

National Poetry Recitation Competition

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Award Form

This Award Form creates the Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.



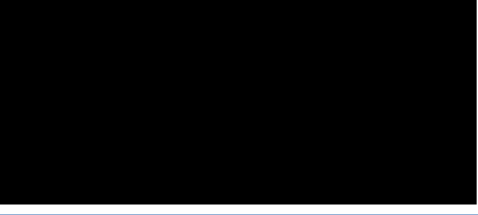

1.	Buyer	The Secretary of State for Education (the Buyer). Its offices are at: Sanctuary Buildings, Great Smith Street, London SW1P 3BT.
2.	Supplier	Name: The Full English Address: The Full English Education Ltd, 13 Orchard Street, Bristol, BS1 5EH Registration number: 08484860 (England & Wales)
3.	Contract	This Contract between the Buyer and the Supplier is for the supply of Deliverables. This opportunity is advertised in the Contract Notice in Find A Tender Service, reference 2022/S 000-012808 (FTS Contract Notice).

4.	Contract reference	con_15235
5.	Deliverables	<p>Poetry forms an important part of the National Curriculum for English at all Key Stages, as well as the specifications for English Literature GCSE and A Level English Literature. The Government wants to encourage schools to improve pupils' knowledge and enjoyment of poetry and engagement in poetry recitation and recall.</p> <p>Our priorities for this contract include:</p> <ul style="list-style-type: none"> • Hold a National Poetry Recitation Competition (NPRC) in the 2022 – 2023 academic year involving pupils from KS2 to KS5, with a target of at least 1,500 schools from a wide spread of regions across the country registered for the competition. • Improve the engagement of a wide range of pupils and schools in poetry recitation, especially those from disadvantaged backgrounds. Encouraging and facilitating the registration and participation of schools and pupils in the competition, particularly those with high levels of disadvantage. This should be achieved by ensuring pupils eligible for Pupil Premium make up at least 25% of the total number of participating pupils. • Curating an anthology of poems with accompanying information and context, for participating schools to use in the competition, but also to be available to all schools and pupils nationally. Producing and signposting to further resources and delivering continuing professional development (CPD) for teachers to support the wider teaching of poetry, with the aim of improving teacher knowledge and confidence in the teaching of poetry. <p>See Schedule 2 (Specification) for further details.</p>
6.	Buyer Cause	<p>Any breach of:</p> <p>the obligations of the Buyer or any other default, act, omission, negligence, or statement of the Buyer, of its employees, servants, or agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier.</p>
7.	Collaborative working principles	<p>The Collaborative Working Principles apply to this Contract.</p> <p>See Clause 3.1.3 for further details.</p>

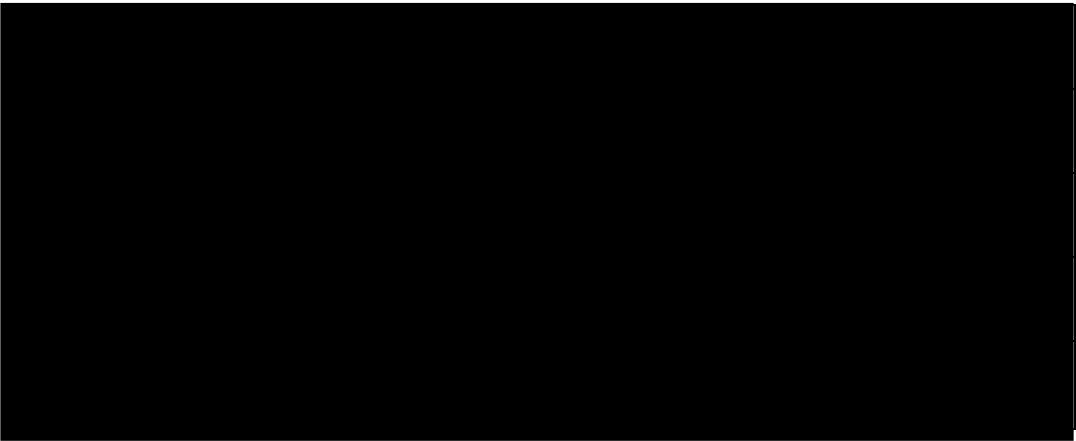
8.	Financial Transparency Objectives	The Financial Transparency Objectives do not apply to this Contract.
9.	Start Date	29 September 2022.
10.	Expiry Date	31 August 2023.
11.	Extension Period	<p>The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.</p> <p>Extension exercised where the Buyer gives the Supplier no less than 3 months written notice before the Contract expires.</p> <p>Any extension is subject to annual review and internal approvals. This could be annual extensions up to 31 August 2025.</p>
12.	Ending the Contract without a reason	<p>The Buyer shall be able to terminate the Contract in accordance with Clause 14.3 and 14.4.</p> <p>Upon any termination in accordance with Clause 14.3, the Buyer shall pay to the Supplier the costs that the Supplier has incurred directly as a result of the early termination of the Contract which are unavoidable, reasonable and not capable of recovery as long as the Supplier provides a fully itemised and costed schedule with evidence. The maximum value of this payment is limited to the total costs which would have been paid to the Supplier as part of the Charges if the Contract had not been terminated.</p>
13.	Incorporated Terms (Together these documents form the "the Contract")	<p>The following documents are incorporated into the Contract. Where numbers are missing, these Schedules are not included. If the documents conflict, the following order of precedence applies:</p> <ol style="list-style-type: none"> a) This Award Form b) Any Special Terms (see Section 14 (Special Terms) in this Award Form c) Core Terms d) Schedule 36 (Intellectual Property Rights) e) Schedule 1 (Definitions) f) Schedule 6 (Transparency Reports) g) Schedule 20 (Processing Data) h) The following Schedules (in equal order of precedence): <ol style="list-style-type: none"> a. Schedule 2 (Specification) b. Schedule 3 (Charges)

