

If a seller withholds consent for Internet display on all sites except the listing broker’s, the listing broker may take the listing but it would not be eligible for inclusion in MLS.

- Q 4.9 May a seller prohibit display of her property address, AVMs, and blogging related to her property on VOWs while permitting those functionalities on non-VOW Internet advertising?

With respect to display of the seller’s property address, VOW model rule Section 19.6 bars display of the seller’s property or property address (or both) where the seller has “affirmatively directed the listing broker to withhold the listing or property address from display on the Internet”. “Display on the Internet” includes “non-VOW Internet advertising,” such as IDX display and third-party aggregator sites. This is reinforced in the wording of the “Seller Opt-Out Form”.

With respect to AVMs and blogging features, Section 19.7 (b) of the model VOW rules deals with sellers who have “elected to have on or both of these features disabled or discontinued on Participants’ websites”. While not as broad as the prohibition established in Section 19.6, it applies to all websites of participants including their IDX sites. (added 1.27.09)

**Sold Information**

Q 5.1 How is “sold information” defined?

The VOW policy defines “sold information” as “listing information relating to properties that have sold”.

Q 5.2 Can MLSs limit Participants’ display or use of sold information on VOWs?

MLSs may prohibit display of sold information on VOWs only if the actual sale prices of completed transactions are not accessible from public records.

Q 5.3 If we prohibit display of sold information on VOWs, must we also prohibit giving sold information to consumers in Participants’ physical offices?

Yes.

Q 5.4 Is sold information synonymous with “property history” or “listing history”.

No.

Q 5.5 Do the rules regarding distribution of “sold” information apply to data acquired by the MLS from third-party sources (other than participants)?

No. If the MLS licenses data from third parties for access only by Participants and subscribers, Participants would not be permitted to provide access to those third-party databases to consumers registering on their VOWs. Participants may independently secure from such third parties their own licenses to display the information on their VOW.

Q 5.6 In our state, sale prices are not specifically matters of public record but can be computed multiplying the conveyance tax by the tax rate per thousand. Would this be considered publicly accessible sold information under the VOW policy and rules?

If that information is publicly accessible, and if the calculation accurately reflects the actual sales price of a completed transaction, then the information described above could be fairly characterized as “sold information”.

Q 5.7 In our state, sold information is not publicly accessible. We provide participants with sold information for their “back-office” systems, but participants may not distribute that information to clients and customers. Must we permit display of sold information on participants’ VOWs?

No.

Q 5.7.1 Must an MLS collect and make available to participants “sold” data?

No. An MLS may, but is not required to, collect sold data and provide it to participants. Any sold data provided must be provided on equal terms to all Participants, whether directly or through a vendor, irrespective of the manner in which Participants operate their businesses. If sold data is provided in electronic form it must be made available in that format for use by all participants. MLSs may, however, restrict the use of sold data on VOWs if it is not publicly available (see Model VOW Rule 19.5). (added 8.06.09)

- Q 5.8 Where sold data is not “publicly accessible” and the MLS prohibits sold data from being displayed/accessible on VOWs under optional Rule 19.15(f), the rules require an “equivalent requirement must be imposed on Participant’s use of MLS Listing Information in providing brokerage service through all other mechanisms.” What requirement must be imposed on use of sold data in the “bricks and mortar” context? Does that mean that a broker may not use and disclose sold listings in connection CMA’s or other advice to a client or customer – either in their offices or via their VOWs?

If the MLS chooses to prohibit display of sold data on the VOW (or, for that matter, expired, withdrawn or pending listing data), Participants may still provide clients and customers with a limited number of such listings in connection with providing brokerage services, including CMA’s. This is permissible both on a VOW and “in the office.”

The distinction between display of such data and permitted uses is based on whether the sold listings provided to the consumer are chosen by the consumer (or selected pursuant to criteria chosen by the consumer), or are selected by the broker in the course of providing brokerage services to the consumer. For example, where the MLS prohibits display of sold data on VOWs, the MLS must also prohibit brokers from offering consumers the opportunity to freely review or search sold listing data in the office. A broker may, however, develop a CMA for a client or customer and provide the underlying comparable sales data (including sold listings) on which that CMA is based, so long as the broker, rather than the consumer, chose a reasonable number of listings to provide in connection with developing, explaining, and justifying the CMA. Conversely, where the MLS prohibits sold data display on VOWs, a broker may not provide a client or customer an unrestricted opportunity to review sold data, such as the sale prices of homes in a geographic area (such as a neighborhood or zip code) selected by the seller, unrelated to the broker’s efforts in marketing the property (added 01.27.09).

### Other Issues

- Q 6.1 Our MLS licenses databases such as public records, mortgage information and neighborhood information at considerable cost, for access only by Participants and subscribers. The license agreement does not give the MLS authority to permit access to those databases to consumers on brokers’ websites. Is the MLS required to re-negotiate these license agreements to allow for consumer access via brokers’ VOWs?

If the MLS licenses databases from third parties for access only by participants and subscribers, the MLS has no obligation to re-negotiate those license agreements and can prohibit Participants and subscribers from providing unauthorized access to those databases by third-parties.

- Q 6.2 Our MLS allows participants and subscribers in their offices and by email to give potential buyers hard copy lists of street addresses (“thumbnails”) of properties in MLS. Names of listing firms do not appear on these lists. Can our participants and subscribers still provide these lists if we require that the names of listing firms be shown in connection with listings displayed on VOWs?

No. If the MLS chooses to require that the names of listing firms be displayed on VOWs, the same requirement must be imposed on participants providing brokerage services via all other delivery mechanisms.

- Q 6.3 Sections 19.15 – 19.19 of the model VOW rules are provisions that can be adopted at the discretion of the MLS. It's clear that if adopted, equivalent requirements must be adopted related to delivery of MLS Listing Information in providing brokerage services using other delivery mechanisms (e.g. in participants' physical offices, by email, by fax, etc.). Must an MLS adopt either all, or none, of the "optional" rules? If an MLS may adopt some, but not all, of the optional rules, can it, for example, adopt certain subsections of a rule (e.g. Section 19.15 which has 6 subsections)?

MLSs can adopt some, none, or all of the "optional" rules found in the model rules as Sections 19.15-19.19. With respect to Section 19.15 which has several subsections, MLSs can adopt some, none or all of the subsections or, with respect to 19.15 (a), some, none or all of the individual items listed (i.e. expired, withdrawn, or pending) in that subsection.

In addition, because these rules are optional, they may be omitted upon initial adoption of the VOW rules and adopted at a later time or, once adopted, may subsequently be deleted. (added 12.24.08)

- Q 6.4 May we adopt Section 19.18 of the model VOW rules but delete the words "listing broker or agent" so that all that's required is display of the name of the listing firm?

Yes (added 1.27.09)

- Q 6.5 Can an MLS set limits to the number of "expired", "withdrawn", and "pending" listings that can be viewed, retrieved or downloaded in response to an inquiry?

Yes. However the number should be reasonable and any limits established will require an equivalent limit on participants' delivery of that information "through all other delivery mechanisms". (added 1.27.09)

- Q 6.6 May a business or legal entity be a "Registrant" on a VOW site?

Yes. The VOW policy authorizes MLS participants to provide brokerage services to VOW "Registrants." Registrants are consumers with whom the broker has formed a lawful consumer-broker relationship. Although the VOW policy does not address whether consumers who become VOW Registrants may be business or legal entities (that is, entities other than natural persons, such as corporations or partnerships), the Final Judgment approving the VOW policy requires VOW services to be available to "customers." "Customer" is defined to include "any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental." Under this definition, any business or legal entity (such as a corporation or a partnership) that is a seller or who has expressed an interest in purchasing residential property and who has described the type, features or location of the property in which it has an interest may be a customer, and, therefore, may also be a Registrant. (added 8.06.09)

**Affiliated VOW Partners (“AVPs”)**

Q 7.1 What is an Affiliated Vow Partner (“AVP”)?

An Affiliated Vow Partner (“AVP”) is a vendor or other service provider that operates a VOW on behalf of a Participant, subject to the Participant’s supervision, accountability and the terms of the VOW policy.

Q 7.2 Must an MLS provide a VOW feed to an AVP?

Yes. An MLS must, at the request of a Participant, provide a direct data feed to the Participant’s AVP, and may not require that MLS Information be retransmitted by the Participant to their AVP.

Q 7.3 Can the fees charged AVPs be higher than the fees charged Participants and subscribers?

AVPs can be charged fees higher than those charged to Participants only if the MLS incurs greater cost in providing service to an AVP. In any instance, the costs charged must reasonably relate to the actual costs incurred in providing the service to Participants or to AVPs.

Q 7.4 If an AVP operates VOWs on behalf of several Participants, can we charge the AVP fees based on the number of VOWs it operates?

If the MLS charges a single fee to all VOWs that combines both the fixed costs of supporting VOWS and the variable costs associated with delivery of a data feed, and the variable costs of providing the feed are insubstantial, then the MLS may charge the AVP a fee based on the number of VOWs they operate. If the MLS charges a separate fee for providing the data feed, and an AVP only receives one feed, it may only be charged one fee.

Q 7.5 If an AVP operates several VOWs for different Participants and misuses MLS information with respect to one of the VOWs, can we terminate the data feed?

Yes, although the MLS should be sure to give the Participants and the AVP notice and an opportunity to correct the problem so that the use of the feed to service the VOWs of the other Participants is not unnecessarily interrupted.

**Definition of MLS “Participation”**

Q 8.1 What is changed by the revised MLS “membership” rule?

The revised membership rule is similar to the longstanding definition of MLS “Participation” except that it requires that Participants “offer or accept cooperation and compensation to and from other Participants”. This differs from the earlier policy that merely required that Participants be “capable of offering and accepting cooperation and compensation”. The official definition of MLS “Participant” can be found in Multiple Listing Policy Statement 7.9, *Definition of MLS “Participant”*.

The new requirement that a Participant be engaged in making or accepting offers of cooperation and compensation to other Participants is explained further in the informational “Note” that accompanies Section 3, Participation, in the model MLS Bylaws, which provides:

*Mere possession of a broker's license is not sufficient to qualify for MLS participation. Rather, the requirement that an individual or firm 'offers or accepts cooperation and compensation' means that the Participant actively endeavors during the operation of its real estate business to list real property of the type listed on the MLS and/or to accept offers of cooperation and compensation made by listing brokers or agents in the MLS. "Actively" means on a continual and on-going basis during the operation of the Participant's real estate business. The "actively" requirement is not intended to preclude MLS participation by a Participant or potential Participant that operates a real estate business on a part time, seasonal, or similarly time-limited basis or that has its business interrupted by periods of relative inactivity occasioned by market conditions. Similarly, the requirement is not intended to deny MLS participation to a Participant or potential Participant who has not achieved a minimum number of transactions despite good faith efforts. Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law.*

*The key is that the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS in which participation is sought. This requirement does not permit an MLS to deny participation to a Participant or potential Participant that operates a Virtual Office Website ("VOW") (including a VOW that the Participant uses to refer customers to other Participants) if the Participant or potential Participant actively endeavors to make or accept offers of cooperation and compensation. An MLS may evaluate whether a Participant or potential Participant "actively endeavors during the operation of its real estate business" to "offer or accept cooperation and compensation" only if the MLS has a reasonable basis to believe that the Participant or potential Participant is in fact not doing so.*

*The membership requirement shall be applied on a nondiscriminatory manner to all Participants and potential Participants.*

Q 8.2 Must we adopt the revised definition of MLS Participation?

Yes.

Q 8.3 Once adopted, how does the revised definition affect current Participants who do not meet its requirements? Must we terminate their participatory rights? If yes, how quickly?

The revised definition applies to Participants upon adoption. If there is any question as to whether a Participant meets the requirement, he or she should be given an opportunity to demonstrate compliance. If he or she is found not to be in compliance under the revised rule, termination may not be effective until May 27, 2009. New Participants may, however, be required to comply immediately as a condition of admission.

Q 8.4 Will NAR defend our MLS if we terminate a Participant who doesn't meet the new criteria?

A lawsuit against an MLS filed by a participant terminated for failure to satisfy the new membership requirements would be generally covered under the NAR-provided professional liability insurance policy. Coverage for such a claim under that policy would be available on the same terms and conditions as it is in any other case, and in particular, would apply only if the rules and policies of the MLS were in compliance with those imposed by NAR.

Q 8.5 Can an MLS require that Participants engage in listing and selling?

No. The fact that a broker engages in either listing or selling satisfies the requirement.

Q 8.6 How do we determine the intent of prospective Participants seeking admission to the MLS to list or sell property?

The MLS may include a provision in the application for participatory rights by which the applicant would be required to affirmatively state his or her intent to list and/or sell real property.

Q 8.7 How do we determine whether a Participant (or potential Participant) is able to “respond knowledgeably” to questions about property displayed on the Participant’s VOW?

It should be assumed that individuals who qualify for MLS participatory rights will be able to respond knowledgeably until such time as an issue arises that calls this ability into question.

Q 8.8 Is the requirement that Participants “actively endeavor” to list property or accept offers of cooperation and compensation merely a requirement to gain participatory rights in MLS, or is it an ongoing obligation?

Actively endeavoring to list real property and/or to accept offers of cooperation and compensation from other Participants is an ongoing requirement of MLS participation.

Q 8.9 Can we conduct periodic audits or evaluations to ensure Participants are continuously engaged in actively listing or selling property?

Yes, as long as the audits are performed uniformly and consistently.

Q 8.10 Some of our Participants are part-time or “seasonal” (e.g. they list and sell property only during the summer and early fall). Are they eligible for ongoing MLS participatory rights under the revised membership rule?

Yes. The explanatory “Note” explaining Section 3 – Participation, in the model MLS Bylaws confirms that such individuals are entitled to participation so long as they are engaged in the business “on a continual and ongoing basis during the operation of (their) real estate business.”

Q 8.11 How does the revised membership rule apply to MLS Participants who spend all their time running real estate companies (e.g. hiring, training, marketing, etc.) and where the firm’s non-principal brokers and sales associates do the listing and selling?

The fact that the real estate brokerage company is actively engaged on an ongoing basis in listing or selling satisfies the requirement.

Q 8.12 What are the consequences if an MLS determines a Participant is not actively listing or selling property?

If it is established that a Participant is no longer engaged in either listing or selling real property, he is not eligible for participatory rights.

Q 8.13 Does the requirement to actively endeavor to list or sell property also apply to subscribers?

No.

Q 8.14 Can we require applicants to demonstrate a history, e.g. 6 months or a year, of actively endeavoring to list or sell?

No. The fact that an applicant can show he or she is currently and intends to continue to be engaged in listing or selling real property is sufficient.

Q 8.15 What effect does the membership rule have on appraisers – both those currently participating in our MLS and those who apply in the future?

The requirement that a Participant be engaged in listing or selling does not apply to appraisers, who are granted participatory rights on the basis of their appraisal activities.

Q 8.16 Can an MLS participation application require applicants to confirm that they are (or will be) actively endeavoring to list real property or accept (or will accept) offers of cooperation and compensation from other Participants in the MLS?

Yes.

Q 8.17 Is an exclusive buyer's broker who rejects the offer of compensation offered by listing brokers and is compensated only by the buyer still eligible for MLS participation?

Yes.

Q 8.18 Does a broker qualify for MLS participation if the broker continuously seeks, or regularly obtains, seller clients, if the listings obtained by the broker are co-listed with another broker Participant in the MLS?

Yes. A co-listing arrangement is one in which two or more brokers jointly list a property by executing a listing agreement with a seller, assume the legal responsibilities for such listing, and provide brokerage services for the listing. The MLS Participation rule does not require a broker to be the sole listing or selling broker in order to qualify as a Participant. To qualify for MLS Participation, a broker must actively endeavor during the operation of its real estate business to list or sell properties of the type listed on the MLS and/or to accept offers of cooperation and compensation. This requirement is not intended to permit an MLS to deny participation based on the level of services provided by the Participant or potential Participant as long as the level of service satisfies state law. (added 8.06.09)

Q 8.19 If a co-listing broker is paid a commission by the seller and payment of that commission is shown on a HUD-1, does payment of the commission constitute evidence of the broker's "offering or accepting cooperation and compensation?"

Yes. The MLS Participation rule requires that a broker "actively endeavor" to secure listings, and that such activity occur "on a continual and ongoing basis." Evidence of such effort by the broker would include his or her receipt of compensation resulting from successful transactions through the MLS as disclosed on the seller's HUD-1 statement. An occasional, isolated report of compensation on a HUD-1 may not, however, be sufficient to satisfy the criteria. (added 8.06.09)

**IDX**

Q 9.1 What's the difference between a VOW and an IDX site?

An IDX site is considered advertising – and listing brokers' consent is required before another broker may advertise his or her listings. A VOW is considered on-line brokerage. Listing brokers' consent is not required to display on a VOW any listing otherwise available to MLS participants and subscribers for Internet display. Sellers retain the ability to withhold their properties from Internet display or to withhold the display of their property's address from Internet display. A website that offers online MLS listing searching capability that does not comply with the detailed requirements of the VOW policy is, by definition, an IDX site.

Q 9.2 Does the settlement agreement affect the IDX policy?

No.

Q 9.3 Can we “graft” elements of the new VOW policy onto our existing IDX rules?

Not at this time. It is possible that the IDX policy may be amended by NAR to incorporate certain elements of the VOW policy.

Q 9.4 If we limit the number of listings that can be viewed, retrieved or downloaded in response to a Registrant's inquiry on a VOW (per Section 19.19 of the model VOW rules), must we establish a similar requirement for display in participants' physical offices? Does the limit we establish apply to participants' IDX sites as well?

A limit on the number of listings that may be viewed, retrieved or downloaded in response to a Registrant's inquiry on a VOW requires a similar limit to Participants' use of MLS Listing Information in **providing brokerage services** through all other delivery mechanisms. Display on an IDX site is considered advertising rather than brokerage and the limits as to the number of listings that may be displayed in response to a consumer's search on an IDX site may be different. (added 12.24.08)

**The Settlement Agreement**

Q 10.1 After the settlement agreement is final, can the VOW policy be changed?

It is possible, although unlikely, that NAR may at some future time propose changes to the VOW policy. Any changes would require approval by the Department of Justice. Once MLSs adopt the VOW policy and VOW rules they may not make changes to them unless those changes are permitted by the current VOW policy.

Q 10.2 Does the settlement agreement have implications for Commercial Information Exchanges?

No.

Real Estate Transaction Standards ("RETS")

Q 11.1 Does the RETS Advisory Board have any recommendations for implementing the VOW policy and rules?

The Advisory Board suggests:

*When implementing the policy, the addition of several data points to the representation of a listing are obvious and that those data points should have the following names:*

<i>Visible Long Name</i>	<i>System/Standard Name</i>
<i>VOWEntireListingDisplay</i>	<i>VOWList</i>
<i>VOWAddressDisplay</i>	<i>VOWAddr</i>
<i>VOWAutomatedValuationDisplay</i>	<i>VOWAVM</i>
<i>VOWConsumerComment</i>	<i>VOWComm</i>

*The data type of each point is boolean with '0' (zero) representing false and '1' (one) representing true.*

*Specifically, the listing input form should have check-box selections for the selling party to explicitly Opt Out of each of displaying a listing; displaying the address of the listing; displaying an automated valuation; displaying consumer comments. In the interests of having consistent representations of these data points and the intent of the RETS Schema workgroup to add these data points to the Listings schema model, the group decided on these representations.*

*The interpretation of the data points are that the seller has opted in to each of the actions of displaying the listing, address, automated valuation and consumer comment when the value is true. (added 12.24.08)*

(8.06.09.v.10.1)

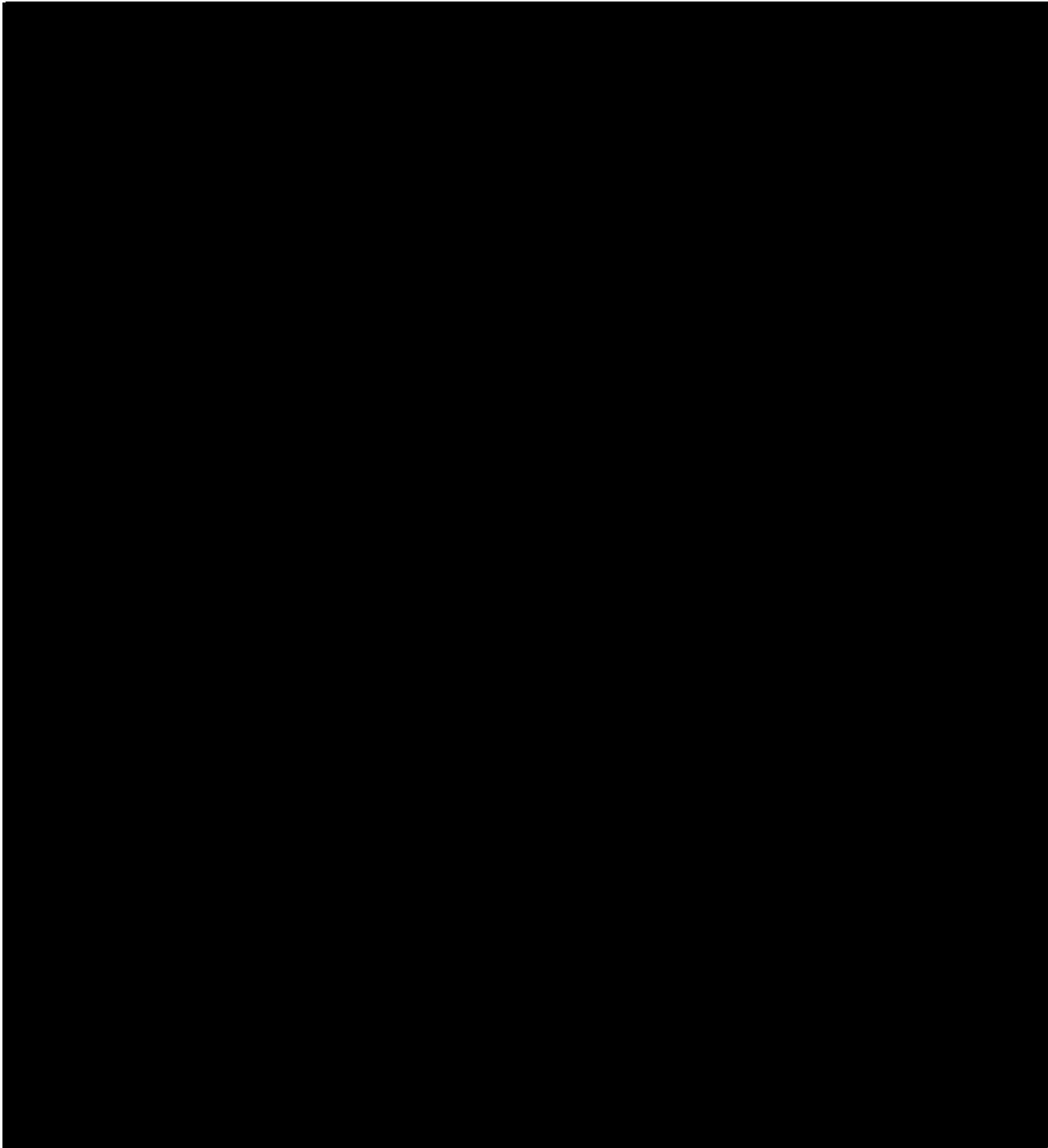
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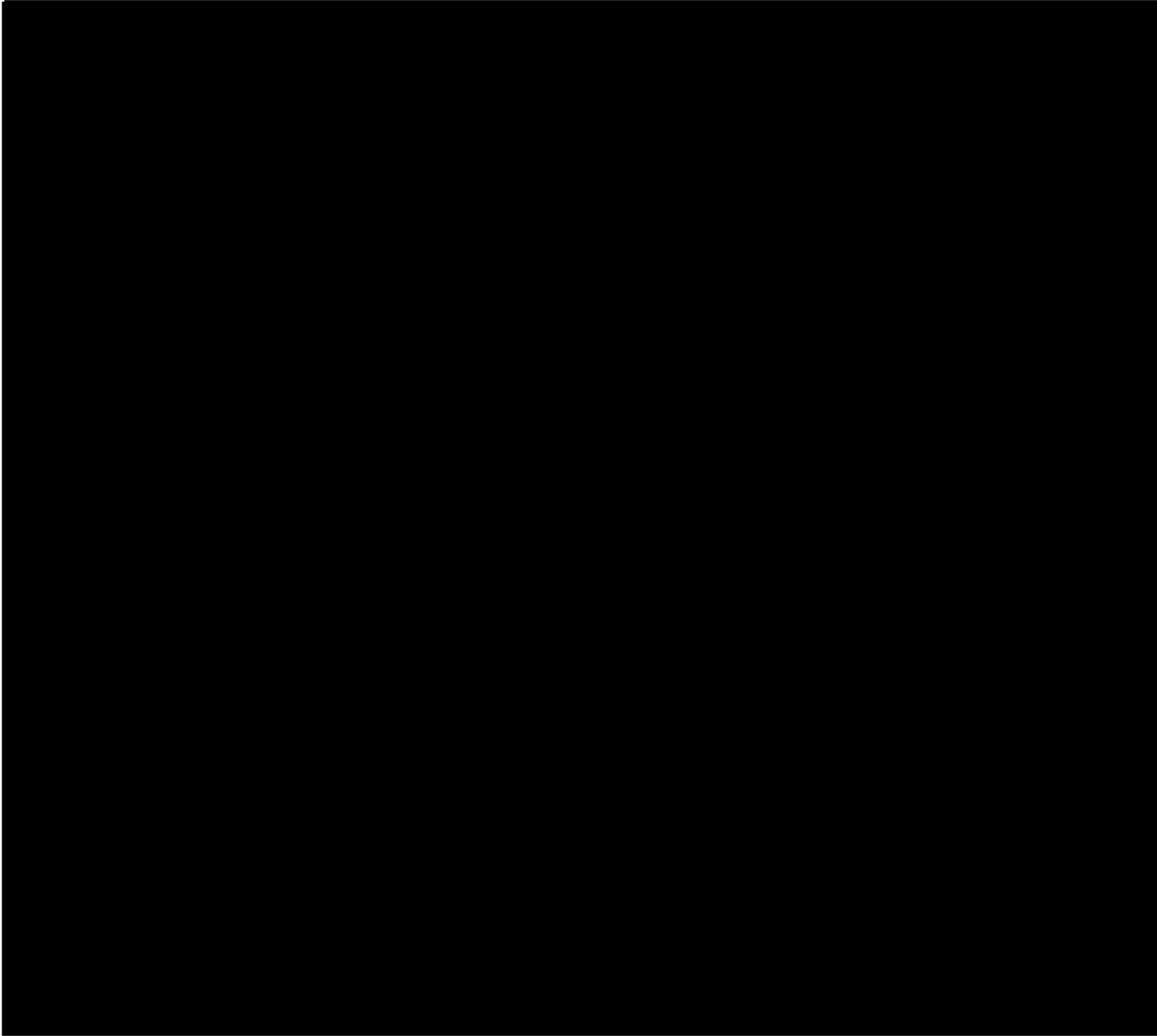
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**Minutes**

VOW Task Force Meeting  
Thursday, March 31, 2011  
TREB Offices, Room A, 10:00 a.m.

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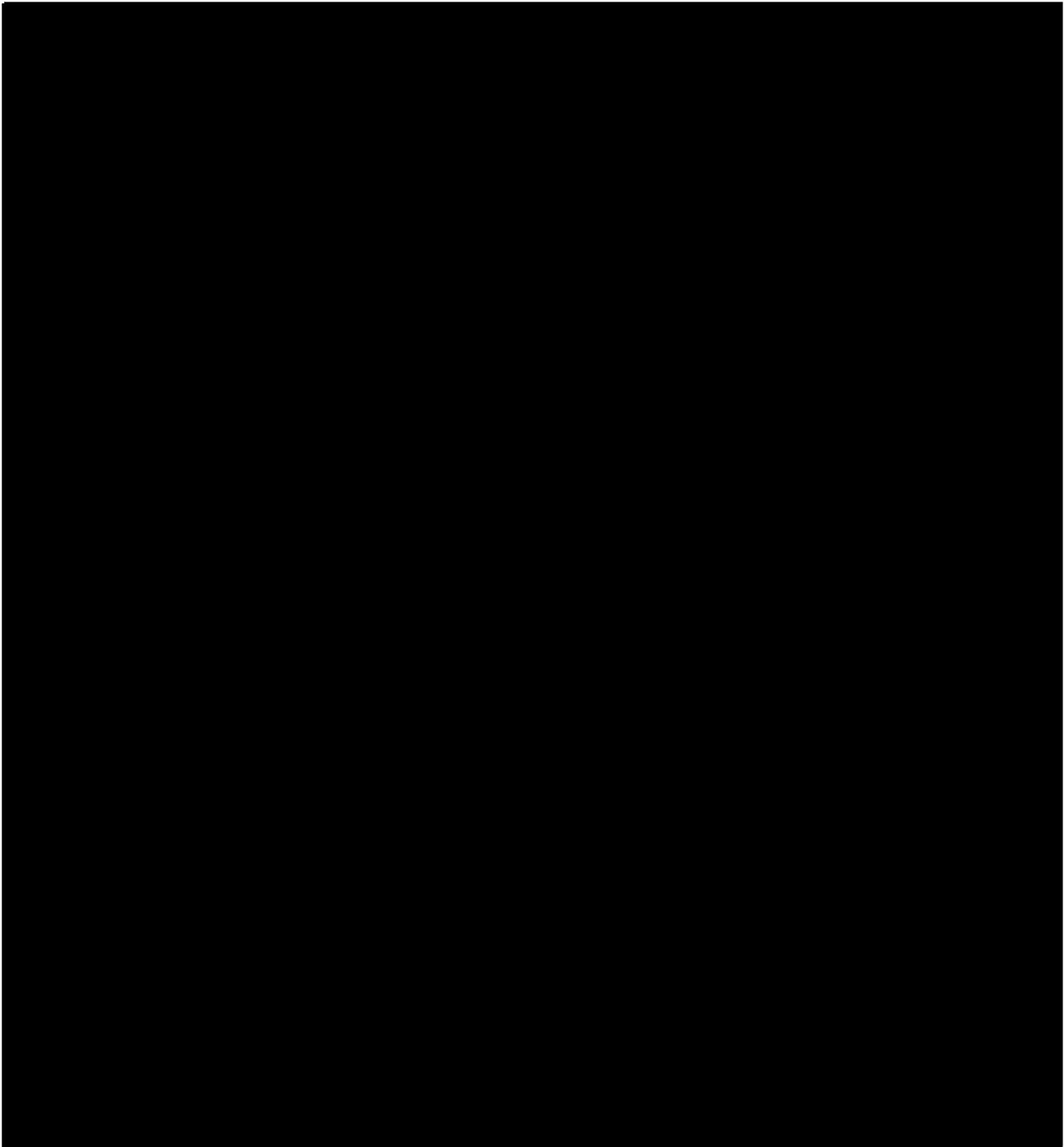
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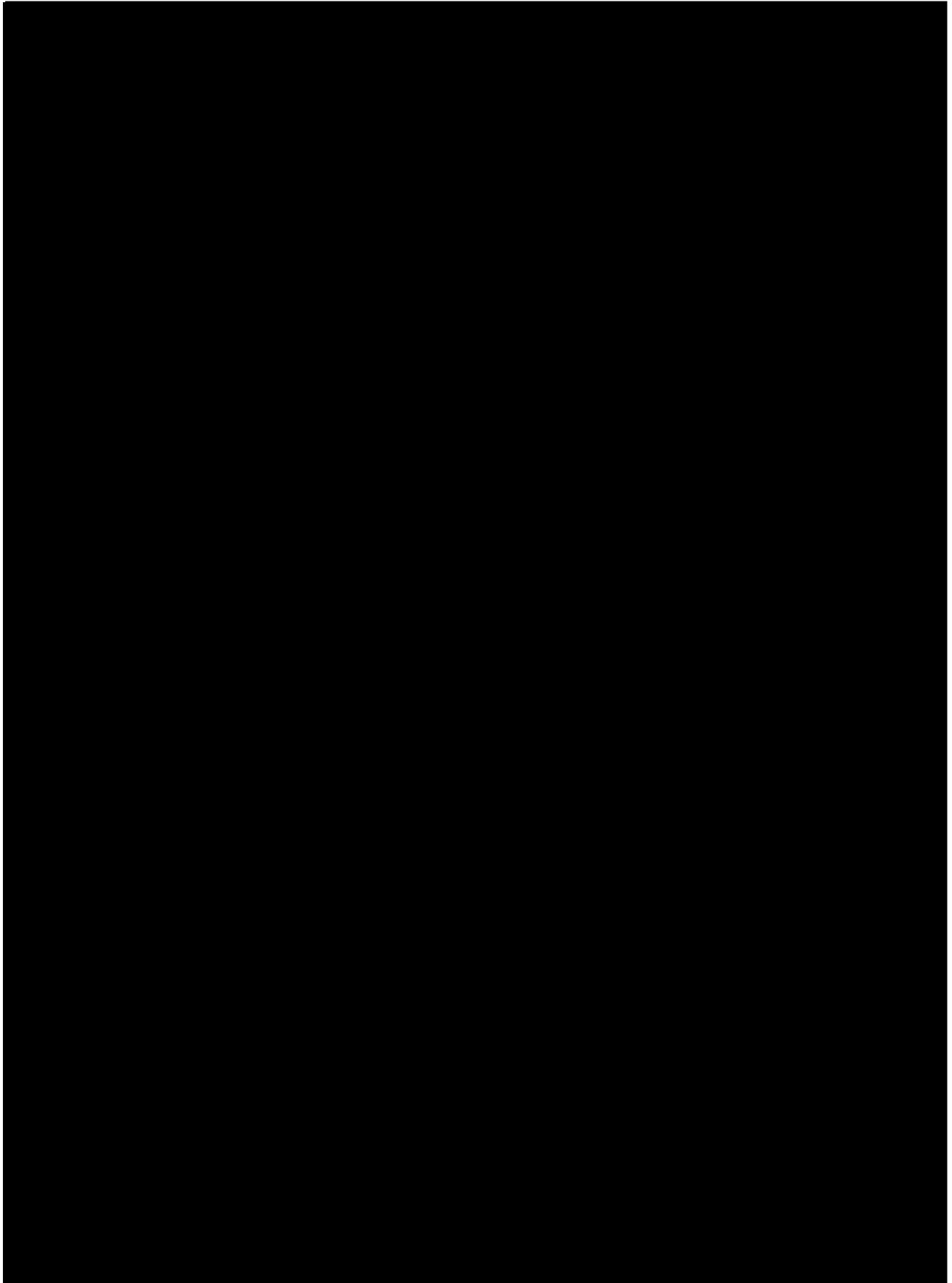
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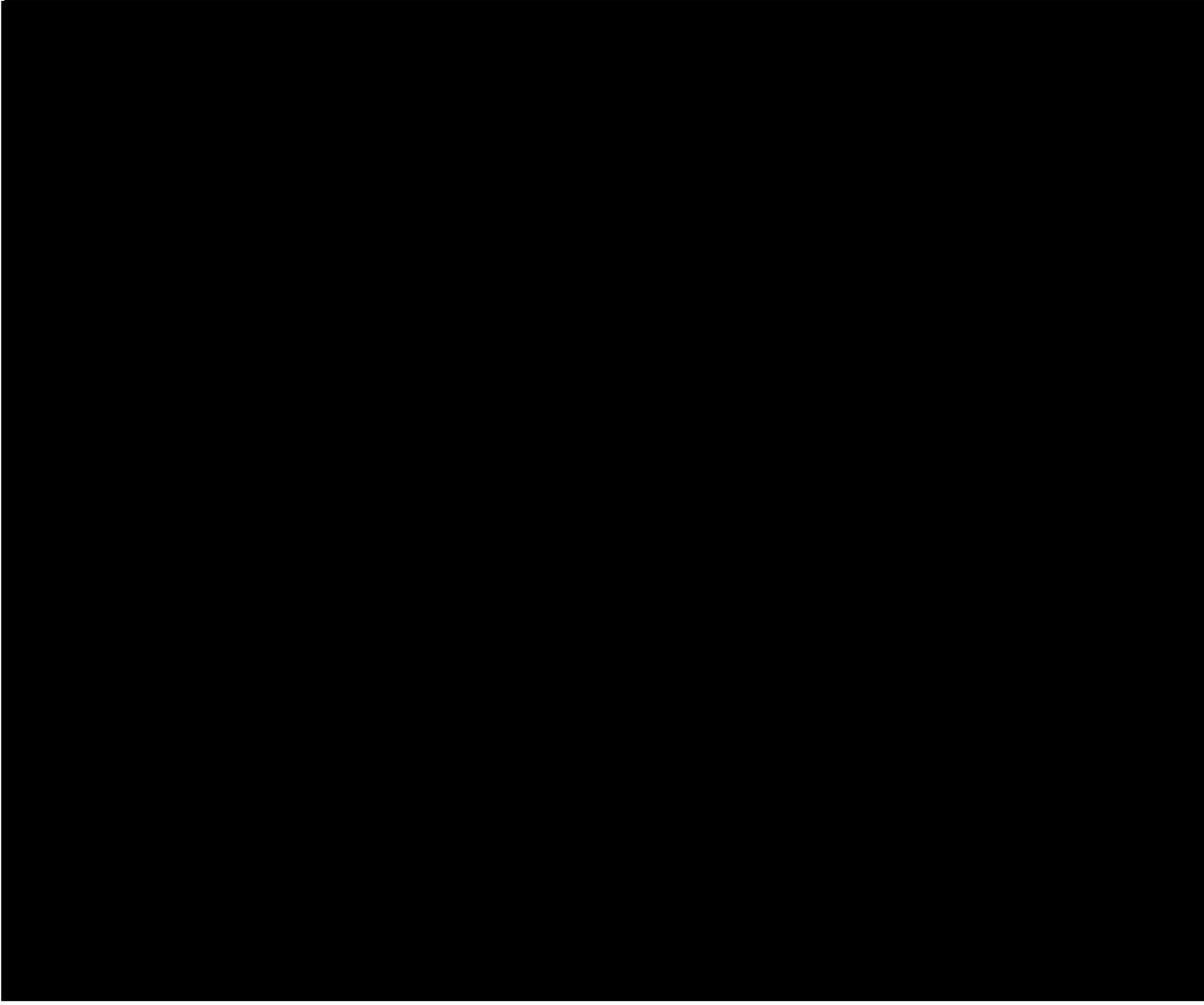
**Minutes**

VOW Task Force Meeting  
Thursday, April 21, 2011  
TREB Offices, Room A, 10:00 a.m.

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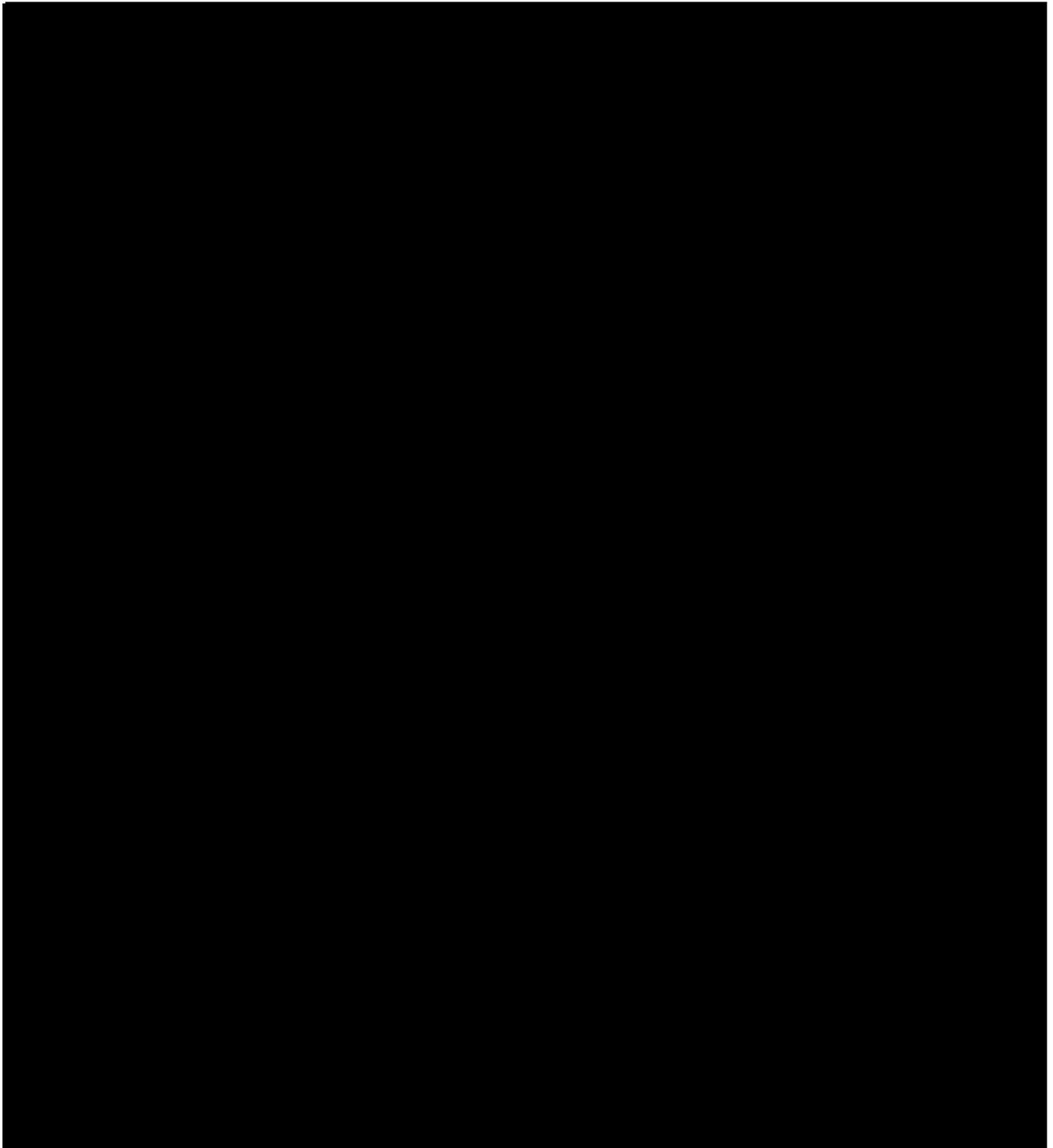


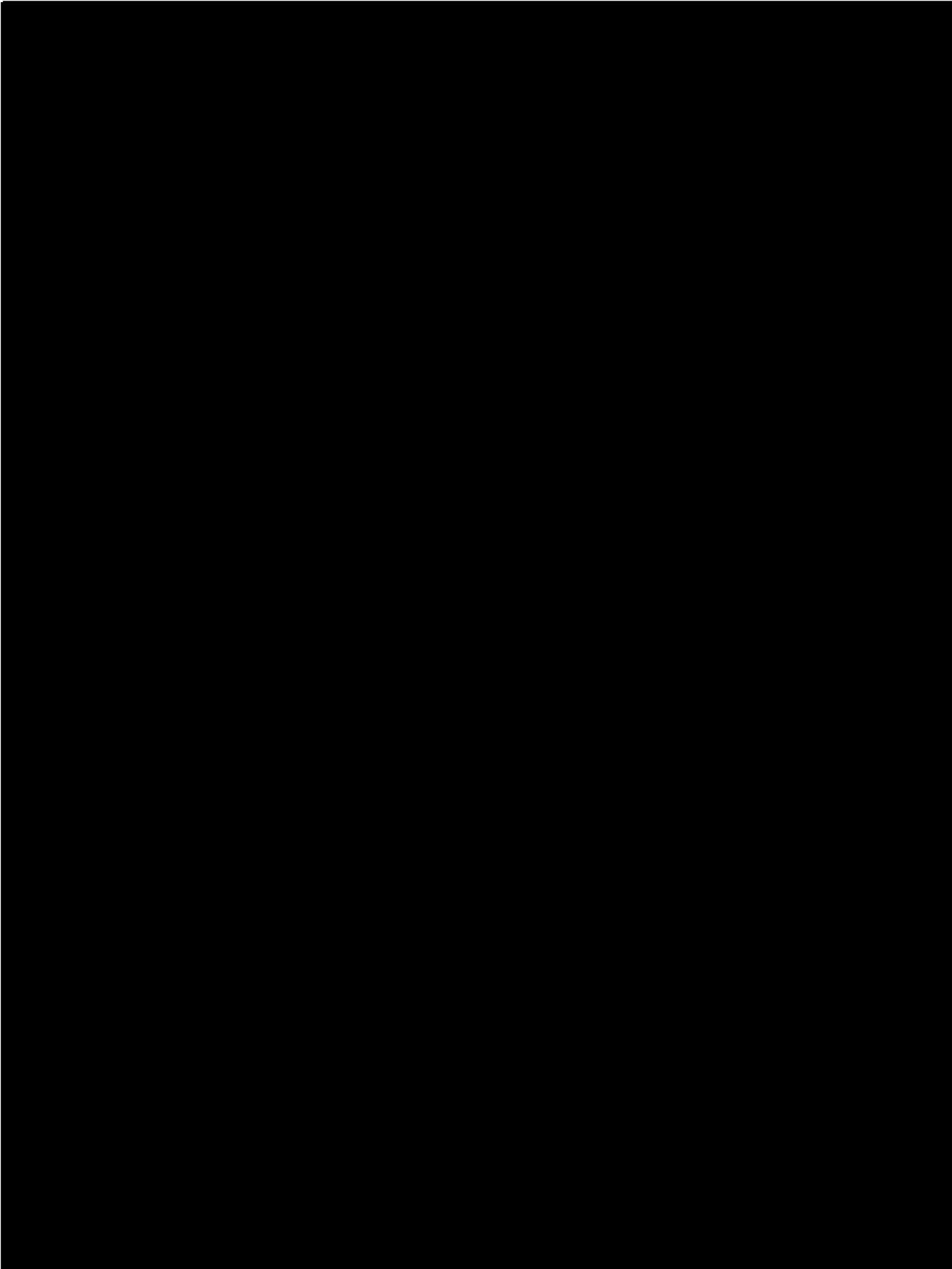
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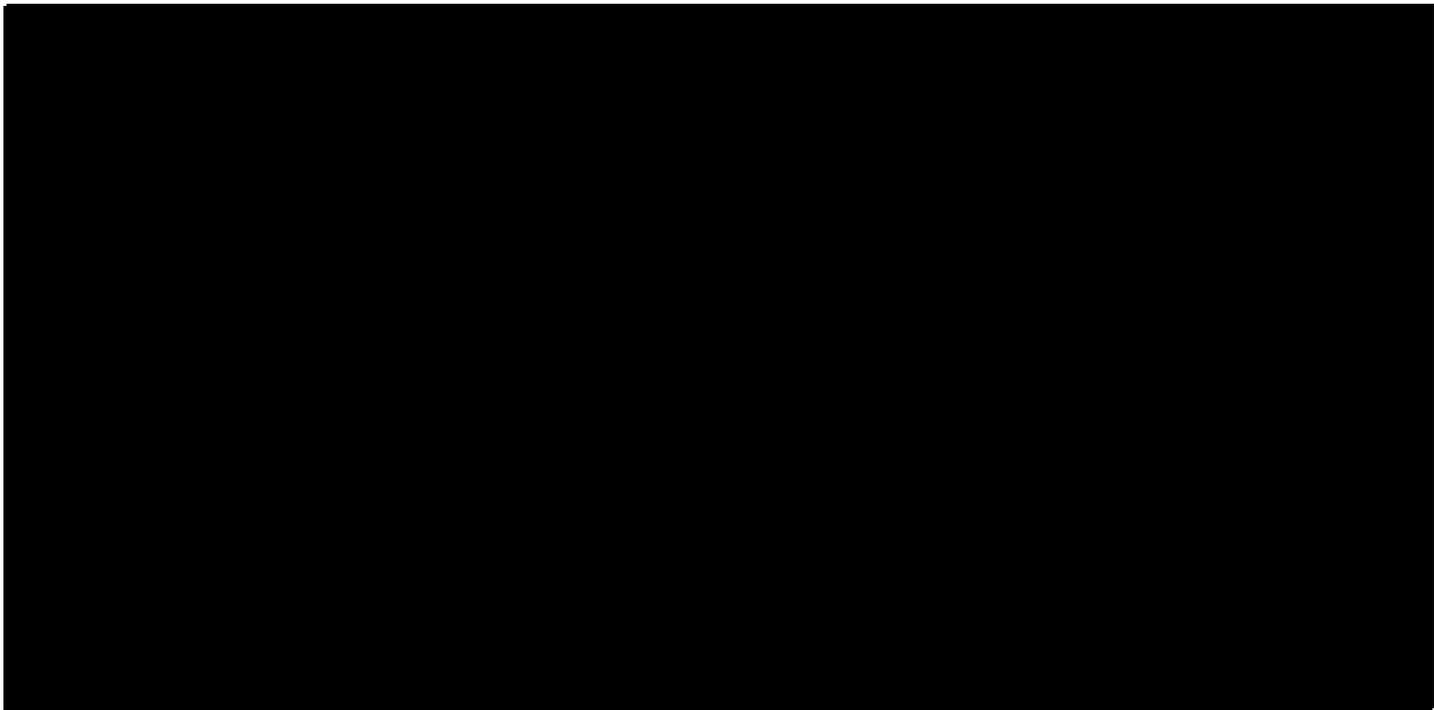
## **EE**

**Minutes**

VOW Task Force Meeting  
Thursday, May 12, 2011  
TREB Offices, Room A, 9:30 a.m.