		<ul style="list-style-type: none"> c. Schedule 5 (Commercially Sensitive Information) d. Schedule 7 (Staff Transfer) e. Schedule 8 (Implementation & Delivery Plans) f. Schedule 10 (Performance Levels) g. Schedule 11 (Continuous Improvement) h. Schedule 13 (Contract Management) i. Schedule 14 (Business Continuity and Disaster Recovery) j. Schedule 16 (Security) k. Schedule 19 (Cyber Essentials Scheme) l. Schedule 21 (Variation Form) m. Schedule 22 (Insurance Requirements) n. Schedule 23 (Guarantee) o. Schedule 24 (Financial Difficulties) p. Schedule 25 (Rectification Plan) q. Schedule 26 (Sustainability) r. Schedule 28 (ICT Services) s. Schedule 29 (Key Supplier Staff) t. Schedule 30 (Exit Management) <p>i) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that aspect of the Tender will take precedence over the documents above.</p>
14.	Special Terms	Special Term 1 – Safeguarding Policy.
15.	Sustainability	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
16.	Buyer's Environmental Policy	https://www.gov.uk/government/publications/environmental-and-sustainability-policy
17.	Social Value Commitment	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability).

18.	Buyer's Security Policy	The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan and complies with the Security Policy. Full details in Schedule 16 (Security).
19.	Commercially Sensitive Information	Supplier's Commercially Sensitive Information: Schedule 5 (Commercially Sensitive Information).
20.	Charges	<p>The Charges shall be calculated in accordance with the terms of Schedule 3; and cannot be increased except as specifically permitted by this Schedule; and any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.</p> <p>Full details in Schedule 3 (Charges).</p>
21.	Reimbursable expenses	Not applicable.
22.	Payment method	<p>In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.</p> <p>All Charges exclude VAT, which is payable on provision of a valid VAT invoice and include all costs connected with the Supply of Deliverables.</p> <p>The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the relevant payment method (Purchase order).</p> <p>A Supplier invoice is only valid if it meets the requirements listed in section 4.4.</p>
23.	Service Levels	<p>Service Credits will accrue in accordance with Schedule 10 (Performance Levels)</p> <p>The Service Credit Ceiling is the maximum applicable service credit applied in relation to KPIs: 1% of the yearly contract value</p> <p>The Service Period is 12 Month(s)</p> <p>A Critical Service Level Failure is:</p> <p>A failure to achieve more than 50% of the Performance Measure, in any calendar month.</p>
24.	Insurance	<p>Details in Annex of Schedule 22 (Insurance Requirements).</p> <p>The Supplier shall upon the Start Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances</p>

		are in force and effect and meet in full the requirements of this Schedule.
25.	Liability	In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges.
26.	Cyber Essentials Certification	Cyber Essentials Scheme Plus Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme).
27.	Progress Meetings and Progress Reports	The Supplier shall attend Progress Meetings with the Buyer every month unless mutually agreed. (Performance Review Meetings). The Supplier shall provide the Buyer with Progress Reports every month. (Performance Monitoring Reports).
28.	Guarantee	The Supplier must have a Guarantor to guarantee their performance using the form in Schedule 23 (Guarantee).
29.	Asset Register	In accordance with Paragraph 2.2. of Schedule 30 (Exit Management) The Supplier shall, within the contract period, create and maintain the Asset Register, as set out in Paragraph 2.2 within thirty (30) days from the Contract start date, and the Supplier shall update the Asset Register every six (6) months.
30.	Supplier Contract Manager	
31.	Supplier Authorised Representative	
32.	Supplier Compliance Officer	
33.	Supplier Data Protection Officer	

34.	Supplier Marketing Contact		
35.	Key Subcontractors	Not applicable.	
36.	Buyer Authorised Representative		



Core Terms

1. Definitions used in the contract

Interpret this Contract using Schedule 1 (Definitions).