# **EXHIBIT**

# **FF**

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**From:** Don Richardson <don@trebnet.com>  
**Sent:** Thursday, May 19, 2011 9:45 AM  
**To:** hfuller@trebnet.com; ettorec@idirect.com; dpatterson@kingsburycommercial.com; homes@karareed.ca; askmichelle@ycracademy.com; esage@sagerealestate.ca; chris@slightham.com; tim@remaxultimate.com  
**Cc:** don@trebnet.com; johnd@trebnet.com  
**Subject:** Tomorrow's Meeting - VOW Task Force  
**Attachments:** image001.jpg; Minutes\_May 12\_2011.doc; VOW Report to the BOD May 18 2011.doc; NAR VOW POLICY 2008 Blacklined Revised May 18, 2011.doc; NAR MLS Rules Doc Blacklined May 18, 2011.doc

Here is a copy of the minutes from the last meeting and a draft Report including the revisions to the NAR policy and accompanying MLS® Rules.

The draft Report is also being circulated to the Board of Directors for their meeting next week.

It is noted in bold type on page 3 in the Report that the Task Force is having a final meeting to discuss the participation vs. opt-out issue and the Chair, Heather Fuller can modify or supplement the written report in accordance with your discussion and recommendations from tomorrow's meeting.

Hope to see you at 12:30 tomorrow.

**Don Richardson**  
Chief Executive Officer

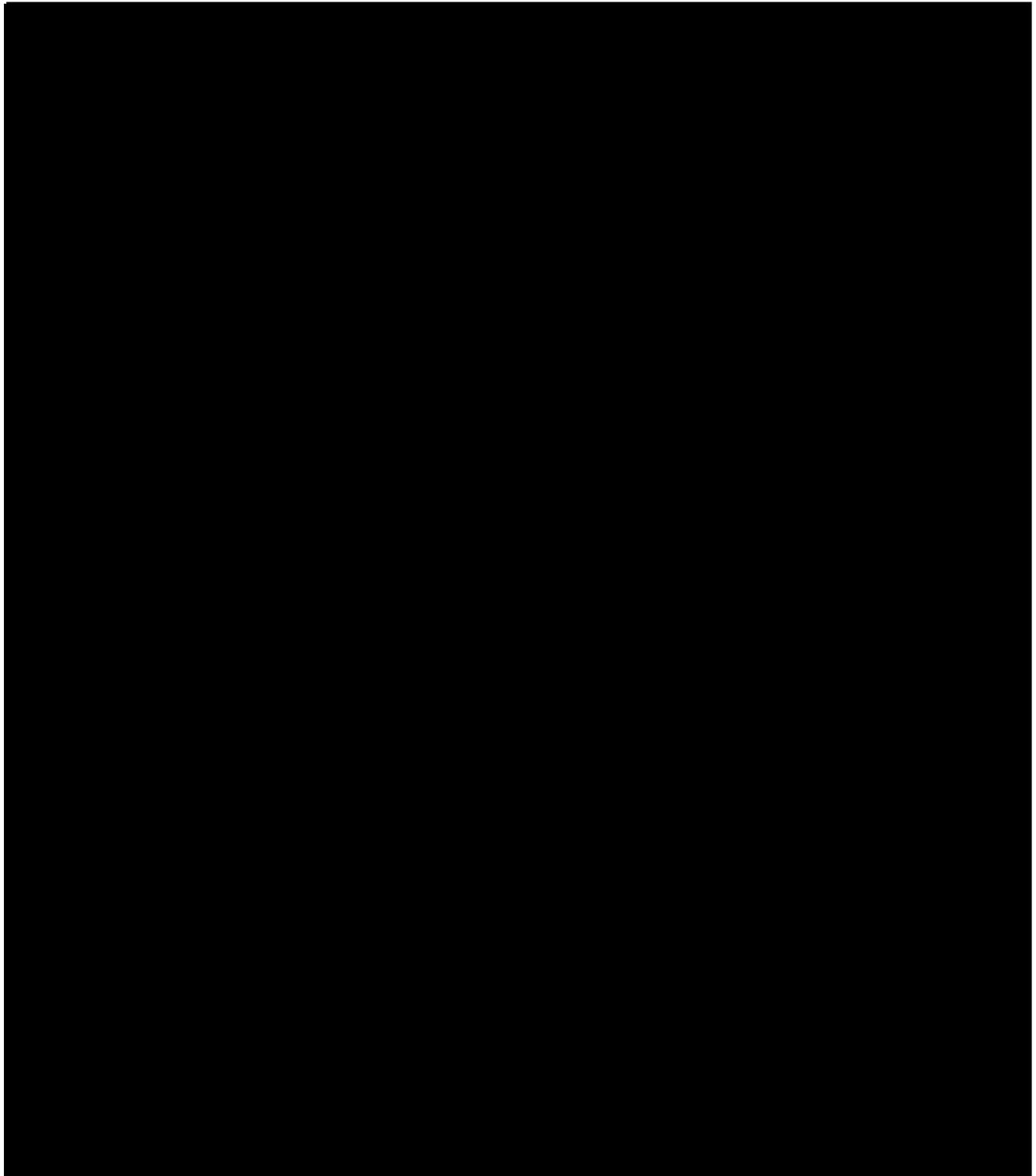
**Toronto Real Estate Board**  
Serving Greater Toronto REALTORS®  
[www.TorontoRealEstateBoard.com](http://www.TorontoRealEstateBoard.com)

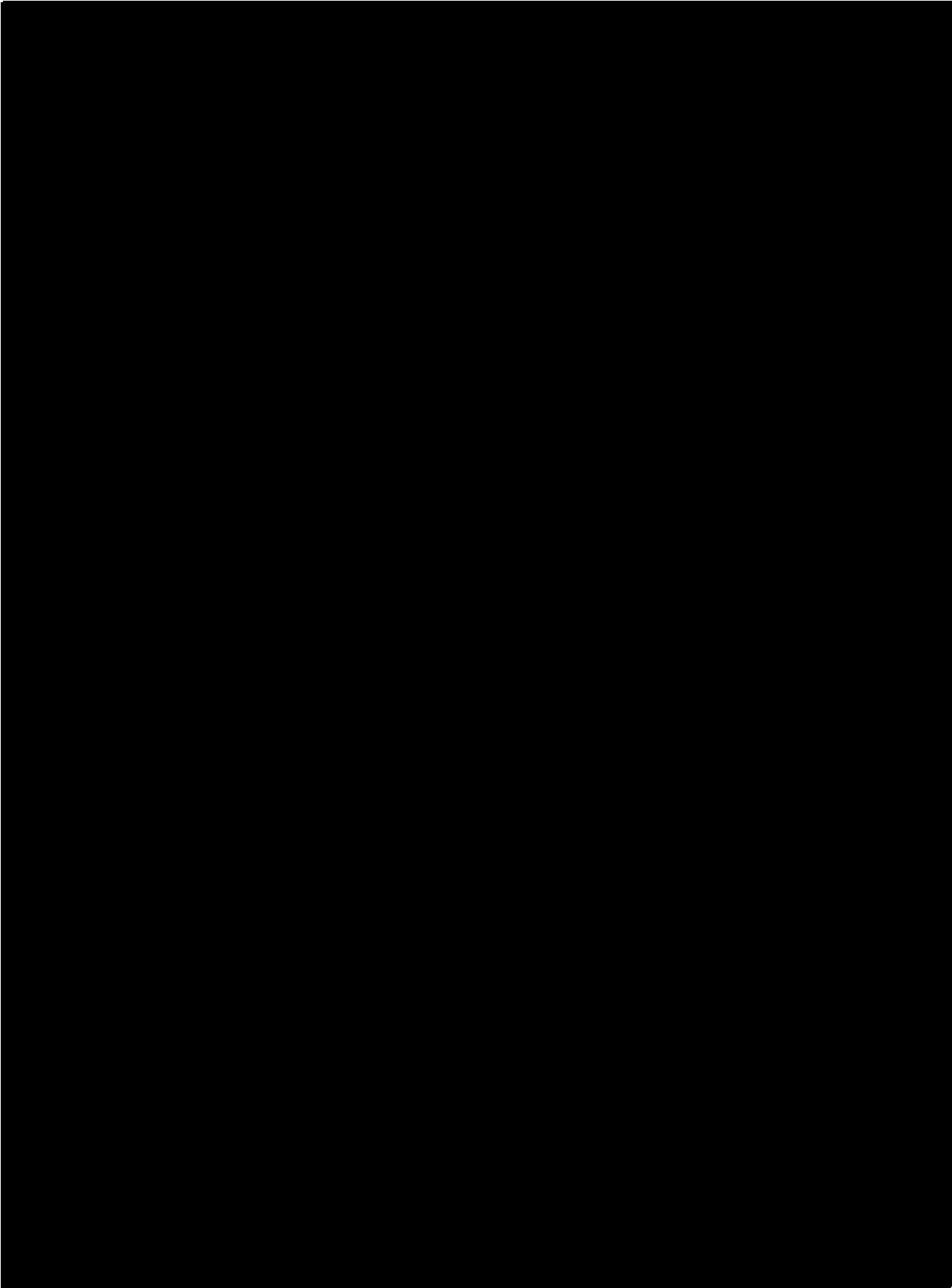
 Please consider the environment before printing this page.

**IMPORTANT NOTICE:** This message / transmission and any accompanying attachments is intended only for the use of the individual or entity to which it is addressed. The message / transmission may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by email or fax at (416) 443-9153. Thank you.

**Minutes**

VOW Task Force Meeting  
Thursday, May 12, 2011  
TREB Offices, Room A, 9:30 a.m.







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**Toronto Real Estate Board**

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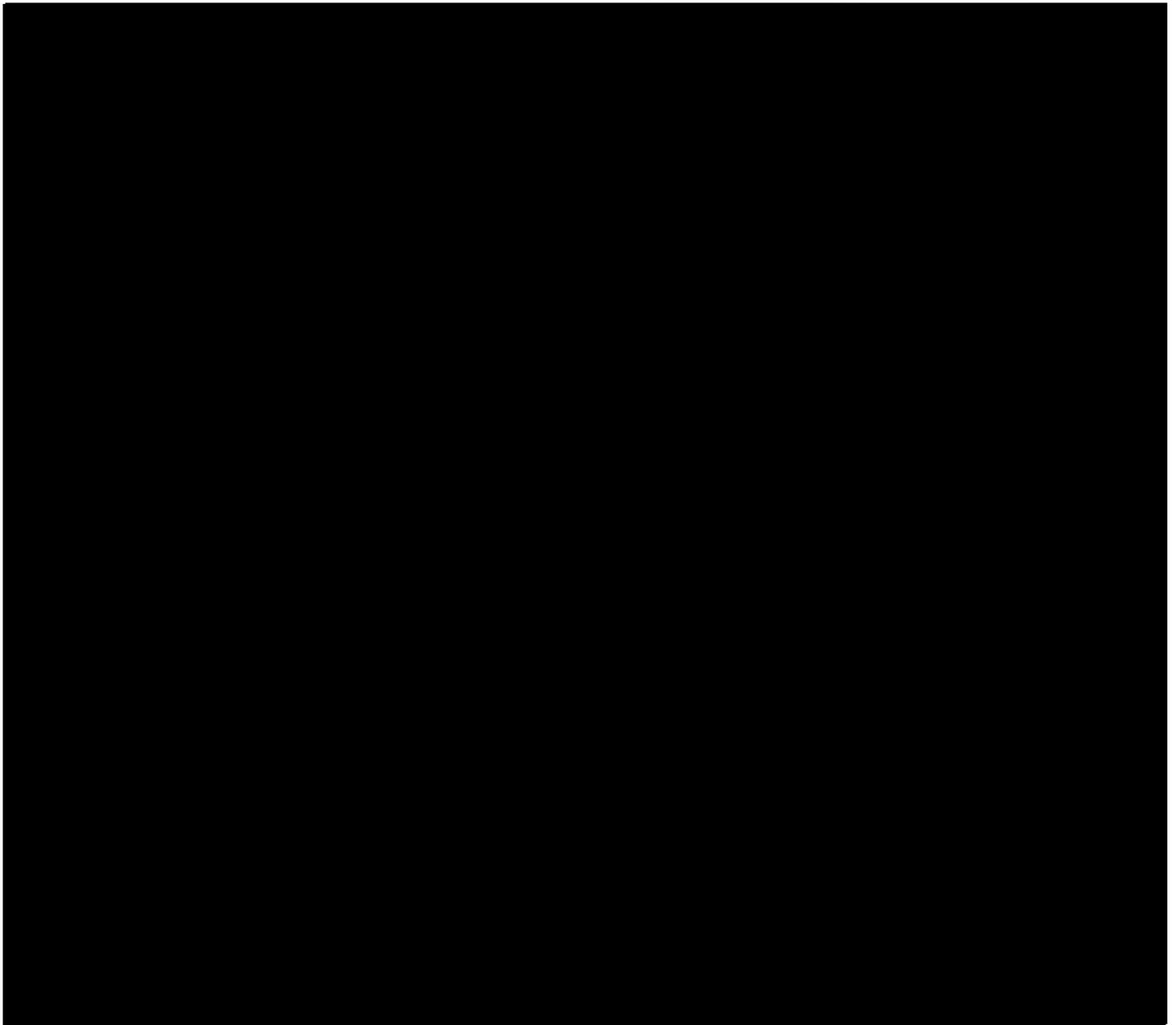
# REPORT

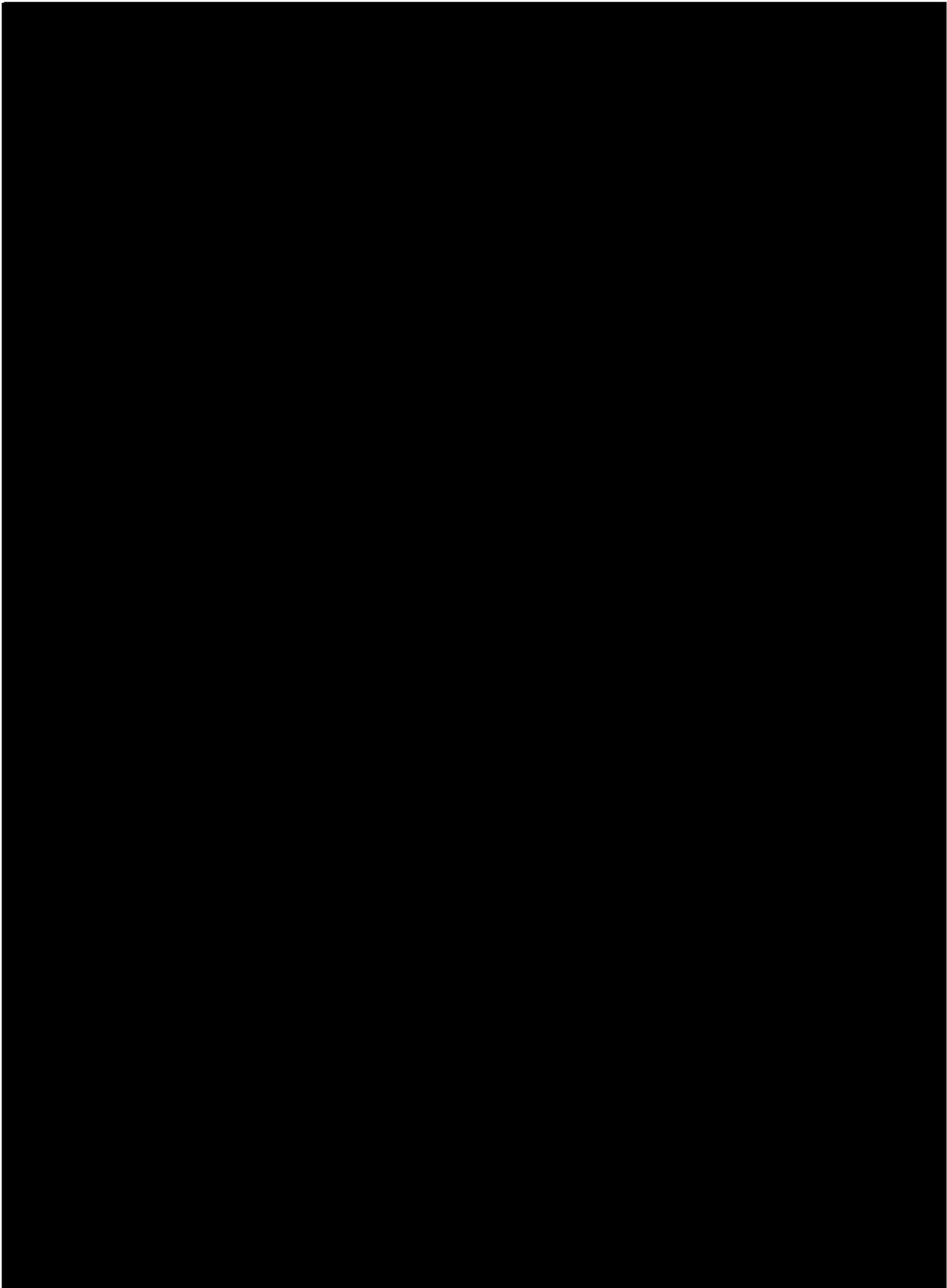
**Executive Offices**

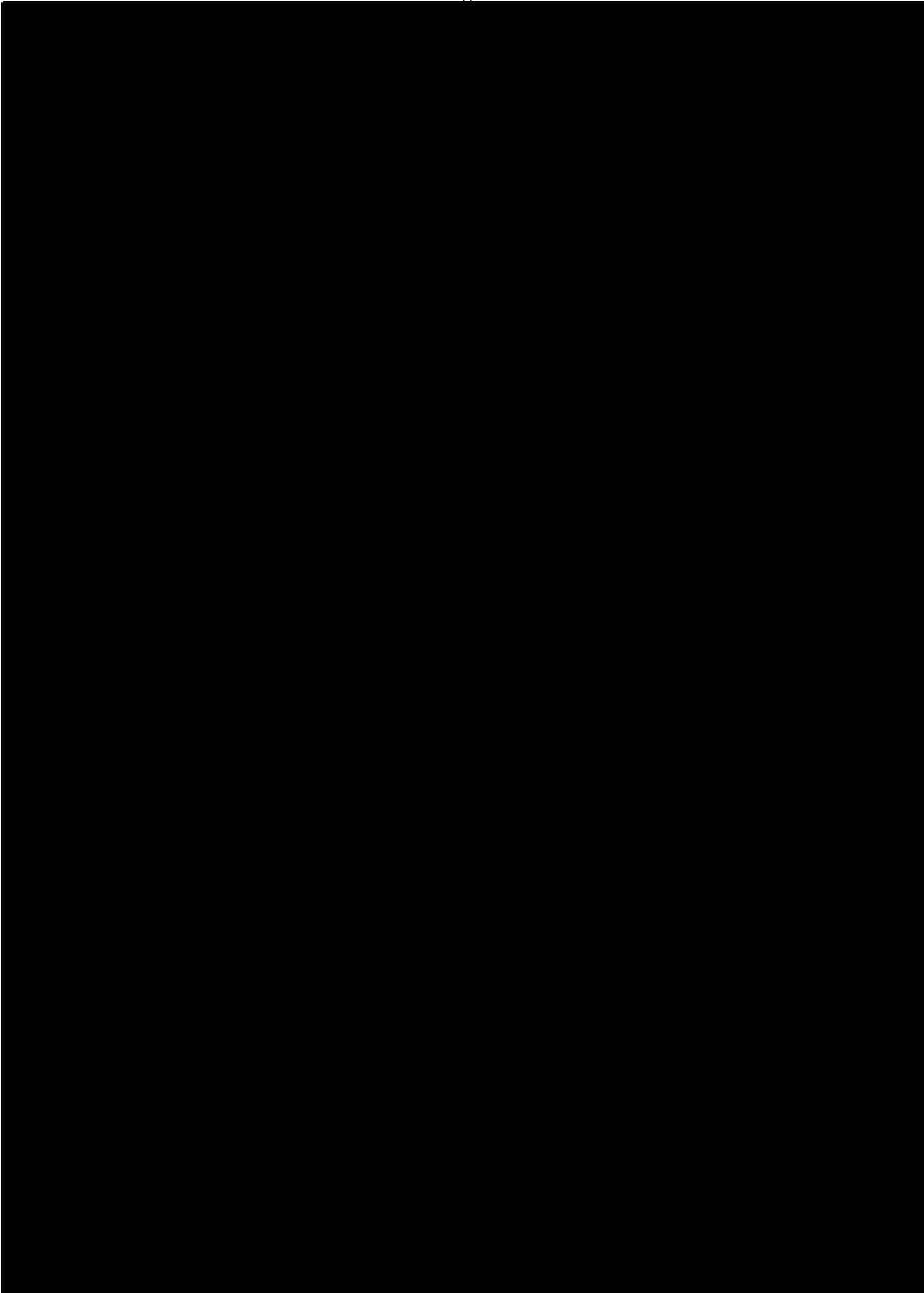
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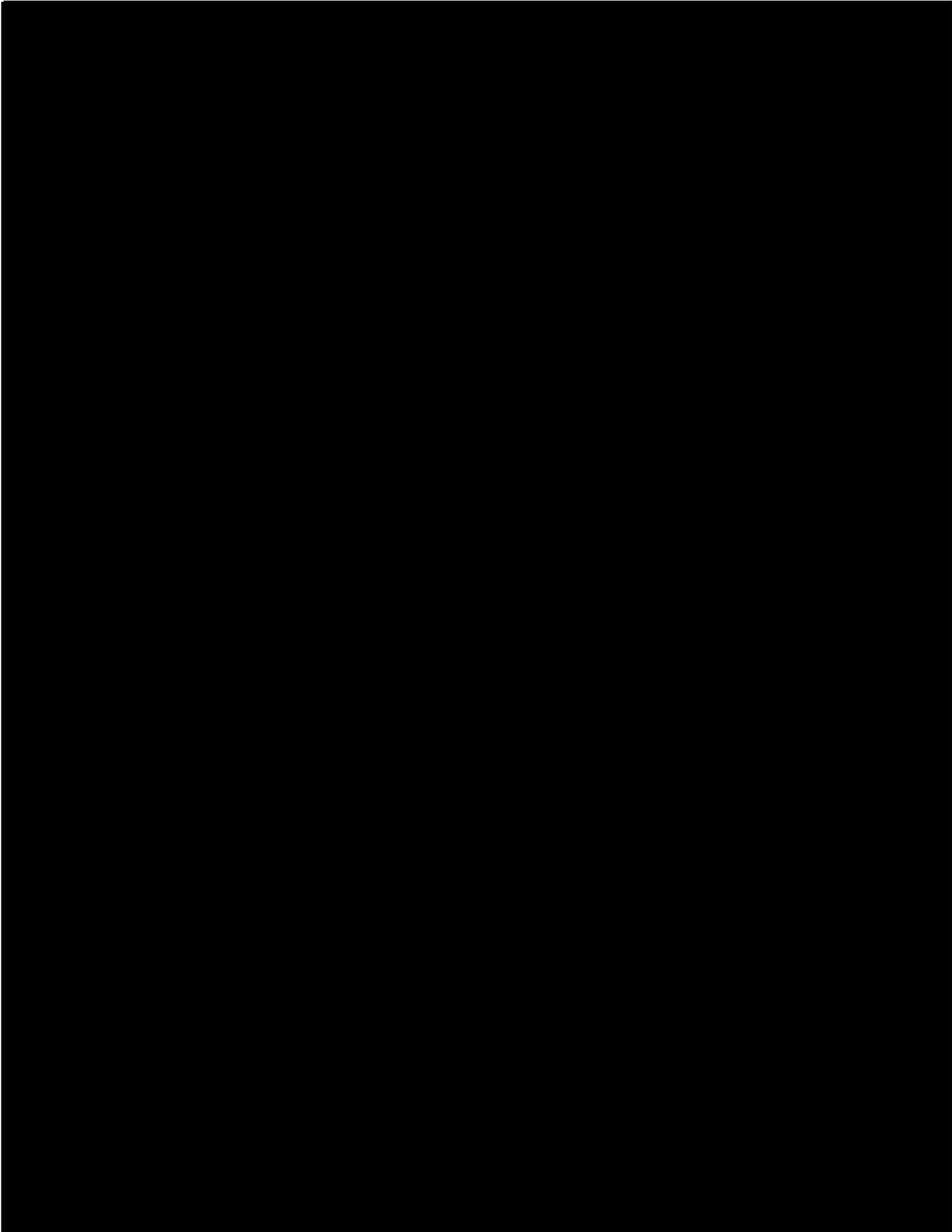
Date: May 18, 2011  
To: Board of Directors  
From: Heather Fuller – Chair, VOW Task Force  
Re: **TREB VOW Task Force**

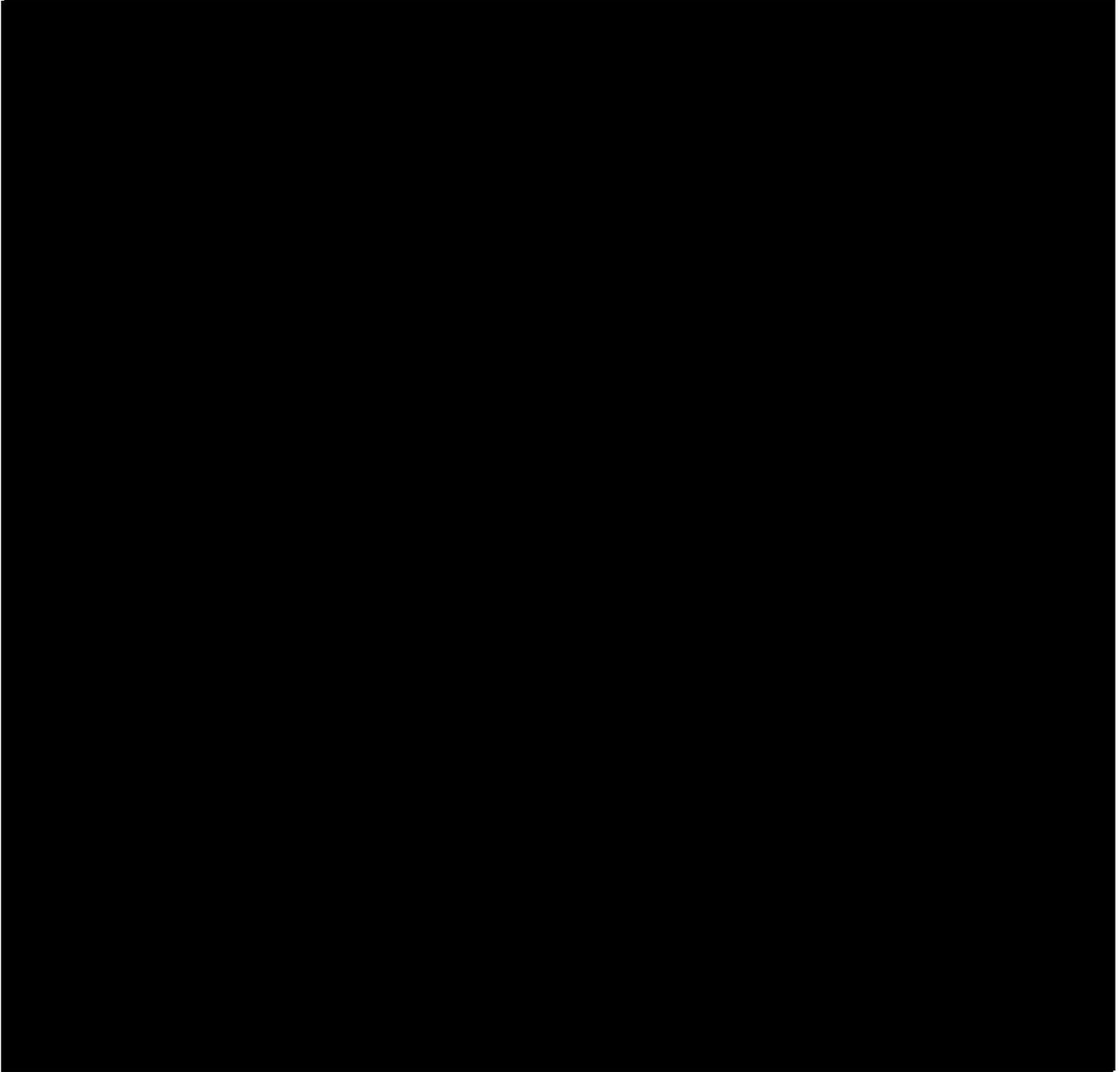
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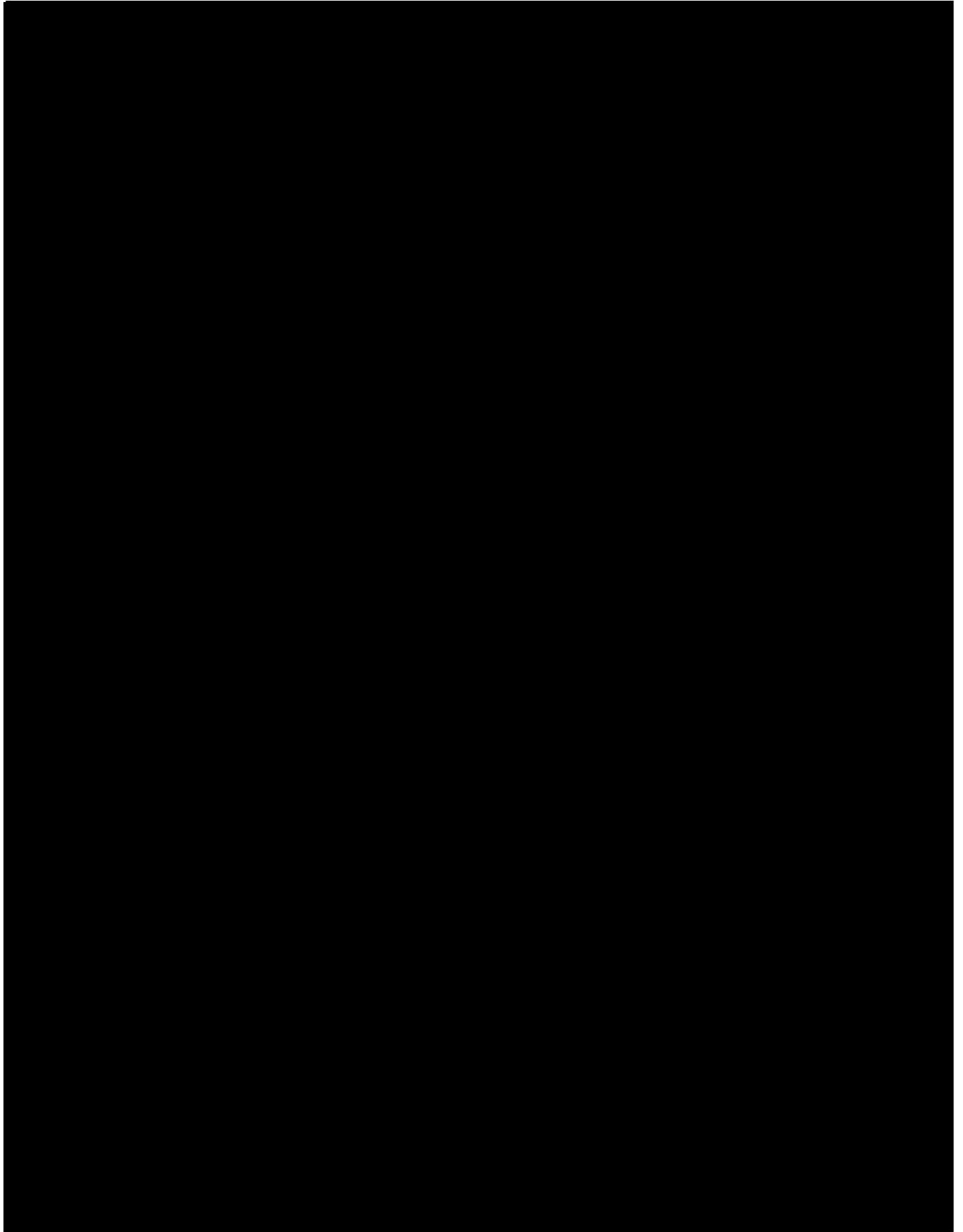


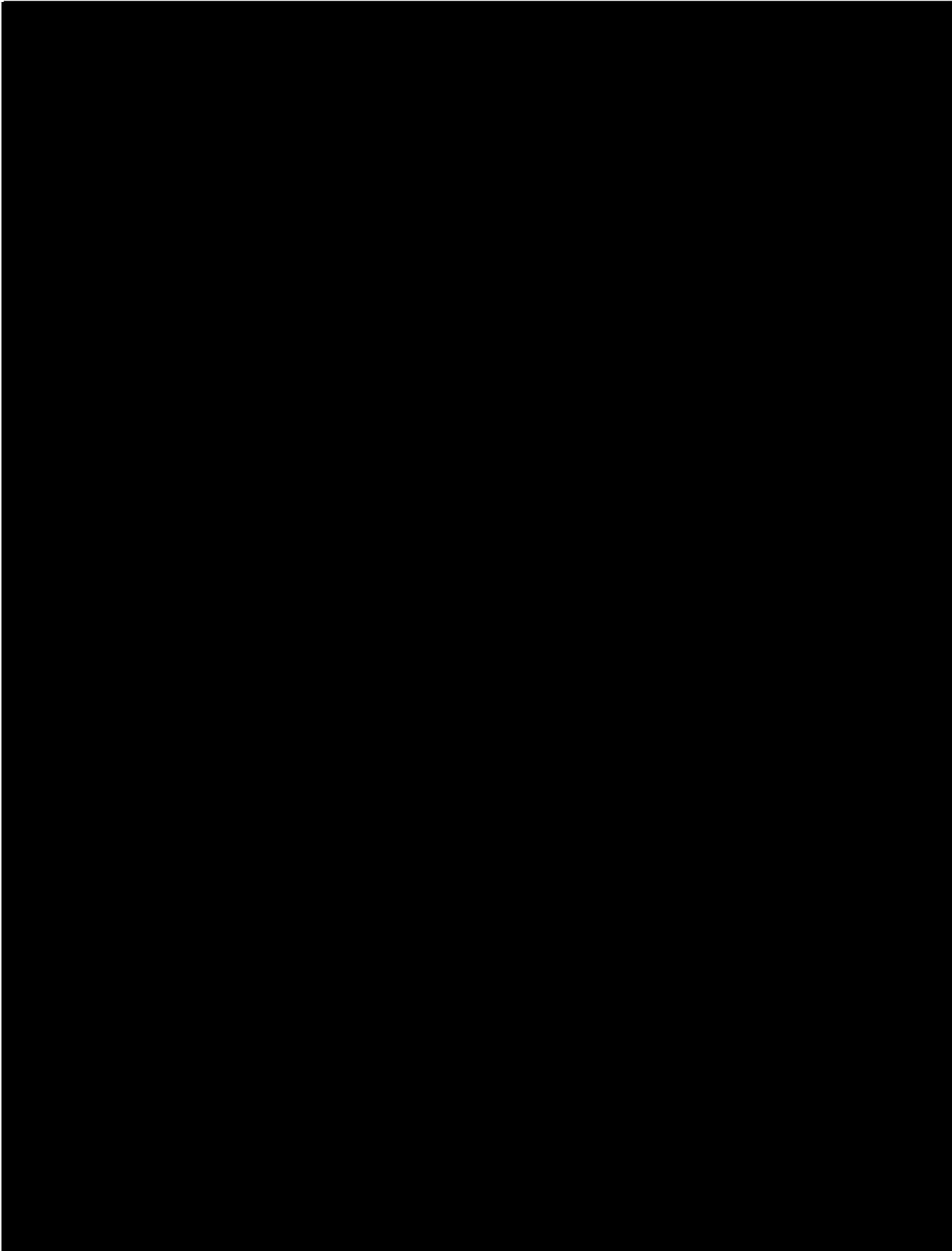


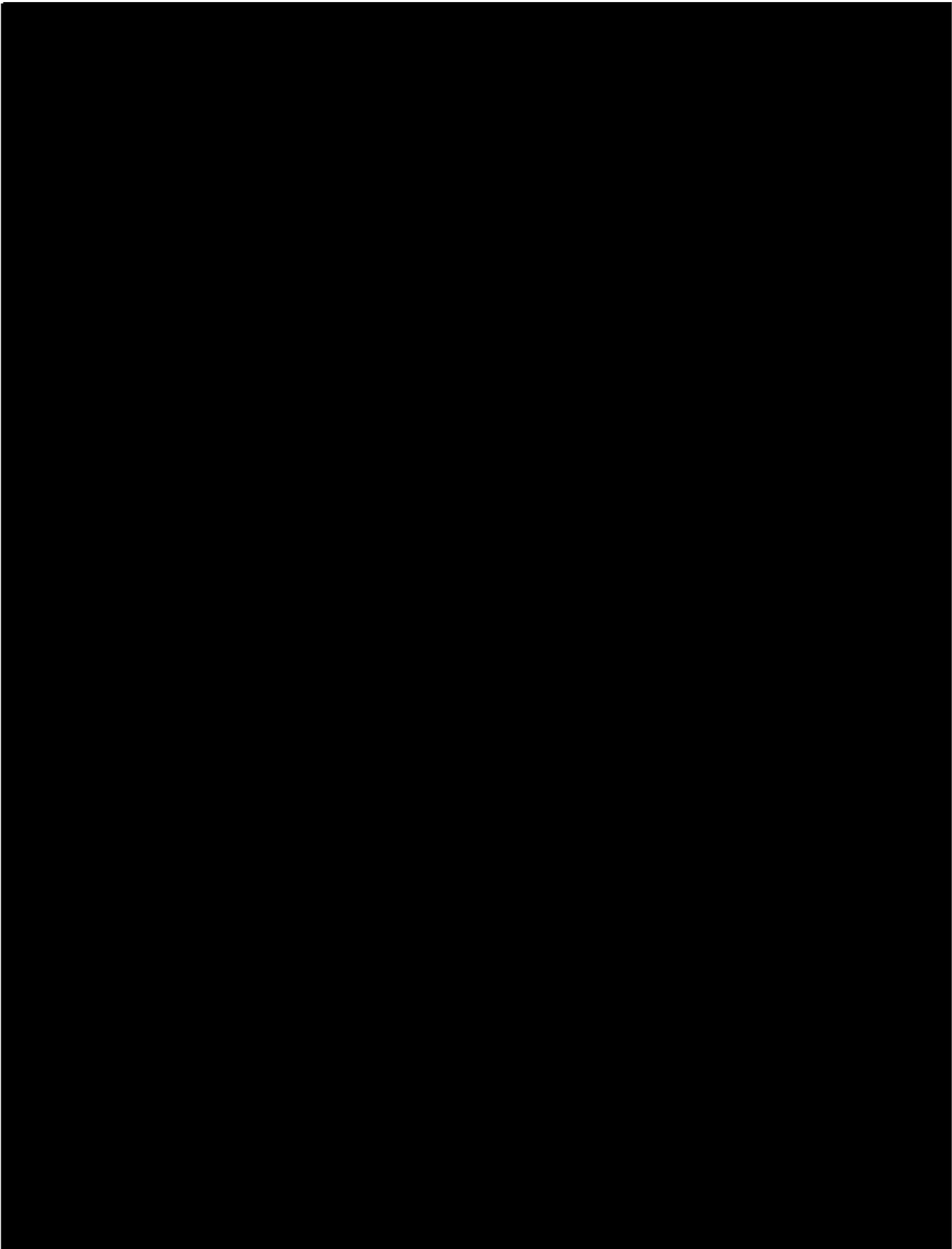


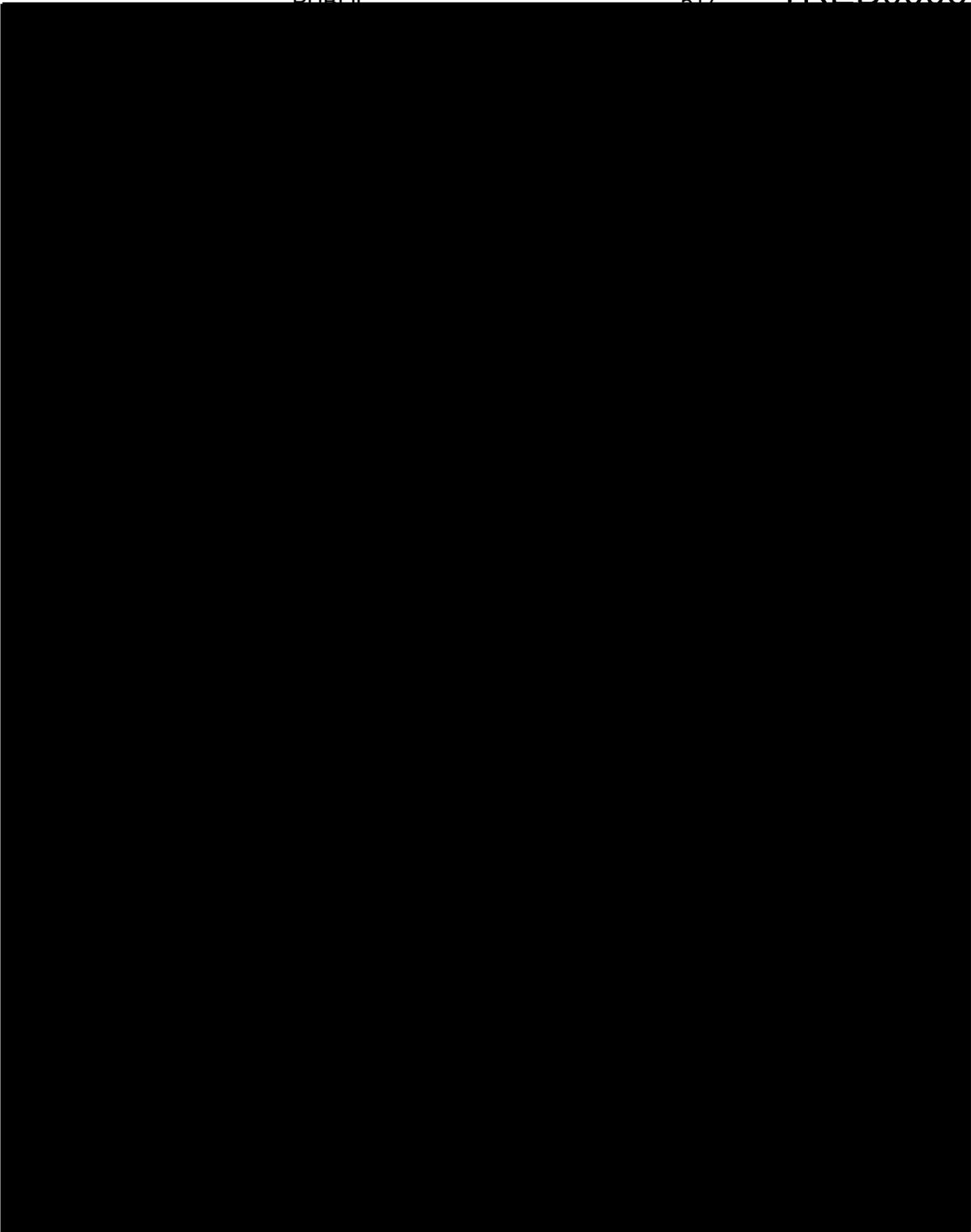


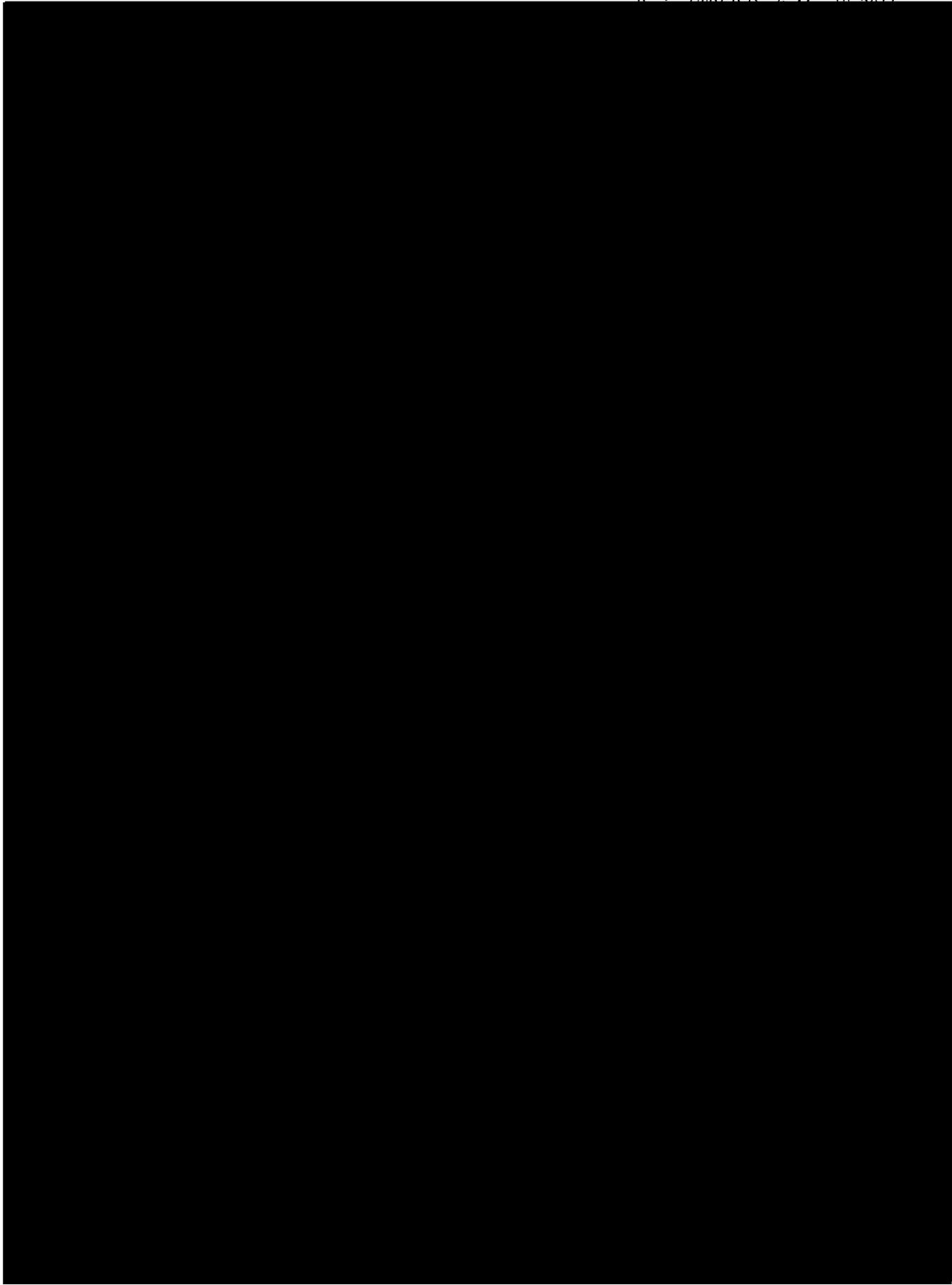


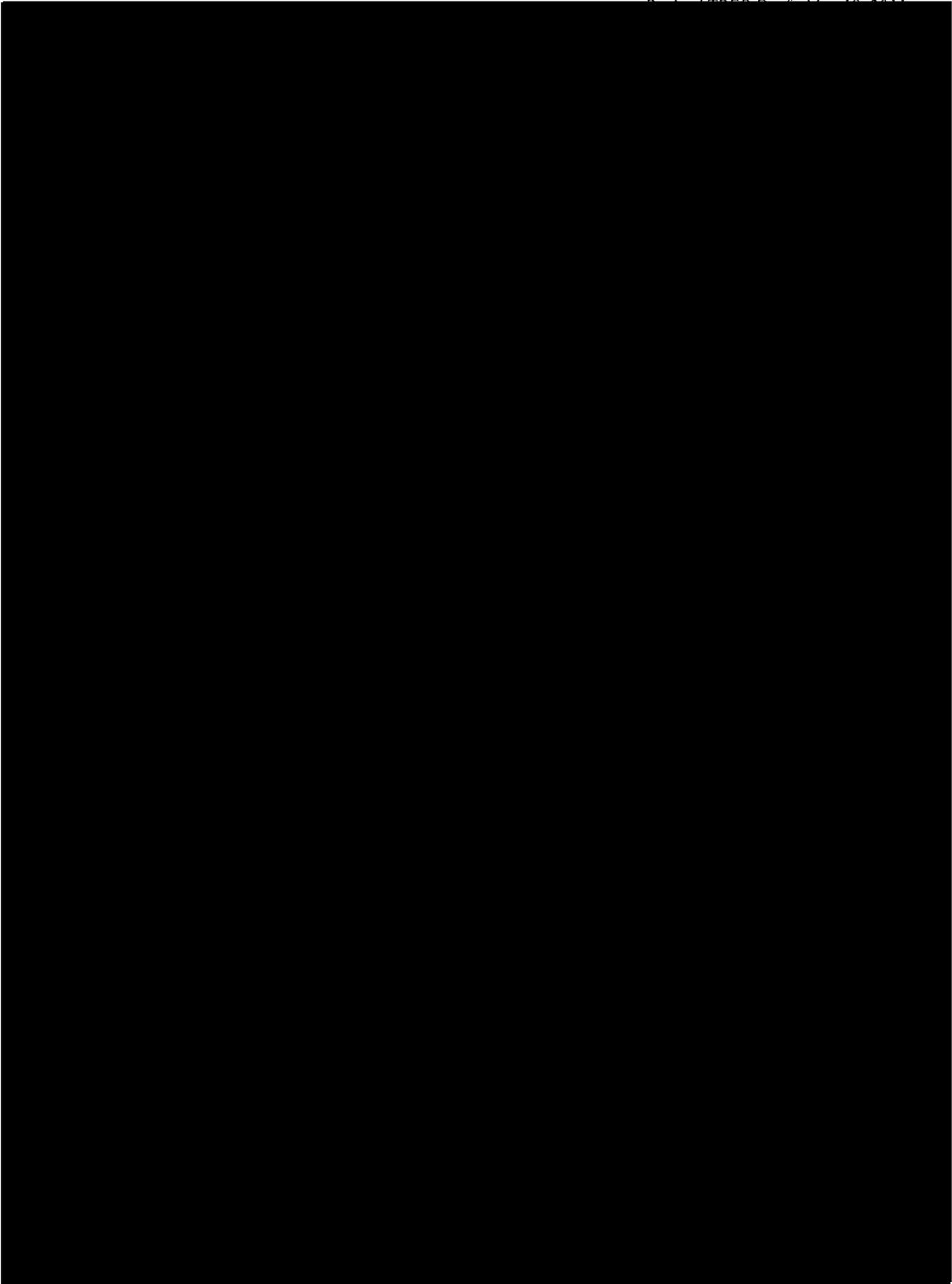


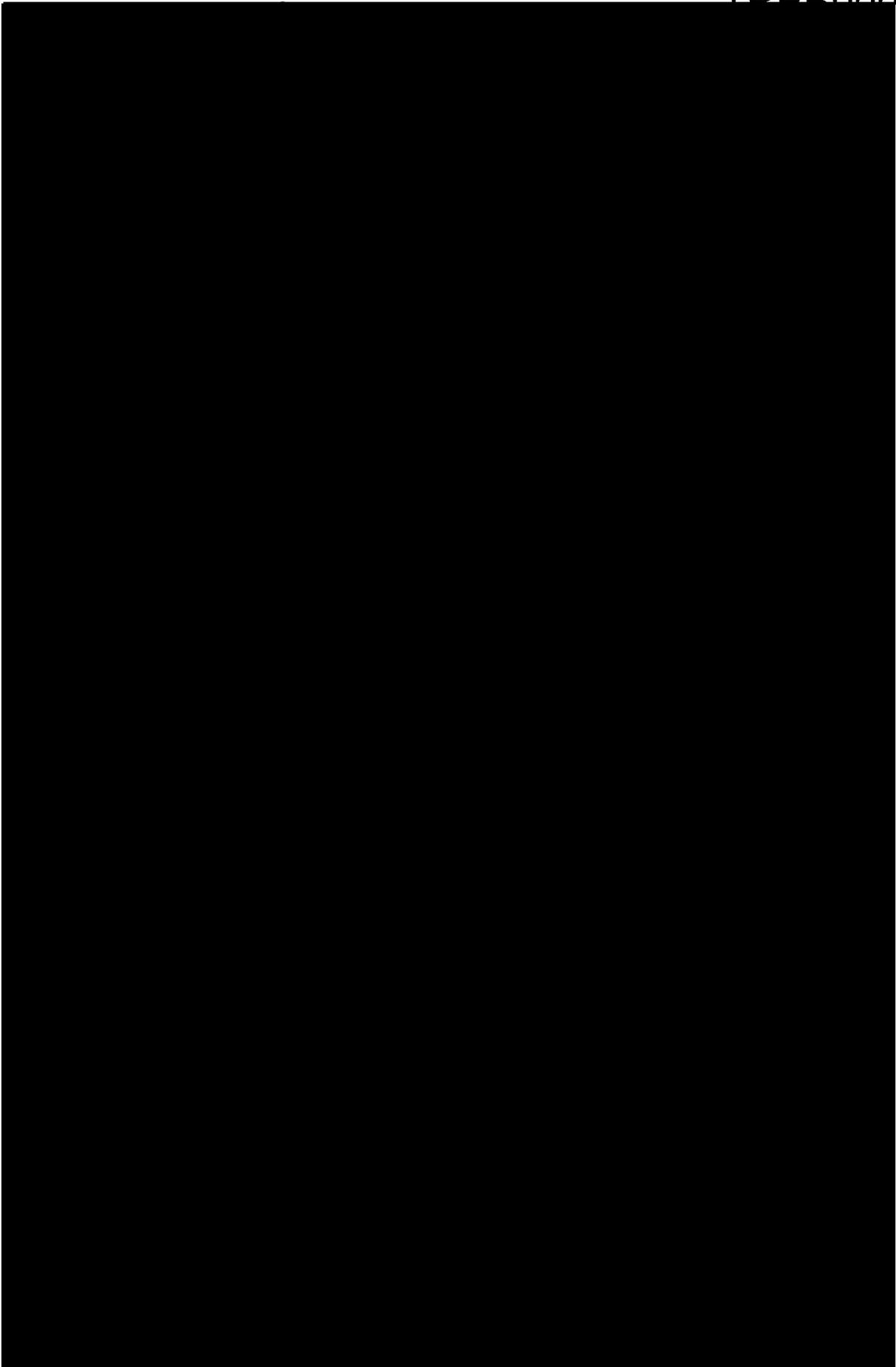


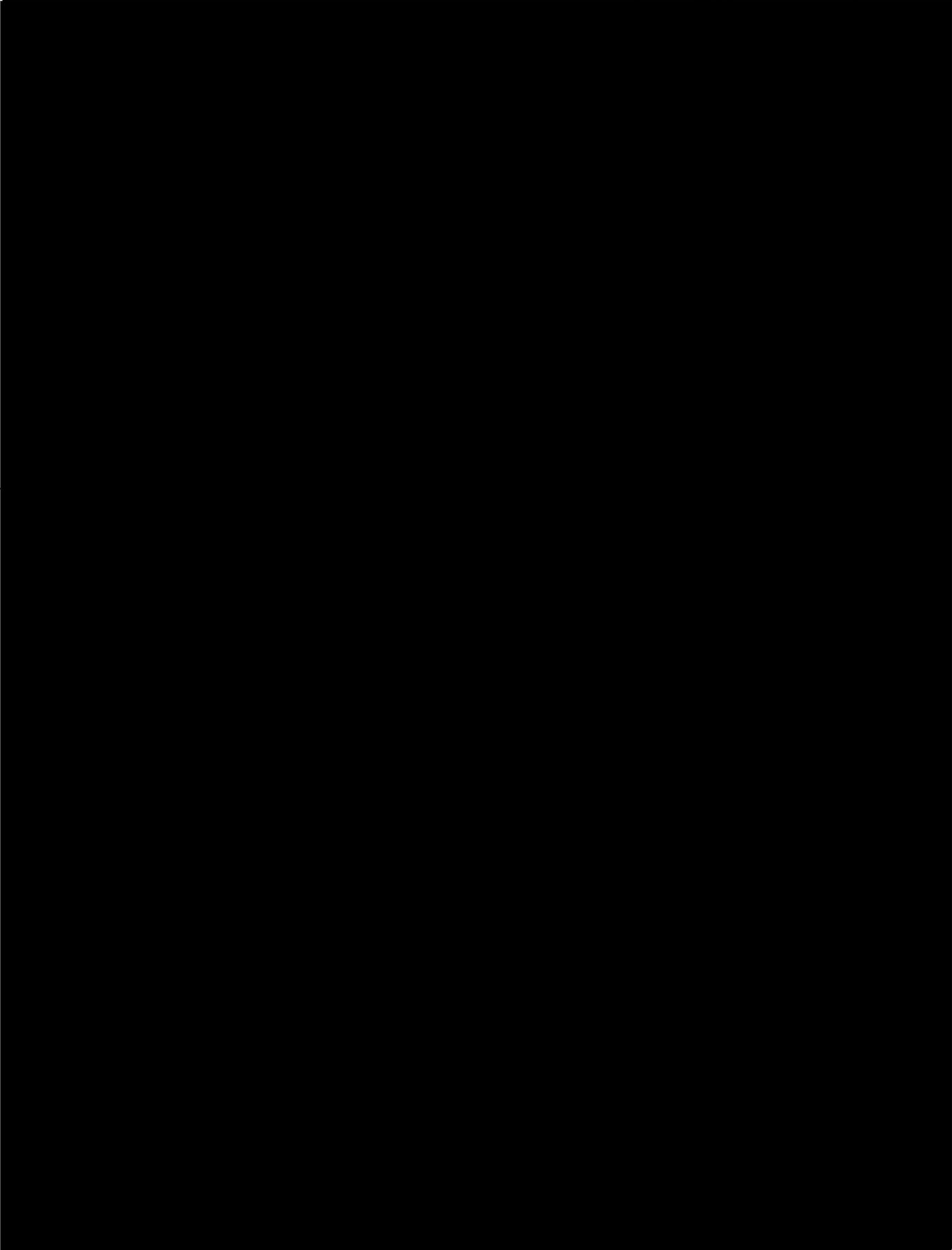


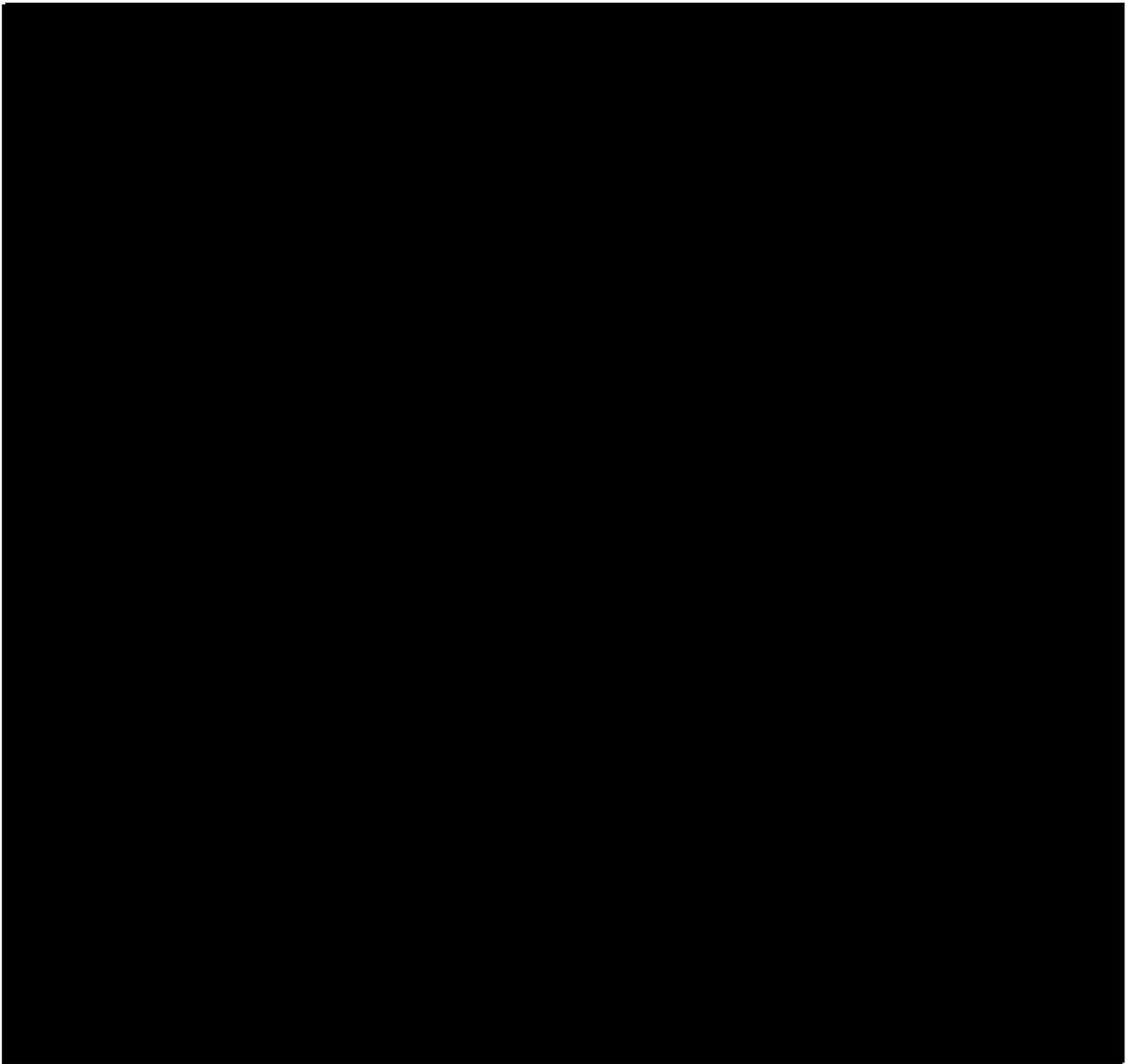




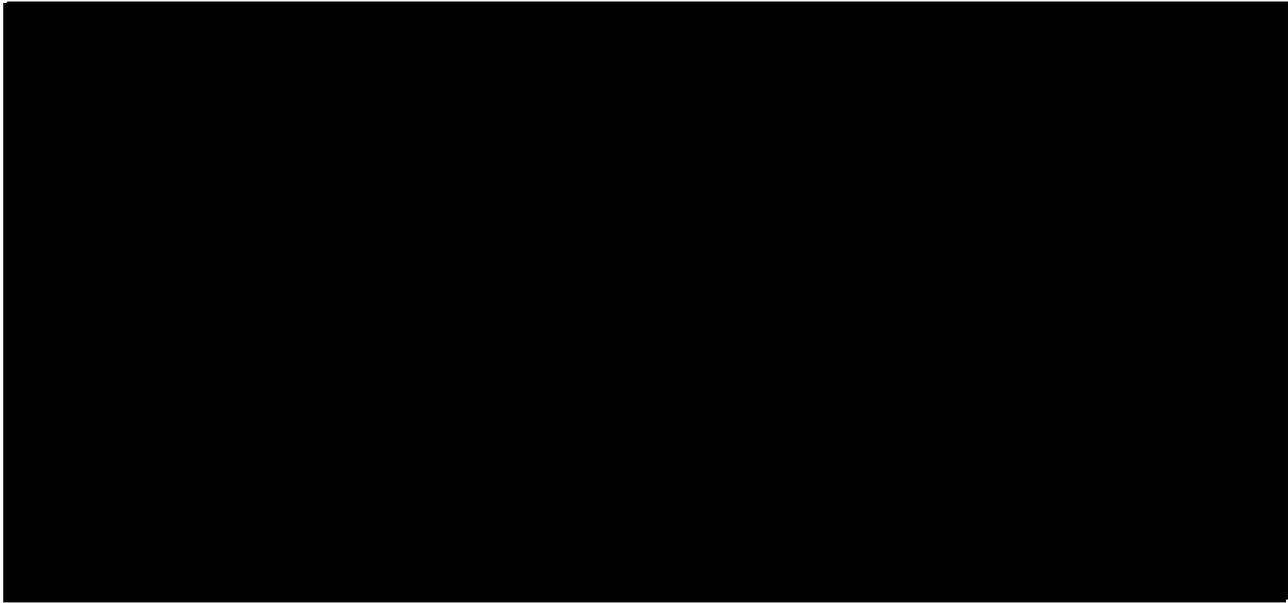




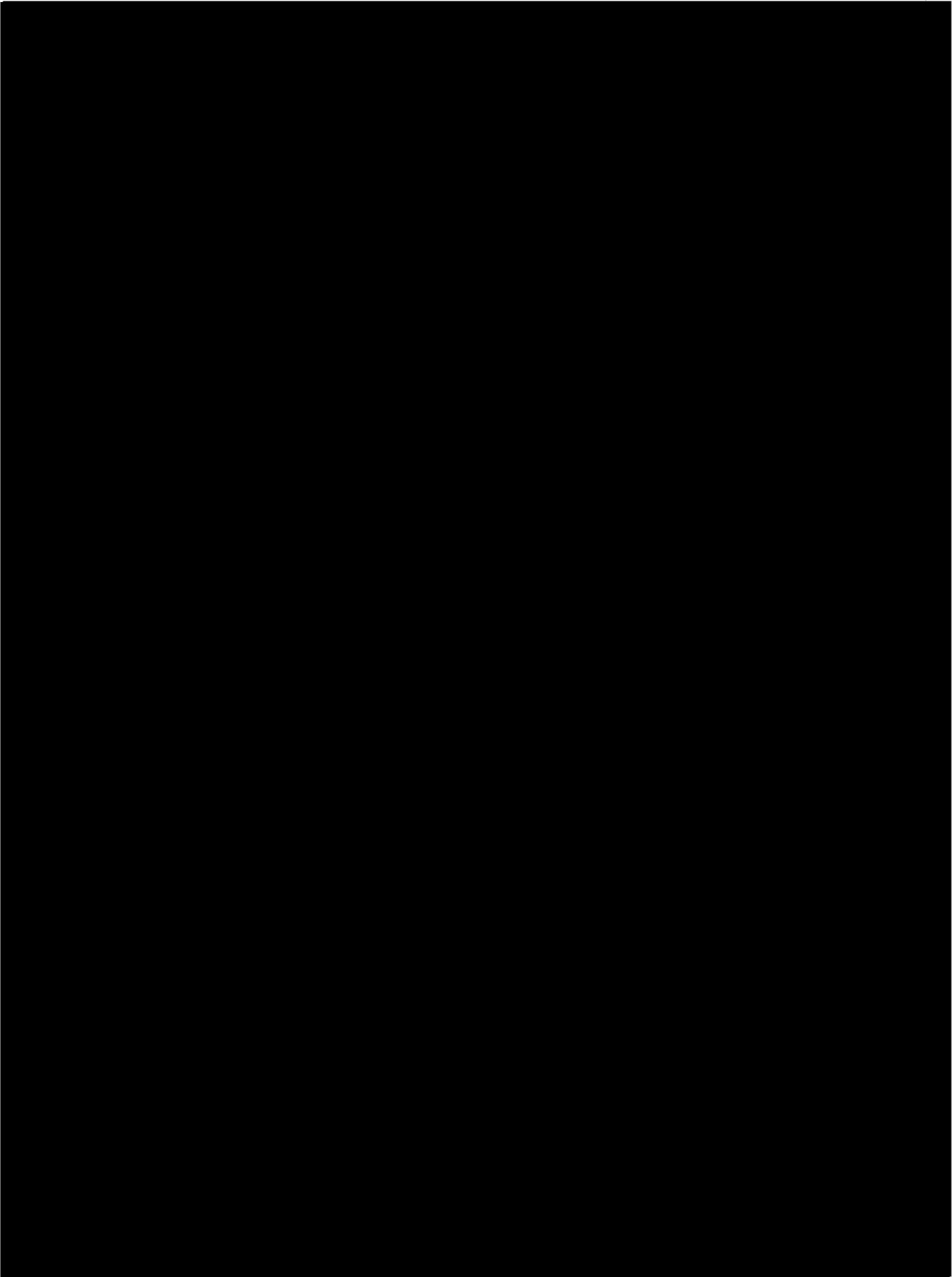


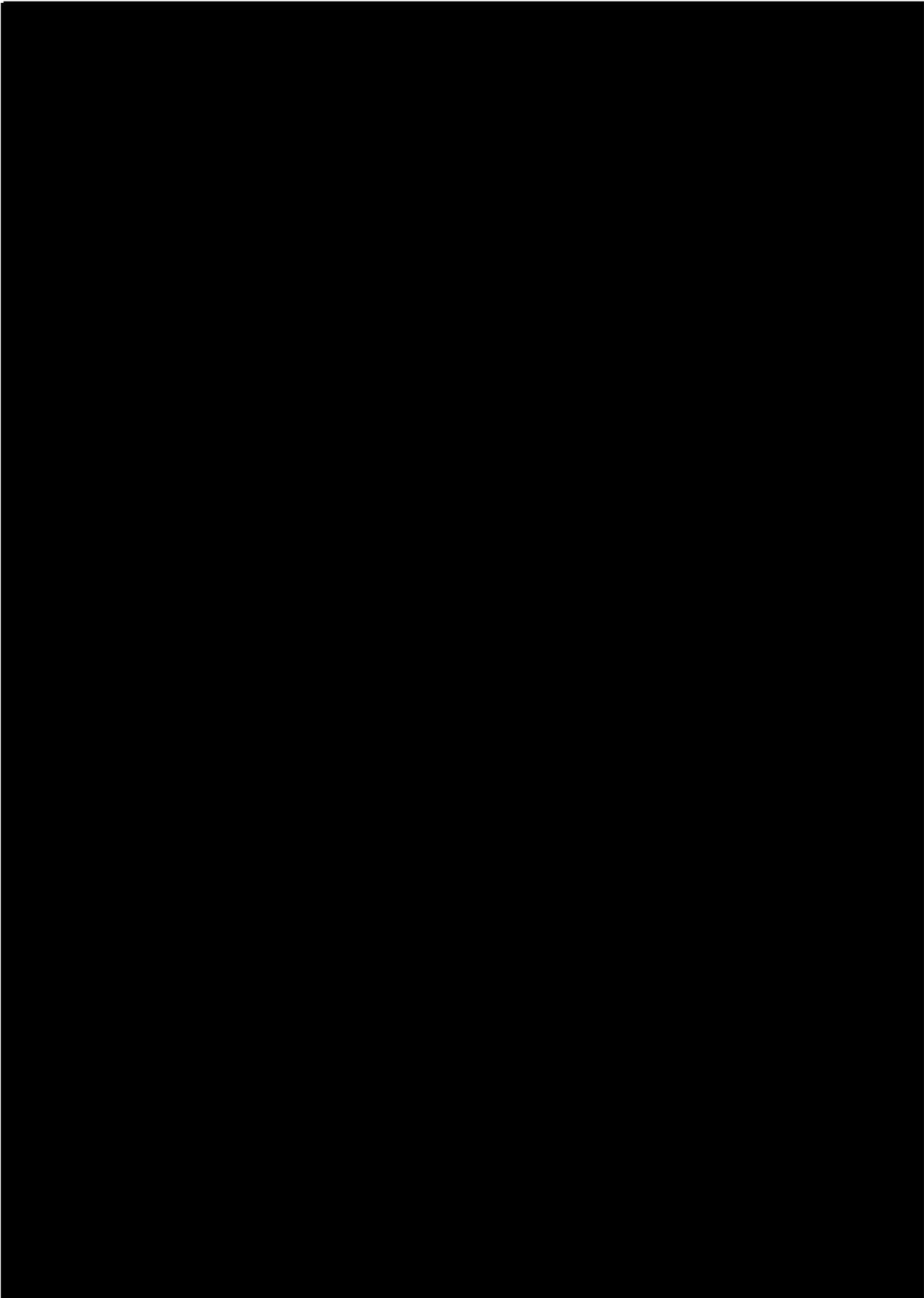


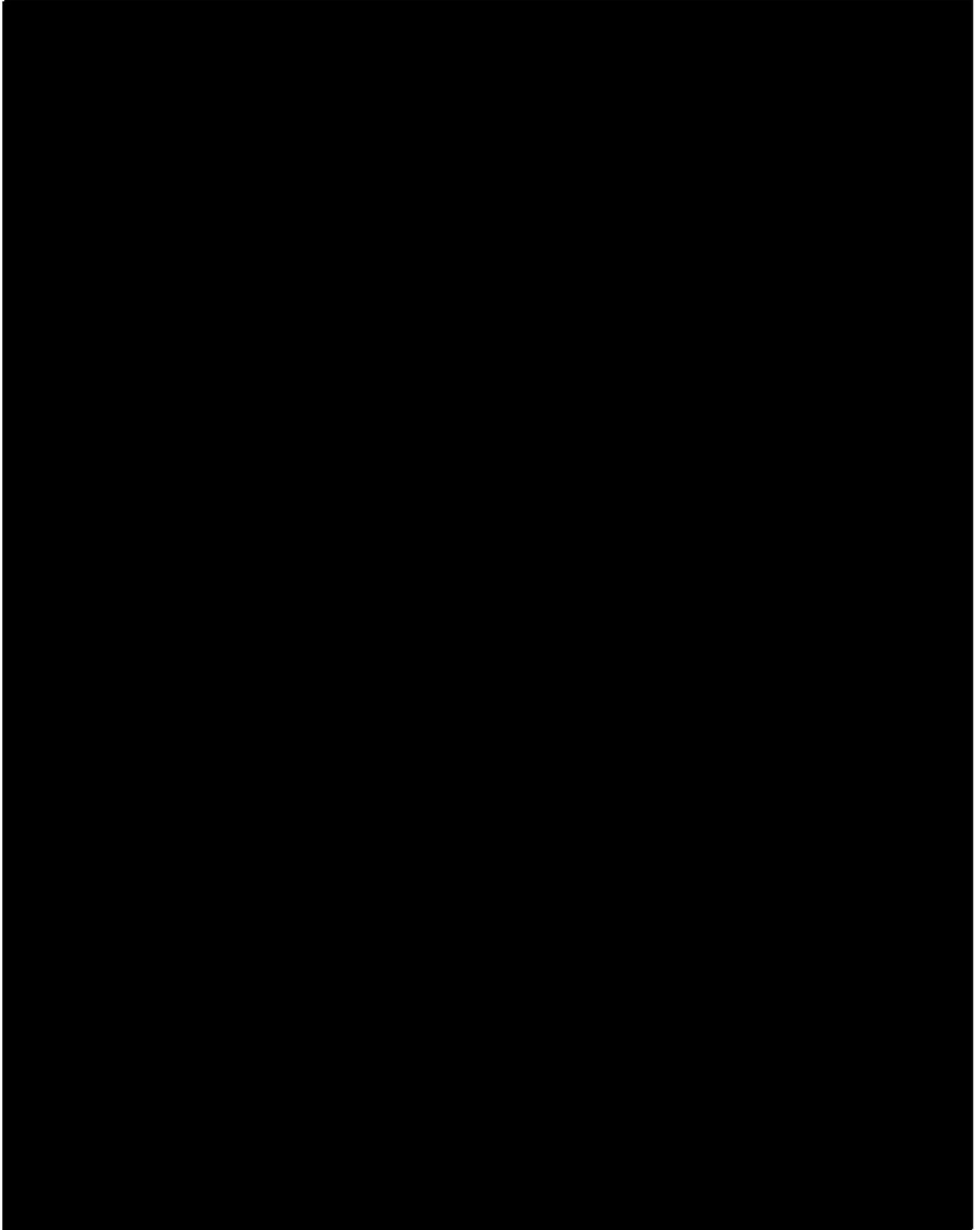


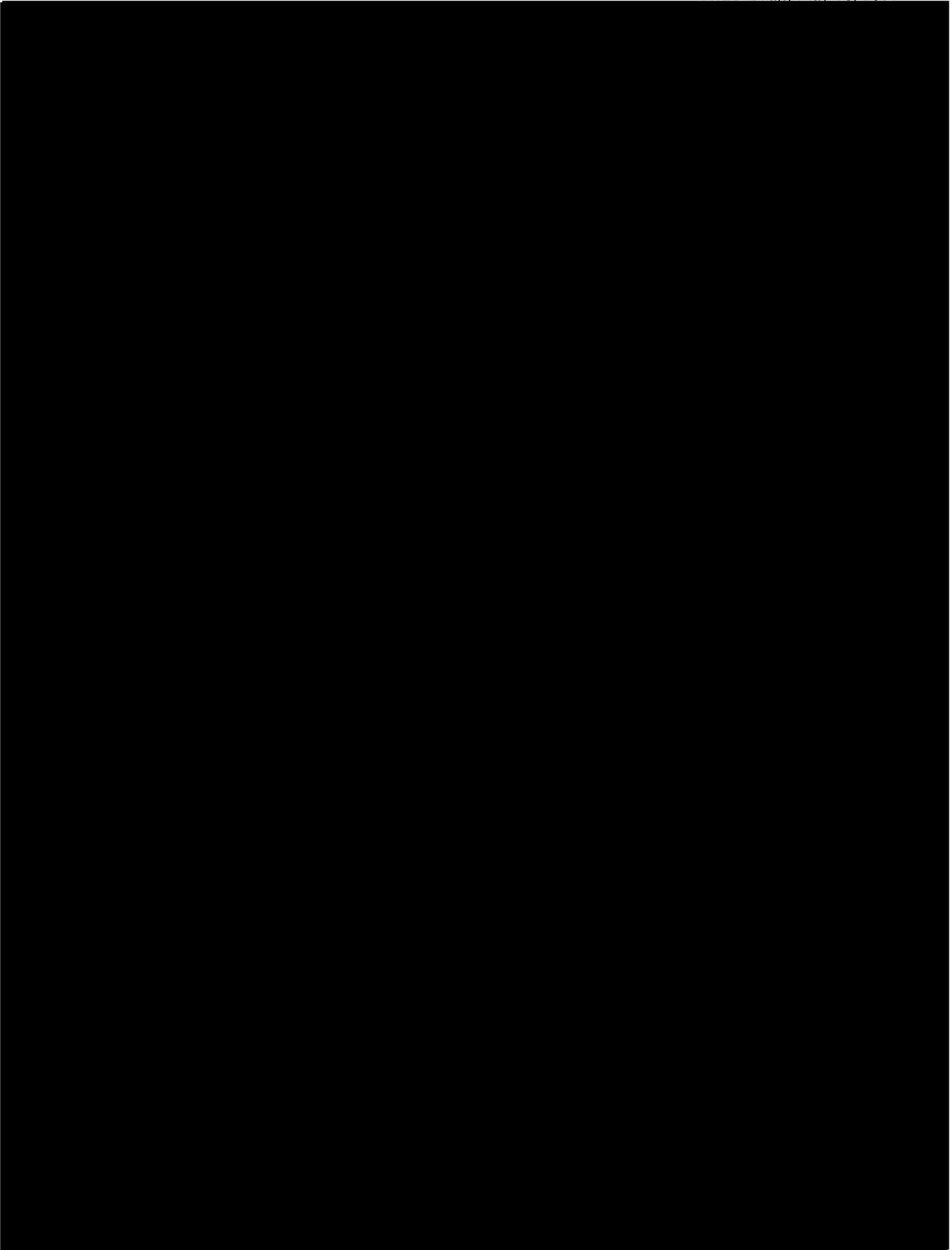


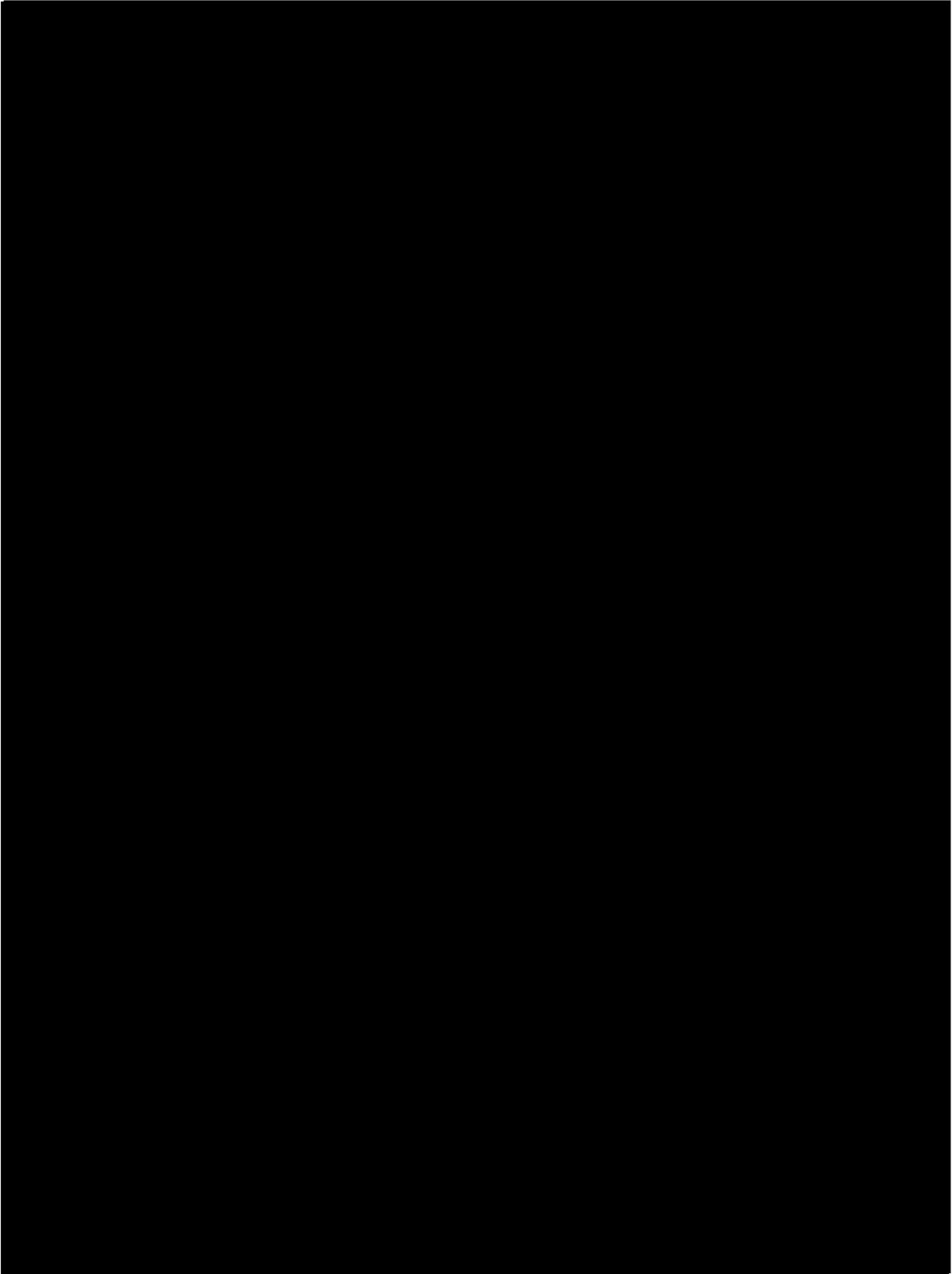
ATTORNEY GENERAL

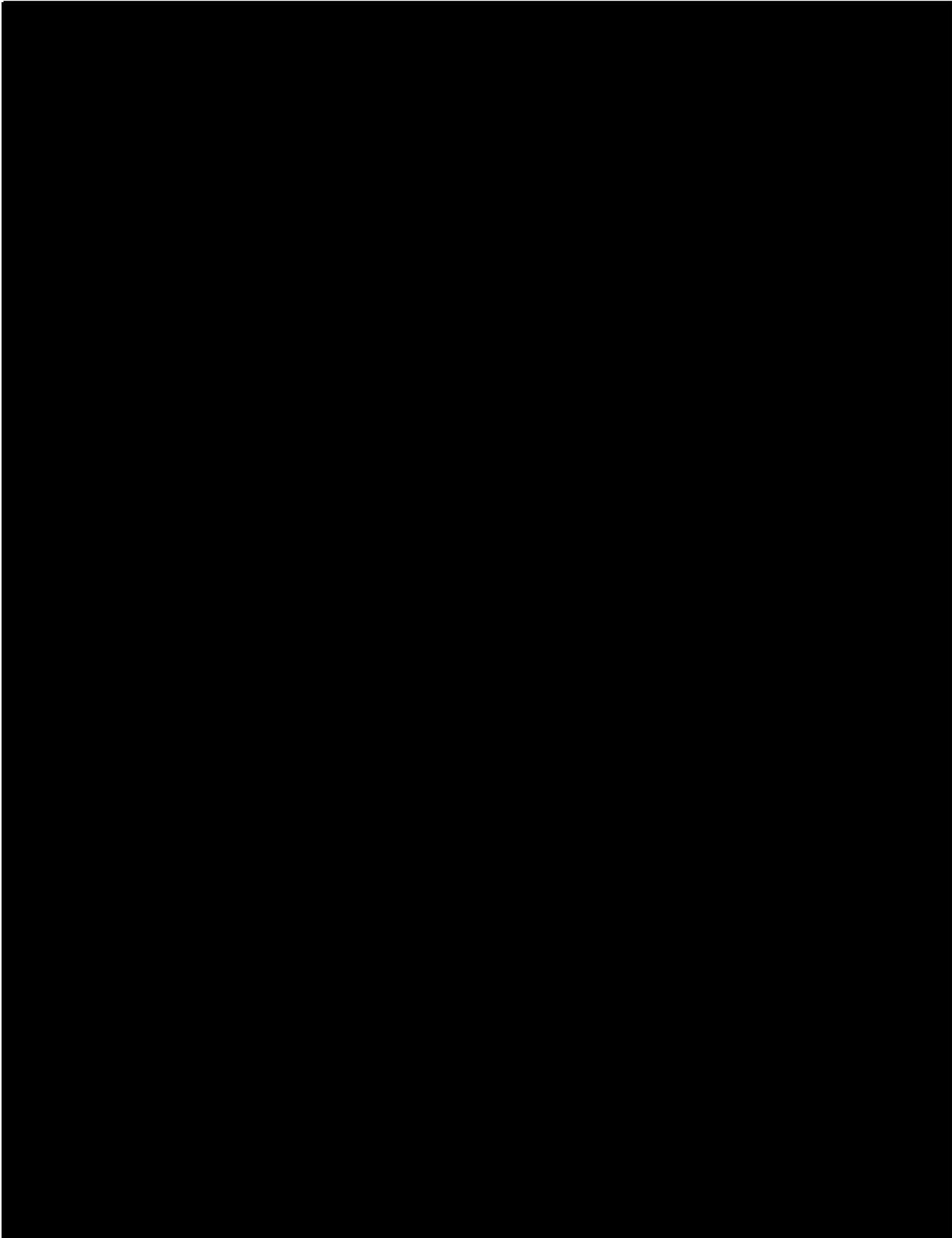


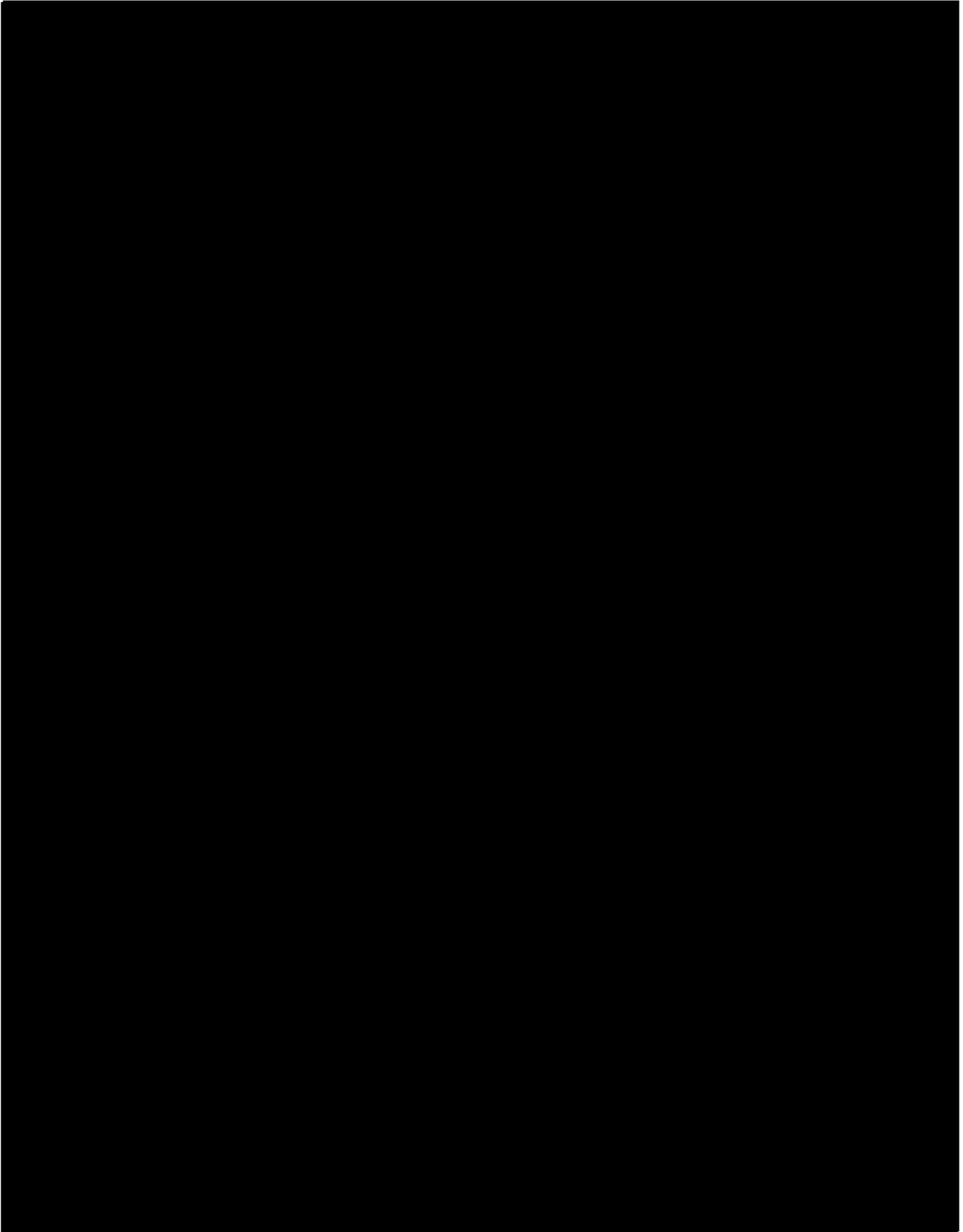


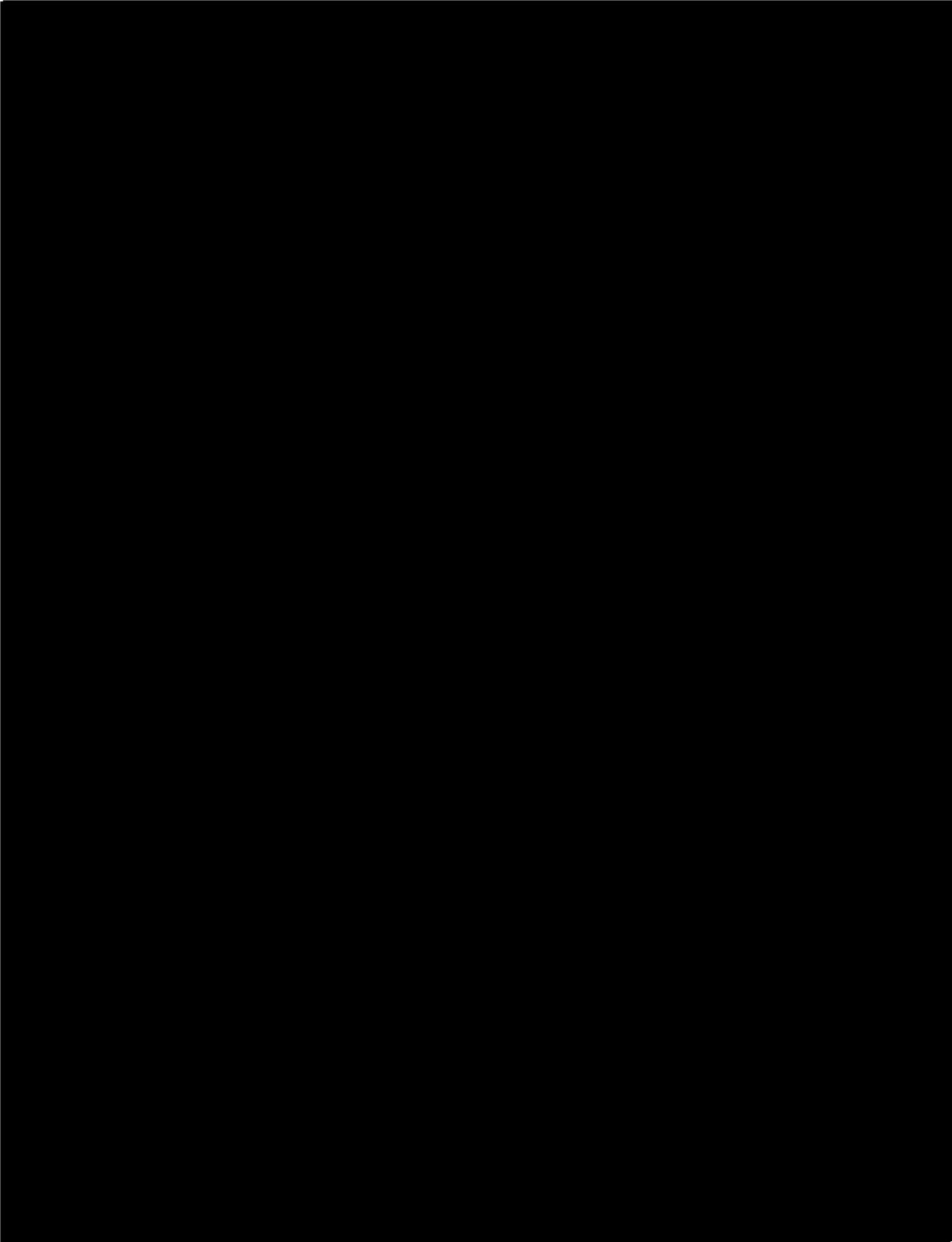


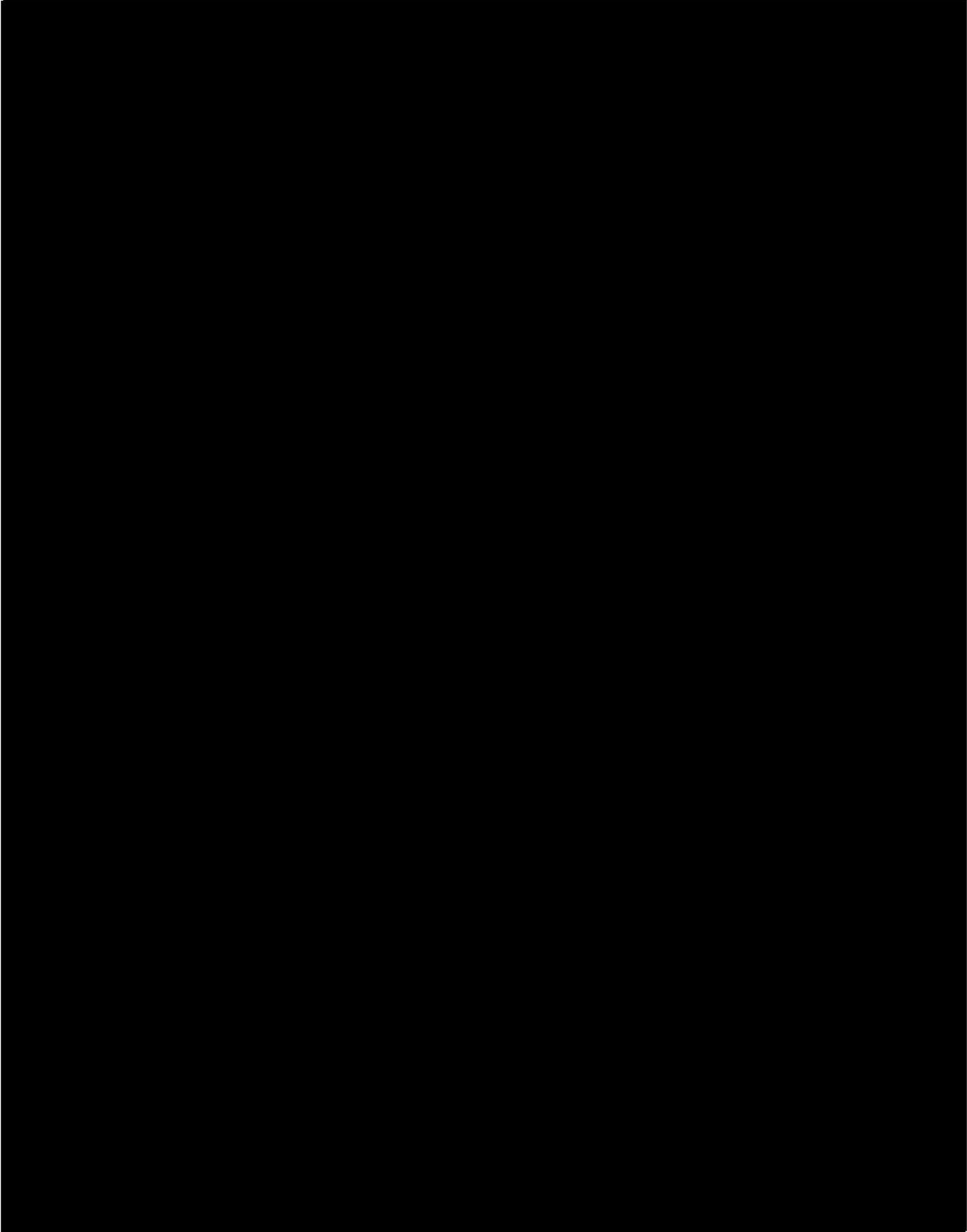


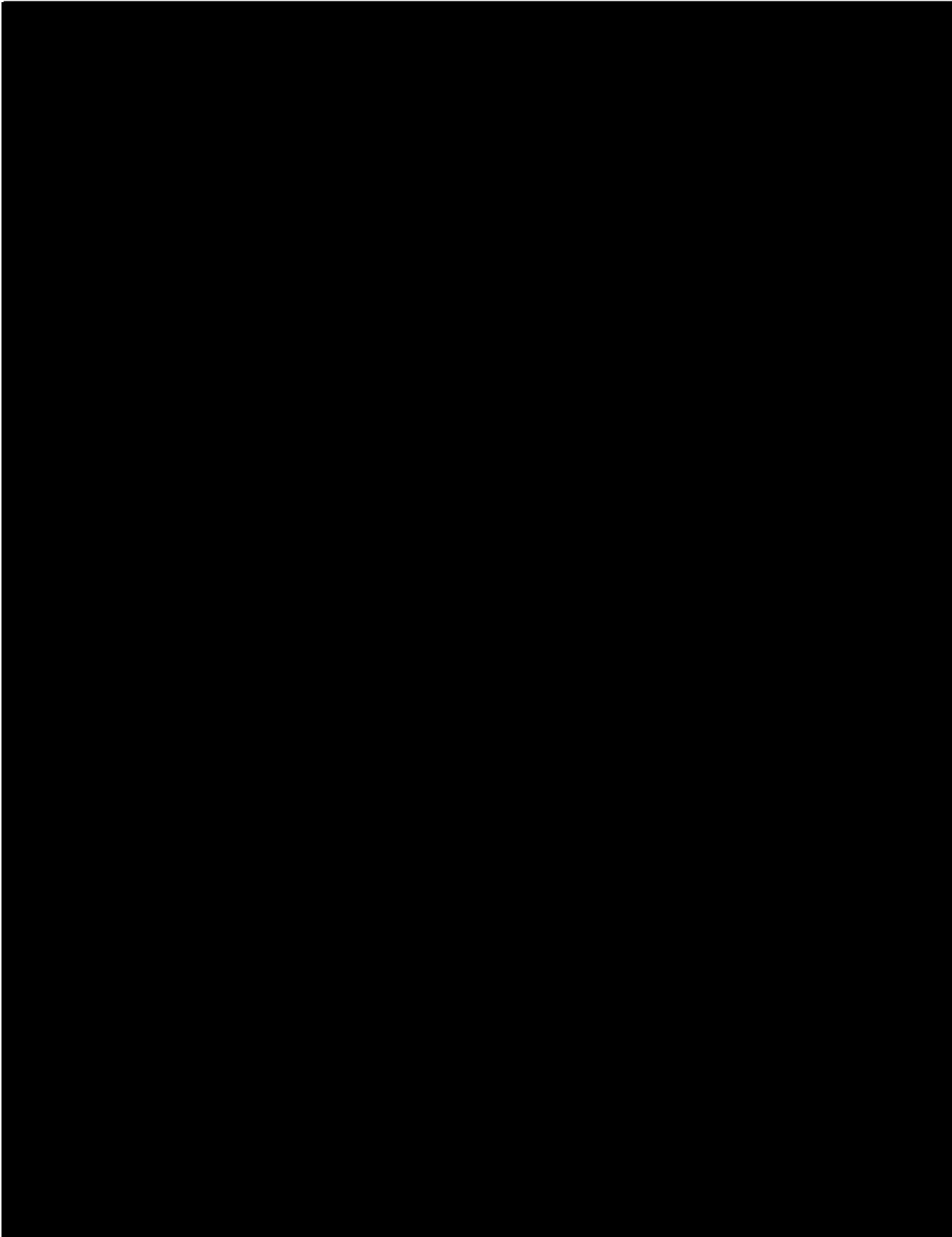


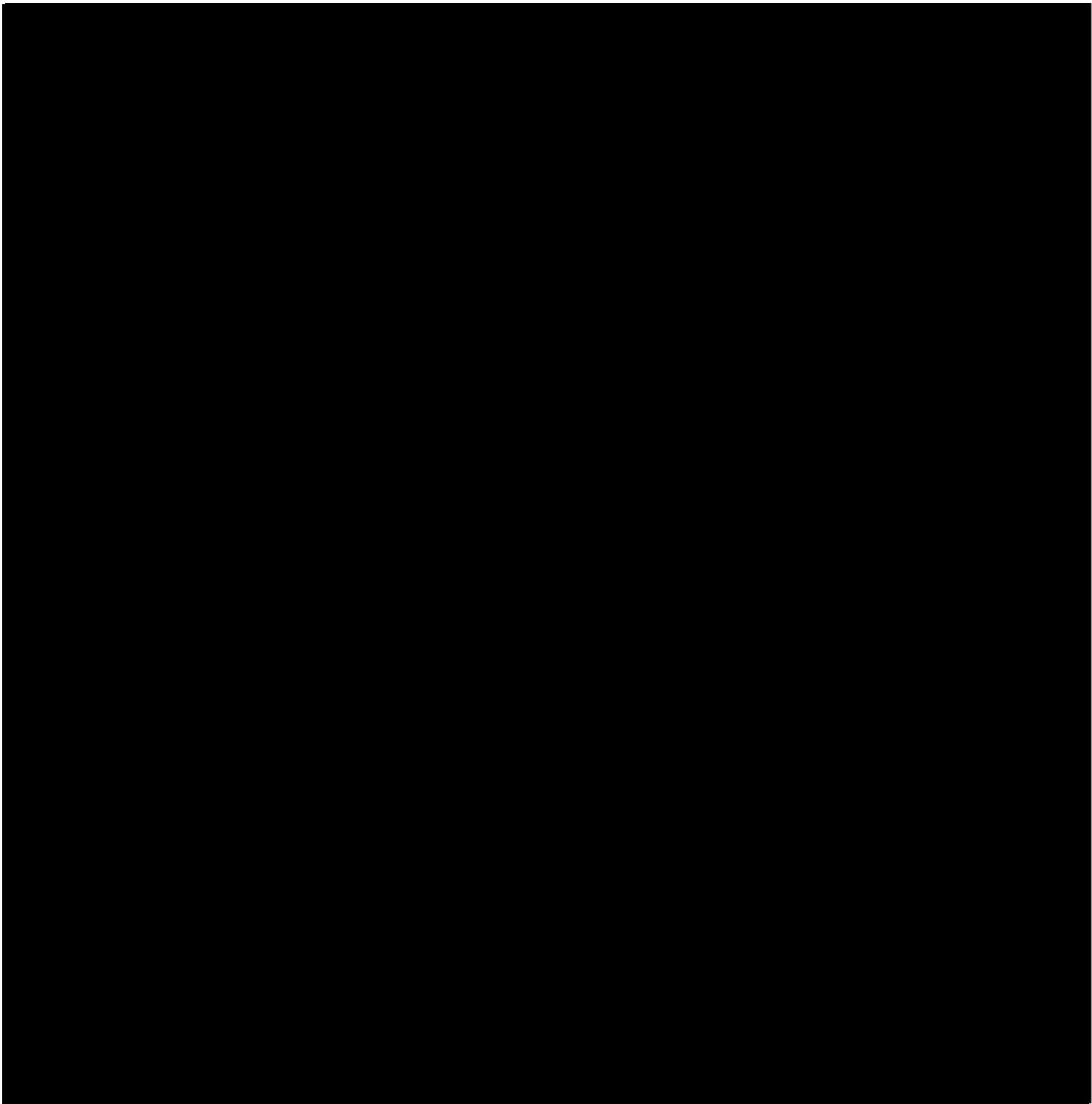










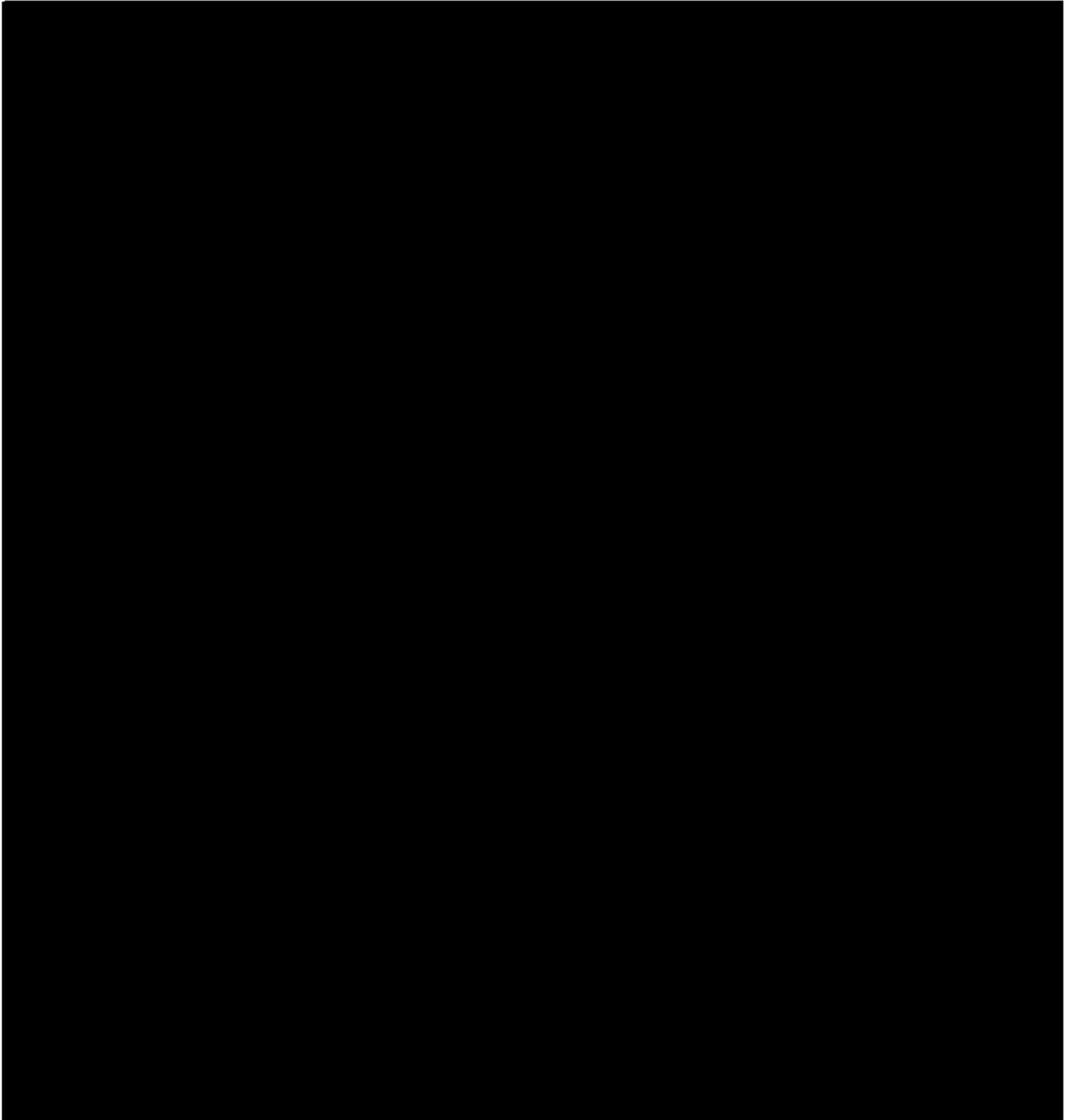


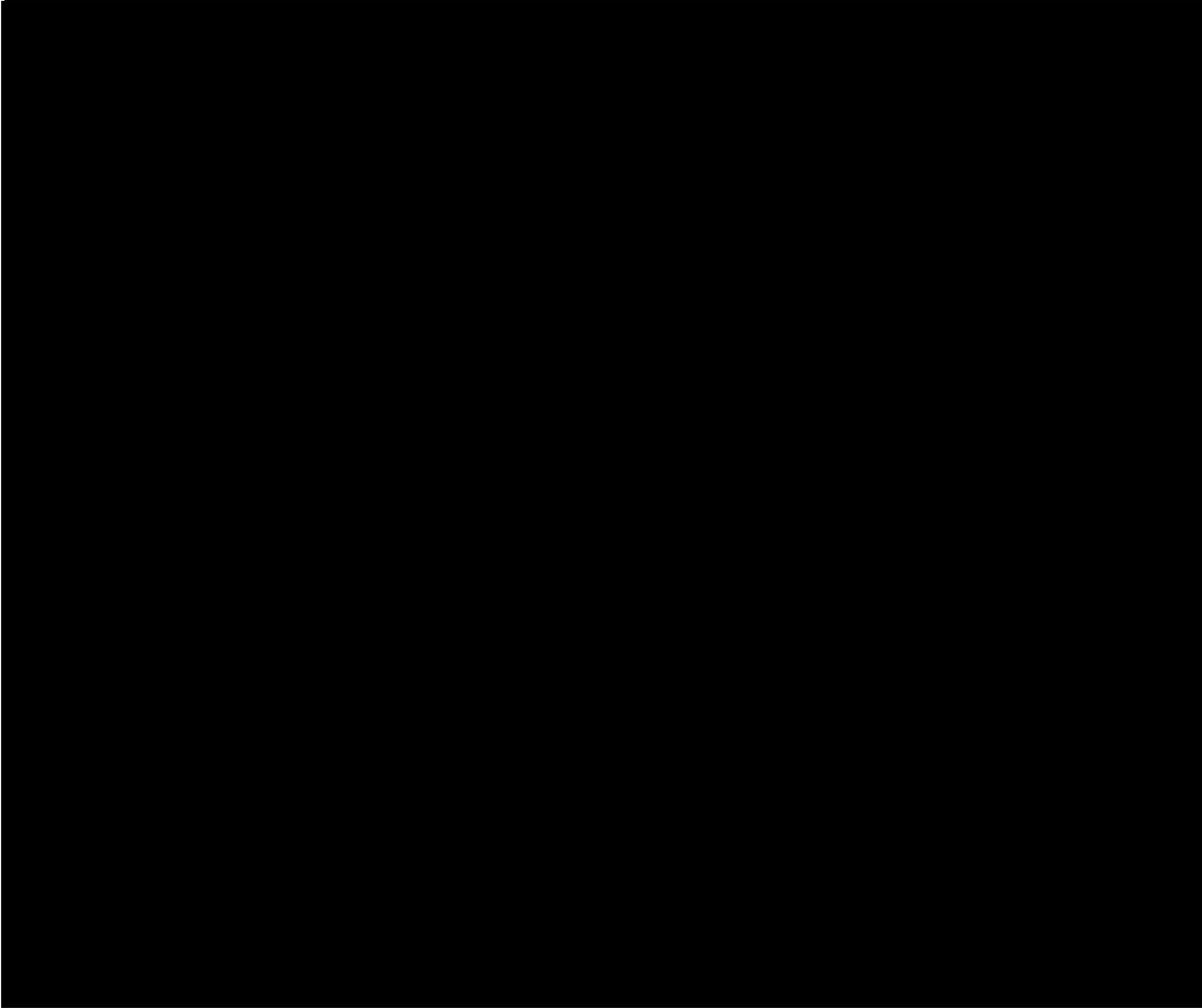
**EXHIBIT**  
**GG**

**Minutes**

VOW Task Force Meeting  
Friday, May 20, 2011  
TREB Offices, Room A, 12:30 a.m.

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# **EXHIBIT**

## **HH**

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MLS®  
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COMMITTEE

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# Memo

**To:** MLS® Committee  
Bev Breslow, Loic Danis, Lisa Clark, Tony Ma, John MacEwen, Paul Maranger, Lynn Martin, Nito Morcos-Brown, Myles Slocombe, Randy Scarlett