2. How the contract works

- 2.1 If the Buyer decides to buy Deliverables under the Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
 - 2.1.1 make changes to the Award Form;
 - 2.1.2 create new Schedules;
 - 2.1.3 exclude optional template Schedules; and
 - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 The Contract:
 - 2.2.1 is between the Supplier and the Buyer; and
 - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under the Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
 - 2.4.1 the Buyer's requirements for the Deliverables;
 - 2.4.2 the Buyer's operating processes and working methods; and
 - 2.4.3 the ownership and fitness for purpose of the Buyer Assets, and it has advised the Buyer in writing of:
 - 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
 - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
 - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract.

- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
 - 2.5.1 verify the accuracy of the Due Diligence Information; and
 - 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. What needs to be delivered

3.1 All deliverables

- 3.1.1 The Supplier must provide Deliverables:
 - a) that comply with the Specification, the Tender Response and the Contract;
 - b) using reasonable skill and care;
 - c) using Good Industry Practice;
 - d) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract;
 - e) on the dates agreed; and
 - f) that comply with Law.
- 3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.
- 3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:
 - a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
 - b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
 - c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;

- d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

3.2 Goods clauses

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- 3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

3.3 Services clauses

- 3.3.1 Late Delivery of the Services will be a Default of the Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
 - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
 - 4.4.1 includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer; and
 - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5. The buyer's obligations to the supplier

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
 - 5.1.1 the Buyer cannot terminate the Contract under Clause 14.4.1;
 - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
 - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
 - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 **Error! Reference source not found.** only applies if the Supplier:
 - 5.2.1 gives notice to the Buyer of the Buyer Cause within 10 Working Days of becoming aware;
 - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
 - 5.2.3 mitigated the impact of the Buyer Cause.

6. Record keeping and reporting

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of the Contract during the Contract Period and for 7 years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
 - 6.3.1 on or before the Start Date;
 - 6.3.2 at the end of each Contract Year; and
 - 6.3.3 within 6 Months of the end of the Contract Period,and the Supplier must meet with the Buyer if requested within 10 Working Days of the Buyer receiving a Financial Report.
- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
 - 6.4.1 Supplier's currently incurred or forecast future Costs; and

- 6.4.2 forecast Charges for the remainder of the Contract,
then the Supplier must notify the Buyer in writing as soon as practicable
setting out the actual or anticipated effect of the event.
- 6.5 The Supplier must allow any Auditor access to their premises and the
Buyer will use reasonable endeavours to ensure that any Auditor:
- 6.5.1 complies with the Supplier's operating procedures; and
- 6.5.2 does not unreasonably disrupt the Supplier or its provision of
the Deliverables.
- 6.6 During an Audit, the Supplier must provide information to the Auditor
and reasonable co-operation at their request including access to:
- 6.6.1 all information within the permitted scope of the Audit;
- 6.6.2 any Sites, equipment and the Supplier's ICT system used in the
performance of the Contract; and
- 6.6.3 the Supplier Staff.
- 6.7 The Parties will bear their own costs when an Audit is undertaken
unless the Audit identifies a material Default by the Supplier, in which
case the Supplier will repay the Buyer's reasonable costs in connection
with the Audit.
- 6.8 The Supplier must comply with the Buyer's reasonable instructions
following an Audit, including:
- 6.8.1 correcting any identified Default;
- 6.8.2 rectifying any error identified in a Financial Report; and
- 6.8.3 repaying any Charges that the Buyer has overpaid.
- 6.9 If the Supplier is not providing any of the Deliverables, or is unable to
provide them, it must immediately:
- 6.9.1 tell the Buyer and give reasons;
- 6.9.2 propose corrective action; and
- 6.9.3 provide a deadline for completing the corrective action.
- 6.10 Except where an Audit is imposed on the Buyer by a regulatory body or
where the Buyer has reasonable grounds for believing that the Supplier
has not complied with its obligations under this Contract, the Buyer
may not conduct an Audit of the Supplier or of the same Key
Subcontractor more than twice in any Contract Year.