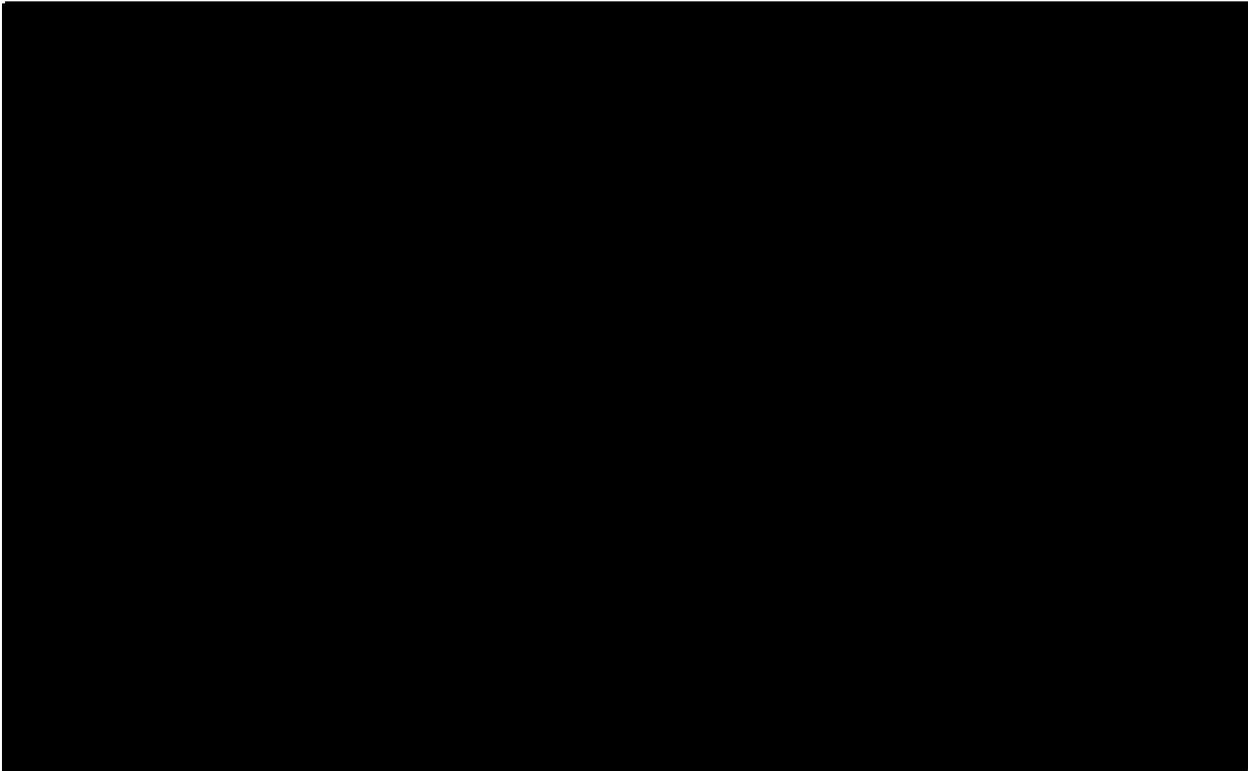
**From:** Heather Fuller, Chair

**Staff Liaison:** John DiMichele

**Subject:** MLS Committee Meeting

**Date:** May 26, 2011

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Heather Fuller

# **EXHIBIT**

## **II**

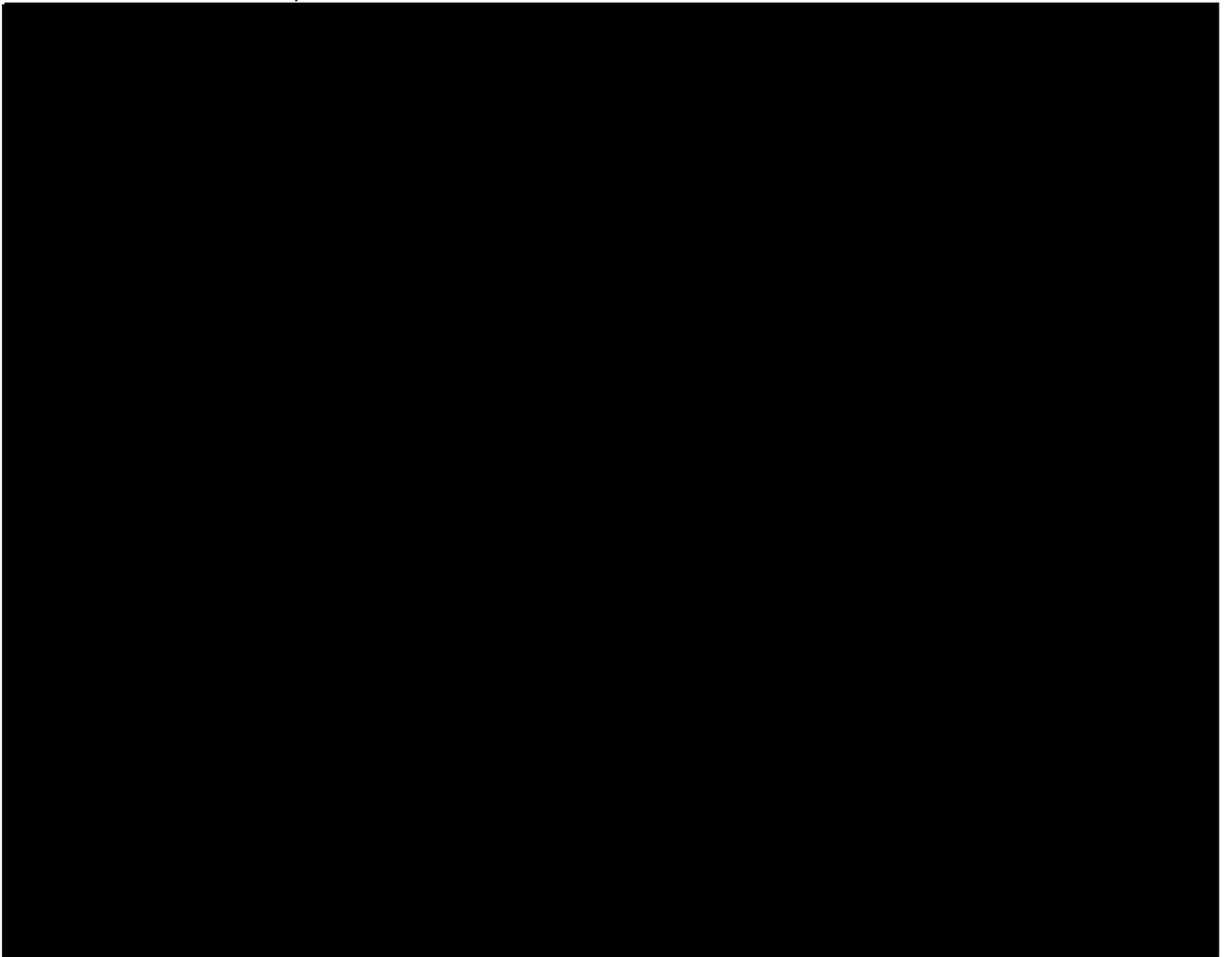
MINUTES OF THE MLS® COMMITTEE MEETING  
HELD AT 10:00AM, BOARDROOM, TREB OFFICE  
WEDNESDAY, JUNE 1, 2011

Chair: Heather Fuller

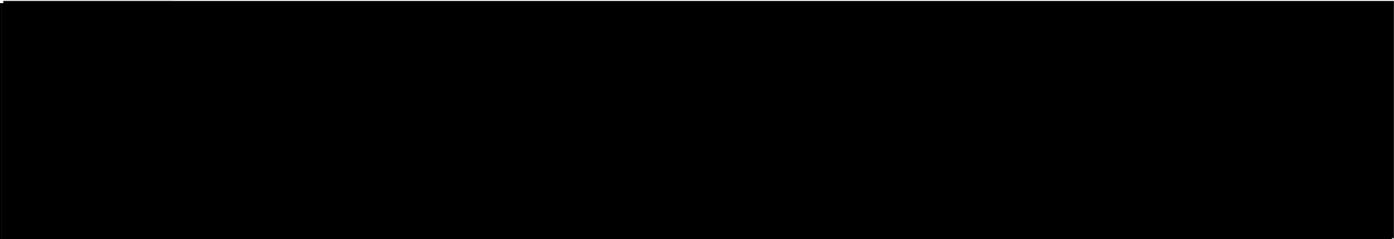
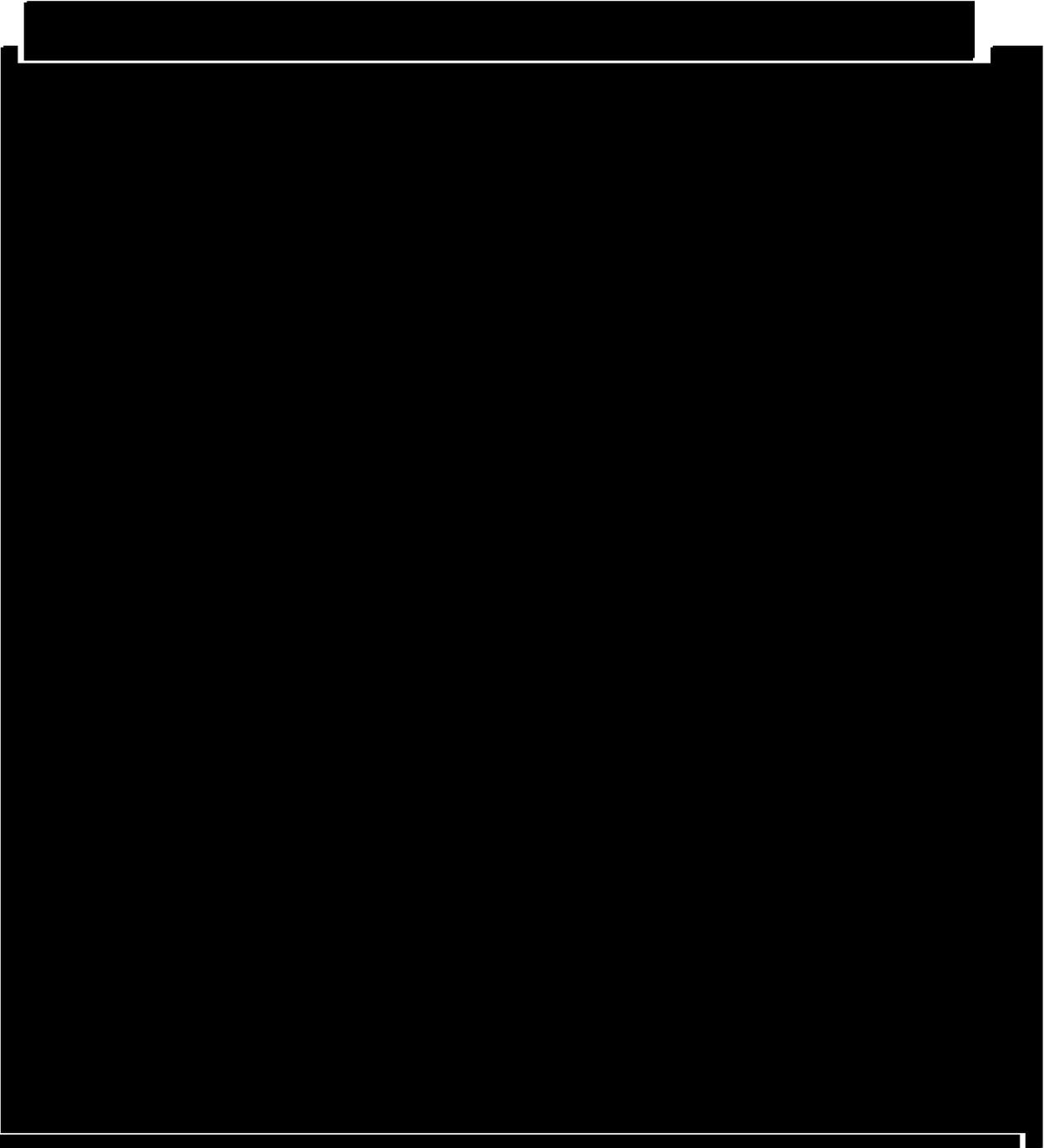
Members Present: Lisa Clark  
Lynn Martin (Brampton Representative)  
John MacEwen  
Myles Slocombe  
Nito Morcos-Brown  
Tony Ma  
Randy Scarlett (Durham Representative)

Regrets: Bev Breslow  
Loic Danis  
Paul Maranger

Staff Liaisons: Don Richardson  
John DiMichele  
Hugh Foy  
Roy Murata



5.



# **EXHIBIT**

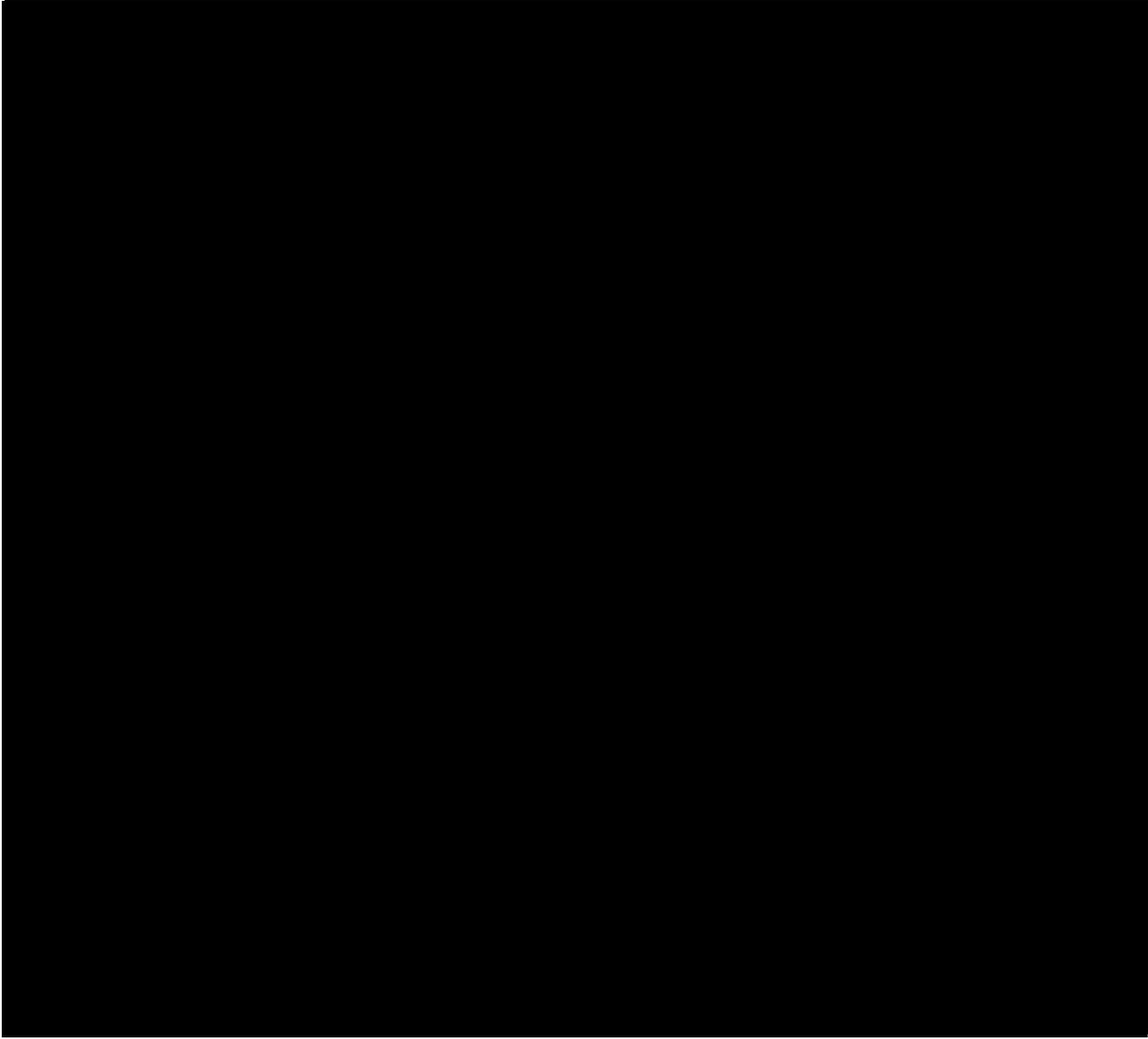
## **JJ**

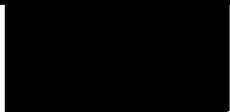
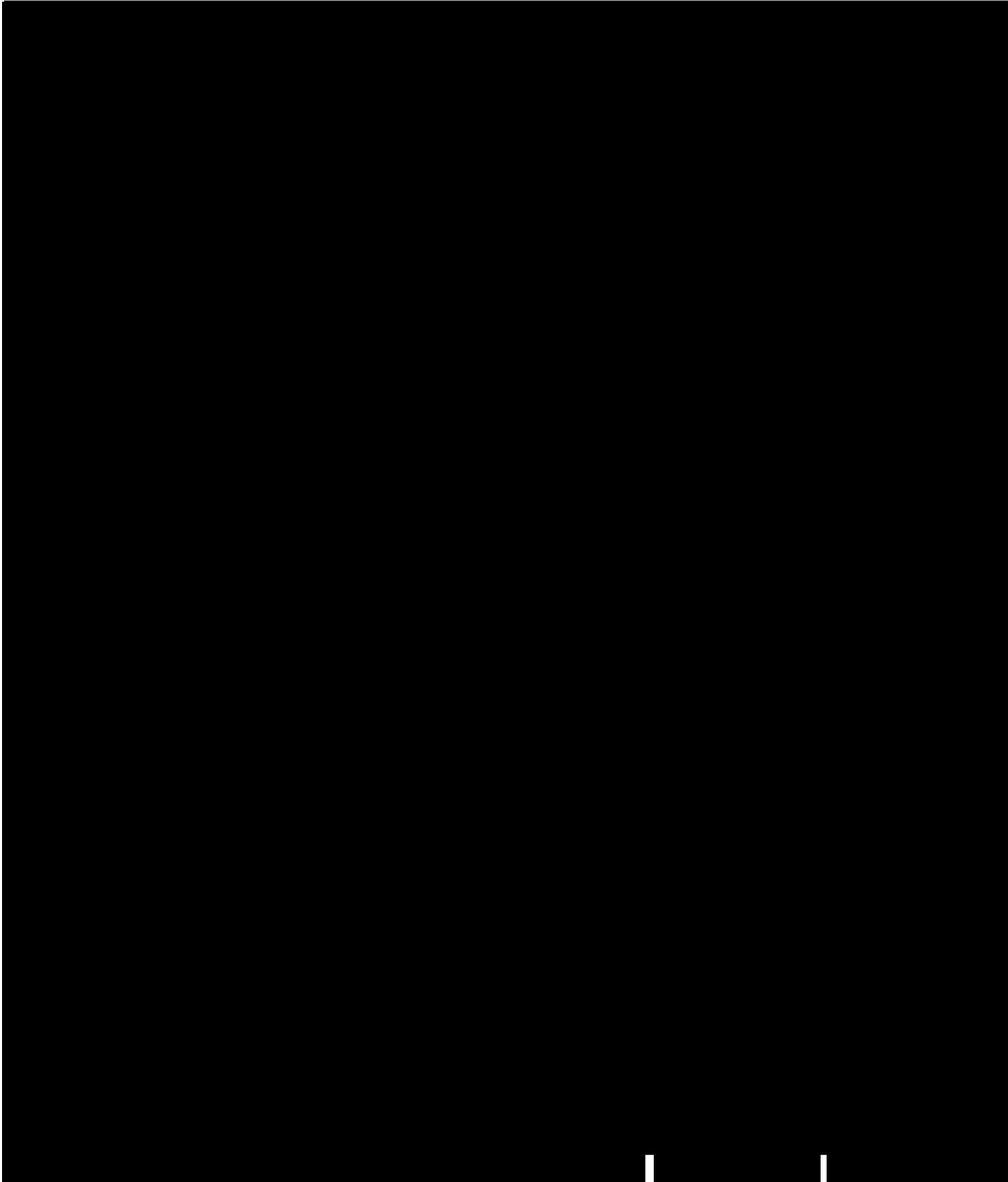
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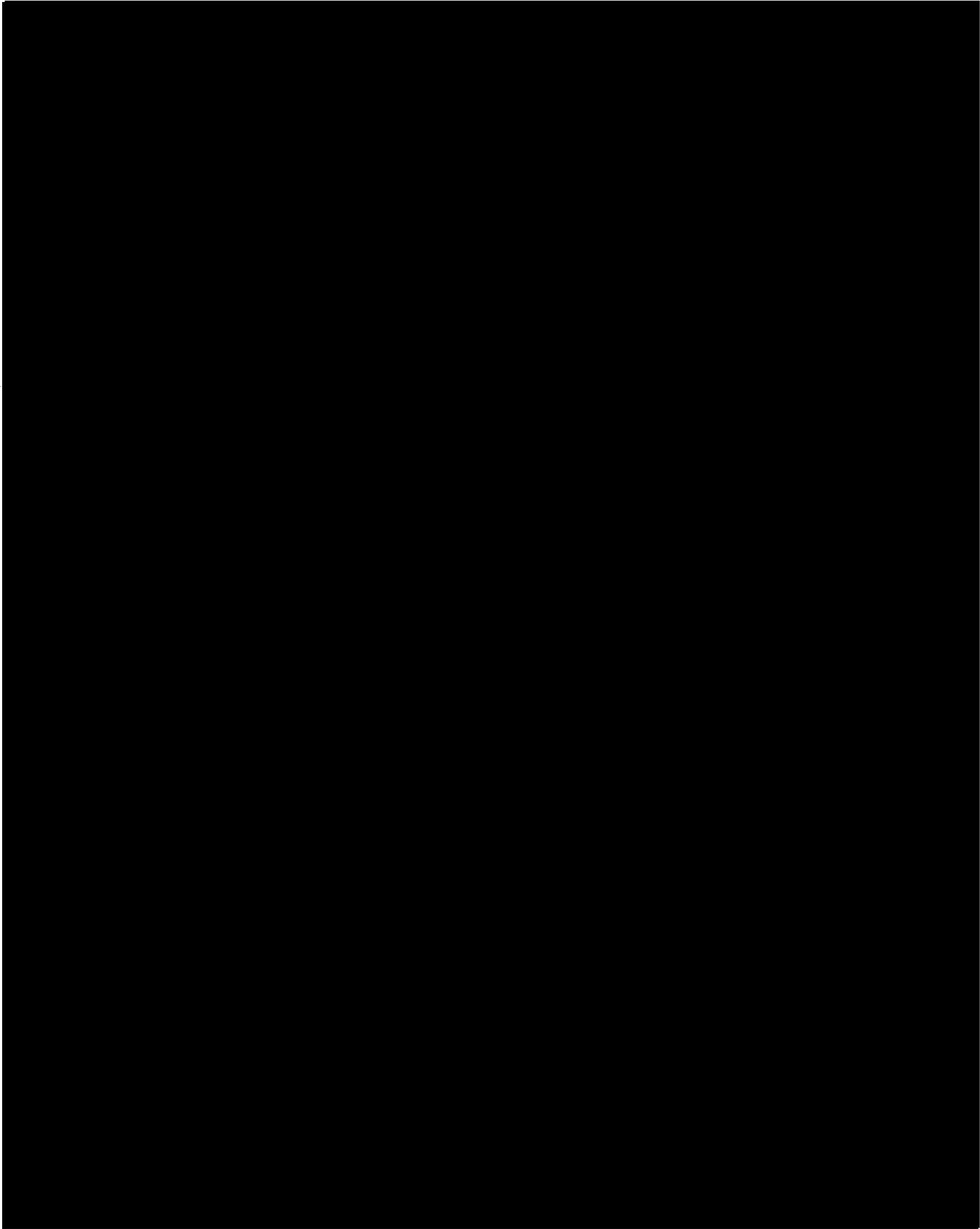
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On Thursday, June 9, 2011 at the Board Offices  
(Immediately following legal briefing session)

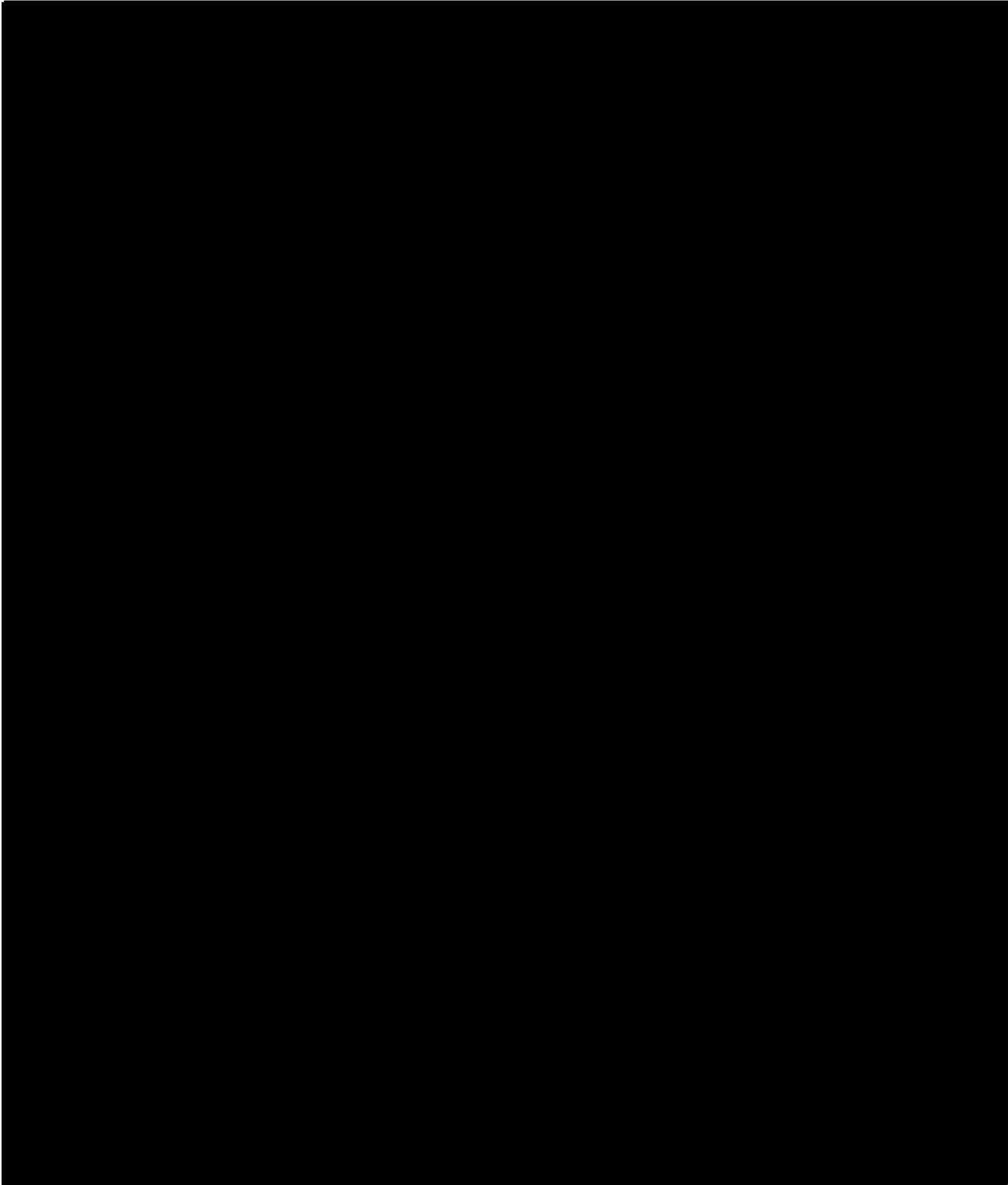
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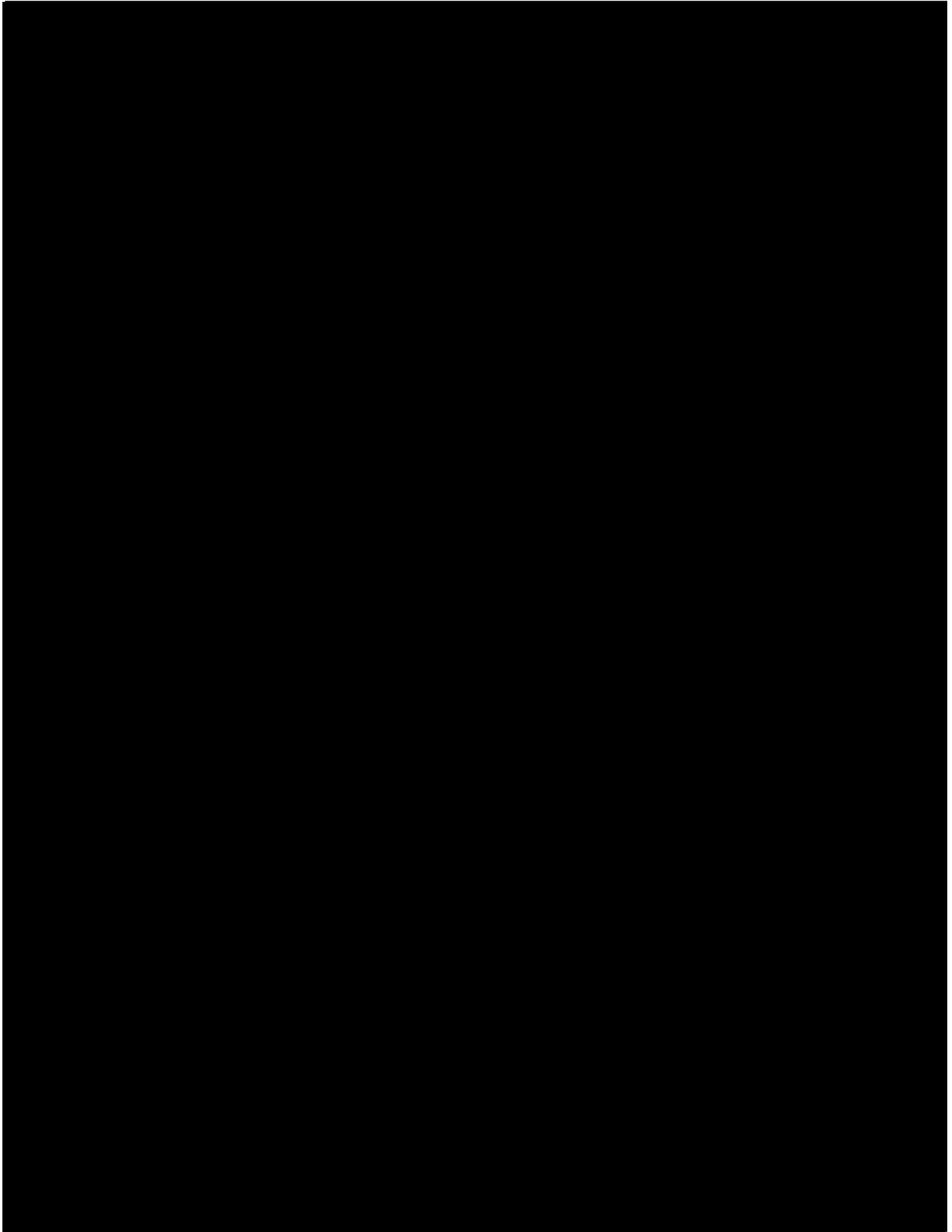
**PRIVATE & CONFIDENTIAL**

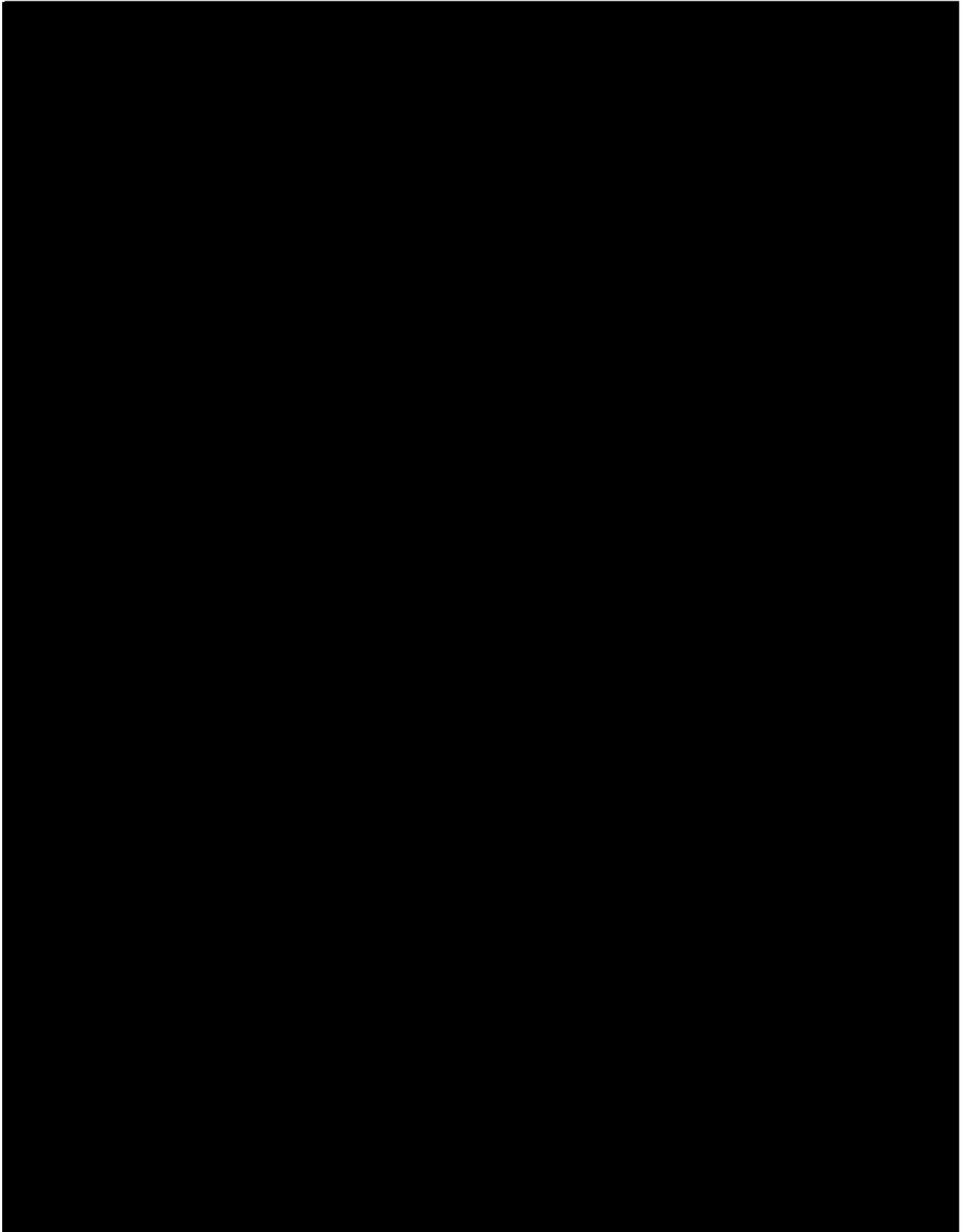


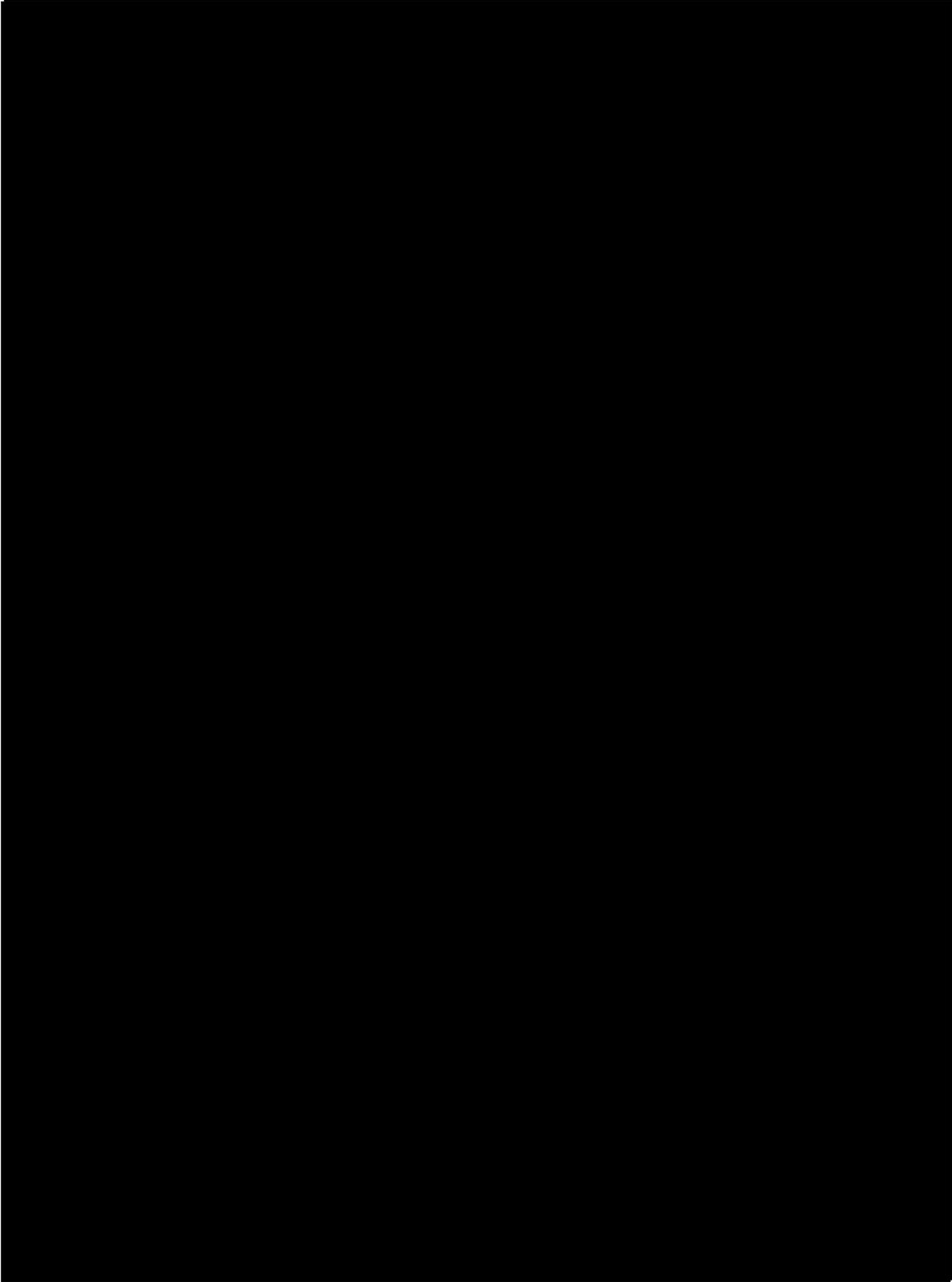


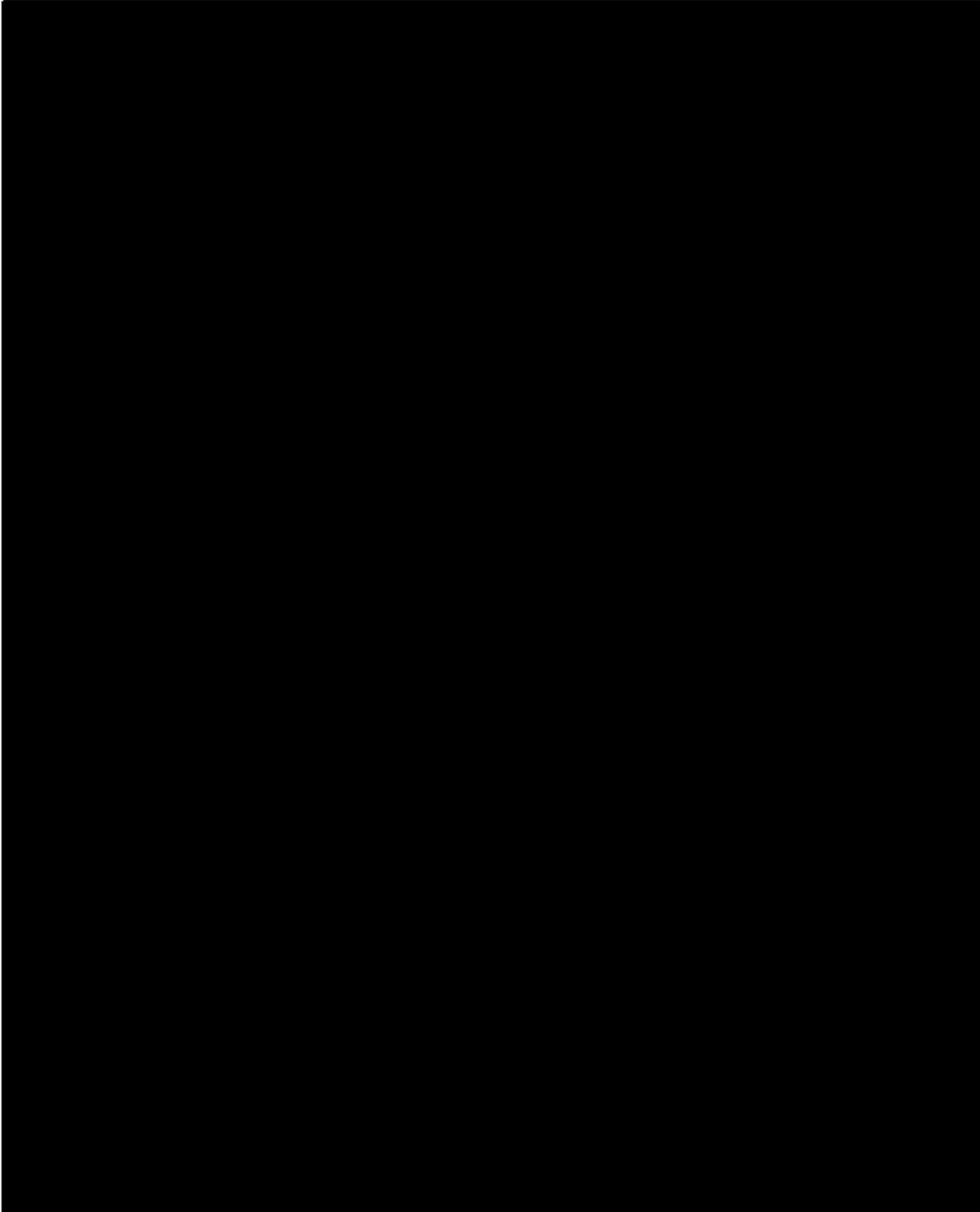












# **EXHIBIT**

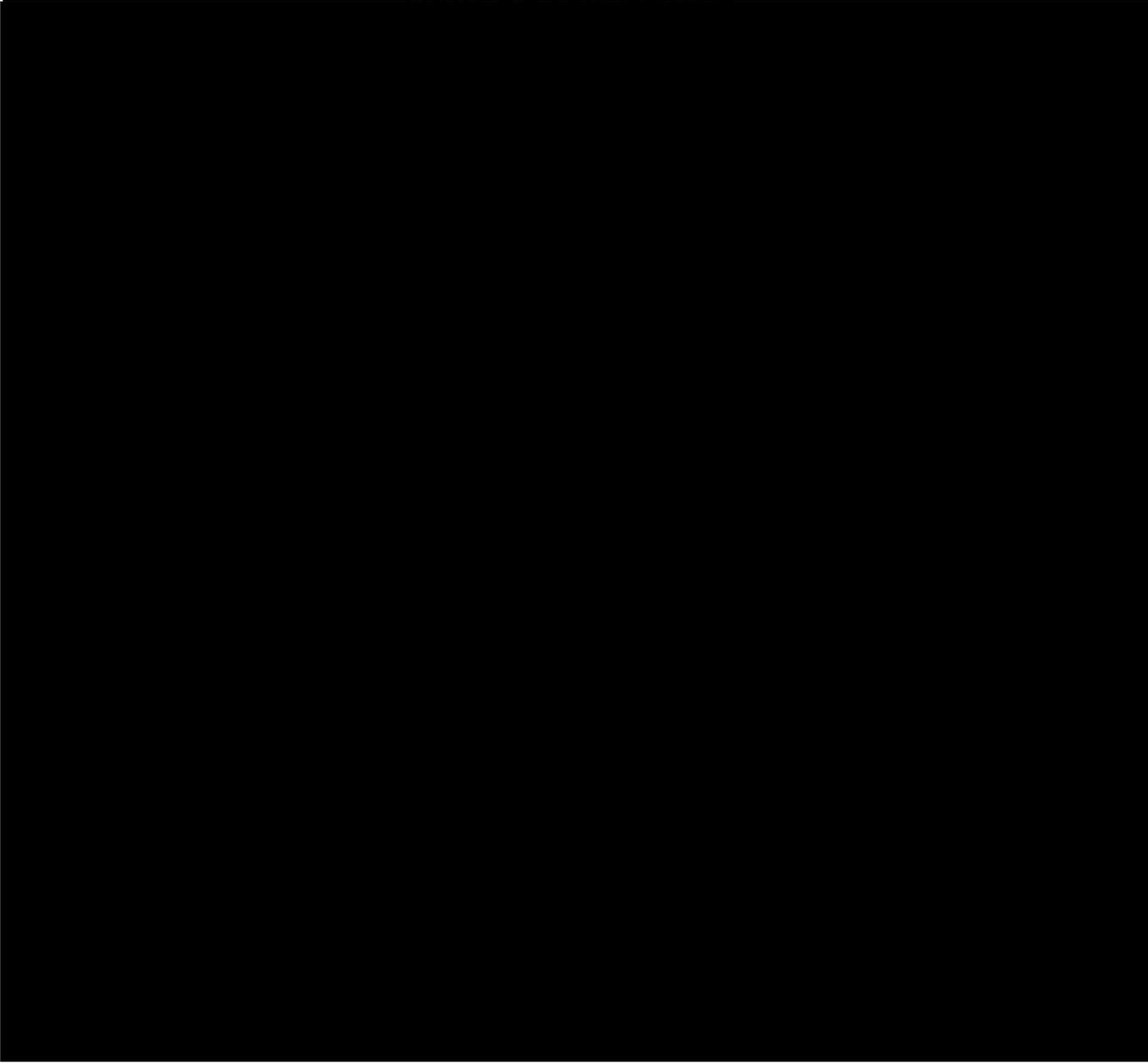
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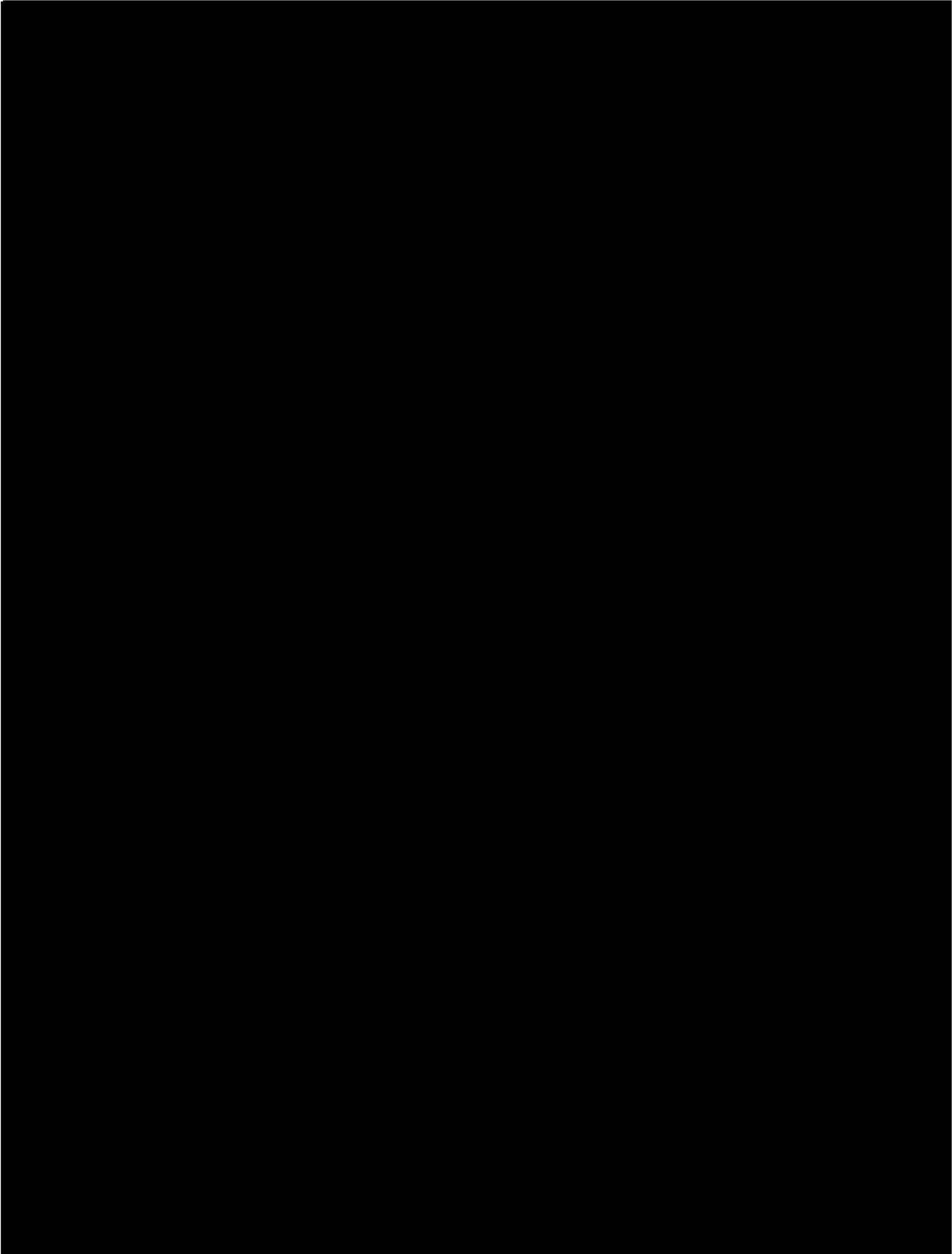
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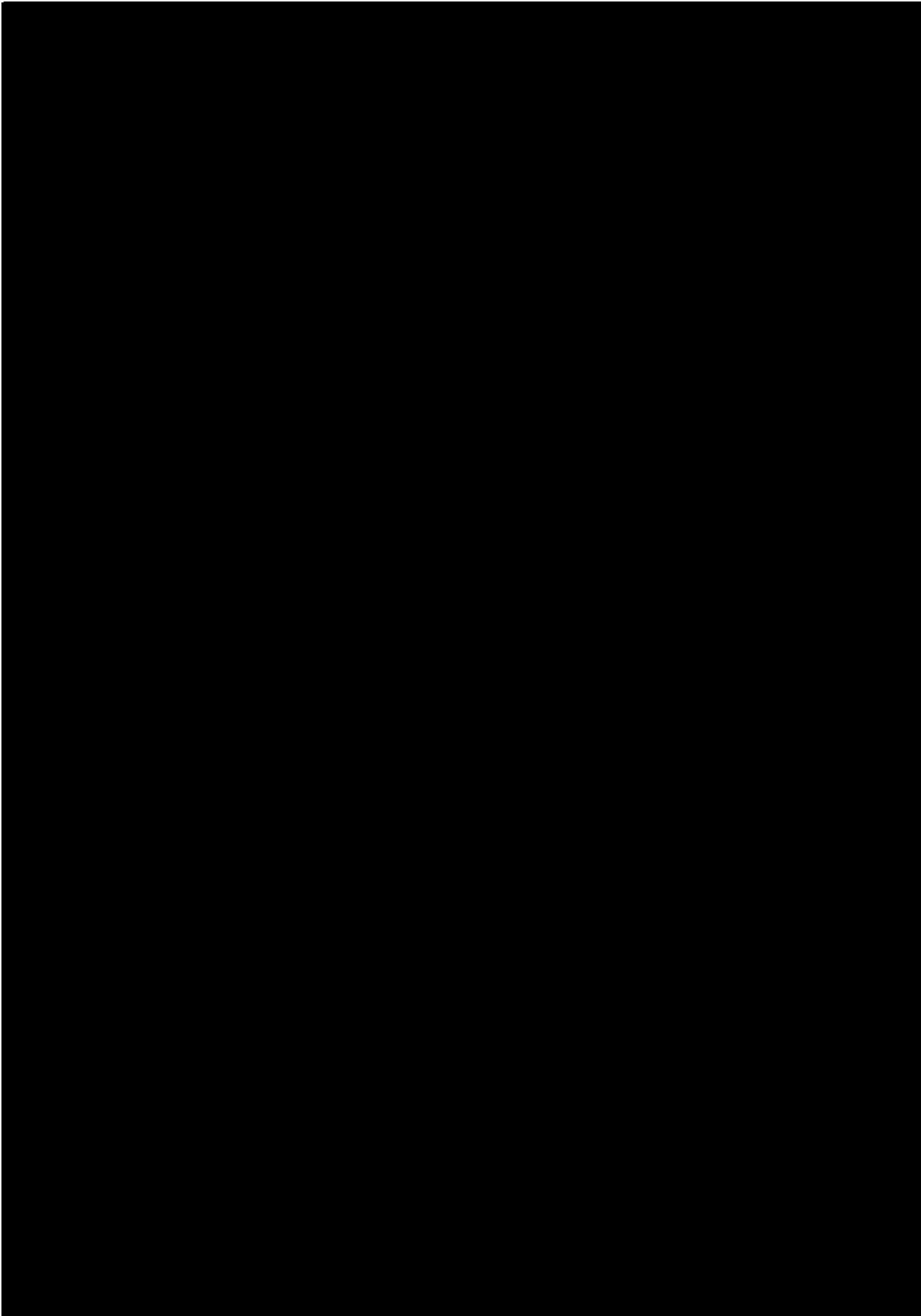
Special Board of Directors Meeting, held  
Thursday, June 23, 2011 at the Board Offices

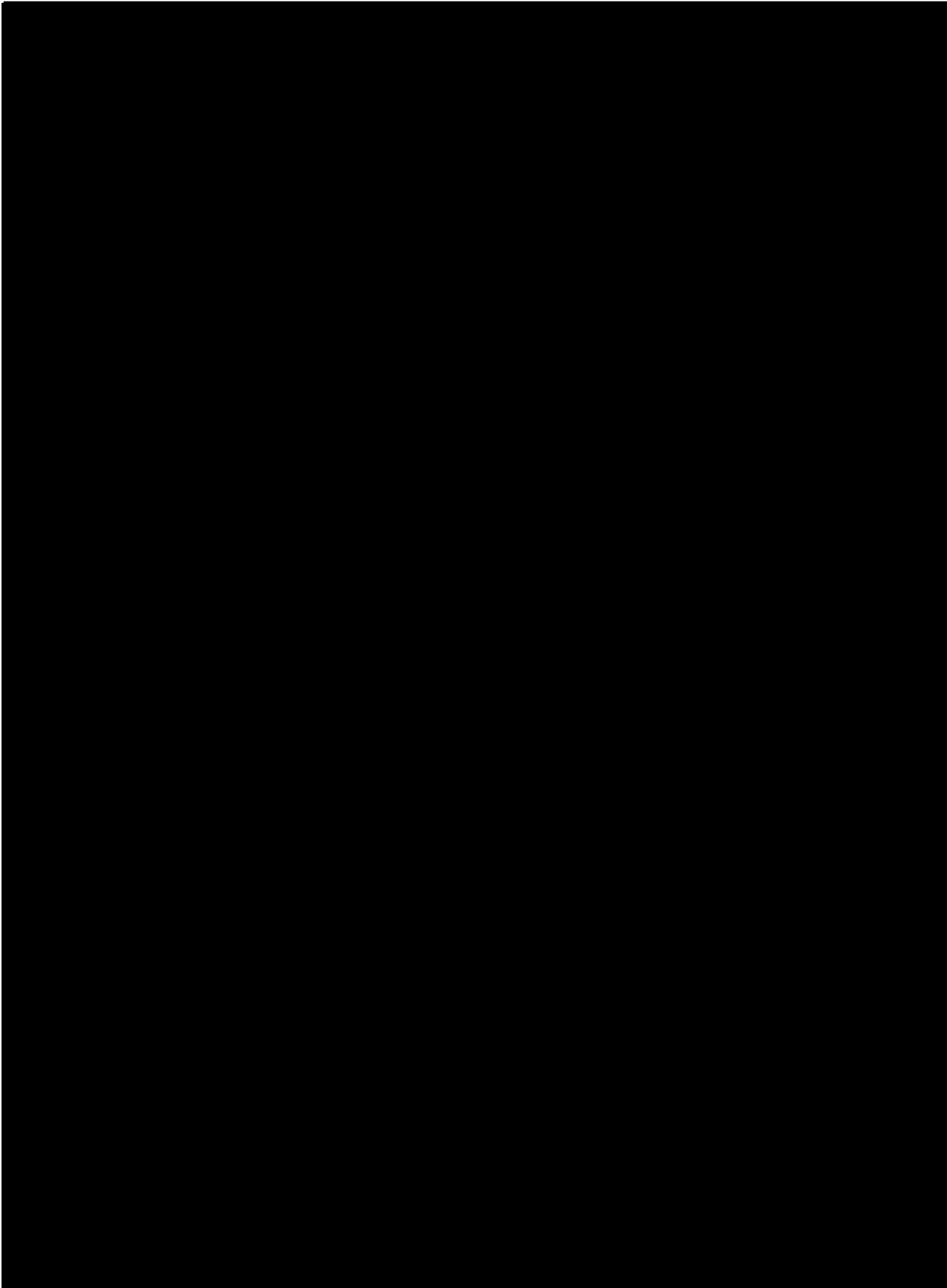
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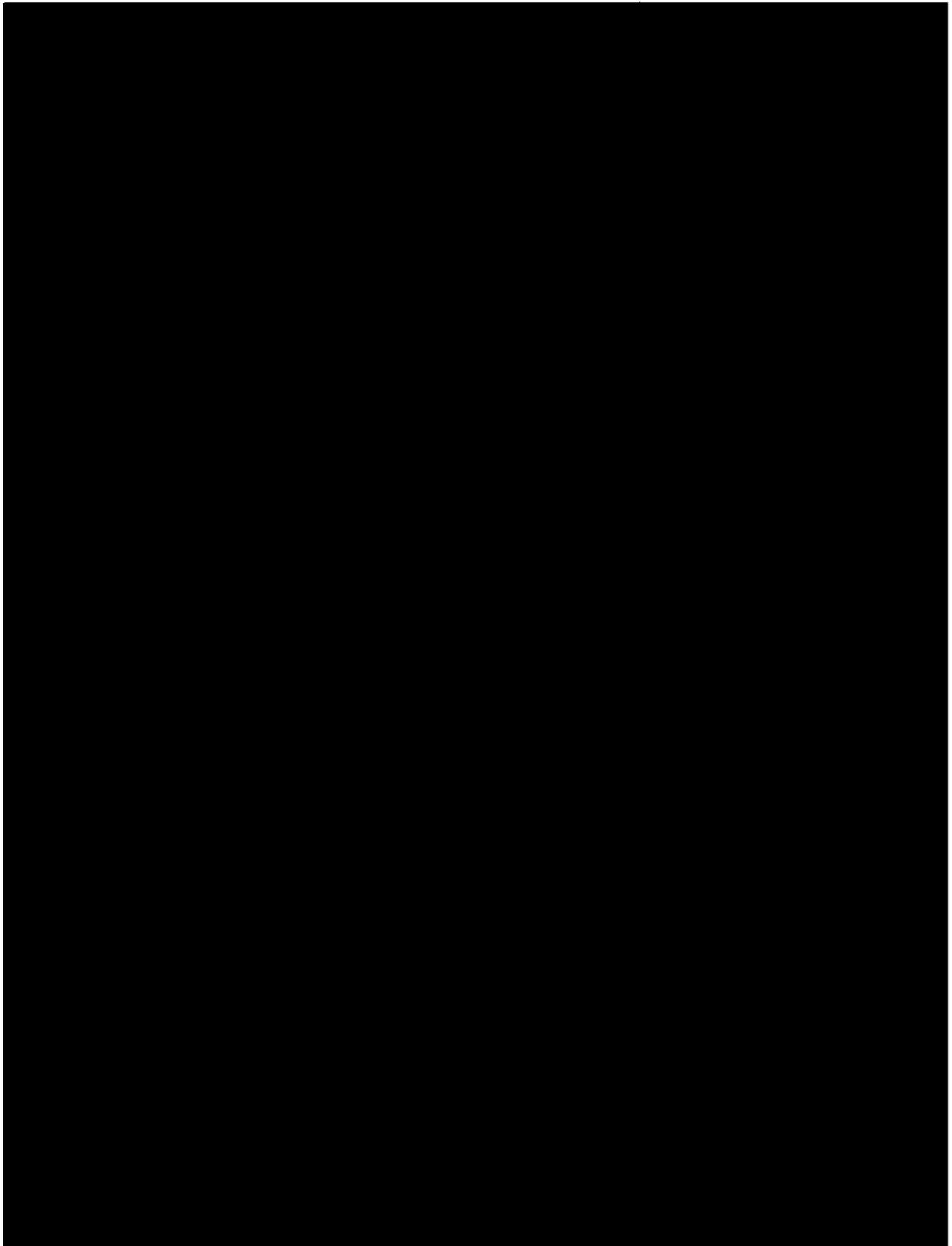
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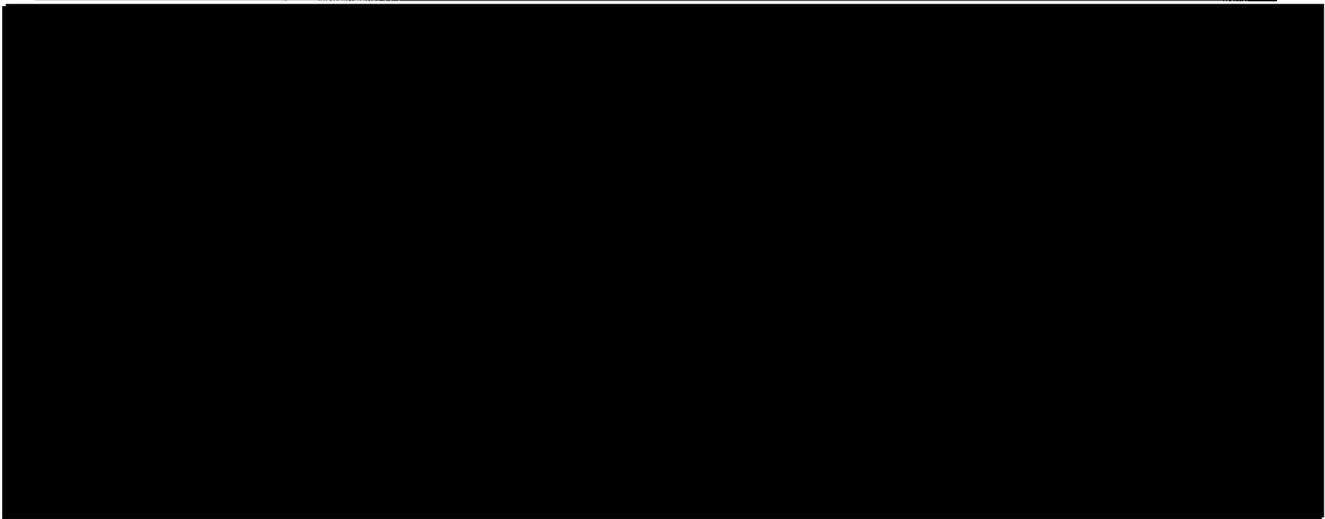












# **EXHIBIT**

# **LL**

MLS®
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**Procedures to Amend TREB's MLS® Rules and Policies**

MLS® Rules and Policies will only be updated annually. (The only exception will be for specific legislation, technology, or legal requirements).

The MLS® Committee is to give initial consideration to changes to MLS® Policies to only consider Rules and Policies that assist in the orderly operation of the MLS® system.

The procedure for any and all changes to MLS® Rules or Policies will be the following:

- a) any proposed change to Rules or Policies will be examined first by the MLS® Committee;
- b) proposed changes will be approved in principle by the Board of Directors;
- c) proposals will then be sent for legal review;
- d) proposals will then be sent to CREA for review to ensure Rules are in adherence to the Competition Law

All comments and feedback will be considered by the MLS® Committee in finalizing proposed changes to the MLS® Rules and Policies before forwarding to the Board of Directors.

A full report of Legal and CREA's comments will accompany the proposed changes to be considered by the Board of Directors subject to Member's input.

The proposed changes will then be published for Members' input. Members will have 60 days from publication to comment in writing to the Board of Directors, or to make a presentation in front of the Board of Directors. (Presentations will be restricted to 5 minutes per person or delegation).

The Board of Directors will give final approval prior to publication to Membership in accordance with TREB By-Laws.

# **EXHIBIT**

## **MM**

## NEWS RELEASE

### TREB ANNOUNCES PROPOSED VIRTUAL OFFICE WEBSITE POLICY FOR SCRUTINY BY REALTOR® MEMBERS

**TORONTO, June 24, 2011** -- The Toronto Real Estate Board (TREB) has published for its Members a proposal for a Virtual Office Website (“VOW”) policy, and Members will have 60 days to provide input and feedback.

TREB’s VOW policy governs the use of secure password-protected websites designed to allow consumers to search and display MLS® listing data, with the benefit of a REALTOR® Member’s oversight, supervision, and accountability.

“This policy demonstrates TREB’s receptivity and responsiveness to new and innovative business models – improving the level of service for consumers and providing REALTOR® Members with greater flexibility,” said Toronto Real Estate Board President Bill Johnston.

The new policy, which has been in development since July of last year, gives due consideration to TREB’s legal responsibility to ensure the protection of consumer data.

As TREB’s incoming President Richard Silver explains, “the development of a comprehensive VOW policy is something TREB undertook independently in response to a changing business environment. Crafting a policy that ensures the safety of consumer information without restricting Members’ ability to provide the highest level of service to their customers took great sensitivity and care.”

This VOW policy confirms TREB’s strong belief in open competition and in its Members’ competitive spirit, quite independent of the Competition Commissioner’s claims and approach. To this end TREB has, and will continue to, take the necessary steps to empower REALTOR® Members to provide the highest level of service for their customers.

Greater Toronto REALTORS® are passionate about their work. They are governed by a strict Code of Ethics and share a state-of-the-art Multiple Listing Service. Over 31,000 TREB Members serve consumers in the Greater Toronto Area. The Toronto Real Estate Board is Canada’s largest real estate board.  
[www.TorontoRealEstateBoard.com](http://www.TorontoRealEstateBoard.com)

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Get the latest real estate news & Market Watch information & summary videos

## VOW Policy and Rules

The following Virtual Office Website (VOW) Policy and Rules is being published to Members for sixty (60) days for Member input as per TREB Policy. After the sixty (60) day period, all comments and presentations will be considered by the MLS® Committee and the Board of Directors before finalization and publication to the Members in accordance with TREB By-Law.

The development of a comprehensive VOW policy is something TREB undertook independently as part of a Strategic Plan in July of 2010 in response to a changing business environment.

Crafting a policy that ensures the safety of consumer information without restricting Members' ability to provide the highest level of service to their customers took great sensitivity and care.

This was *completely* independent of recent actions by the Competition Commissioner and was continued despite those actions.

This VOW policy confirms TREB's strong belief in open competition and in its Members' competitive spirit. TREB has, and will continue to, take the necessary steps to empower REALTOR® Members to provide the highest level of service for their customers.

### LINKS:

- [Overview](#)
- [VOW Policy](#)
- [VOW Rules](#)
- [VOW Glossary](#)
- [FAQ](#)
- [News Release](#)

TREB is pleased announce its new Virtual Office Website ("VOW") policy:

- A Virtual Office Website is a secure password-protected internet website that provides consumers with the opportunity to search MLS® listing data, with the benefit of a REALTOR® Member's oversight, supervision, and accountability.
- This policy is designed to enhance the portfolio of services offered by REALTOR® Members for the benefit of their customers with whom a broker-consumer relationship has been properly established.
- TREB retains the right to monitor VOW activity to ensure appropriate use of the MLS ® database and MLS® data.
- This policy strikes a balance between consumer privacy concerns, the protection of consumer rights, and fostering competition.
- In the interest of protecting the consumer, VOW operators must ensure both the reliability and safekeeping of data. Individual Sellers will retain the right to opt-out of sharing some (or all) information.
- Certain data, like sellers' names and contact information, is exempt from publishing. All sale data remains privacy (PIPEDA) and RECO Rule compliant.
- Prior to gaining access to a VOW, the consumer must consent to a "Terms of Use" agreement.

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

**Policy governing use of MLS<sup>®</sup> data in connection with internet brokerage services offered by Toronto Real Estate Board Members (“Virtual Office Websites”)**

**I. Definitions and Scope of VOW Policy**

1. For purposes of this VOW Policy, “**Virtual Office Website**” (“VOW”) refers to a Member’s secure, password-protected internet website, or a feature of a Member’s internet website, through which the Member is capable of providing real estate brokerage services to consumers with whom the Member has first established a broker-consumer relationship (as may be designated by provincial and/or federal law) where the consumer has the opportunity to search MLS<sup>®</sup> data, subject to the Member’s oversight, supervision, and accountability.
  - a) A Member may designate an Affiliated VOW Partner (“AVP”) to operate a VOW on behalf of the Member, subject to the Member’s oversight, supervision and accountability and the terms of this VOW Policy.
  - b) A broker or salesperson registered with a Member may, with the Member’s consent, operate a VOW or have a VOW operated on the Member’s behalf by an AVP. Such a VOW is subject to the Member’s oversight, supervision and accountability and the terms of this VOW Policy.
  - c) Each use of the term “Member” in this VOW Policy shall have the meaning designated in Article 2 of the By-laws and shall also include a Member’s brokers and salespersons (with the exception of references to “Member’s consent”, “Member’s oversight, supervision, and accountability,” and in paragraph 22(a), below, to “Member acknowledges”). Each reference to “VOW” or “VOWs” herein refers to all VOWs, whether operated by a Member, by a Member’s broker or salesperson, or by an AVP on behalf of a Member.
2. The right of a Member’s VOW to display Listings in response to Consumer searches is limited to the display of MLS<sup>®</sup> data supplied by TREB in which the Member has member rights. This does not preclude a Member with offices participating in different real estate boards or associations from operating a master website with links to the VOWs of its other offices.
3. Members’ VOWs, including those operated for Members by AVPs, may also provide other features, information, or functions in addition to VOWs (including the Internet Data Exchange (“IDX”) function).
4. The display of Listing Information on a VOW does not require separate permission from the Member whose Listings will be available on the VOW.
5. Any capitalized term used herein shall have the same meaning as contained in the MLS<sup>®</sup> Rules and Policies Glossary, unless otherwise expressly defined in this VOW Policy.

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

## II. Policies Applicable to Members' VOWs

6. A Member may provide brokerage services via a VOW that include making Listing Information available, but only to consumers with whom the Member has first established a lawful broker-consumer relationship, including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers ("Consumer" or "Consumers"). Such actions may include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).
7. A Member's VOW must obtain the identity of each Consumer and obtain each Consumer's agreement to Terms of Use of the VOW, as follows:
  - a) Consumers must provide their name and a valid email address. The Member must send an email to the address provided by the Consumer confirming that the Consumer has agreed to the Terms of Use (described in paragraph 7(c) below). The Consumer may be permitted to access the VOW only after the Member has verified that the email address provided is valid and that the Consumer agreed to the Terms of Use.
  - b) The Consumer must supply a username and a password, the combination of which must be different from those of all other Consumers on the VOW, before being permitted to search and retrieve Listing Information via the VOW. The username and password may be established by the Consumer or may be supplied by the Member, at the option of the Member. An email address may be associated with only one username and password. Consumers' passwords may be valid for up to 90 days, after which such passwords must be renewed or reconfirmed. The Member must, at all times, maintain a record of the name and email address supplied by the Consumer, and the username and current password of each Consumer. Such records must be kept for not less than 180 days after the expiration of the validity of the Consumer's password. If TREB has reason to believe that a Member's VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of this VOW Policy, or the MLS<sup>®</sup> Rules and Policies (including the VOW Rules) related to use by one or more Consumers, the Member shall, upon request of TREB, provide to TREB a copy of the record of the name, email address, username, current password, and audit trail, if required, of any Consumer identified by TREB to be suspected of involvement in the breach or violation.
  - c) The Consumer must be required to affirmatively express agreement to a "Terms of Use" agreement that requires the Consumer to open and review an agreement that provides at least the following:
    - i) That the Consumer acknowledges entering into a lawful broker-consumer relationship with the Member.

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

- ii) That all MLS<sup>®</sup> data obtained from the VOW is intended only for the Consumer's personal, non-commercial use.
  - iii) That the Consumer has a *bona fide* interest in the purchase, sale, or lease of real estate of the type being offered through the VOW.
  - iv) That the Consumer will not copy, redistribute, retransmit, or otherwise use any of the data or Listing Information provided, except in connection with the Consumer's consideration of the purchase, sale, or lease of an individual property.
  - v) That the Consumer acknowledges TREB's ownership of, and the validity of TREB's proprietary rights and copyright in the MLS<sup>®</sup> database, MLS<sup>®</sup> data, TREB's MLS<sup>®</sup> System, and Listing Information.
  - vi) That the Consumer will not, directly or indirectly, display, post, disseminate, distribute, publish, broadcast, transfer, sell or sublicense any Listing Information to another individual or entity. The prohibited uses expressly include "scraping" (including "screen scraping" and "database scraping"), "data mining" or any other activity intended to collect, store, re-organize, summarize or manipulate any Listing Information or any related data.
  - vii) After the Consumer has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use agreement may not impose a financial obligation on the Consumer or create any representation agreement between the Consumer and the Member.
  - viii) The Terms of Use agreement shall also expressly authorize TREB, and other TREB Members or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS<sup>®</sup> Rules and Policies (including the VOW Rules) and monitoring the display of Members' Listings by the VOW.
  - ix) Every VOW must display a privacy policy that boldly informs Consumers of, and obtains Consumers' consent to, all the ways in which Personal Information that they provide may be collected, used or disclosed, including the fact that Personal Information may be shared with TREB for auditing and/or legal purposes.
- d) An agreement entered into at any time between the Member and Consumer imposing a financial obligation on the Consumer or creating representation of the Consumer by the Member must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.
8. A Member's VOW shall include any copyright notice as may be provided by TREB from time to time regarding TREB's copyright in MLS<sup>®</sup> data.
9. A Member's VOW must prominently display an email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

Consumer can contact the Member to ask questions, or get more information, about Listings displayed on the VOW. The Member, or such Member's broker or salesperson, must be willing and able to respond knowledgeably to inquiries from Consumers about Listings within the market area served by that Member and displayed on the VOW.

10. A Member's VOW must protect the MLS<sup>®</sup> data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping", data mining, and other unauthorized access, reproduction, or use of the MLS<sup>®</sup> database, MLS<sup>®</sup> data and/or any related information.
11. A Member's VOW must comply with the following additional requirements:
  - a) No VOW shall display Listing or property address of any seller who has affirmatively directed the listing brokerage to withhold their Listing or property address from display on the internet. The listing brokerage or salesperson shall communicate to TREB that a seller has elected not to permit display of the Listing or property address on the internet. Notwithstanding the foregoing, a Member who operates a VOW may provide to Consumers via other delivery mechanisms, such as email, fax, or otherwise, the Listing or property address of sellers who have determined not to have the Listing or address for their property displayed on the internet.
  - b) A Member who lists a property for a seller who has elected not to have the Listing or the property address displayed on the internet shall cause the seller to execute a document that so indicates. The Member shall retain such documents for at least one year from the date they are signed, or one year from the date the Listing expires or is terminated, whichever is later.
  - c) With respect to any VOW that:
    - i) allows third-parties to write comments or reviews about particular Listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular Listings, or
    - ii) displays an automated estimate of the market value of the Listing (or hyperlink to such estimate) in immediate conjunction with the Listing,the VOW shall disable or discontinue either or both of those features as to the seller's Listing at the request of the seller. The listing brokerage shall communicate to TREB that the seller has elected to have one or both of these features disabled or discontinued on all Members' websites. Except for the foregoing and subject to subparagraph 11(d), a Member's VOW may communicate the Member's professional judgment concerning any Listing. Nothing shall prevent a VOW from notifying its Consumers that a particular feature has been disabled "at the request of the seller".
  - d) A VOW shall maintain a means (e.g., email address, telephone number) to receive comments about the accuracy of any MLS<sup>®</sup> data or information that is added by or on

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011).*

behalf of the VOW Member beyond that supplied by TREB and that relates to a specific property displayed on the VOW. The VOW Member shall correct or remove any untrue, deceptive or misleading data or information relating to a specific property within 48 hours of receipt of a communication from TREB or the listing brokerage for that property explaining why the data or information is untrue, deceptive or misleading. However, the VOW Member shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

- e) Each VOW shall refresh MLS<sup>®</sup> data available on the VOW not less frequently than every 24 hours.
  - f) Except as provided elsewhere in this VOW Policy, or in MLS<sup>®</sup> Rules and Policies (including the VOW Rules), no portion of the MLS<sup>®</sup> database or Listing Information may be distributed, provided, or made accessible to any person or entity.
  - g) A VOW may exclude Listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, and type of property.
12. A Member who intends to operate a VOW to display Listing Information must notify TREB in writing of its intention to establish a VOW and must make the VOW readily accessible to TREB and to all Members for purposes of verifying compliance with this VOW Policy, and any other applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).
13. A Member may operate more than one VOW itself or through an AVP. A Member who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

### **III. Policies respecting Data Feeds, Security, AVPs and related matters**

14. TREB will permit Members to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of all provincial and/or federal laws, including all RECO Rules, PIPEDA and this VOW Policy and the VOW Rules.
15. TREB will, if requested by a Member, provide basic “downloading” of non-confidential MLS<sup>®</sup> data, including without limitation address fields, listing types, photographs, and links to virtual tours. “Confidential data” includes that which Members are prohibited from providing to Consumers orally and by all other delivery mechanisms. They include fields containing the information described in paragraph 24 of this VOW Policy, provided that sold data (i.e., Listing Information relating to properties that have sold) shall be deemed confidential and withheld from a download if the actual sales prices of completed transactions are not readily publicly accessible or if the method of use is contrary to provincial or federal law, including all RECO Rules and PIPEDA. For purposes of this VOW Policy, “downloading” means electronic transmission of data (i.e., data feed) from TREB servers to a Member’s or AVP’s server on a persistent basis via RETS feed, FTP download, or in such format as may be determined by TREB from time to time. TREB may

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

also offer a transient download. In such case, it shall also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.

16. This VOW Policy does not require TREB to establish publicly accessible websites displaying Members' Listings.
17. The VOW data feed will include all of the non-confidential MLS<sup>®</sup> data included in the data feed described in paragraph 15 above except for Listings or property addresses of sellers who have elected not to have their Listings or addresses displayed on the internet.
18. TREB may pass on to those Members who request downloading of Listing Information the reasonably estimated costs incurred by TREB in adding or enhancing its "downloading" capacity to enable such Members to operate VOWs.
19. TREB will require that Members (1) utilize appropriate security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by TREB; and (2) maintain an audit trail of Consumers' activity on the VOW and make that information available to TREB if TREB has reason to believe that any VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).
20. Except as provided in this VOW Policy, TREB will not prohibit Members from enhancing their VOWs by providing, information obtained from sources other than TREB, additional technological services (such as mapping functionality), or information derived from non-confidential MLS<sup>®</sup> data (such as an estimated monthly payment derived from the listed price), or regulating the use or display of such information or technological services on any VOW.
21. TREB will not restrict the format of MLS<sup>®</sup> data displayed on a VOW or regulate the appearance of VOWs.
22. Subject to the provisions below, TREB will make MLS<sup>®</sup> data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Member and will make MLS<sup>®</sup> data available to an AVP under the same terms and conditions as those applicable to Members. No AVP has independent member rights in TREB or MLS<sup>®</sup> data by virtue of its right to receive MLS<sup>®</sup> data on behalf of a Member, or the right to use MLS<sup>®</sup> data except in connection with operation of a VOW for a Member. AVP access to MLS<sup>®</sup> data is derivative of the rights of the Member on whose behalf the AVP is downloading MLS<sup>®</sup> data.
  - a) A Member or AVP may establish the AVP's right to receive and use MLS<sup>®</sup> data by providing to TREB a document in which the Member acknowledges its selection of the AVP to operate a VOW on its behalf.

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

- b) TREB will not charge an AVP, or a Member on whose behalf an AVP operates a VOW, more than a Member that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS<sup>®</sup> data, as described in paragraph 22(g), below), except to the extent that TREB incurs greater costs in providing MLS<sup>®</sup> data to the AVP than TREB incurs in providing MLS<sup>®</sup> data to a Member.
- c) TREB will not place data security requirements or restrictions on use of MLS<sup>®</sup> data by an AVP that are not also imposed on Members.
- d) TREB will permit an AVP to download Listing Information in the same manner (e.g., via a RETS feed, FTP download, or in such format as may be determined by TREB from time to time), at the same times and with the same frequency that TREB permits Members to download Listing Information to Members' VOWs.
- e) TREB will deal directly with an AVP in order to resolve technical problems with the data feed. However, TREB may require that the Member on whose behalf the AVP is operating the VOW participate in such communications if TREB reasonably believes that the involvement of the Member would be helpful in order to resolve the problem.
- f) TREB will not condition an AVP's access to a data feed on the financial terms on which the AVP provides the website for the Member.
- g) TREB will require Members and AVPs to execute a license or similar agreements sufficient to ensure that Members and AVPs understand and agree that MLS<sup>®</sup> data provided by TREB may be used only to establish and operate a VOW on behalf of the Member and not for any other purpose.
- h) TREB will not (i) prohibit an AVP from operating VOWs on behalf of more than one Member, and several Members may designate an AVP to operate a single VOW for them collectively, (ii) limit the number of entities that Members may designate as AVPs for purposes of operating VOWs, or (iii) prohibit Members from designating particular entities as AVPs except that, if an AVP's access has been suspended or terminated by TREB, TREB may prevent an entity from being designated an AVP by another Member during the period of the AVP's suspension or termination.
- i) Except as stated below, TREB may not suspend or terminate an AVP's access to MLS<sup>®</sup> data (a) for reasons other than those that would allow TREB to suspend or terminate a Member's access to MLS<sup>®</sup> data, or (b) without giving the AVP and the associated Member(s) prior notice and the process set forth in the applicable provisions of the By-laws or MLS<sup>®</sup> Rules and Policies for suspension or termination of a Member's access. Notwithstanding the foregoing, TREB will immediately terminate an AVP's access to MLS<sup>®</sup> data (a) if the AVP is no longer designated to provide VOW services to any Member, (b) if the Member for whom the AVP operates a VOW ceases to maintain its status with TREB, (c) if the AVP has downloaded MLS<sup>®</sup> data in a manner not authorized for Members and that hinders the ability of Members to download MLS<sup>®</sup> data to Members' VOWs, or (d) if the

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

associated Member or AVP has failed to make required payments to TREB in accordance with TREB's generally applicable payment policies and practices.

23. TREB will not prohibit, restrict, or impede a Member from referring Consumers to any person or from obtaining a fee for such referral.

**IV. Requirements on the Operation of VOWs and Members**

24. A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumers the following MLS<sup>®</sup> data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:
- a) Expired, withdrawn, suspended or terminated Listings and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;
  - b) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws;
  - c) The compensation offered to other Members;
  - d) The seller's name and contact information, unless otherwise directed by the seller to do so; and
  - e) Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.
25. The content of MLS<sup>®</sup> data that is displayed on a VOW may not be changed from the content as it is provided in TREB's MLS<sup>®</sup> System. MLS<sup>®</sup> data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS<sup>®</sup> data displayed on VOWs or the display on VOWs of fewer than all of the Listings or fewer than all of the authorized data fields.
26. There shall be a notice on all MLS<sup>®</sup> data displayed indicating that the data is deemed reliable but is not guaranteed accurate by TREB. A Member's VOW may also include other appropriate disclaimers necessary to protect the Member and/or TREB from liability.
27. Any Listing displayed on a VOW shall identify the name of the listing brokerage or salesperson in a readily visible color, and reasonably prominent location, and in typeface not smaller than the typeface used in the display of Listing data.
28. The number of Listings that Consumers may view or retrieve on or from a VOW in response to an inquiry will be limited to 100 Listings.

*TREB VOW Policy (Clean Version GR Draft same, June 23, 2011)*

29. TREB will not prohibit Members from downloading and displaying or framing listings obtained from other sources, e.g., other real estate boards or associations or from brokers not participating in TREB, etc., but may require either that (i) such information be searched separately from listings obtained from other sources, including other real estate boards or associations, or (ii) if such other sources are searched in conjunction with searches of the Listings available on the VOW, require that any display of listings from other sources identify such other source.

**Virtual Office Website (VOW) Rules****R 800 – VIRTUAL OFFICE WEBSITES****R-801**

Unless defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Glossary contained in the MLS<sup>®</sup> Rules and Policies.

A “**Virtual Office Website**” or “**VOW**” is a Member’s secure password-protected internet website, or a feature of a Member’s internet website, through which the Member is capable of providing real estate brokerage services to consumers with whom the Member has first established a broker-consumer relationship (as may be designated by provincial and/or federal law) where the consumer has the opportunity to search Listing Information, subject to the Member’s oversight, supervision, and accountability. A broker or salesperson registered with a Member may, with his broker of record’s consent, operate a VOW. Any VOW of a broker or salesperson is subject to the Member’s oversight, supervision, and accountability.

“**Member**” shall have the meaning designated in Article 2 of the By-laws and shall also include a Member’s brokers and salespersons (with the exception of references to “Member’s consent”, and “Member’s oversight, supervision, and accountability”). References to “VOW” and “VOWs” include all VOWs, whether operated by a Member, by a Member’s broker or salesperson, or by an AVP on behalf of a Member.

“**Affiliated VOW Partner**” or “**AVP**” refers to an entity or person designated by a Member to operate a VOW on behalf of the Member, subject to the Member’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the TREB MLS<sup>®</sup> by virtue of its right to receive information on behalf of a Member. No AVP has the right to use Listing Information except in connection with operation of a VOW on behalf of one or more Members. Access by an AVP to Listing Information is derivative of the rights of the Member on whose behalf the AVP operates a VOW.

**R-802**

The right of a Member’s VOW to display Listing Information in response to Consumer searches is limited to the display of MLS<sup>®</sup> data supplied by TREB, in accordance with the VOW Policy and VOW Rules, and in which MLS<sup>®</sup> data the Member has member rights. However, a Member with offices participating in different real estate boards or associations may operate a master website with links to the VOWs of its other offices.

**R-803**

Subject to the provisions of the VOW Policy and these VOW Rules, a Member’s VOW, including any VOW operated on behalf of a Member by an AVP, may provide other features, information, or functions in addition to VOWs including the Internet Data Exchange (“IDX”) function.

## R-804

Except as otherwise provided in the VOW Policy or in these VOW Rules, a Member need not obtain separate permission from other TREB Members whose Listings will be displayed on the Member's VOW.

## R-805

Before permitting any Consumer to search for or retrieve any Listing Information on a Member's VOW, the Member must take each of the following steps:

(i) The Member must first establish with that Consumer a lawful broker-consumer relationship (as may be designated by provincial and/or federal law), including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers ("Consumer" or "Consumers"). Such actions may include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

(ii) The Member must obtain the name of, and a valid email address for, each Consumer. The Member must send an email to the address provided by the Consumer confirming that the Consumer has agreed to the Terms of Use (described in Rule 809 below). The Member must verify that the email address provided by the Consumer is valid and that the Consumer has agreed to the Terms of Use.

(iii) The Member must require each Consumer to have a username and a password, the combination of which is different from those of all other Consumers on the VOW. The Member may, at the Member's option, supply the username and password or may allow Consumers to establish their username and password. The Member must also assure that any email address is associated with only one username and password.

## R-806

The Member must ensure that each Consumer's password is valid for no more than 90 days but may provide for renewal of the password. The Member must, at all times, maintain a record of the name, email address, username, and current password of each Consumer. The Member must keep such records for not less than 180 days after the expiration of the validity of the Consumer's password.

## R-807

A Member's VOW shall include any copyright notice as may be provided by TREB from time to time regarding TREB's copyright in MLS<sup>®</sup> data.

## R-808

If TREB has reason to believe that a Member's VOW has been the cause of, or permitted a breach in, the security of Listing Information or a violation of MLS<sup>®</sup> Rules and Policies (including the VOW Rules), the Member shall, upon request of TREB, provide the name, email address, username, and current password, of any Consumer suspected of involvement in the breach or violation. The Member shall also, if requested by TREB, provide an audit trail of activity by any such Consumer.

*TREB VOW Rules (Clean Version GR Draft2 June 23, 2011)*

R-809

The Member shall require each Consumer to review, and to affirmatively express agreement (by mouse click or otherwise) to, a "Terms of Use" agreement that provides at least the following:

(i) That the Consumer acknowledges entering into a lawful broker-consumer relationship with the Member.

(ii) That all Listing Information obtained by the Consumer from the VOW is intended only for the Consumer's personal, non-commercial use.

(iii) That the Consumer has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW.

(iv) That the Consumer will not copy, redistribute, retransmit, or otherwise use any of the data or Listing Information provided, except in connection with the Consumer's consideration of the purchase or sale of an individual property.

(v) That the Consumer will not, directly or indirectly, display, post, disseminate, distribute, publish, broadcast, transfer, sell or sublicense any Listing Information to another individual or entity. The prohibited uses expressly include "scraping" (including "screen scraping" and "database scraping"), "data mining" or any other activity intended to collect, store, re-organize, summarize or manipulate any Listing Information or any related data.

(vi) That the Consumer acknowledges TREB's ownership of, and the validity of TREB's proprietary rights and copyright in, the MLS<sup>®</sup> database, TREB's MLS<sup>®</sup> System, Listing Information and any related information.

R-810

The Terms of Use agreement may not impose a financial obligation on the Consumer or create any representation agreement between the Consumer and the Member. Any agreement entered into at any time between the Member and Consumer imposing a financial obligation on the Consumer or creating representation of the Consumer by the Member must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

R-811

The Terms of Use agreement shall also expressly authorize TREB, and other Members of TREB or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS<sup>®</sup> Rules and Policies (including the VOW Rules) and monitoring the display of Members' Listings by the VOW. The Terms of Use agreement may also include such other provisions as may be agreed to between the Member and the Consumer.

R-812

A Member's VOW must prominently display an email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a Consumer can

*TREB VOW Rules (Clean Version GR Draft2 June 23, 2011)*

contact the Member to ask questions, or get more information, about any property displayed on the VOW. The Member, or a broker or salesperson registered with the Member, must be willing and able to respond knowledgeably to inquiries from Consumers about Listings within the market area served by that Member and displayed on the VOW.

R-813

A Member's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", "data mining" and other unauthorized, access, reproduction, or use of Listing Information, the MLS<sup>®</sup> database, MLS<sup>®</sup> data and any related information. A Member's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by TREB; and shall maintain an audit trail of Consumers' activity on the VOW and make that information available to TREB if TREB has reason to believe that any VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).

R-815

(a) A Member's VOW shall not display Listings or property addresses of any seller who has affirmatively directed the listing brokerage to withhold the seller's Listing or property address from display on the internet. The listing brokerage shall communicate to TREB that the seller has elected not to permit display of the Listing or property address on the internet. Notwithstanding the foregoing, a Member who operates a VOW may provide to Consumers via other delivery mechanisms, such as email, fax, or otherwise, the Listings of sellers who have determined not to have the Listing for their property displayed on the internet.

(b) A Member who lists a property for a seller who has elected not to have the Listing or the property address displayed on the internet shall cause the seller to execute a document that so indicates.

(c) The Member shall retain such documents for at least one year from the date they are signed, or one year from the date the Listing expires or is terminated, whichever is later.

R-816

(a) Subject to subsections (b) and (c), a Member's VOW may allow third-parties to: (i) write comments or reviews about particular Listings or display a hyperlink to such comments or reviews in immediate conjunction with particular Listings, or (ii) display an automated estimate of the market value of the Listing (or hyperlink to such estimate) in immediate conjunction with the Listing.

(b) Notwithstanding the foregoing, at the request of a seller, the Member shall disable or discontinue either or both of those features described in subsection (a) as to any Listing of the seller. The listing brokerage or salesperson shall communicate to TREB that the seller has elected to have one or both of these features disabled or discontinued on all Members' websites. Subject to the foregoing and to Rule 817, a Member's VOW may communicate the Member's professional judgment concerning any Listing. A Member's VOW may notify its Consumers that a particular feature has been disabled "at the request of the seller."

*TREB VOW Rules (Clean Version GR Draft2 June 23, 2011)*

(c) In the event that a Member's VOW allows third parties to post comments or reviews on its VOW, or to display a hyperlink to such comments or reviews, the Member's Terms of Use shall include the following:

i) that the Consumer agrees not to assert any ownership rights of any kind in Listing Information or any related data;

ii) that TREB shall not be responsible or liable, directly or indirectly, in any way, for any loss or damage of any kind incurred as a result of, or in connection with a Consumer's use of, or reliance on Listing Information, any related data, and/or posted or hyperlinked comments or reviews; and

iii) that TREB does not endorse any posted or hyperlinked comments or reviews.

R-817

A Member's VOW shall maintain a means (e.g., email address, telephone number) to receive comments from the listing brokerage about the accuracy of any information that is added by or on behalf of the Member beyond that supplied by TREB and that relates to a specific property displayed on the VOW. The Member shall correct or remove any untrue, deceptive or misleading information relating to a specific property within 48 hours following receipt of a communication from TREB or the listing brokerage explaining why the data or information is untrue, deceptive or misleading. The Member shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

R-818

A Member shall cause the Listing Information available on its VOW to be refreshed at least once every 24 hours.

R-819

Except as provided in these VOW Rules, the VOW Policy, or any other applicable MLS<sup>®</sup> Rules and Policies, no Member shall distribute, provide, or make accessible any portion of the MLS<sup>®</sup> database or Listing Information to any person or entity.

R-820

A Member's VOW must display the Member's privacy policy boldly informing Consumers of, and obtaining Consumers' consent to, all of the ways in which Personal Information that they provide may be collected, used, or disclosed including the fact that Personal Information may be shared with TREB for auditing and/or legal purposes.

R-821

A Member's VOW may exclude Listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price and type of property.

## R-822

A Member who intends to operate a VOW to display Listing Information must notify TREB in writing of its intention to establish a VOW and must make the VOW readily accessible to TREB and to all TREB Members for purposes of verifying compliance with these VOW Rules, the VOW Policy, and any other applicable MLS<sup>®</sup> Rules and Policies.

## R-823

A Member may operate more than one VOW himself or herself or through an AVP. A Member that operates its own VOW may contract with an AVP to have the AVP operate other VOWs on its behalf. However, any VOW operated on behalf of a Member by an AVP is subject to the Member's oversight, supervision, accountability and the terms of the VOW Policy.

## R-824

A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumers the following MLS<sup>®</sup> data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:

- (a) Expired, withdrawn, suspended or terminated Listings, and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;
- (b) The compensation offered to other Members;
- (c) The seller's name and contact information, unless otherwise directed by the seller to do so;
- (d) Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property; and
- (e) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws.

## R-825

A Member shall not change the content of any Listing Information that is displayed on a VOW from the content as it is provided in TREB's MLS<sup>®</sup> System. The Member may, however, augment Listing Information with additional information not otherwise prohibited from display by these VOW Rules or by other applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules) as long as the source of such other information is clearly identified. This rule does not restrict the format of display of Listing Information on VOWs or the display on VOWs of fewer than all of the Listings or fewer than all of the authorized information fields

## R-826

A Member shall cause to be placed on the Member's VOW a notice indicating that the Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by TREB. A Member's VOW shall include other appropriate disclaimers necessary to protect the Member and/or TREB from liability.

*TREB VOW Rules (Clean Version GR Draft2 June 23, 2011)*

R-827

A Member shall cause any Listing that is displayed on the Member's VOW to identify the name of the listing brokerage or salesperson in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the typeface used in the display of Listing Information.

R-828

A Member shall limit the number of Listings that a Consumer may view or retrieve, to not more than 100 Listings in response to any inquiry.

R-829

A Member shall cause any listing displayed on the Member's VOW that is obtained from other sources to identify the source of the Listing.

R-830

A Member shall cause any listing displayed on the Member's VOW obtained from other sources to be searched separately from Listings in the MLS<sup>®</sup> database.

R-831

Members and the AVPs operating VOWs on their behalf must execute the license agreement required by TREB.

R-832

Where a seller affirmatively directs their listing brokerage to withhold either the seller's Listing or the address of the seller's Listing from display on the internet, a copy of the seller's affirmative direction shall be provided to TREB upon request, within 48 hours.

R-833

In the event of any conflict between any VOW Rule/VOW Policy and any other MLS<sup>®</sup> Rules or Policies, the VOW Rule/VOW Policy shall govern, subject to applicable laws, regulations, and the RECO Rules.

*Glossary re VOW Policy and Rules (Clean version GR Draft2 June 23, 2011)*

**[TO BE INSERTED IN THE GLOSSARY CONTAINED  
IN THE MLS<sup>®</sup> RULES AND POLICIES]**

**“Affiliated VOW Partner”** or **“AVP”** has the meaning ascribed thereto in R-801 of the VOW Rules.

**“Listing(s)”** shall include MLS<sup>®</sup> Listing(s).

**“Listing Information”** or **“MLS<sup>®</sup> data”** means all information that is contained in a Listing uploaded on the TREB MLS<sup>®</sup> System and maintained in the TREB MLS<sup>®</sup> database regarding the Listings of Members, and any subsequent additions or changes to that information, including current information about the property.

**“MLS<sup>®</sup> database”** means the aggregation of all MLS<sup>®</sup> data as well as its selection, assembly and arrangement, and any successor database owned and operated by or on behalf of TREB.

**“Personal Information”** shall have the meaning attributed to such term in the *Personal Information and Electronic Documents Act* (Canada), S.C. 2000, c. 5, as such legislation may be amended from time to time.

**“PIPEDA”** means the *Personal Information and Electronic Documents Act* (Canada), S.C. 2000, c. 5, as such legislation may be amended from time to time.

**“Terms of Use”** means a written series of terms displayed on a VOW to which a Consumer may agree in order to obtain access to the Listings on the VOW.

**“Virtual Office Website”** or **“VOW”** has the meaning ascribed thereto in R-801 of the VOW Rules.

**“VOW Rules”** means the series of rules found in the R-800 section of the MLS<sup>®</sup> Rules and Policies.

*What is a VOW?*

A VOW gives brokers the opportunity to operate a secure, password-protected website (or a feature of a website) that is capable of supplying real estate services to consumers. This is provided that the Member has a properly established broker-consumer relationship, which includes satisfying agency and disclosure obligations, and executing any required agreements. A VOW can offer consumers the ability to view MLS® data for a designated period of time, with the Member's oversight, supervision, and accountability.

*Who can operate a VOW?*

A Member may operate more than one VOW, and an Affiliated VOW Partner (or Partners) can operate a VOW on behalf of a Member (or Members), provided there is Member oversight, supervision, and accountability. If however, TREB has suspended or terminated an AVP's access, that AVP cannot operate on behalf of other Members.

*How do Members get started?*

To operate a VOW, a Member must notify TREB in writing of their intention to do so, and initiate a license agreement with TREB, which verifies that the TREB MLS® data may not be used for purposes other than operating a VOW. The VOW must be readily accessible to TREB and all Members so that compliance with MLS® and VOW Rules and Policies can be verified.

*How do consumers get started?*

Members must first properly establish a broker-consumer relationship ~~as required by law~~. Consumers can initiate VOW access by providing an email address and agreeing to **Terms of Use**, both of which the Member must verify. The consumer or the Member can then determine a unique username and password combination, which is valid for up to 90 days, with an opportunity to renew it thereafter.

*What records must be kept?*

Members must maintain a record of the consumer's name, email address, username and password for at least 180 days after password expiry, and maintain an audit trail of consumer activity on the VOW. These may be requested by TREB if a security breach or violation of MLS® and VOW Rules and Policies is suspected.

*What security measures must be taken?*

Members are required to utilize security protections on the VOW, though not greater than those used by TREB. Members are required to monitor the VOW, to protect it from unauthorized access, use or reproduction of MLS® data.

*Are there provisions for supplemental agreements?*

The Terms of Use cannot impose a financial agreement between the Member and consumer. Any financial agreement must be separate from the VOW Terms of Use.

*Are there provisions for supplemental features and information?*

While a VOW may include supplemental features and information that is clearly identified as such, listings from sources other than TREB must be clearly identified and searched separately.

*What information must be displayed?*

Members cannot alter the content of MLS® data displayed on a VOW as is provided in TREB's MLS® system. VOWS must display a TREB MLS® copyright notice and accuracy disclaimer, a privacy policy, and a Member's contact information, the latter of which can be used by consumers to get more information about the VOW's listings. Members must be willing and able to respond to such inquiries. MLS® data available on a VOW must be refreshed at least every 24 hours.

Those who operate VOWS are not required to obtain separate permission from Members whose listings are displayed on the VOW however; the listing Member's name must be displayed prominently in at least the size of the listing data.

*What information must not be displayed?*

Certain confidential data may not be displayed on VOWS as follows:

- a) Expired, withdrawn, suspended or terminated Listings and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;
- b) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws;
- c) The compensation offered to other Members;
- d) The seller's name and contact information, unless otherwise directed by the seller to do so; and
- e) Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

*What information may be excluded?*

VOWs may exclude listings from display based on objective criteria such as geography, price and property type.

Sellers may choose not to display their listings or property addresses on the Internet. Listing Members must advise TREB accordingly, in which case VOWs will not be permitted to display such information. Members who operate VOWS may however, provide such information to consumers via other methods such as email or fax. A copy of such sellers' instructions must be retained by the listing Member for at least one year and provided to TREB within 48 hours upon request.

*Are solds available on a VOW?*

*You must get the necessary consents. Sold data (i.e., Listing Information relating to properties that have sold) shall be deemed confidential and withheld from a download if the actual sales prices of completed transactions are not readily publicly accessible or if the method of use is contrary to provincial or federal law, including all RECO Rules and PIPEDA.*

*A Member's VOW may not make available expired, withdrawn, suspended or terminated Listings and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed.*

# **EXHIBIT**

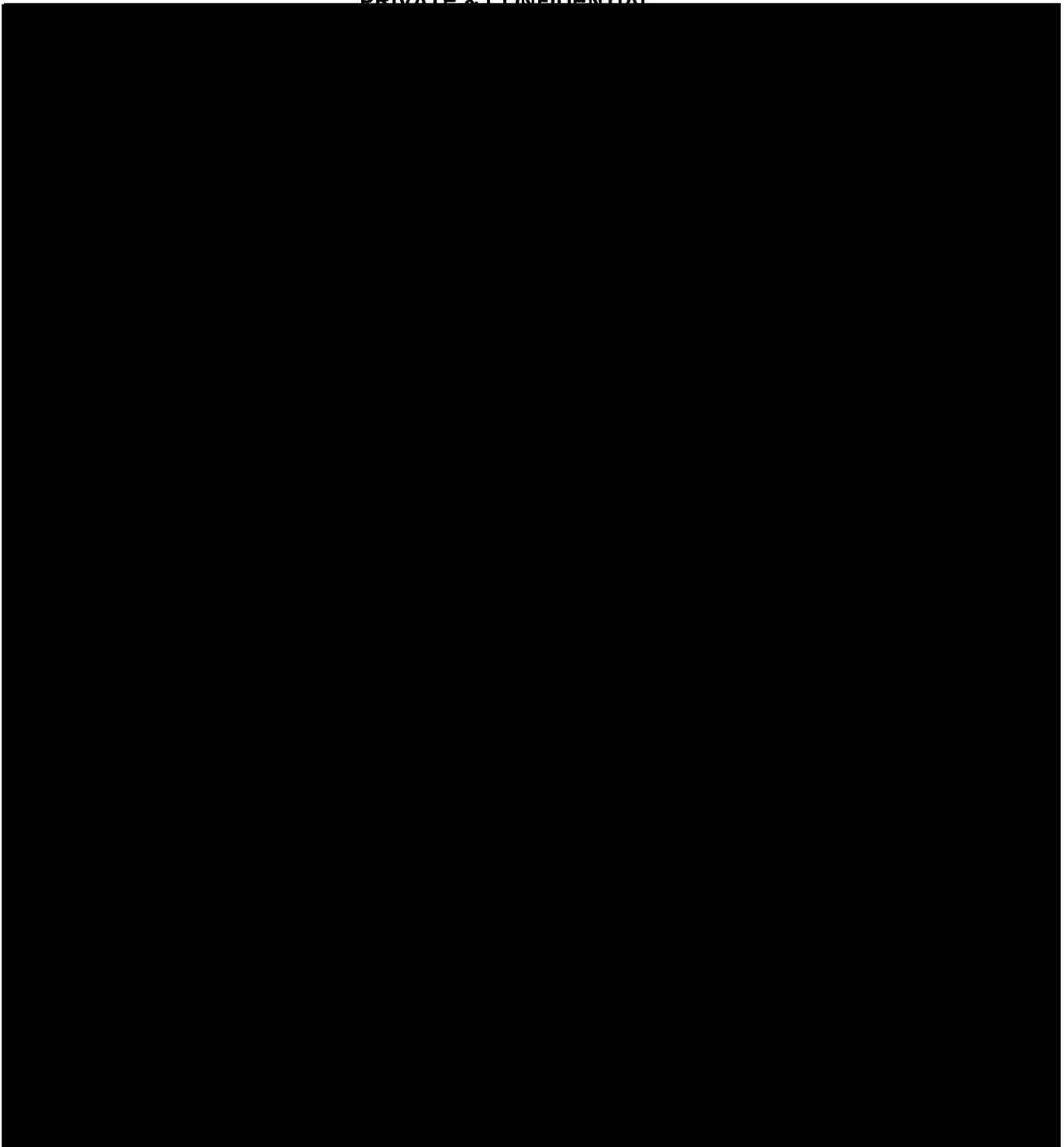
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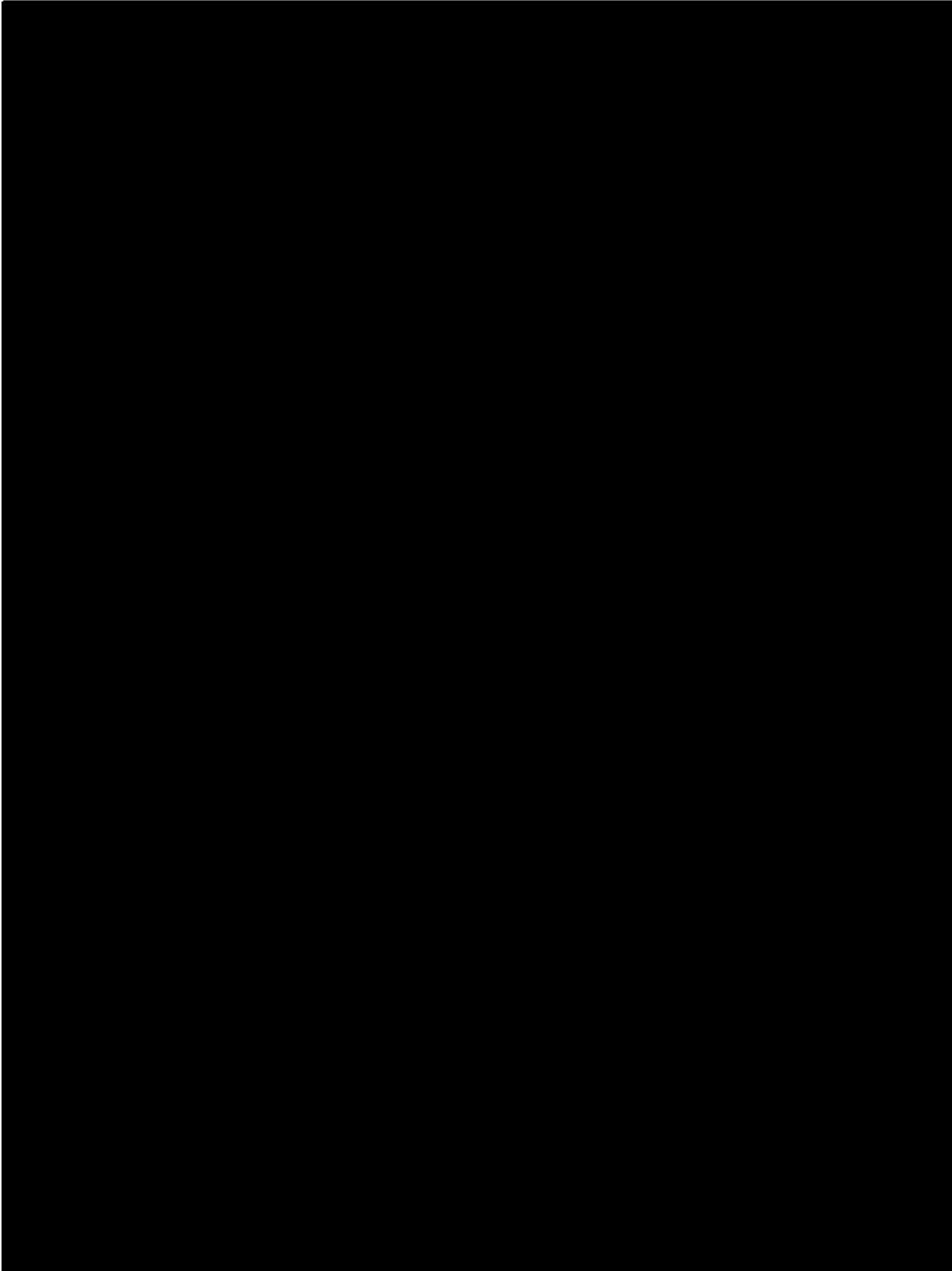
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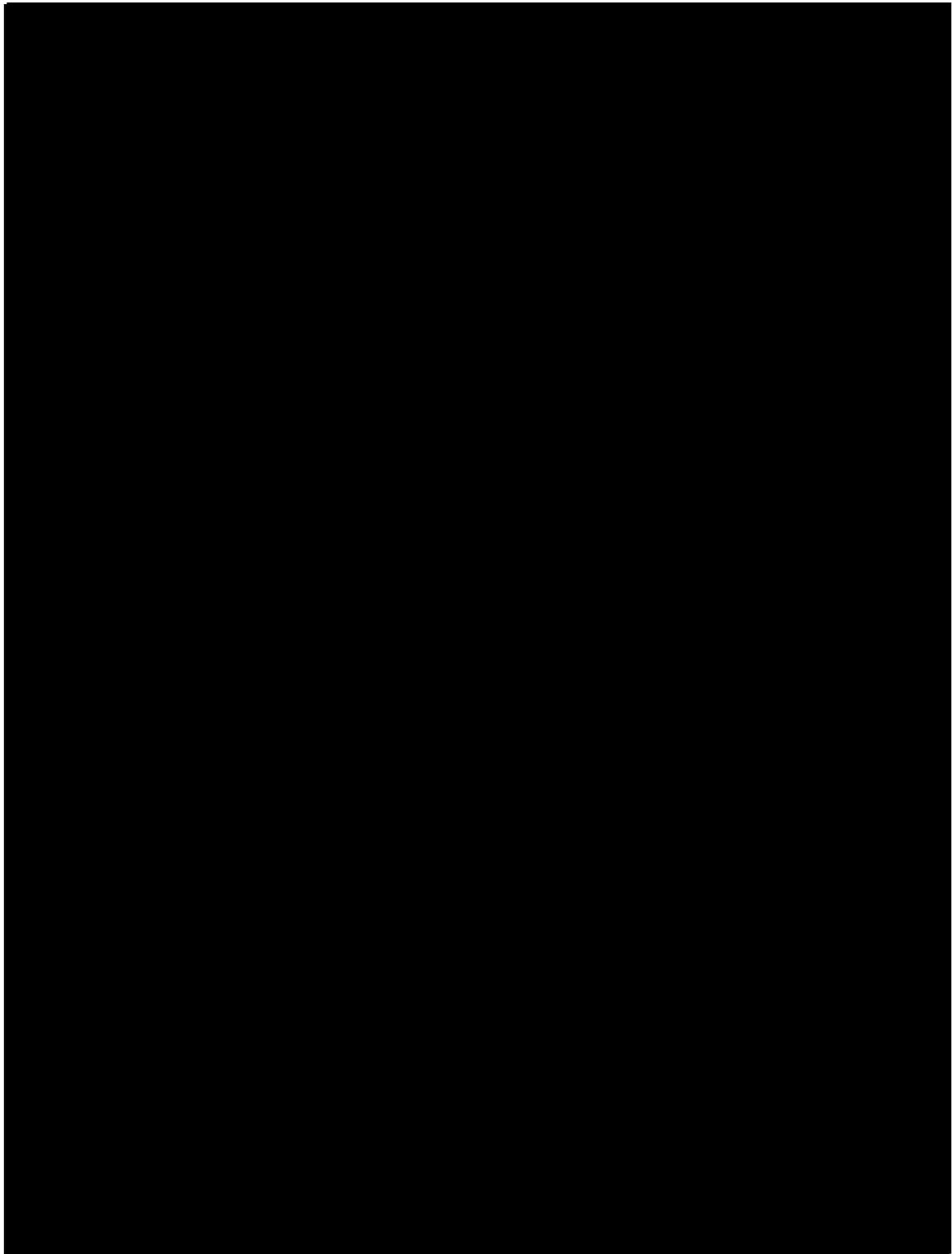
Special Board of Directors Meeting, held  
Thursday, August 25, 2011  
At the Board Offices

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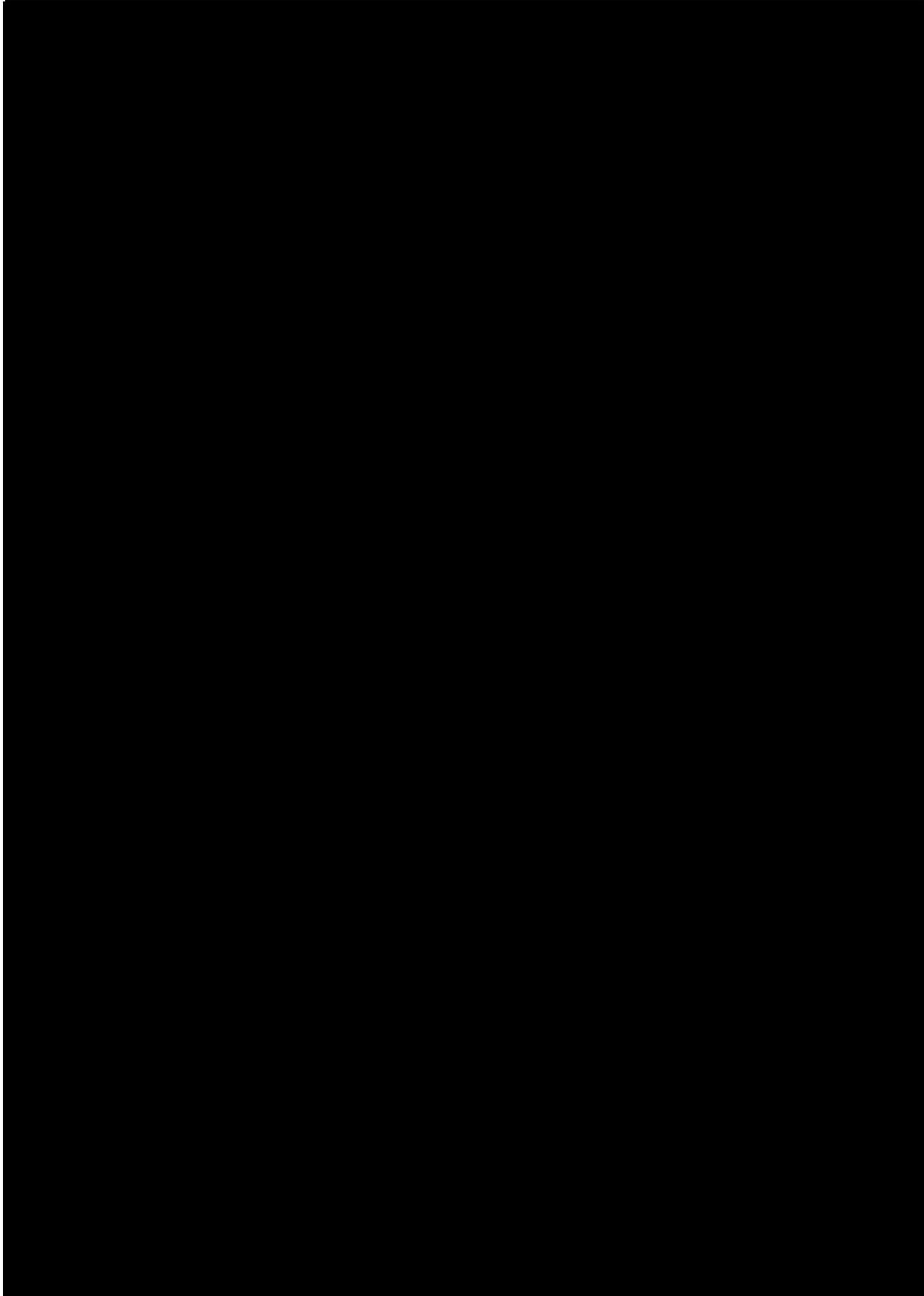
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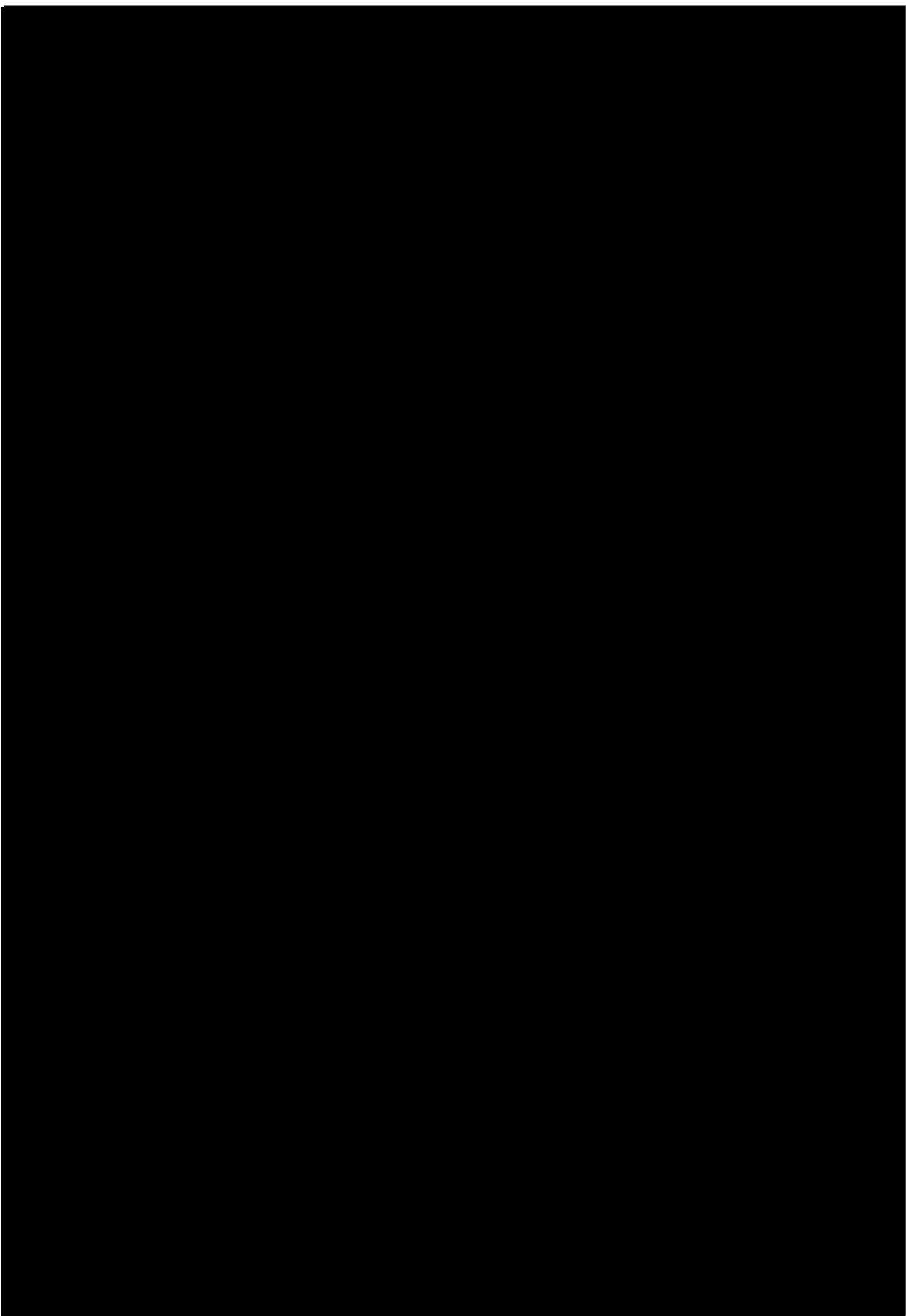


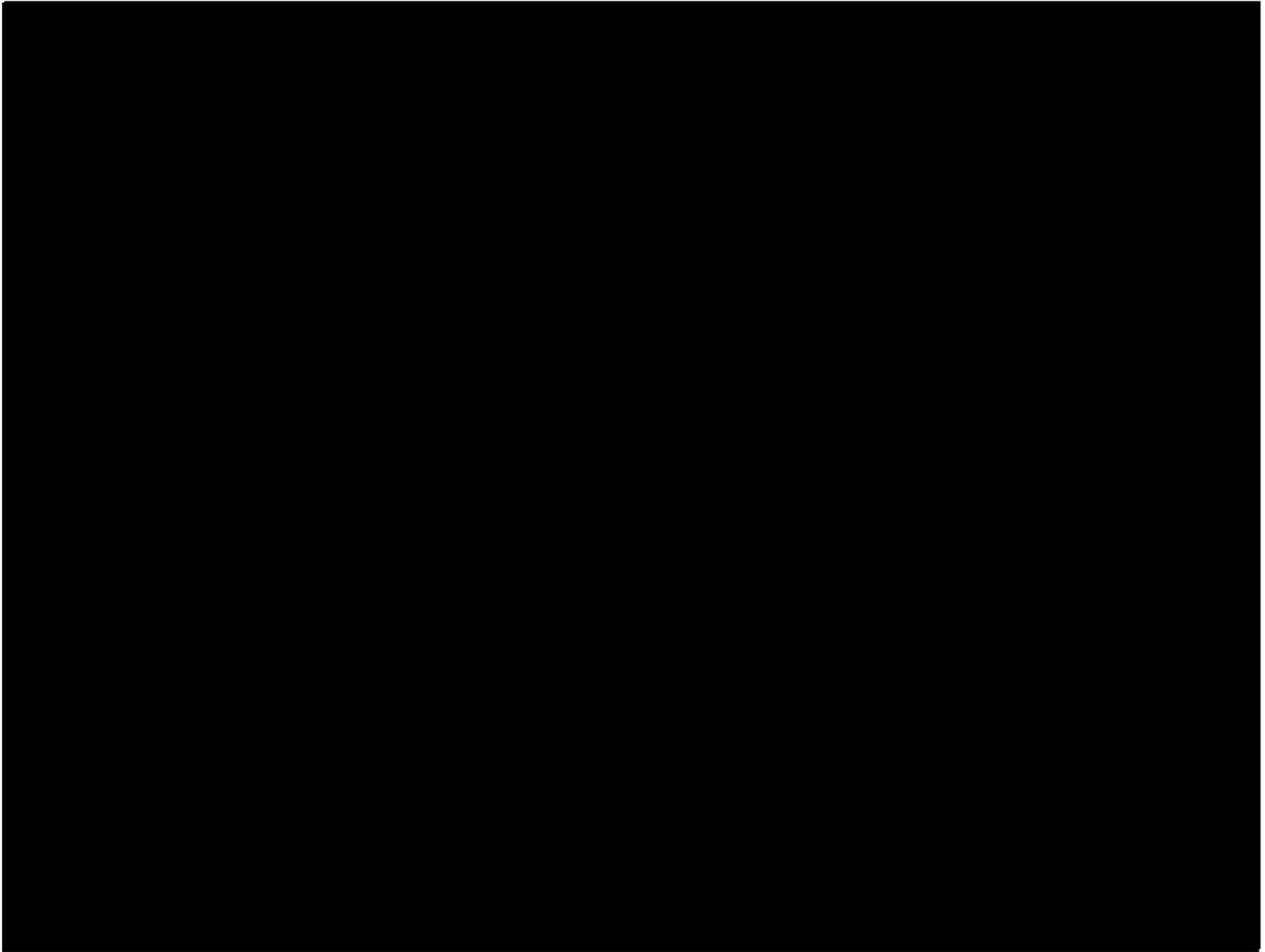




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# **EXHIBIT**

# **00**

**R 800 – VIRTUAL OFFICE WEBSITES** *(Effective November 15, 2011)***R-801**

Unless defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Glossary contained in the MLS<sup>®</sup> Rules and Policies.

A “Virtual Office Website” or “VOW” is a Member’s secure password-protected internet website, or a feature of a Member’s internet website, through which the Member is capable of providing real estate brokerage services to consumers with whom the Member has first established a broker-consumer relationship (as may be designated by provincial and/or federal law) where the consumer has the opportunity to search Listing Information, subject to the Member’s oversight, supervision, and accountability. A broker or salesperson registered with a Member may, with his broker of record’s consent, operate a VOW. Any VOW of a broker or salesperson is subject to the Member’s oversight, supervision, and accountability.

“Member” shall have the meaning designated in Article 2 of the By-laws and shall also include a Member’s brokers and salespersons (with the exception of references to “Member’s consent”, and “Member’s oversight, supervision, and accountability”). References to “VOW” and “VOWs” include all VOWs, whether operated by a Member, by a Member’s broker or salesperson, or by an AVP on behalf of a Member.

“Affiliated VOW Partner” or “AVP” refers to an entity or person designated by a Member to operate a VOW on behalf of the Member, subject to the Member’s supervision, accountability and compliance with the VOW Policy. No AVP has independent participation rights in the TREB MLS<sup>®</sup> by virtue of its right to receive information on behalf of a Member. No AVP has the right to use Listing Information except in connection with operation of a VOW on behalf of one or more Members. Access by an AVP to Listing Information is derivative of the rights of the Member on whose behalf the AVP operates a VOW.

**R-802**

The right of a Member’s VOW to display Listing Information in response to Consumer searches is limited to the display of MLS<sup>®</sup> data supplied by TREB, in accordance with the VOW Policy and VOW Rules, and in which MLS<sup>®</sup> data the Member has member rights. However, a Member with offices participating in different real estate boards or associations may operate a master website with links to the VOWs of its other offices.

**R-803**

Subject to the provisions of the VOW Policy and these VOW Rules, a Member’s VOW, including any VOW operated on behalf of a Member by an AVP, may provide other features, information, or functions in addition to VOWs including the Internet Data Exchange (“IDX”) function.

## R-804

Except as otherwise provided in the VOW Policy or in these VOW Rules, a Member need not obtain separate permission from other TREB Members whose Listings will be displayed on the Member's VOW.

## R-805

Before permitting any Consumer to search for or retrieve any Listing Information on a Member's VOW, the Member must take each of the following steps:

(i) The Member must first establish with that Consumer a lawful broker-consumer relationship (as may be designated by provincial and/or federal law), including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers ("Consumer" or "Consumers"). Such actions may include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreements.

(ii) The Member must obtain the name of, and a valid email address for, each Consumer. The Member must send an email to the address provided by the Consumer confirming that the Consumer has agreed to the Terms of Use (described in Rule 809 below). The Member must verify that the email address provided by the Consumer is valid and that the Consumer has agreed to the Terms of Use.

(iii) The Member must require each Consumer to have a username and a password, the combination of which is different from those of all other Consumers on the VOW. The Member may, at the Member's option, supply the username and password or may allow Consumers to establish their username and password. The Member must also assure that any email address is associated with only one username and password.

## R-806

The Member must ensure that each Consumer's password is valid for no more than 90 days but may provide for renewal of the password. The Member must, at all times, maintain a record of the name, email address, username, and current password of each Consumer. The Member must keep such records for not less than 180 days after the expiration of the validity of the Consumer's password.

## R-807

A Member's VOW shall include any copyright notice as may be provided by TREB from time to time regarding TREB's copyright in MLS<sup>®</sup> data.

## R-808

If TREB has reason to believe that a Member's VOW has been the cause of, or permitted a breach in, the security of Listing Information or a violation of MLS<sup>®</sup> Rules and Policies (including the VOW Rules), the Member shall, upon request of TREB, provide the name, email address, username, and current password, of any Consumer suspected of involvement in the breach or violation. The Member shall also, if requested by TREB, provide an audit trail of activity by any such Consumer.

## R-809

The Member shall require each Consumer to review, and to affirmatively express agreement (by mouse click or otherwise) to, a "Terms of Use" agreement that provides at least the following:

(i) That the Consumer acknowledges entering into a lawful broker-consumer relationship with the Member.

(ii) That all Listing Information obtained by the Consumer from the VOW is intended only for the Consumer's personal, non-commercial use.

(iii) That the Consumer has a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through the VOW.

(iv) That the Consumer will not copy, redistribute, retransmit, or otherwise use any of the data or Listing Information provided, except in connection with the Consumer's consideration of the purchase or sale of an individual property.

(v) That the Consumer will not, directly or indirectly, display, post, disseminate, distribute, publish, broadcast, transfer, sell or sublicense any Listing Information to another individual or entity. The prohibited uses expressly include "scraping" (including "screen scraping" and "database scraping"), "data mining" or any other activity intended to collect, store, reorganize, summarize or manipulate any Listing Information or any related data.

(vi) That the Consumer acknowledges TREB's ownership of, and the validity of TREB's proprietary rights and copyright in, the MLS<sup>®</sup> database, TREB's MLS<sup>®</sup> System, Listing Information and any related information.

## R-810

The Terms of Use agreement may not impose a financial obligation on the Consumer or create any representation agreement between the Consumer and the Member. Any agreement entered into at any time between the Member and Consumer imposing a financial obligation on the Consumer or creating representation of the Consumer by the Member must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

## R-811

The Terms of Use agreement shall also expressly authorize TREB, and other Members of TREB or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS<sup>®</sup> Rules and Policies (including the VOW Rules) and monitoring the display of Members' Listings by the VOW. The Terms of Use agreement may also include such other provisions as may be agreed to between the Member and the Consumer.

## R-812

A Member's VOW must prominently display an email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a Consumer can contact the Member to ask questions, or get more information, about any property displayed on the VOW. The Member, or a broker or salesperson registered with the Member, must be willing and able to respond knowledgeably to inquiries from Consumers about Listings within the market area served by that Member and displayed on the VOW.

## R-813

A Member's VOW must employ reasonable efforts to monitor for, and prevent, misappropriation, "scraping", "data mining" and other unauthorized, access, reproduction, or use of Listing Information, the MLS<sup>®</sup> database, MLS<sup>®</sup> data and any related information. A Member's VOW shall utilize appropriate security protection such as firewalls as long as this requirement does not impose security obligations greater than those employed concurrently by TREB; and shall maintain an audit trail of Consumers' activity on the VOW and make that information available to TREB if TREB has reason to believe that any VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).

## R-814

(a) A Member's VOW shall not display Listings or property addresses of any seller who has affirmatively directed the listing brokerage to withhold the seller's Listing or property address from display on the internet. The listing brokerage shall communicate to TREB that the seller has elected not to permit display of the Listing or property address on the internet. Notwithstanding the foregoing, a Member who operates a VOW may provide to Consumers via other delivery mechanisms, such as email, fax, or otherwise, the Listings of sellers who have determined not to have the Listing for their property displayed on the internet.

*Notes*

(b) A Member who lists a property for a seller who has elected not to have the Listing or the property displayed on the internet shall cause the seller to execute a document that so indicates.

(c) The Member shall retain such documents for at least one year from the date they are signed, or one year from the date the Listing expires or is terminated, whichever is later.

R-815

(a) Subject to subsections (b) and (c), a Member's VOW may allow third-parties to: (i) write comments or reviews about particular Listings or display a hyperlink to such comments or reviews in immediate conjunction with particular Listings, or (ii) display an automated estimate of the market value of the Listing (or hyperlink to such estimate) in immediate conjunction with the Listing.

(b) Notwithstanding the foregoing, at the request of a seller, the Member shall disable or discontinue either or both of those features described in subsection (a) as to any Listing of the seller. The listing brokerage or salesperson shall communicate to TREB that the seller has elected to have one or both of these features disabled or discontinued on all Members' websites. Subject to the foregoing and to Rule 816, a Member's VOW may communicate the Member's professional judgment concerning any Listing. A Member's VOW may notify its Consumers that a particular feature has been disabled "at the request of the seller."

(c) In the event that a Member's VOW allows third parties to post comments or reviews on its VOW, or to display a hyperlink to such comments or reviews, the Member's Terms of Use shall include the following:

i) that the Consumer agrees not to assert any ownership rights of any kind in Listing Information or any related data;

ii) that TREB shall not be responsible or liable, directly or indirectly, in any way, for any loss or damage of any kind incurred as a result of, or in connection with a Consumer's use of, or reliance on Listing Information, any related data, and/or posted or hyperlinked comments or reviews; and

iii) that TREB does not endorse any posted or hyperlinked comments or reviews.

## R-816

A Member's VOW shall maintain a means (e.g., email address, telephone number) to receive comments from the listing brokerage about the accuracy of any information that is added by or on behalf of the Member beyond that supplied by TREB and that relates to a specific property displayed on the VOW. The Member shall correct or remove any untrue, deceptive or misleading information relating to a specific property within 48 hours following receipt of a communication from TREB or the listing brokerage explaining why the data or information is untrue, deceptive or misleading. The Member shall not, however, be obligated to correct or remove any data or information that simply reflects good faith opinion, advice, or professional judgment.

## R-817

A Member shall cause the Listing Information available on its VOW to be refreshed at least once every 24 hours.

## R-818

Except as provided in these VOW Rules, the VOW Policy, or any other applicable MLS<sup>®</sup> Rules and Policies, no Member shall distribute, provide, or make accessible any portion of the MLS<sup>®</sup> database or Listing Information to any person or entity.

## R-819

A Member's VOW must display the Member's privacy policy boldly informing Consumers of; and obtaining Consumers' consent to, all of the ways in which Personal Information that they provide may be collected, used, or disclosed including the fact that Personal Information may be shared with TREB for auditing and/or legal purposes.

## R-820

A Member's VOW may exclude Listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price and type of property.

## R-821

A Member who intends to operate a VOW to display Listing Information must notify TREB in writing of its intention to establish a VOW and must make the VOW readily accessible to TREB and to all TREB Members for purposes of verifying compliance with these VOW Rules, the VOW Policy, and any other applicable MLS<sup>®</sup> Rules and Policies.

## R-822

A Member may operate more than one VOW himself or herself or through an AVP. A Member that operates its own VOW may contract with an AVP to have the AVP operate other VOWs on its behalf. However, any VOW operated on behalf of a Member by an AVP is subject to the Member's oversight, supervision, accountability and the terms of the VOW Policy.

## R-823

A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumers the following MLS<sup>®</sup> data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules:

- (a) Expired, withdrawn, suspended or terminated Listings, and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;
- (b) The compensation offered to other Members;
- (c) The seller's name and contact information, unless otherwise directed by the seller to do so;
- (d) Instructions or remarks intended for cooperating brokers only, such as those regarding showings or security of listed property; and
- (e) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws.

## R-824

A Member shall not change the content of any Listing Information that is displayed on a VOW from the content as it is provided in TREB's MLS<sup>®</sup> System. The Member may, however, augment Listing Information with additional information not otherwise prohibited from display by these VOW Rules or by other applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules) as long as the source of such other information is clearly identified. This rule does not restrict the format of display of Listing Information on VOWs or the display on VOWs of fewer than all of the Listings or fewer than all of the authorized information fields

## R-825

A Member shall cause to be placed on the Member's VOW a notice indicating that the Listing Information displayed on the VOW is deemed reliable but is not guaranteed accurate by TREB. A Member's VOW shall include other appropriate disclaimers necessary to protect the Member and/or TREB from liability.

## R-826

A Member shall cause any Listing that is displayed on the Member's VOW to identify the name of the listing brokerage or salesperson in a readily visible color, in a reasonably prominent location, and in typeface not smaller than the typeface used in the display of Listing Information.

*Notes*

R-827

A Member shall limit the number of Listings that a Consumer may view or retrieve, to not more than 100 Listings in response to any inquiry.

R-828

A Member shall cause any listing displayed on the Member's VOW that is obtained from other sources to identify the source of the Listing.

R-829

A Member shall cause any listing displayed on the Member's VOW obtained from other sources to be searched separately from Listings in the MLS<sup>®</sup> database.

R-830

Members and the AVPs operating VOWs on their behalf must execute the license agreement required by TREB.

R-831

Where a seller affirmatively directs their listing brokerage to withhold either the seller's Listing or the address of the seller's Listing from display on the internet, a copy of the seller's affirmative direction shall be provided to TREB upon request, within 48 hours.

R-832

In the event of any conflict between any VOW Rule/VOW Policy and any other MLS<sup>®</sup> Rules or Policies, the VOW Rule/VOW Policy shall govern, subject to applicable laws, regulations, and the RECO Rules.

**VIRTUAL OFFICE WEBSITE POLICY (VOW)***(Effective November 15, 2011)***1. Definition and Scope of VOW Policy**

1. For purposes of this VOW Policy, "Virtual Office Website" ("VOW") refers to a Member's secure, password-protected internet website, or a feature of a Member's internet website, through which the Member is capable of providing real estate brokerage services to consumers with whom the Member has first established a broker-consumer relationship (as may be designated by provincial and/or federal law) where the consumer has the opportunity to search MLS® data, subject to the Member's oversight, supervision, and accountability.

a) A Member may designate an Affiliated VOW Partner ("AVP") to operate a VOW on behalf of the Member, subject to the Member's oversight, supervision and accountability and the terms of this VOW Policy.

b) A broker or salesperson registered with a Member may, with the Member's consent, operate a VOW or have a VOW operated on the Member's behalf by an AVP. Such a VOW is subject to the Member's oversight, supervision and accountability and the terms of this VOW Policy.

c) Each use of the term "Member" in this VOW Policy shall have the meaning designated in Article 2 of the By-laws and shall also include a Member's brokers and salespersons (with the exception of references to "Member's consent", "Members' oversight, supervision, and accountability" and in paragraph 22(a), below, to "Member acknowledges"). Each reference to "VOW" or "VOWs" herein refers to all VOWs, whether operated by a Member, by a Member's broker or salesperson, or by an AVP on behalf of a Member.

2. The right of a Member's VOW to display Listings in response to Consumer searches is limited to the display of MLS® data supplied by TREB in which the Member has member rights. This does not preclude a Member with offices participating in different real estate boards or associations from operating a master website with links to the VOWs of its other offices.

3. Members' VOWs, including those operated for Members by AVPs, may also provide other features, information, or functions in addition to VOWs (including the Internet Data Exchange ("IDX") function).

4. The display of Listing Information on a VOW does not require separate permission from the Member whose Listings will be available on the VOW.

5. Any capitalized term used herein shall have the same meaning as contained in the MLS® Rules and Policies Glossary, unless otherwise expressly defined in this VOW Policy.

## II. Policies Applicable to Members' VOWs

6. A Member may provide brokerage services via a VOW that include making Listing Information available, but only to consumers with whom the Member has first established a lawful broker-consumer relationship, including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers ("Consumer" or "Consumers"). Such actions may include, but are not limited to, satisfying all applicable agency, non-agency, and other disclosure obligations, and execution of any required agreement(s).

7. A Member's VOW must obtain the identity of each Consumer and obtain each Consumer's agreement to Terms of Use of the VOW, as follows:

a) Consumers must provide their name and a valid email address. The Member must send an email to the address provided by the Consumer confirming that the Consumer has agreed to the Term of Use (described in paragraph 7© below). The Consumer may be permitted to access the VOW only after the Member has verified that the email address provided is valid and that the Consumer agreed to the Terms of Use.

b) The Consumer must supply a username and a password, the combination of which must be different from those of all other Consumers on the VOW, before being permitted to search and retrieve Listing Information via the VOW. The username and password may be established by the Consumer or may be supplied by the Member, at the option of the Member. An email address may be associated with only one username and password. Consumers' passwords may be valid for up to 90 days, after which such passwords must be renewed or reconfirmed. The Member must, at all times, maintain a record of the name and email address supplied by the Consumer, and the username and current password of each Consumer. Such records must be kept for not less than 180 days after the expiration of the validity of the Consumer's password. If TREB has reason to believe that a Member's VOW has been the cause of, or permitted a breach in, the security of the MLS® data or a violation of this VOW Policy, or the MLS® Rules and Policies (including the VOW Rules) related to use by one or more Consumers, the Member shall, upon request of TREB, provide to TREB a copy of the record of the name, email address, username, current password, and audit trail, if required, of any Consumer identified by TREB to be suspected of involvement in the breach or violation.

c) The Consumer must be required to affirmatively express agreement to a "Terms of Use" agreement that requires the Consumer to open and review an agreement that provides at least the following:

i) That the Consumer acknowledges entering into a lawful broker-Consumer relationship with the Member.

ii) That all MLS® data obtained from the VOW is intended only for the Consumer's personal, non-commercial use.

iii) That the Consumer has a *bona fide* interest in the purchase, sale, or lease of real estate of the type being offered through the VOW.

iv) That the Consumer will not copy, redistribute, retransmit, or otherwise use any of the data or Listing Information provided, except in connection with the Consumer's consideration of the purchase, sale, or lease of an individual property.

v) That the Consumer acknowledges TREB's ownership of, and the validity of TREB's proprietary rights and copyright in the MLS<sup>®</sup> database, MLS<sup>®</sup> data, TREB's MLS<sup>®</sup> System, and Listing Information.

vi) That the Consumer will not, directly or indirectly, display, post, disseminate, distribute, publish, broadcast, transfer, sell or sublicense any Listing Information to another individual or entity. The prohibited uses expressly include "scraping" (including "screen scraping" and "database scraping"), "datta mining" or any other activity intended to collect, store, re-organize, summarize or manipulate any Listing Information or any related data.

vii) After the Consumer has opened for viewing the Terms of Use agreement, a "mouse click" is sufficient to acknowledge agreement to those terms. The Terms of Use agreement may not impose a financial obligation on the Consumer or create any representation agreement between the Consumer and the Member.

viii) the Terms of Use agreement shall also expressly authorize TREB, and other TREB Members or their duly authorized representatives, to access the VOW for the purposes of verifying compliance with MLS<sup>®</sup> Rules and Policies (including the VOW Rules) and monitoring the display of Members' Listings by the VOW.

ix) Every VOW must display a privacy policy that boldly informs Consumer's of, and obtains Consumers' consent to, all the ways in which Personal Information that they provide may be collected, used or disclosed, including the fact that Personal Information may be shared with TREB for auditing and/or legal purposes.

d) An agreement entered into at any time between the Member and Consumer imposing a financial obligation on the Consumer or creating representation of the Consumer by the Member must be established separately from the Terms of Use, must be prominently labeled as such, and may not be accepted solely by mouse click.

8. A Member's VOW shall include any copyright notice as may be provided by TREB from time to time regarding TREB's copyright in MLS<sup>®</sup> data.

9. A Member's VOW must prominently display an email address, telephone number, or specific identification of another mode of communication (e.g., live chat) by which a Consumer can contact the Member to ask questions or get more information, about Listings displayed on the VOW. The Member, or such Member's broker or salesperson, must be willing and able to respond knowledgeably to inquiries from Consumers about Listings within the market area served by that Member and displayed on the VOW.

10. A Member's VOW must protect the MLS<sup>®</sup> data from misappropriation by employing reasonable efforts to monitor for and prevent "scraping", data mining, and other unauthorized access, reproduction, or use of the MLS<sup>®</sup> database, MLS<sup>®</sup> data and/or any related information.

11. A Member's VOW must comply with the following additional requirements:

a) No VOW shall display Listing or property address of any seller who has affirmatively directed the listing brokerage to withhold their Listing or property address from display on the internet. The listing brokerage or salesperson shall communicate to TREB that a seller has elected not to permit display of the Listing or property address on the internet. Notwithstanding the foregoing, a Member who operates a VOW may provide to Consumers via other delivery mechanisms, such as email, fax, or otherwise, the Listing or property address of sellers who have determined not to have the Listing or address for their property displayed on the internet.

b) A Member who lists a property for a seller who has elected not to have the Listing or the property address displayed on the internet shall cause the seller to execute a document that so indicates. The Member shall retain such documents for at least one year from the date they are signed, or one year from the date the Listing expires or is terminated, whichever is later.

c) With respect to any VOW that:

i) allows third parties to write comments or reviews about particular Listings or displays a hyperlink to such comments or reviews in immediate conjunction with particular Listings; or

ii) displays an automated estimate of the market value of the Listing (or hyperlink to such estimate) in immediate conjunction with the Listing,

the VOW shall disable or discontinue either or both of those features as to the seller's Listing at the request of the seller. The listing brokerage shall communicate to TREB that the seller has elected to have one or both of these features disabled or discontinued on all Members' websites. Except for the foregoing and subject to subparagraph 11(d), a Member's VOW may communicate the Member's professional judgment concerning any Listing. Nothing shall prevent a VOW from notifying its Consumers that a particular feature has been disabled "at the request of the seller".

*Notes*

d) A VOW shall contain a means (e.g., email address, telephone number) to receive comments about the accuracy of any MLS<sup>®</sup> data or information that is added by or on behalf of the VOW Member beyond that supplied by TREB and that relates to a specific property displayed on the VOW. The VOW Member shall correct or remove any untrue, deceptive or misleading data or information relating to a specific property within 48 hours of receipt of a communication from TREB or the listing brokerage for that property explaining why the data or information is untrue, deceptive or misleading. However, the VOW Member shall not be obligated to remove or correct any data or information that simply reflects good faith opinion, advice, or professional judgment.

e) Each VOW shall refresh MLS<sup>®</sup> data available on the VOW not less frequently than every 24 hours.

f) Except as provided elsewhere in this VOW Policy, or in MLS<sup>®</sup> Rules and Policies (including the VOW Rules), no portion of the MLS<sup>®</sup> database or Listing Information may be distributed, provided, or made accessible to any person or entity.

g) A VOW may exclude Listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, and type of property.

12. A Member to operate a VOW to display Listing Information must notify TREB in writing of its intention to establish a VOW and must make the VOW readily accessible to TREB and to all Members for purposes of verifying compliance with this VOW Policy, and any other applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).

13. A Member may operate more than one VOW itself or through an AVP. A Member who operates a VOW itself shall not be precluded from also operating VOWs in conjunction with AVPs.

### III. Policies respecting Data Feeds, Security, AVPs and related matters

14. TREB will permit Members to operate VOWs, or to have VOWs operated for them by AVPs, subject to the requirements of all provincial and/or federal laws, including all RECO Rules, PIPEDA and this VOW Policy and the VOW Rules.

15. TREB will, if requested by a Member, provide basic "downloading" of non-confidential MLS<sup>®</sup> data, including without limitation address fields, listing types, photographs, and links to virtual tours. "Confidential data" includes that which Members are prohibited from providing to Consumers orally and by all other delivery mechanisms. They include fields containing the information described in paragraph 24 of this VOW Policy, provided that sold data (i.e. Listing Information relating to properties that have sold) shall be deemed confidential and withheld from a download if the actual sales prices of completed transactions are not readily publicly accessible or if the method of use is contrary to provincial or federal law, including all RECO Rules and PIPEDA.

*Notes*

For purposes of this VOW Policy, "downloading" means electronic transmission of data (i.e. data feed) from TREB servers to a Member's AVP's server on a persistent basis via RETS feed, FTP download, or in such format as may be determined by TREB from time to time. TREB may also offer a transient download. In such case, it shall, also, if requested, provide a persistent download, provided that it may impose on users of such download the approximate additional costs incurred by it to do so.

16. This VOW Policy does not require TREB to establish publicly accessible websites displaying Members' Listings.

17. The VOW data feed will include all of the non-confidential MLS<sup>®</sup> data included in the data feed described in paragraph 15 above except for Listings or property addresses of sellers who have elected not to have their Listings or addresses displayed on the internet.

18. TREB may pass on to those Members who request downloading of Listing Information the reasonably estimated costs incurred by TREB in adding or enhancing its "downloading" capacity to enable such Members to operate VOWs.

19. TREB will require that Members (1) utilize security protection, such as firewalls, as long as such requirement does not impose security obligations greater than those employed concurrently by TREB, and (2) maintain an audit trail of Consumers' activity on the VOW and make that information available to TREB if TREB has reason to believe that any VOW has been the cause of, or permitted a breach in, the security of the MLS<sup>®</sup> data or a violation of applicable MLS<sup>®</sup> Rules and Policies (including the VOW Rules).

20. Except as provided for in this VOW Policy, TREB will not prohibit Members from enhancing their VOWs by providing, information obtained from sources other than TREB, additional technological services (such as mapping functionality), or information derived from non-confidential MLS<sup>®</sup> data (such as an estimated monthly payment derived from the listed price); or regulating the use or display of such information or technological services on any VOW.

21. TREB will not restrict the format of MLS<sup>®</sup> data displayed on a VOW or regulate the appearance of VOWs.

22. Subject to the provisions below, TREB will make MLS<sup>®</sup> data available to an AVP for the exclusive purpose of operating a VOW on behalf of a Member and will make MLS<sup>®</sup> data available to an AVP under the same terms and conditions as those applicable to Members. No AVP has independent member rights in TREB or MLS<sup>®</sup> data by virtue of its right to receive MLS<sup>®</sup> data on behalf of a Member, or the right to use MLS<sup>®</sup> data except in connection with operation of a VOW for a Member. AVP access to MLS<sup>®</sup> data is derivative of the rights of the Member on whose behalf the AVP is downloading MLS<sup>®</sup> data.

- a) A Member or AVP's right to receive and use MLS<sup>®</sup> data by providing to TREB a document in which the Member acknowledges its selection of the AVP to operate a VOW on its behalf.
- b) TREB will not charge an AVP, or a Member on whose behalf an AVP operates a VOW, more than a Member that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS<sup>®</sup> data, as described in paragraph 22 (g), below), except to the extent that TREB incurs greater costs in providing MLS<sup>®</sup> data to the AVP than TREB incurs in providing MLS<sup>®</sup> data to a Member.
- c) TREB will not place data security requirements or restrictions on use of MLS<sup>®</sup> data by an AVP that are not also imposed on Members.
- d) TREB will permit an AVP to download Listing Information in the same manner (e.g. via a RETS feed, FTP download, or in such format as may be determined by TREB from time to time), at the same times and with the same frequency that TREB permits Members to download Listing Information to Members' VOWs.
- e) TREB will deal directly with an AVP in order to resolve technical problems with the data feed, TREB may require that the Member on whose behalf the AVP is operating the VOW participate in such communications if TREB reasonably believes that the involvement of the Member would be helpful in order to resolve the problem.
- f) TREB will not condition an AVP's access to a data feed on the financial terms on which the AVP provides the website for the Member.
- g) TREB will require Members and AVPs to execute a license or similar agreements sufficient to ensure that Members and AVPs understand and agree that MLS<sup>®</sup> data provided by TREB may be used only to establish and operate a VOW on behalf of the Member and not for any other purpose.
- h) TREB will not (i) prohibit an AVP from operating VOWs on behalf of more than one Member, and several Members may designate an AVP to operate a single VOW for them collectively, (ii) limit the number of entities that Members may designate as AVPs for purposes of operating VOWs, or (iii) prohibit Members from designating particular entities as AVPs except that, if an AVP's access has been suspended or terminated by TREB, TREB may prevent an entity from being designated an AVP by another Member during the period of the AVP's suspension or termination.
- i) Except as stated below, TREB may not suspend or terminate an AVP's access to MLS<sup>®</sup> data (a) for reasons other than those that would allow TREB to suspend or terminate a Member's access to MLS<sup>®</sup> data, or (b) without giving the AVP and the associated Member(s) prior notice and the process set forth in the applicable provisions of the By-laws or MLS<sup>®</sup> Rules and Policies for suspension or termination of a Member's access. Notwithstanding the foregoing, TREB will immediately terminate an AVP's access to MLS<sup>®</sup> data (a) if the AVP is no longer designated to provide VOW services to any Member, (b) if the Member for whom the AVP operates a

VOW ceases to maintain its status with TREB, (c) if the AVP has downloaded MLS<sup>®</sup> data in a manner not authorized for Members and that hinders the ability of Members to download MLS<sup>®</sup> data to members' VOWs, or (d) if the associated Member or AVP has failed to make required payments to TREB in accordance with TREB's generally applicable payment policies and practices.

23. TREB will not prohibit, restrict, or impede a Member from referring Consumer's to any person or from obtaining a fee for such referral.

#### IV. Requirements on the Operation of VOWs and Members

24. A Member, whether through a Member's VOW or by any other means, may not make available for search by, or display to, Consumer's the following MLS<sup>®</sup> data intended exclusively for other Members and their brokers and salespersons, subject to applicable laws, regulations and the RECO Rules.

a) Expired, withdrawn, suspended or terminated Listings and pending solds or leases, including Listings where sellers and buyers have entered into an agreement that has not yet closed;

b) Sold data, unless the method of use of actual sales price of completed transactions is in compliance with RECO Rules and applicable privacy laws;

c) The compensation offered to other Members;

d) The seller's name and contact information, unless otherwise directed by the seller to do so; and

e) Instructions or remarks intended for cooperating brokers only, such as those regarding showing or security of the listed property.

25. The content of MLS<sup>®</sup> data that is displayed on a VOW may not be changed from the content as it is provided in TREB's MLS<sup>®</sup> System. MLS<sup>®</sup> data may be augmented with additional data or information not otherwise prohibited from display as long as the source of such other data or information is clearly identified. This requirement does not restrict the format of MLS<sup>®</sup> data displayed on VOWs or the display on VOWs of fewer than all of the Listings or fewer than all of the authorized data fields.

26. There shall be a notice on all MLS<sup>®</sup> data displayed indicating that the data is deemed reliable but is not guaranteed accurate by TREB. A Member's VOW may also include other appropriate disclaimers necessary to protect the Member and/or TREB from liability.

27. Any Listing displayed on a VOW shall identify the name of the listing brokerage or salesperson in a readily visible color, and reasonably prominent location, and in typeface not smaller than the typeface used in the display of Listing data.

28. The number of Listings that Consumer's may view or retrieve on or from a VOW in response to an inquiry will be limited to 100 listings.

29. TREB will not prohibit Members from downloading and displaying or framing listings obtained from other sources, e.g. other real estate boards or associations or from brokers not participating in TREB, etc., but may require wither that (i) such information be searched separately from listings obtained from other sources, including other real estate boards or associations, or (ii) if such other sources are searched in conjunction with searches of the Listings available on the VOW, require that any display of listings from other sources identify such other source.

#### GLOSSARY

In these MLS<sup>®</sup> Rules and Policies and this Glossary unless the context requires otherwise words or terms having a commonly understood meaning in the real estate brokerage industry and not otherwise defined herein shall be given that meaning provided that the terms set out below shall have the following meanings:

“Act” means the Real Estate and Business Brokers Act S.O. 2002, Chapter 30, as amended, or any successor legislation as may be amended from time to time;

“Affiliated VOW Partner” or “AVP” has the meaning ascribed thereto in R-801 of the VOW Rules; *(Effective November 15, 2011)*

“Agency” means that relationship between principal and agent wherein the agent is considered in law to represent the principal;

“Agreement of Purchase and Sale” is a document giving evidence of a contract which exists between the parties involved and includes an “Agreement to Lease”, “Offer to Sub-Lease”, “Agreement of Purchase and Sale Under the Bulk Sales Act”, “Option to Purchase”, “Offer to Exchange”, “Agreement of Purchase and Sale - Condominium Resale”;

“as principal” means acting as Seller and therefore directly liable to other Members for compensation;

“Authenticator” means any handheld random password generator(s) that may be provided by TREB from time to time;  
*(Effective October 2008)*

“Authorized User Agreement” is a confidentiality agreement in a form provided by TREB from time to time to be signed by every Member of TREB and the authorized Broker of Record/Manager of the Brokerage;

“Board” means the Toronto Real Estate Board;

“Boardload” means the entry of listing information from the MLS<sup>®</sup> Data Information Form onto TREB’s MLS<sup>®</sup> Online System by TREB staff;

“Board of Directors” means the Board of Directors of TREB;

“Document Attachment” is a facsimile of an actual document or image that is supplementary to the specific MLS<sup>®</sup> Listing Agreement it is attached to and forms part of that Listing;

“exclusion” means any material fact that may affect the Co-operating Brokerage;

“HST” means the Harmonized Sales Tax imposed by the *Excise Tax Act* (Canada) as may be amended or replaced from time to time;  
(Effective May 12, 2011)

“Listing(s)” shall include MLS<sup>®</sup> Listing(s);  
(Effective November 15, 2011)

“Listing Information” or “MLS<sup>®</sup> data” means all information that is contained in a Listing uploaded on the TREB MLS<sup>®</sup> System and maintained in the TREB MLS<sup>®</sup> database regarding the Listings of Members, and any subsequent additions or changes to that information, including current information about the property;  
(Effective November 15, 2011)

“Manager” means the Registrant in effective control and management of a Brokerage office;

“Mandatory Fields” are designated as the dark shaded fields on the Freehold, Condominium and Commercial MLS<sup>®</sup> Data Information Forms and are to be correctly completed;

“may” is construed as permissive;

“Member” includes all types of Members of TREB as defined in the By-Laws and those who TREB has authorized to have access to TREB’s MLS<sup>®</sup> System;

“Member Office” means a Business office maintained by a Brokerage and used for the real estate Business, serving the public on a regular and consistent basis;

“MLS<sup>®</sup>” is a registered trademark of The Canadian Real Estate Association;

“MLS<sup>®</sup> database” means the aggregation of all MLS<sup>®</sup> data as well as its selection, assembly and arrangement, and any successor database owned and operated by or on behalf of TREB;  
(Effective November 15, 2011)

“MLS<sup>®</sup> Data Information Form” means a printed or electronic document containing information required by TREB from time to time about an MLS<sup>®</sup> Listing or the property listed on an MLS<sup>®</sup> Listing;

“MLS<sup>®</sup> Forms” means all forms (regardless of media employed) prescribed by TREB for use by Members in connection with TREB’s MLS<sup>®</sup> System;

“MLS<sup>®</sup> Listing” is property offered for sale, lease, sub-lease, exchange or option through TREB’s MLS<sup>®</sup> System and, where the context permits, includes the information concerning the property submitted to or published on TREB’s MLS<sup>®</sup> System including the MLS<sup>®</sup> Data Information Form;

“MLS<sup>®</sup> Listing Agreement” means the agreement between the Listing Brokerage and a Seller as prescribed by TREB from time to time and Document Attachment is supplementary to the specific MLS<sup>®</sup> Listing it is attached to and forms part of the MLS<sup>®</sup> Listing Agreement;

“MLS<sup>®</sup> Notice Pages” includes the pages of notices published by TREB on TREB’s MLS<sup>®</sup> System containing solds, conditional sales, suspensions, Cancellations, extensions and deals that fell through;

“notify TREB” is the delivery of information regarding MLS<sup>®</sup> Listings to TREB either by Directload or telephone, or as determined by TREB;

“Offer” is an Agreement of Purchase and Sale, including a counter-offer, which has been executed by the offeror, but not yet accepted by the offeree;

“Personal Information” shall have the meaning attributed to such term in the *Personal Information and Electronic Documents Act* (Canada), S.C. 2000, c. 5, as such legislation may be amended from time to time; (Effective November 15, 2011)

“PIPEDA” means the *Personal Information and Electronic Documents Act* (Canada), S.C. 2000, c. 5, as such legislation may be amended from time to time; (Effective November 15, 2011)

“property” means real estate;

“real estate” includes leasehold interests and Business, whether with or without premises, and fixtures, stock-in-trade, goods connected with the operation of Business. For greater clarity, “real estate” may include less than a 100% interest in the foregoing, and shall include mobile homes and travel trailers that have become real property as a fixture;

“RECO” means the Real Estate Council of Ontario;

“RECO Rules” means the Real Estate and *Business Brokers Act, 2002*, and all regulations thereto, including the Code of Ethics, as well as all applicable RECO rules and policies; (Effective May 12, 2011)

“Registrant” means a Brokerage that is registered under the Act or a Broker or Salesperson who is registered under the Act;

*Notes*

“Reporting” means notification of information regarding MLS<sup>®</sup> Listings to TREB either by Directload or telephone, or as determined by TREB from time to time and “Reported” and “Report” shall have a corresponding meaning;

“Re-run” is the re-appearance of an MLS<sup>®</sup> Listing on TREB’s MLS<sup>®</sup> Online System and in the MLS<sup>®</sup> daily listings;

“sale” shall include all forms of Trade;

“Salesperson” means an individual who has the prescribed qualifications to be registered as a Salesperson under the Act and who is employed by a Brokerage to trade in real estate;

“Seller” includes a vendor or landlord or a prospective vendor or landlord;

“shall” is construed as imperative;

“suspension” is notice from the Listing Brokerage which renders a current MLS<sup>®</sup> Listing inactive. Suspension includes the terms “Off the Market”, “No Showings” and “No Further Appointments” but does not constitute a Cancellation of an MLS<sup>®</sup> Listing Agreement; and “suspend” and “suspended” shall have a corresponding meaning;

“Terms of Use” means a written series of terms displayed on a VOW to which a Consumer may agree in order to obtain access to the Listings on the VOW.

“Trade” as defined in the Real Estate and Business Broker’s Act (REBBA);

“TREB” means the Toronto Real Estate Board;

“TREB business day” means a day on which the offices of TREB are open to serve Members;

“TREB’s MLS<sup>®</sup> Online System” is a computer system as operated by TREB from time to time for TREB’s MLS<sup>®</sup> System;

“TREB’s MLS<sup>®</sup> System” means the multiple listing service as owned and operated by or on behalf of TREB and includes, without limitation, all MLS<sup>®</sup> data, the MLS<sup>®</sup> database, the MLS<sup>®</sup> Data Information Forms and TREB’s MLS<sup>®</sup> Online System;

“Virtual Office Website” or “VOW” has the meaning ascribed thereto in R-801 of the VOW Rules;  
*(Effective November 15, 2011)*

“VOW Rules” means the series of rules found in the R-800 section of the MLS<sup>®</sup> Rules and Policies;  
*(Effective November 15, 2011)*

“**Broker**” means an individual who has the prescribed qualifications to be registered as a Broker under the Act and who is employed by a Brokerage to trade in real estate and is authorized to use the MLS<sup>®</sup> System;

“**Brokerage**” (Listing/Co-operating) means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, trades in real estate or holds himself, herself or itself out as such;

“**Brokerload**” means the entry of listing information from the MLS<sup>®</sup> Data Information Form onto TREB’s MLS<sup>®</sup> Online System by the Listing Brokerage’s office;

“**Broker of Record**” has the meaning ascribed to that term in the TREB By-law;

“**Business**” means an undertaking carried on for gain or profit and includes an interest in such undertaking;

“**Buyer Representation Agreement**” means a Representation Agreement between a Brokerage and a Buyer;

“**Buyer**” includes a purchaser, a tenant, and a prospective purchaser or tenant;

“**By-laws**” means the By-law of the TREB as may be amended from time to time;

“**Cancellation**” (of an MLS<sup>®</sup> Listing), means a written agreement between the Listing Brokerage and the Seller or the Seller’s legally authorized representative which terminates an existing MLS<sup>®</sup> Listing Agreement;

“**commence**” when used with reference to an MLS<sup>®</sup> Listing Agreement means the date the Agency between the Listing Brokerage and the Seller is to begin and may be a date that is different from the date the MLS<sup>®</sup> Listing Agreement was signed by the Seller and “**commencement**” shall have a corresponding meaning;

“**Courtesy Office**” is an office other than the Listing Brokerage’s office, where keys and security cards may be held;

“**CREA Rules**” means all applicable CREA By-laws, rules and policies; including the REALTOR<sup>®</sup> Code of Ethics;  
(Effective May 12, 2011).

“**Directload**” includes the entry of information from the MLS<sup>®</sup> Data Information Form, Reporting of Trades, Cancellations and suspensions to TREB’s MLS<sup>®</sup> Online System by the Listing Brokerage’s office (Brokerload) or Salesperson (Replod). Any MLS<sup>®</sup> Listing information entered through Directload shall be considered to be a reproduction of information contained on the MLS<sup>®</sup> Data Information Form;

# **EXHIBIT**

# **PP**



## TREB VOW DATAFEED AGREEMENT

### IMPORTANT: PLEASE READ CAREFULLY

**PLEASE REVIEW THE TERMS AND CONDITIONS OF THIS TREB VOW DATAFEED AGREEMENT (the "Agreement") CAREFULLY BEFORE INDICATING YOUR ACCEPTANCE BY SIGNING BELOW. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SIGN THIS AGREEMENT, IN WHICH CASE YOU WILL NOT BE PERMITTED TO ACCESS OR USE THE VOW DATAFEED OR SERVICES PROVIDED PURSUANT HERETO.**

This Agreement (the "Agreement") is made and entered into by and between the Toronto Real Estate Board ("TREB"), and \_\_\_\_\_ the real estate firm whose name and contact information appear on the Signature Page of this Agreement designated "Member Information and Signature" ("Member"), and if applicable, \_\_\_\_\_ the company or individual(s) whose name and contact information appear on the Signature Page of this Agreement designated "Affiliated VOW Partner Information and Signature" ("AVP").

### ARTICLE 1 VOW POLICY AND RULES

- 1.1 VOW Policy and Rules. Member and AVP hereby acknowledge that they each have a copy of the VOW Policy and Rules (as defined below) and agree to be bound by and comply with the VOW Policy and Rules.
- (a) The VOW Policy and Rules may include terms and limitations in addition to those set forth in this Agreement. In the event of any inconsistency, the terms of the VOW Policy and Rules will govern.
  - (b) TREB may modify the VOW Policy and Rules at any time, in its sole discretion. Member and AVP shall obtain a copy of any modification of the VOW Policy and Rules, and Member and AVP shall comply with such modification not later than five (5) business days after such modification.

### ARTICLE 2 GENERAL

- 2.1 In addition to the TREB VOW Policy and Rules, this Agreement sets out the requirements for the orderly and efficient operation of Member Virtual Office Websites (as defined below).
- 2.2 This Agreement should be read in conjunction with TREB VOW Policy and Rules.
- 2.3 By using the VOW Datafeed or any part thereof, Member and AVP agree to, and must comply with, this Agreement and the VOW Policy and Rules.
- 2.4 Member and Brokerage are fully responsible for all access to and use of the VOW Datafeed and any part thereof.

**ARTICLE 3 DEFINITIONS**

3.1 Any capitalized term used herein shall have the same meaning as contained in the MLS<sup>®</sup> Rules and Policies, unless otherwise expressly defined in this Agreement.

3.2 The following terms shall have the meanings set forth below:

**“Affiliated VOW Partner”** or **“AVP”** refers to an entity or person designated by a Member to operate a VOW on behalf of the Member, subject to the Member’s supervision, accountability and compliance with the VOW Policy and Rules. No AVP has independent participation rights in the TREB MLS<sup>®</sup> System by virtue of its right to receive information on behalf of a Member. No AVP has the right to use Listing Information except such Listing Information used in connection with operation of a VOW on behalf of one or more Members. Access by an AVP to any such Listing Information is derivative of the rights of the Member on whose behalf the AVP operates a VOW.

**“Agreement”** or **“TREB VOW Datafeed Agreement”** means this agreement, including any preamble and schedules, as amended, restated or replaced by TREB from time to time.

**“Confidential Information”** has the meaning set out at Article 8 herein.

**“Consumer(s)”** means consumers with whom the Member has first established a lawful broker-consumer relationship, including, where necessary, completion of any actions required by provincial and/or federal law in connection with providing real estate brokerage services to clients and customers.

**“Effective Date”** shall be the date set out by the parties at the signature section of this Agreement.

**“Fees”** shall have the meaning set out at Article 4 of this Agreement.

**“Listing Information”** or **“MLS<sup>®</sup> data”** shall mean all, or any part of information that is contained in a Listing uploaded on the TREB MLS<sup>®</sup> System and maintained in the TREB MLS<sup>®</sup> database regarding the Listing(s) of Members, and any subsequent additions or changes to that information, including current information about the property.

**“Member”** shall have the meaning designated in Article 2 of the By-laws and shall also include a Member’s brokers and salespersons.

**“MLS<sup>®</sup> Database”** means the compilation, collection, aggregation and storage of all, or any part of, the information, comments, opinions, statements, advice, descriptions, services, offers, data, files, links, ideas, images, graphics, audio clips, video clips, icons, or any other form of content or information, as well as its selection, assembly and arrangement, as may be amended from time to time, and any associated software, which form a part of TREB’s MLS<sup>®</sup> System, and any successor or replacement service thereto.

“**MLS<sup>®</sup> Rules and Policies**” means the rules and policies enacted by TREB, as may be amended, restated or replaced from time to time, by TREB in its sole discretion, which govern, among other things, the operation and use of TREB’s MLS<sup>®</sup> System.

“**Participating VOW Members**” means a Member that: (i) operates a VOW for the sole purpose of allowing Consumers that have a *bona fide* interest in the purchase, sale, or lease of real estate, of the type being offered through Member’s VOW, to view Member’s VOW; and (ii) executes an agreement in the form of this TREB VOW Datafeed Agreement.

“**Personal Information**” shall have the meaning set out in the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, as such legislation may be amended from time to time.

“**Purpose**” means to permit a Member to display on Member’s VOW given Listing Information which is transmitted through a VOW Datafeed to Member for the sole purpose of use by Consumers that have a bona fide interest in the purchase, sale, or lease of real estate of the type being offered through Member’s VOW.

“**REBBA**” means the *Real Estate and Business Brokers Act*, 2002 S.O. 2002, c. 30 and the regulations thereunder, as such legislation may be amended from time to time.

“**Services**” shall have the meaning set out in Article 4 of this Agreement.

“**TREB Intellectual Property**” shall have the meaning set out at Article 7 of this Agreement.

“**Virtual Office Website**” or “**VOW**” refers to a Member’s secure password-protected internet website, or a feature of a Member’s internet website, through which the Member is capable of providing real estate brokerage services to Consumers for the Purpose, subject to the Member’s oversight, supervision, and accountability and in accordance with the VOW Policy and Rules and includes any website maintained and operated by an AVP on behalf of Member.

“**VOW Datafeed**” means an electronic transmission of data from TREB to Member or AVP, which data consists of such Listing Information that TREB has agreed, pursuant to this Agreement, to provide to Member or AVP, as applicable, from time to time in its sole discretion, which information transmitted will, at all times, be subject to the VOW Policy and Rules and this Agreement.

“**VOW Policy and Rules**” refers to that part of the MLS<sup>®</sup> Rules and Policies governing VOWs.

#### **ARTICLE 4 SERVICES, LICENSE AND FEES**

- 4.1 Services and License. Subject to the terms and conditions of this Agreement and the VOW Policy and Rules, TREB will provide to Member or AVP, if operating Member’s VOW on behalf of Member, a VOW Datafeed to Member or AVP, solely and exclusively

for the Purpose (“Services”). Subject to the terms and conditions of this Agreement, TREB hereby grants to Member and AVP, if operating Member’s VOW on behalf of Member, a non-exclusive, non-transferable, non-sublicensable, revocable limited license to use such Listing Information as may be provided to Member or AVP through the VOW Datafeed solely and exclusively for the Purpose.

- 4.2 Fees and Payment. In consideration for the Services and rights granted under this Agreement, Member agrees to pay to TREB the non-refundable license fees and other fees described at Schedule A attached to this Agreement (the “Fees”), as may be amended by TREB from time to time. The Fees shall be due and payable as provided at Schedule A attached hereto.
- 4.3 Payment Default. In the event that Member is late or otherwise fails to pay any such payment due hereunder, Member shall be liable to TREB for such amounts until paid and Member shall pay interest at the rate of 1.25% per month on all outstanding amounts from the date the amount was due until the full amount is received by TREB. Member shall also reimburse TREB for all expenses and costs incurred by TREB for collection of unpaid amounts, including, without limitation, legal fees and costs. TREB is entitled to receive the amounts provided under this Agreement in addition to any other rights or remedies available to TREB with respect to Member and/or AVP’s breach of any obligation under this Agreement.
- 4.4 Own Expenses and Costs. Member and AVP shall each be responsible for its own expenses and costs under this Agreement, and TREB shall have no obligation whatsoever to reimburse AVP or Member for any expenses or costs incurred by AVP or Member in the exercise of Member’s or AVP’s rights or in the performance of Member’s and AVP’s duties under this Agreement.

## ARTICLE 5 VOW DATAFEED, MONITOR, SECURITY AND AUDIT

- 5.1 Means of Receiving VOW Datafeed. Receipt by Member or AVP of the VOW Datafeed shall be exclusively by the means, including the format and method of delivery, designated by TREB from time to time. TREB may, in its sole discretion and at any time, change the means and nature of delivery of VOW Datafeed to Member or AVP. TREB will endeavour to provide reasonable notice to Member and AVP (if applicable), but is not obligated to do so.
- 5.2 TREB Monitoring Rights and Access to Member’s VOW. Member shall, at all times, make Member’s VOW readily accessible to TREB and Participating VOW Members for purposes of verifying compliance with the VOW Policy and Rules and this Agreement. Without limiting the generality of the foregoing, for security, monitoring and network maintenance purposes, and the like, at any time, TREB and Participating VOW Members are authorized, but not obligated, to monitor and access applications and systems, monitor network traffic and usage, and to obtain full access to Member’s VOW and systems to ensure that any information transmitted through a VOW Datafeed is displayed on Member’s VOW in accordance with this Agreement and with the VOW Policy and Rules. Member and AVP agree to render reasonable assistance and cooperation to TREB if so requested in connection with any of the foregoing.

- 5.3 Interruption, etc. of VOW Datafeed. TREB shall not be obligated to make any changes to TREB server(s), including any software running on TREB server(s), the configuration, applicable protocols, or any other aspect of TREB server(s) for any reason. Member and AVP acknowledge that TREB's MLS<sup>®</sup> System, or the receipt of the VOW Datafeed may, from time to time, be unavailable to Member or AVP for any reason, including without limitation, whether because of technical failures or interruptions, hardware malfunctions, software malfunctions, upgrades, intentional downtime for service, or changes to TREB server(s), causes beyond the reasonable control of TREB and/or not reasonably foreseeable by TREB, or otherwise. Member and AVP agree that any modification of TREB server(s), any interruption, delay, omission, or unavailability of the VOW Datafeed, the Services, or receipt of, or display of VOW Datafeed shall not constitute a default under this Agreement. TREB shall not, in any way be responsible for any such interruption or prevention of receipt of and/or display of the VOW Datafeed and/or Services and TREB shall have no liability of any nature to Member or AVP for, and Member and AVP waive all claims arising out of, any of the foregoing, or otherwise.
- 5.4 Member and AVP Security and Audit. Member and AVP shall utilize appropriate security protection measures, such as firewalls and shall maintain an audit trail of Consumers' activity on Member's VOW and through any AVP server and make that information available to TREB, if TREB has determined in its sole discretion that any VOW or AVP server has been the cause of, or permitted a breach in, the security of TREB's MLS<sup>®</sup> System, Listing Information or VOW Datafeed or a violation of any VOW Policy or Rules.
- 5.5 Use of Internet. Member and AVP acknowledge that there are certain security, corruption, transmission errors, and access availability risks associated with using open networks such as the internet and Member and AVP hereby expressly assume all such risks. TREB shall not be responsible for any failure in providing the VOW Datafeed and/or use or access of Listing Information due to malfunction or loss of Member or AVP system or internet service providers or from the malfunction or failure of hardware, software or services used by Member or AVP.
- 5.6 Member and AVP Software and Hardware. Each of Member and AVP is solely responsible, at its expense, for acquiring, providing, servicing, updating, maintaining, and ensuring the compatibility with, all the software, hardware and communication services owned or operated by it, in order to ensure access to the VOW Datafeed in accordance with the terms herein.
- 5.7 Notification. Member and AVP shall each promptly notify TREB if either becomes aware of any error, bug, or security breach, or any unauthorized use, reproduction or distribution of any VOW Datafeed. Subject to the foregoing, Member and AVP shall each maintain all such information in confidence in accordance with the confidentiality provisions herein.
- 5.8 Liability for Use of VOW Datafeed. Member is responsible for any liability or loss of goodwill associated with problems of data integrity, accuracy or timeliness arising from Member's use, either directly, or indirectly through AVP, of TREB's MLS<sup>®</sup> System, Listing Information, and/or any information transmitted through a VOW Datafeed.

**ARTICLE 6 CONDITIONS AND RESTRICTIONS ON USE**

- 6.1 Compliance. In using the Listing Information or any part thereof, Member and AVP must comply with the terms and conditions of this Agreement and all of the VOW Policy and Rules.
- 6.2 Restrictions. Except as expressly set forth in this Agreement, Member and AVP shall not, and shall not facilitate, cause, assist or allow any person or third party, directly or indirectly, to do under any circumstances whatsoever, any unauthorized activity, including without limitation any of the following:
- (a) access or use any information transmitted through a VOW Datafeed in a manner that is contrary to or in violation of this Agreement, the VOW Policy and Rules or applicable laws or regulations and/or for any purpose other than as permitted herein. Without limiting the generality of the foregoing, except as permitted herein, Member and AVP shall not use any information transmitted through a VOW Datafeed in connection with any website (other than display on Member's VOW), wireless device, other electronic or digital devices, or any other means, or internet posting, advertising, unsolicited products or services, promotional material or any other display, distribution, publication or republication to the public or any group or third party;
  - (b) assist, allow or permit any person or entity to gain access to or use any information transmitted through a VOW Datafeed by or through the Member or AVP, or access or use any such information to provide service bureau, hosting or time-sharing services or to support the operations of any other person or entity;
  - (c) use or attempt to use another Participating VOW Member's or AVP's password, access code, or other access information, to gain access to or use of the VOW Datafeed;
  - (d) fail to maintain reasonable security precautions to protect its password, or other access information from unauthorized access, use or disclosure, fail to maintain reasonable security precautions to prevent scraping, data mining, data piracy and other unauthorized access, use and/or exploitation of any information transmitted through a VOW Datafeed, including failing to monitor its website for indications that any such information is being scraped, mined, or other unauthorized access, use and/or exploitation of any such information and/or fail to immediately notify TREB upon becoming aware of any of the foregoing;
  - (e) attempt, in any way whatsoever, to circumvent any computer security measures or resource restrictions, or attempt to gain unauthorized access to TREB operating systems, networks, and/or servers including by obscuring or falsifying the identity of Member or AVP;
  - (f) distribute, redistribute, copy, produce, reproduce, publish, republish, duplicate, alter, modify, or transfer, any information transmitted through a VOW Datafeed, or merge any such information with other data, or publish any Listing

Information in any form, or create any derivative work(s) or adaptation(s) based on, or in any other way exploit any such information;

- (g) scrape, data mine, download, distribute, redistribute, export, merge, deliver, transfer, or transmit any information transmitted through a VOW Datafeed, including to any computer, wireless device, mobile device, or any other electronic or digital device, except downloading to Member or AVP server, as applicable, as permitted under this Agreement. Without limiting the foregoing, prohibited uses include "screen scraping", "database scraping" and any other activity intended to collect, store, reorganize, profile, extract patterns, and/or manipulate any information transmitted through a VOW Datafeed;
- (h) market, sell, resell, assign, exchange, barter or transfer, convey, loan, lease, rent, grant access to, license or sublicense, or in any other manner exploit any information transmitted through a VOW Datafeed. Member and AVP agree to take all reasonable steps necessary to protect all information transmitted through a VOW Datafeed from any of the foregoing, including but not limited to, unauthorized access, distribution, reproduction, copying, use, or in any other way, exploit any information transmitted through a VOW Datafeed;
- (i) access or use the VOW Datafeed in a manner that is contrary to or in violation of this Agreement, VOW Policy and Rules and/or for any purpose other than as permitted herein;
- (j) use a robot, spider, scraper, or other automatic device, software, or manual process for any purpose, including to directly or indirectly access, monitor, or copy any information transmitted through a VOW Datafeed;
- (k) use any device, software or routine to bypass TREB robot exclusion headers or any other security measures, or interfere, or attempt to interfere, with TREB server(s) and/or any information transmitted through a VOW Datafeed;
- (l) decompile, reverse engineer, disassemble, modify and/or adapt any software owned or licensed by TREB or any information transmitted through a VOW Datafeed, or any part thereof, or attempt to create any source code that is derived from TREB server(s), any information transmitted through a VOW Datafeed, or any software owned or licensed by TREB;
- (m) use Member's VOW, TREB's MLS<sup>®</sup> System, the VOW Datafeed, or any other means to conduct any abusive practices including transmitting anything defamatory, threatening, hateful, harassing, vulgar, obscene, harmful, or invasive of anyone's privacy;
- (n) impair, jeopardize, violate or infringe the rights of TREB, Participating VOW Members, or any person or entity, including, without limitation, intellectual property, privacy, and/or contractual rights;

- (o) cause excessive strain on TREB server(s) or system(s), or cause unwarranted or unsolicited interference with other Participating VOW Members' or their AVP's use of, or access to, any VOW Datafeed and/or TREB's MLS<sup>®</sup> System;
- (p) cause or permit anything that will prejudice or hamper the reputation or goodwill of TREB;
- (q) disclose, or permit the disclosure of, the VOW Datafeed, TREB's MLS<sup>®</sup> System, or any part thereof, to any person except as specifically permitted in this Agreement;
- (r) syndicate or redistribute by any means any information transmitted through a VOW Datafeed;
- (s) cause or take any action which might reasonably be construed as injurious or detrimental to the interests of TREB or of any other Participating VOW Member; and/or
- (t) represent or suggest any affiliation between TREB and Member and/or between TREB and AVP.

6.3 Conditions on Operating VOW. In operating its VOW, in addition to its obligations under this Agreement and the VOW Policy and Rules, Member shall comply with the following requirements, as may be amended from time to time in TREB's sole discretion:

- (a) No Listing(s) other than the Listing Information transmitted through a VOW Datafeed may be displayed on Member's VOW.
- (b) The number of Listing(s) that Consumers may view or retrieve on or from a Member's VOW in response to an inquiry will be limited to 100 Listing(s).
- (c) The listing Brokerage must be clearly displayed for all Listing(s) including thumbnail views. The listing Brokerage must be in the same font and size as other Listing(s) details and not visually separated from the Listing(s) display.
- (d) The display of other Brokerages' Listing(s) obtained from other sources (e.g., other MLS<sup>®</sup> non-participating Brokerages, etc.) on Member's VOW shall display the source from which each such Listing(s) was obtained.
- (e) The contact information of the Member operating the VOW must be clearly separated from the detail display of a Listing(s) which is listed by a Brokerage other than the Member's own Listing(s).
- (f) The content of any information transmitted through a VOW Datafeed, or any portion thereof, may not be changed in any way from the content as it is provided by TREB. Notwithstanding the foregoing, any information transmitted through a VOW Datafeed may only be reformatted but only to the extent of choosing which fields to display based on objective criteria such as geography or type of property.

- (g) Each Member VOW must be preapproved by the Broker of Record or its designate using a "Member VOW Brokerage Approval Form" in the form attached hereto at Schedule B, an executed copy of which shall be provided to TREB.
- (h) Member shall ensure that the information transmitted through a VOW Datafeed displayed on Member's VOW is refreshed not less than every 24 hours.
- (i) Member shall have a notice on all VOW Datafeed displayed on Member's VOW indicating that the information is deemed reliable but is not guaranteed accurate by TREB.
- (j) Member's VOW must not claim to provide full access to TREB's MLS<sup>®</sup> System.
- (k) Member shall prominently post a notice on Member's VOW stating that the Member's VOW may only be used by Consumers that have a *bona fide* interest in the purchase, sale, or lease of real estate of the type being offered through Member's VOW. The following notice may be used: "The information provided herein must only be used by consumers that have a *bona fide* interest in the purchase, sale, or lease of real estate and may not be used for any commercial purpose or any other purpose."

6.4 Authorization of AVP to Receive VOW Datafeed. AVP hereby acknowledges and agrees that (i) AVP has no independent member rights in Listing Information received via a VOW Datafeed by virtue of this Agreement; (ii) AVP shall not use Listing Information except such Listing Information as may be provided through a VOW Datafeed in connection with operation of Member's VOW pursuant to this Agreement; and (iii) receipt by AVP of the VOW Datafeed is derivative of the rights of Member. For greater certainty, the termination of the rights and license granted herein to Member shall result in the termination of the rights and license granted herein to AVP.

## ARTICLE 7 INTELLECTUAL PROPERTY AND OTHER PROPRIETARY RIGHTS

7.1 Ownership of Intellectual Property. AVP and Member acknowledge and agree that the MLS<sup>®</sup> Database, TREB's MLS<sup>®</sup> System, Listing Information, MLS<sup>®</sup> data and VOW Datafeed are proprietary to TREB and/or its licensors and are protected by copyright, trademark, patent and other intellectual property laws of Canada and international treaties and conventions and by any other applicable laws (collectively "TREB Intellectual Property"). AVP and Member each further acknowledges and agrees that all right, title, and interest (including without limitation all copyright, trademark, patent and trade secret rights) now existing or hereafter coming into force, in and to TREB Intellectual Property are and shall remain the property of TREB and/or its licensors. Nothing in this Agreement shall be construed as conveying or granting to AVP or Member an interest or right of any kind, express or implied, in or to any of TREB's and/or its licensor's intellectual property, proprietary rights and any other rights, including in relation to all of the foregoing, except for the limited rights granted herein.

- 7.2 Trademark License. TREB further grants to Member or AVP, if AVP is operating Member's VOW, a limited, non-exclusive, non-transferable, non-sublicensable revocable license to use TREB's trademark(s) identified in Schedule C attached hereto ("TREB Trademark") for the sole purpose of identifying TREB as the owner of any TREB Intellectual Property, including any TREB Trademark(s), and any associated goods/services. TREB may subsequently grant similar rights to Member and AVP, if AVP is operating Member's VOW, to use other trademarks of TREB, and Member and AVP's use thereof shall be subject to the provisions of this paragraph and any other requirements as may be provided by TREB from time to time.
- 7.3 No Rights. Member and AVP acknowledge and agree that they do not have any rights to and shall not obtain, through the terms of this Agreement or otherwise, any rights in connection with any trademarks, copyright, patents, and/or other proprietary or intellectual property rights of TREB and/or its licensors, now or hereafter coming into existence, including without limitation, in and to TREB Intellectual Property, and any part of, or relating to, any of the foregoing.
- 7.4 Restrictions. Member and AVP shall not, nor shall either assist any person or entity, in Canada, or any other country or territory, to: (a) take any action or cause or permit anything that will impair, negate, invalidate, jeopardize, violate, diminish the value, infringe or otherwise, the intellectual property and/or proprietary rights of TREB and/or its licensors, including without limitation, in and to TREB Intellectual Property and TREB trademarks (including the TREB Trademark) copyright and/or patents, and any part of, or relating to, any of the foregoing; (b) directly or indirectly dispute or contest the ownership, validity, or enforceability of the intellectual property and proprietary rights of TREB and/or its licensors including, without limitation, in and to TREB Intellectual Property, TREB trademarks (including the TREB Trademark) copyright and/or patents, and any part of, or relating to, any of the foregoing; and/or (c) claim, assert any rights or interest to, use, or apply to register, record, or file any trademark or design application that is identical or similar to TREB's trademarks (including the TREB Trademark).
- 7.5 Waiver of Third Party Claims. Each of AVP and Member waives any claims against TREB resulting from rights that others may assert against Member and/or AVP based on Member and/or AVP's exercise of the rights granted under this Agreement, including without limitation claims of trademark, copyright or patent infringement and/or violation of other intellectual property or proprietary rights.
- 7.6 Proprietary and Other Notices. Each of Member and AVP agrees that it will include and not alter or remove any trademark, copyright, other notices, and/or any disclaimers or other legends located or used on or in connection with the Listing Information and/or the VOW Datafeed and any part of, or relating to, any of the foregoing, as required by TREB from time to time.

## ARTICLE 8 CONFIDENTIAL INFORMATION

- 8.1 Confidential Information. For the purposes herein, "Confidential Information" means any and all information and material proprietary to TREB and/or its licensors and not generally known to the public, including but not limited to confidential information,

trade secret information, knowledge, processes, systems, technology, software and data and information of every kind, including any information transmitted through a VOW Datafeed (except to the extent to which this Agreement permits disclosure), disclosed by TREB to Member or AVP, or that Member or AVP may obtain knowledge or access to as a result of this Agreement. Without limiting the generality of the foregoing, TREB may mark Confidential Information "confidential" or "proprietary" but regardless of whether so marked or identified, any information or material, whether in oral, visual, audio, electronic, written or other form, that Member and AVP each knew or ought to have known was considered confidential or proprietary to TREB and/or its licensors will be considered Confidential Information.

- 8.2 Exclusions. Notwithstanding the foregoing, Member and AVP shall not have any obligation under this Article 8, as evidenced by written record, with respect to any information, knowledge and/or data disclosed pursuant hereto to the extent same: (a) is or hereafter becomes part of the public domain through no wrongful act of Member or AVP; (b) is known to Member or AVP free of any obligation of confidentiality at the time of first disclosure hereunder; (c) is lawfully obtained by Member or AVP from a third party without obligation of confidentiality; (d) is independently developed by Member or AVP; or (e) is disclosed pursuant to a court order or other legal compulsion provided, however, that prior to any such disclosure, Member or AVP, as applicable shall, unless legally prohibited, promptly notify TREB in writing of the requirement or request to disclose, and cooperate with TREB in protecting against or limiting the scope of any such disclosure.
- 8.3 Confidentiality. Member and AVP each covenants and agrees that it shall: (a) receive and maintain all Confidential Information received hereunder in strict confidence; (b) use Confidential Information received hereunder strictly as permitted herein, lawfully exercising the rights and/or performing its obligations hereunder and for no other purpose whatsoever; (c) use the highest degree of care to protect and handle Confidential Information received hereunder; and (d) advise TREB immediately of any circumstances, incidents or events which may impact, compromise, or in any way relate to, the privacy, confidentiality, availability or security of Confidential Information, including, without limitation, the violation or non-observance of any term or condition contained in this Agreement.
- 8.4 Ownership of Confidential Information. All Confidential Information is and will remain the exclusive property of TREB and/or its licensors, and Member and AVP will have no rights, by license or otherwise, to Confidential Information except as expressly provided herein.

## ARTICLE 9 PRIVACY

- 9.1 Compliance with Privacy Laws. Member and AVP shall each ensure that all Personal Information that may be collected by Member and AVP in connection with its access to or use of any information transmitted through a VOW Datafeed will be collected, used, disclosed and maintained strictly in accordance with the requirements of applicable privacy legislation including the *Personal Information Protection and Electronic Documents Act* and with the MLS<sup>®</sup> Rules and Policies.

- 9.2 Listing(s). Member and AVP each will, at all times, treat any personally identifiable information contained in any information transmitted through a VOW Datafeed as Personal Information and will protect and safeguard such Personal Information from any collection, use or disclosure that is not expressly permitted by this Agreement.
- 9.3 Consent. By agreeing to the terms of this Agreement and by accessing and using any information transmitted through a VOW Datafeed and exercising any other rights granted herein, Member and AVP each consents to the collection, use and disclosure of its Personal Information by TREB in accordance with TREB's privacy policy located at TREB's website, including to the extent necessary for TREB to communicate with Member and AVP and to administer and enforce this Agreement and the MLS® Rules and Policies. Member and AVP each acknowledges having read, understanding and agreeing to be bound by such privacy policy.

#### **ARTICLE 10 DISCLAIMER AND LIMITATION OF LIABILITY**

- 10.1 **DISCLAIMER.** BROKERAGE, AVP AND MEMBER ACKNOWLEDGE AND AGREE THAT THE SERVICES, THE VOW DATAFEED, LISTING INFORMATION AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY GUARANTEE, REPRESENTATION, CONDITION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR QUALITY, TITLE OR NON-INFRINGEMENT OR WITH RESPECT TO THE ACCURACY, CORRECTNESS, CURRENCY, RELIABILITY, USEFULNESS, OR COMPLETENESS OF LISTING INFORMATION OR VOW DATAFEED OR WITH RESPECT TO THE USE OR THE RESULTS OF THE USE OF ANY SERVICES LISTING INFORMATION, VOW DATAFEED AND THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE OR COURSE OF DEALING. TREB MAKES NO GUARANTEE, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND ASSUMES NO LIABILITY WHATSOEVER WITH RESPECT TO THE ADEQUACY OF SERVICES OR LISTING INFORMATION OR VOW DATAFEED OR SERVICES FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO ADEQUACY OF THE SERVICES TO PRODUCE ANY PARTICULAR RESULT OR THAT THE SERVICES, VOW DATAFEED, OR LISTING INFORMATION WILL OPERATE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS WILL BE CORRECTED.
- 10.2 **LIMITATION OF LIABILITY.** NEITHER TREB NOR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS WILL BE LIABLE TO BROKERAGE, AVP, MEMBER OR ANY THIRD PARTY (INCLUDING MEMBER'S CLIENTS OR CUSTOMERS) FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR OTHER DAMAGES OF ANY NATURE INCLUDING BUT NOT LIMITED TO ANY LOSS OF PROFITS OR REVENUE OR GOODWILL, OR INTERRUPTION OF BUSINESS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY INACCURATE, INCORRECT, UNRELIABLE, NOT CURRENT, NOT USEFUL, OR INCOMPLETE SERVICES,

LISTING INFORMATION OR VOW DATAFEED, THE TERMINATION OF THIS AGREEMENT, THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES, VOW DATAFEED, AND/OR THE USE OF ANY SERVICES, LISTING INFORMATION OR VOW DATAFEED MADE AVAILABLE PURSUANT HERETO, HOWSOEVER ARISING, INCLUDING BUT NOT LIMITED TO, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), FUNDAMENTAL BREACH OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

- 10.3 THIRD PARTY WEBSITES. THE INFORMATION TRANSMITTED THROUGH A VOW DATAFEED MAY INCLUDE LINKS TO THIRD PARTY WEBSITES OR FEEDS FROM THIRD PARTY WEBSITES (COLLECTIVELY "THIRD PARTY WEBSITES"). TREB DOES NOT WARRANT OR ENDORSE THE CONTENT CONTAINED IN ANY THIRD PARTY WEBSITE. TREB DOES NOT MAKE ANY ENDORSEMENT, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, OR STATUTORY, OF ANY KIND REGARDING ANY THIRD PARTY WEBSITE, INCLUDING REGARDING THE LEGALITY, ACCURACY, RELIABILITY, QUALITY, USEFULNESS, COMPLETENESS, TIMELINESS, NON-INFRINGEMENT, SECURITY, OR SUITABILITY OF ANY CONTENT ON A THIRD PARTY WEBSITE OR WHETHER OR NOT ANY NECESSARY CONSENTS REQUIRED UNDER APPLICABLE PRIVACY LAWS OR OTHER LAWS FOR ANY ASPECT OF ANY THIRD PARTY WEBSITE HAVE BEEN PROPERLY OBTAINED. TREB DOES NOT MAKE ANY ENDORSEMENT, REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONTENT, FUNCTIONS, GOODS OR SERVICES ON OR MADE AVAILABLE THROUGH ANY THIRD PARTY WEBSITES OR THAT THE OPERATION OF ANY THIRD PARTY WEBSITE WILL BE UNINTERRUPTED, FREE OF ERROR, VIRUSES, DEFECTS, OR ANY OTHER HARMFUL COMPONENTS OR THAT ANY OF THE FOREGOING WILL BE CORRECTED. THE CONTENT, FUNCTIONS, GOODS AND/OR SERVICES AVAILABLE ON OR THROUGH ANY THIRD PARTY WEBSITE IS NOT UNDER TREB'S CONTROL IN ANY WAY WHATSOEVER AND IF AVP OR MEMBER CHOOSES TO ACCESS OR HAVE ANY DEALINGS WITH ANY THIRD PARTY WEBSITE, AVP AND MEMBER DO SO ENTIRELY AT THEIR OWN RISK.

## ARTICLE 11 INDEMNITY AND REPRESENTATIONS AND WARRANTIES

- 11.1 Indemnity. Brokerage, Member and AVP jointly and severally agree to indemnify, defend and hold harmless TREB, its officers, directors, employees, and agents, from and against any and all claims, demands, suits, proceedings, actions, causes of action, and/or liability of any kind whatsoever, for any and all damages, losses, costs and/or expenses (including the payment of all legal expenses, including reasonable attorneys' fees and costs), arising out of or related to, any and all breaches by Member and/or AVP of any term or condition of this Agreement, including any breach of representation or warranty set forth in this Agreement, receipt of the VOW Datafeed, and the use and display of information transmitted through a VOW Datafeed. Each of Brokerage and Member is and

shall be fully and directly liable for any breach by AVP under this Agreement. TREB shall have the right to control its own defense and engage legal counsel acceptable to TREB.

11.2 Representations and Warranties.

- (a) Each party represents and warrants to the others that this Agreement, when executed by such party, will be valid, binding and enforceable with respect to such party in accordance with its terms.
- (b) Member represents and warrants that:
  - (i) information transmitted through a VOW Datafeed will be used by Member and AVP strictly as permitted herein;
  - (ii) it has executed an agreement with AVP establishing the AVP's right to receive and access VOW Datafeed (per the "VOW Datafeed Transfer Authorization Form" attached hereto at Schedule D) and shall provide to TREB a copy of such agreement in which the Member acknowledges its selection of AVP to operate a VOW on its behalf;
  - (iii) it has made AVP aware of the VOW Policy and Rules;
  - (iv) its VOW terms of use are compliant with the VOW Policy and Rules and it has made AVP aware of such terms of use;
  - (v) it is a Member in good standing in accordance with TREB's By-laws and REBBA; and
  - (vi) the execution of this Agreement and/or the performance of Member's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which Member is bound.
- (c) AVP represents and warrants that:
  - (i) it is not and shall not be under any disability, restriction, or prohibition related to the execution of this Agreement and the performance of its obligations under this Agreement;
  - (ii) that the grant of rights herein to AVP and the fulfillment of AVP's obligations as contemplated under this Agreement are proper and lawful; and
  - (iii) the execution of this Agreement and/or the performance of AVP's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which AVP is bound.

**ARTICLE 12 TERM AND SUSPENSION OR TERMINATION**

- 12.1 Term. The term of this Agreement shall commence on the Effective Date of this Agreement and shall remain in force until or unless suspended or terminated as further described herein.

- 12.2 Suspension. In the event Member or AVP is in breach of this Agreement, or of any of the MLS<sup>®</sup> Rules and Policies, as determined by TREB in its sole discretion, TREB may immediately suspend without notice Member's and AVP's access to and use of the VOW Datafeed. TREB may end a suspension, at its sole discretion, by notice to Member.
- 12.3 Termination. Without limiting any other rights or remedies available to TREB under the terms of this Agreement, the VOW Policy and Rules, at law or in equity, TREB may immediately terminate this Agreement and Member's and AVP's access to and use of the VOW Datafeed, in which case Member and AVP shall comply with any applicable procedures and obligations contained herein and/or in the MLS<sup>®</sup> Rules and Policies in the event of any of the following:
- (a) Member or AVP is in breach of:
    - (i) any term or condition of this Agreement, which is not cured (if capable of being cured) within 10 days after notice from TREB;
    - (ii) any representation, warranty, covenant, term or condition contained in the VOW Policy and Rules, which is not cured within the applicable cure period, if any, as set forth in the VOW Policy and Rules in respect of the specific breach; or
    - (iii) any provisions contained in REBBA, the TREB By-laws or any other applicable laws.
  - (b) AVP no longer being designated by the Member to operate Member's VOW;
  - (c) Member ceasing to maintain its status with TREB;
  - (d) Member or AVP accessing or downloading any VOW Datafeed in a manner not authorized for Participating VOW Members and/or that hinders the ability of Participating VOW Members from accessing, receiving and/or downloading any VOW Datafeed to Participating VOW Members' VOW;
  - (e) Member or AVP violating or breaching any MLS<sup>®</sup> Rules and Policies or this Agreement; or
  - (f) Member or AVP failing to make any required payments to TREB.
- 12.4 Notice of Termination. Member may elect to no longer display VOW Datafeed on its VOW and thereby terminate this Agreement upon fifteen (15) business days written notice to TREB of such termination and upon completion of the "VOW Datafeed Member Unsubscribe Notice Form", attached hereto at Schedule E, an executed copy of which shall be submitted to TREB.
- 12.5 Discontinuance of VOW Datafeed. In the event TREB, in its sole discretion, decides at any time to discontinue offering a VOW Datafeed, TREB may terminate this Agreement and accordingly terminate Member and AVP access to and use of VOW Datafeed.
- 12.6 Return, Destruction, etc. Each of Member and AVP shall permanently cease all use of Confidential Information, Personal Information, information transmitted through a VOW Datafeed, and any other proprietary and confidential information received hereunder upon any suspension or termination of its access to and use of the VOW Datafeed pursuant to this Agreement and shall promptly, by secure means, permanently delete, erase and destroy any and all Confidential Information, Personal Information, information transmitted through a VOW Datafeed and any materials (in any medium)

containing or reflecting any Listing Information including all copies, extracts, reproductions, or otherwise, in whole or in part, that each has stored anywhere and by any means, including without limitation on magnetic media or other electronic or digital storage, including all backup copies, in its possession or under its control, as well as any copies in the possession or under the control of its representatives, immediately upon termination of this Agreement, but in any event, not later than seven (7) days after termination of this Agreement, for any reason whatsoever. Member and AVP shall each certify in writing to TREB that each has complied with all of the foregoing.

- 12.7 Effect of Suspension of Termination; Survival. Upon any suspension or termination of this Agreement for any reason whatsoever, any and all licenses and rights granted herein to Member and AVP to access and use the VOW Datafeed and any information transmitted through a VOW Datafeed shall immediately terminate. Suspension or termination of this Agreement, for any reason whatsoever, shall not limit TREB from pursuing any other remedies available to it under the MLS<sup>®</sup> Rules and Polices, or at law or in equity, including, if applicable, injunctive relief.
- 12.8 Nonrefundable. No Fees, portion of the Fees, or other fees payable by AVP or Member under this Agreement will be refunded to AVP or Member upon suspension or termination of this Agreement for any reason whatsoever.
- 12.9 VOW Policy and Rules. Suspension or termination of this Agreement for any reason whatsoever shall not release each of Brokerage, AVP and Member from the responsibilities, obligations, liabilities, and/or indemnifications set forth in this Agreement, including the VOW Policy and Rules which responsibilities, obligations, liabilities, and/or indemnifications shall survive the termination of this Agreement.

#### ARTICLE 13 REMEDIES

- 13.1 Remedies. Member and AVP agree that a breach of this Agreement will result in immediate and irreparable injury and harm to TREB. In such event, TREB shall have the right to immediately terminate the right of Member and AVP to receive the VOW Datafeed and to obtain an injunction, specific performance, and/or other equitable relief to prevent the breach under this Agreement; provided, however, that this shall in no way limit any other remedies which TREB may have including, without limitation, the right to seek monetary damages.

#### ARTICLE 14 GENERAL PROVISIONS

- 14.1 Notices. Any notice, direction or other communication required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered personally, mailed by prepaid registered mail, or transmitted by facsimile or other form of recorded communication to the appropriate party at the address provided at the signature section of this Agreement. Any party may change its address for service from time to time by written notice given to the other parties in accordance with this Agreement. Notwithstanding the foregoing, Member and AVP hereby agree and consent to the receipt of electronic legal notices regarding this Agreement upon access to the VOW Datafeed.

- 14.2 Entire Agreement. The terms of this Agreement, together with the VOW Policy and Rules, constitute the entire agreement between the parties with respect to the subject matter herein. There are no representations, warranties, terms, conditions, promises, undertakings or collateral agreements, oral or written, among the parties with respect to the subject matter herein other than those set forth or expressly referred to herein.
- 14.3 Amendment. TREB may, in its sole discretion, change, modify, add or delete portions of this Agreement at any time and from time to time without notice to Member and AVP by posting the then current version of this Agreement on TREB's website or TREB's MLS<sup>®</sup> System.
- 14.4 Further Assurances. The parties shall, from time to time, execute and deliver all such other and further deeds, documents, instruments and assurances as may be reasonably necessary or required to carry into force and effect the purpose and intent of this Agreement.
- 14.5 Relationship. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, fiduciary, employment or agency relationship between TREB and AVP or between TREB and Member. Neither Member nor AVP has any express or implied authority to assume or create any obligations on behalf of TREB or to bind TREB to any contract, agreement or undertaking with any third party.
- 14.6 Waiver. The waiver by TREB or the failure of TREB, to require or enforce the performance of any provision of this Agreement or to take action with respect to any breach of any term, covenant, or condition herein contained shall not be construed as a waiver of any provision or right nor to be deemed to be a continuing waiver or waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant or condition contained in this Agreement. A waiver by TREB of any default hereunder or of any of the terms and conditions of this Agreement shall be in writing signed by TREB and shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed.
- 14.7 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be sublicensed, conveyed, sold, given, assigned or otherwise transferred, including by operation of law, by Member or AVP, without the prior written consent of TREB. TREB may assign its rights and obligations under this Agreement.
- 14.8 Enurement. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.
- 14.9 Governing Law and Forum. This Agreement shall be governed by and construed in accordance the laws of the Province of Ontario and the federal laws of Canada applicable therein (without reference to its conflict of laws or choice of law principles). The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario and the federal courts of Canada with subject matter jurisdiction with respect to any matter arising hereunder or relating hereto.

- 14.10 Severability. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, by a court of competent jurisdiction, the validity, legality and enforceability of any of the remaining provisions or part thereof shall not in any way be affected or impaired.
- 14.11 Force Majeure. TREB shall not be responsible to Brokerage, Member or AVP or any third party for any failure or delay in performance due to circumstances or causes beyond its reasonable control, including any labour dispute, acts of God, natural disasters, fire, utility or communications failures, vandalism, war, acts of terrorism, riots, embargoes, or laws, regulations or orders of any governmental or regulatory entity.
- 14.12 Headings, Gender, Number and Including. The division of this Agreement into articles and sections and the use of headings are for purposes of reference only and shall not limit or otherwise affect the interpretation of this Agreement. In this Agreement, unless there is something in the subject matter or context inconsistent therewith, words importing a specific gender include all genders and words importing the singular include the plural and vice versa. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- 14.13 Language. This Agreement and any documents relating thereto have been prepared in the English language at the express request of the parties. Les parties ont exigé, et par les présentes confirment leur demande, que ce contrat soit rédigé en anglais seulement.
- 14.14 Survival. The following Articles shall survive the suspension or termination of this Agreement, regardless of the reasons for suspension or termination, in addition to any other provision herein which by law or by its nature should survive: Articles 1 to 3 and 5 to 14.
- 14.15 Execution. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument. Facsimile signatures are deemed to be equivalent to original signatures for the purposes of this Agreement.

[CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

Effective Date: \_\_\_\_\_

**TREB Information and Signature**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Chief Information Officer

Street Address: 1400 Don Mills Road

City, Province, Postal Code: Toronto, Ontario M3B 3N1

Email Address:

Telephone Number:

Facsimile Number: 416-443-8129

(I have authority to bind the corporation.)

**Affiliated VOW Partner Information and Signature**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

Street Address

City, Province, Postal Code:

Email Address

Telephone Number

Facsimile Number:

(I have authority to bind the corporation.)

**Member Information and Signature**

Signature: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Street Address:

City, Province, Postal Code:

Email Address:

Telephone Number:

Facsimile Number:

(I have authority to bind the corporation.)

**ACKNOWLEDGEMENT AND AGREEMENT BY BROKERAGE**

The undersigned Brokerage hereby acknowledges and confirms that it has read, understands and agrees to be bound by the terms and conditions of this Agreement and specifically including sections 2.4, 6.3(g), 10.1, 10.2, 11.1, 12.9 and 14.11 herein.

Brokerage further acknowledges and confirms that:

1. this Agreement is valid, binding and enforceable with respect to Brokerage;
2. it is and shall be fully and directly liable for any breach or any other unauthorized activity by Member and AVP under, or in any way relating to, this Agreement; and
3. TREB shall have no liability of any nature to Brokerage for, and waives all claims arising out of, or related in any way, to this Agreement.

**EXECUTED** at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Brokerage:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** ●  
**Title:** Brokerage

**Date:** \_\_\_\_\_

**Witness:** \_\_\_\_\_  
**Name:** ●  
**Title:**

**Date:** \_\_\_\_\_

**Schedule A**  
**(Fees and Payment Terms)**

Schedule B  
(Member VOW Brokerage Approval Form)



Member VOW Brokerage Approval Form

With this form, the undersigned Broker of Record acknowledges to TREB that the Brokerage identified below, along with all of its associated offices, approves the Member VOW to receive VOW Datafeed from TREB, either directly or through its AVP, as described in the TREB VOW Datafeed Agreement.

Brokerage Name \_\_\_\_\_

Brokerage/Branch Code: 

				-		
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Brokerage Address \_\_\_\_\_

Phone: \_\_\_\_\_

Broker of Record Name Printed: \_\_\_\_\_  
\_\_\_\_\_

TREB Membership Number  

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I am the Broker of Record for the Brokerage whose Brokerage/Branch code(s) are noted above and represent and warrant that I have the authority to execute this form on behalf of such firm(s).

Broker of Record  
Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please fax completed form to TREB VOW Administrator at (416) 443-8129

**Schedule C**  
**(TREB Trademark(s))**



Broker of Record

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Member:**

Printed Name of Member	Authorized Signature (Member)
	(I have the authority to bind Member)
Contact	Address
Contact e-mail Address	City
Contact Phone Number	Province
Date:	Postal Code

**AVP ACKNOWLEDGEMENT**

The undersigned AVP acknowledges this VOW Datafeed Authorization and, for good and valuable consideration, the sufficiency of which is acknowledged, the undersigned AVP accepts and agrees with the contents of this Authorization.

Printed Name of AVP	Authorized Signature (AVP)
	(I have the authority to bind AVP)
Contact	Address
Contact e-mail Address	City
Contact Phone Number	Province
Internet address:	Postal Code
Date:	

**Please fax completed form to TREB VOW Administrator at (416) 443-8129**

Schedule E  
(VOW Datafeed Member Unsubscribe Notice Form)



**VOW Datafeed Member Unsubscribe Notice Form**

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With this form, the undersigned Member provides notice to TREB that it wishes to unsubscribe from participation in the VOW Datafeed and no longer receive a VOW Datafeed, as described in the TREB VOW Datafeed Agreement. Member acknowledges and confirms that its TREB VOW Datafeed Agreement is accordingly terminated.

Member Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

(I have authority to bind the Member)

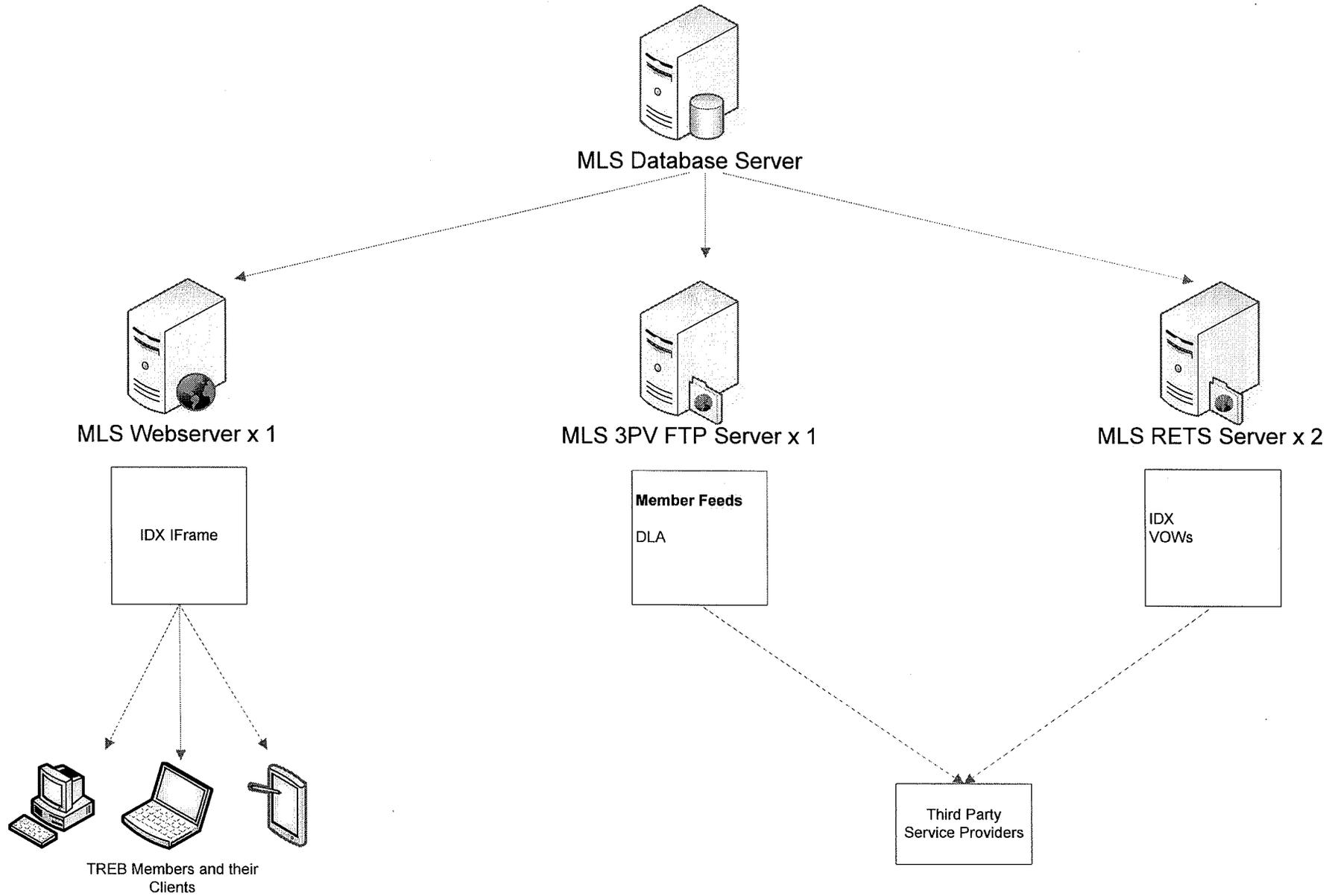
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**Please fax completed form to TREB VOW Administrator at (416) 443-8129**

# **EXHIBIT**

# **QQ**

### TREB MLS Data Feeds Hi-Level Data Flow Chart



# **EXHIBIT**

# **RR**

## RETS VOWs Opted In Broker List: July 25, 2012

Total Count = 93

MemberID	Name	Company	AVP
1732077	TARIK H. GIDAMY	THEREDPIN.COM REALTY INC.	
9535565	SHAWN LEPP	KELLER WILLIAMS ENERGY REAL ESTATE	Seth Hunt
9544923	JONATHAN DAVID	VIEWPOINT REALTY SERVICES INC.	
2422026	KEN P. MCLACHLAN	RE/MAX HALLMARK REALTY LTD.	Simx Solutions Chris Simmons
9518084	JUAN SANTOS	CITY CENTRE REAL ESTATE LTD.	
3824038	MICHAEL ZUCCATO	RE/MAX REALTY SERVICES INC.	MCS RES Michael Grenier
9513832	SIGFRIDO MORETTI	SANDRA RINOMATO REALTY INC.	
9545558	JAMES BLAIR	FUTURE GROUP REALTY SERVICES LTD.	
9523804	JOHN PASALIS	REALOSOPHY REALTY INC.	
9544897	HAYLEY KNAPP	RIGHT AT HOME REALTY INC.	Andrew Knapp
1729026	RONALD GORDON	RE/MAX FIRST REALTY LTD.	Real Web Solutions Ryan Taylor
9535626	RIZWAN PIPRAWALA	CENTURY 21 TITANS REALTY INC.	
3132147	TONY SLAVIN	RIGHT AT HOME REALTY INC.	All About Web Services Andrew Knapp
9519976	SOTIRIOS KAMOUTSIS	PLANIT REAL ESTATE INC.	
9539988	JAY RANA	CENTURY 21 TITANS REALTY INC.	
9524111	GHOLAMHOSSEIN GHADAKI	DOTCOM ADVANTAGE REALTY INC,	
3134084	VICTOR SAU KIN SING	HOMELIFE EXCELSIOR REALTY INC.	Elora Consulting - Rohit Shanker
9514225	SHOUFENG ZHANG	ROYAL LIFE REALTY INC.	
9531017	ARA MAMOURIAN	SPRING REALTY INC.	
2121004	JAMES L. JOHNSTON	RE/MAX CONDOS PLUS CORPORATION	DTI WEB - Sue Sutcliffe
1321257	JERRY CELENZA	HOME@EASE REALTY INC.	Thomas Wong
3111010	ALLAN SPIVAK	REALTYSELLERS REAL ESTATE INC.	
9539297	SIVAMALAR ARIYANAYAGAM	HOMELIFE TODAY REALTY LTD.	Parvathy Vallikkannan
2711010	ALEX PILARSKI	RE/MAX REALTRON REALTY INC.	
9516242	DOMINIQUE ALLARD	RE/MAX REALTRON REALTY INC.	
1321257	JERRY CELENZA	HOME@EASE REALTY INC.	Thomas Wong
9530532	ANDRE ALVES	HOMELIFE/REALTY ONE LTD.	My RealPage
1224176	MYRA BONGARD	RIGHT AT HOME REALTY INC.	Webtechdezine
1313306	CARMINE CUPELLI	RE/MAX FIRST REALTY LTD.	Junior Payne

2422026	KEN P. MCLACHLAN	RE/MAX HALLMARK REALTY LTD.	MCS RES Michael Grenier
2411360	ZAN MOLKO	KELLER WILLIAMS REFERRED REALTY	
2714129	DAVID MICHAEL PYLYP	RE/MAX REALTY SPECIALISTS INC.	
9522488	MAHDI RAZA	ROYAL LEPAGE YOUR COMMUNITY REALTY	SimX Solutions Inc.
2411212	ARUN MEHTA	RICHMOND REALTY GROUP (ONTARIO) INC.	
9518001	ILKYOUNG KIM	HOMELIFE CENTRUST REALTY INC.	
1611150	ASHLEY L. FRAY	RE/MAX CONDOS PLUS CORPORATION	White Nile Systems Inc.
9539960	COLIN WRIGHT	SUTTON GROUP REALTY SPECIALISTS INC.	SimX Solutions
9543611	IMRAN GONDAL	CITYSCAPE REAL ESTATE LTD.	Bilalzia
9545741	PETER CHAO	HOMELIFE LANDMARK REALTY INC.	SimX Solutions
9535651	MICHEAL BISHOP	RE/MAX YORK GROUP REALTY INC.	Subleh Iqbal
9535346	AMINE AGHA	RIGHT AT HOME REALTY INC.	
9519552	MARK ARNSTEIN	RE/MAX HALLMARK REALTY LTD.	My RealPage
9520982	CARL LANGSCHMIDT	ROYAL LEPAGE YOUR COMMUNITY REALTY	
2232076	TULA THOMAS	RIGHT AT HOME REALTY INC.	All About Web Services.com Andrew Knapp
2912095	BERNARD J. ROTH	CENTURY 21 B.J. ROTH REALTY LTD.	Realty Sites Plus
9526135	QIAN XIANG	KINGSWAY REAL ESTATE BROKERAGE	
9547652	ROY ALMOG	2 PERCENT REALTY INC.	Sam & Andy Inc
9544233	GLENN TATE	RIGHT AT HOME REALTY INC.	
9528362	MIKO NALEPA	ROYAL LEPAGE YOUR COMMUNITY REALTY	
3211110	ANDREW TEODOSIU	SUTTON GROUP CENTRAL REALTY INC.	CRWork Systems
9522352	PAULA AMARAL	ROYAL LEPAGE REAL ESTATE PROFESSIONALS	Sam & Andy Inc.
9536677	JASON VAN STIPHOUT	KELLER WILLIAMS ENERGY REAL ESTATE	My Realpage
2738011	ZEN PAWSON	REAL ESTATE HOMEWARD	Real Web Solutions
2114001	DAVID JOSEPH	MINCOM PEOPLES CHOICE REALTY INC.	WebTech Dezine
1714151	DEIRDRE GALLIBOIS	REAL ESTATE HOMEWARD	Real Web Solutions
9525312	GRANT BRIGDEN	RIGHT AT HOME REALTY INC.	
9522097	MICHELLE MAKOS	RE/MAX FIRST REALTY LTD.	Magi Richardson/ WEBTECH DEZINE
3514025	DARCY P. WARNER	LIFESTYLES REALTY SOURCE INC.	Christine Crowley

9531780	STERLING WONG	SEARCH REALTY CORP.	Adnan Topuz/Adosoft Inc
9530069	IMAN JALILI	ROYAL LEPAGE SIGNATURE REALTY	My RealPage
9538771	SAMEER VALIMOHAMED	RE/MAX ULTIMATE REALTY INC.	SimX Solutions
9522837	RAMADHANI HAMISI	REAL ESTATE HOMEWARD	Web4Realty
1321476	JASON COLATOSTI	RE/MAX WEST REALTY INC.	Real Web Solutions
9514336	PARMISS GHOOPARANLOO	THE CONDO STORE REALTY INC.	Lime Wedge Media
9520831	RYAN COYLE	THE CONDO STORE REALTY INC.	Sam & Andy Inc
1416009	FRANCES DICENSO	MAX-A-MILL REALTY INC.	My Real Page
9539768	WEI-HONG CHAN	SUTTON GROUP - SIGNATURE REALTY INC.	
9545246	KIRILL SOLOVIEV	ROYAL LEPAGE YOUR COMMUNITY REALTY	Sam Prochazka
9518173	RICHARD BURNS	RIGHT AT HOME REALTY INC.	Tony Slavin
9531780	STERLING WONG	SEARCH REALTY CORP.	Lime Wedge Media inc
9531780	STERLING WONG	SEARCH REALTY CORP.	Real Web Leads
1612006	BARRY FREEMAN	FREEMAN REAL ESTATE LTD.	Redman Technologies
9532150	SHARON CRANN	HOMELIFE DURHAM REAL ESTATE CORP.	WolfNet
9514085	NICKY SAINI	ZOLO REALTY	
3119035	INGRID S. SMITH	RE/MAX WEST REALTY INC.	WolfNet Technologies
2714208	DAVID PAUL PROULX	RE/MAX WEST REALTY INC.	Wolfnet Technologies
9533914	MEISAM RASTI	PRINCE BAY INTERNATIONAL LUXURY REALTY CORP.	My RealPage
9519036	KEVIN CAMPBELL	ROYAL LEPAGE CONNECT REALTY	My Real Page
9514120	ABDUL SYED	RIGHT AT HOME REALTY INC.	Sam Prochazka
2224217	MICHAEL SAMUEL KALLES	HARVEY KALLES REAL ESTATE LTD.	Neighbourhood Experts
1519006	IRENA ELINA	ROYAL LEPAGE YOUR COMMUNITY REALTY	Denis Kateneff
9521360	DWIGHT GRANGE	GRANGE REAL ESTATE INC.	
9539603	JAN WROBEL	YOUR CHOICE REALTY CORP.	WebtechDezine
9547564	KAJATHEEPH PARAMESHWARANATHAN	RIGHT AT HOME REALTY INC.	All About Web Services
9533613	BHALWANT DEONARAIN	UNREALTY INC.	Sami Dalati
9538527	LISA FAYLE	KELLER WILLIAMS ENERGY REAL ESTATE	
1321209	JANE COTTERILL	SUTTON GROUP-HERITAGE REALTY INC.	Magi Richardson
9526856	NADINE ROBBINS	MILBORNE REAL ESTATE INC.	Webtechdezine
2337053	RICHARD YUN-SONG LEE	SULTAN REALTY INC.	
2423136	LISA R. MCDONALD	KELLER WILLIAMS REAL ESTATE ASSOCIATES	Clicksold/Sam & Andy Inc.
1116029	FRED ALI	MEDIVEST REALTY INC.	
9540192	ADNAN FERAZ	CENTURY 21 PARKLAND LTD.	
1221183	JOHN BRADLEY	RE/MAX PERFORMANCE REALTY INC.	Ryan D Taylor

CT-2011-003

## COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

- and -

THE CANADIAN REAL ESTATE ASSOCIATION AND  
REALTYSELEERS REAL ESTATE INC.

Intervenors

WITNESS STATEMENT OF DONALD RICHARDSON,  
THE TORONTO REAL ESTATE BOARD**AFFLECK GREENE McMURTRY LLP**365 Bay Street, Suite 200  
Toronto, Ontario M5H 2V1**Donald S. Affleck, Q.C.** LSUC#: 10420B**David N. Vaillancourt** LSUC#: 56969I**Fiona Campbell** LSUC#: 60383V

Tel: (416) 360-2800

Fax: (416) 360-5960

Counsel for The Toronto Real Estate Board