7. Supplier staff

- 7.1 The Supplier Staff involved in the performance of the Contract must:
- 7.1.1 be appropriately trained and qualified;
- 7.1.2 be vetted using Good Industry Practice and the Security Policy;
and

- 7.1.3 comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clauses 31.1 to 31.4.
- 7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

8. Supply chain

8.1 Appointing Subcontractors

- 8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:
 - a) manage Subcontractors in accordance with Good Industry Practice;
 - b) comply with its obligations under this Contract; and
 - c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

8.2 Mandatory provisions in Sub-Contracts

- 8.2.1 The Supplier will ensure that all Sub-Contracts in the Supplier's supply chain entered into after the Effective Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:
 - a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
 - b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
 - c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

8.2.2 The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Effective Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:

- a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and
- c) allow the Buyer to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

8.3 When Sub-Contracts can be ended

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

8.4 Competitive terms

8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

8.4.2 If the Buyer uses Clause 8.4.1 **Error! Reference source not found.** then the Charges must be reduced by an agreed amount by using the Variation Procedure.

8.5 Ongoing responsibility of the Supplier

8.5.1 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

9. Rights and protection

- 9.1 The Supplier warrants and represents that:
 - 9.1.1 it has full capacity and authority to enter into and to perform the Contract;
 - 9.1.2 the Contract is executed by its authorised representative;
 - 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
 - 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform the Contract;
 - 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under the Contract and for the Buyer to receive the Deliverables;
 - 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract;
 - 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and
 - 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Start Date or been subject to an investigation relating to a Prohibited Act.
- 9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
 - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract; and
 - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 All claims indemnified under this Contract must use Clause 30.
- 9.5 The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

10. Intellectual Property Rights (IPR)

- 10.1 The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.
- 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
 - 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
 - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Schedule 36 or to modify or replace an item pursuant to Schedule 36, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect.

11. Rectifying issues

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within 3 Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within 10 Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
 - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
 - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
 - 11.3.1 will give reasonable grounds for its decision; and
 - 11.3.2 may request that the Supplier provides a revised Rectification Plan within 5 Working Days.

12. Escalating issues

- 12.1 If the Supplier fails to:
 - 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and

12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than 5 Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than 5 Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clause 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

13. Step-in rights

13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:

13.1.1 whether it will be taking action itself or with the assistance of a third party;

13.1.2 what Required Action the Buyer will take during the Step-In Process;

13.1.3 when the Required Action will begin and how long it will continue for;

13.1.4 whether the Buyer will require access to the Sites; and

13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.

13.2 For as long as the Required Action is taking place:

13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;

13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and

13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.

13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within 20 Working Days of this

notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.

- 13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
 - 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
 - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

14. Ending the contract

- 14.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.
- 14.2 The Buyer can extend the Contract for the Extension Period by giving the Supplier written notice before the Contract expires as described in the Award Form.

14.3 Ending the contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or (unless the Award Form states something different) liability by giving the Supplier not less than 90 days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clauses 14.5.1b) to 14.5.1h) applies.

14.4 When the Buyer can end the Contract

- 14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate the Contract by issuing a Termination Notice to the Supplier:
 - a) there's a Supplier Insolvency Event;
 - b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance
 - c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
 - d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request;
 - e) there's any material Default of the Contract;
 - f) a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;

- g) there's any material Default of any Joint Controller Agreement relating to the Contract;
- h) there's a Default of Clauses 2.7, 10, 12, 18, 19, 31, 36, Schedule 19 (Cyber Essentials) (where applicable) or Schedule 36 (Intellectual Property Rights) relating to the Contract;
- i) the performance of the Supplier causes a Critical Service Level Failure to occur;
- j) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- k) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- l) the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded;
- m) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them; or
- n) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables.

14.4.2 The Buyer also has the right to terminate the Contract in accordance with Clauses 9.5 and 24.3, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) and Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable).

14.4.3 If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate the Contract and Clauses 14.5.1b) to 14.5.1h) applies.

14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates the Contract under Clauses 14.4.1 and 9.5, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) or Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable). all of the following apply:

- a) The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- b) The Buyer's payment obligations under the terminated Contract stop immediately.
- c) Accumulated rights of the Parties are not affected.
- d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- e) The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

- f) The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- g) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.
- h) The following Clauses survive the termination of the Contract: 3.2.10, 6, 7.2, 10, 15, 18, 19, 20, 21, 22, 39, 40, Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

14.5.2 If either Party terminates the Contract under Clause 24.3:

- a) each party must cover its own Losses; and
- b) Clauses 14.5.1b) to 14.5.1h) applies.

14.6 When the Supplier can end the contract

14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within 30 days of the date of the Reminder Notice.

14.6.2 The Supplier also has the right to terminate the Contract in accordance with Clauses 24.3 and 27.5.

14.6.3 Where the Buyer terminates the Contract under Clause 14.3 or the Supplier terminates the Contract under Clause 14.6.1 or 27.5:

- a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
- c) Clauses 14.5.1d) to 14.5.1h) apply.

14.7 Partially ending and suspending the contract

14.7.1 Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.

14.7.2 The Buyer can only partially terminate or suspend the Contract if the remaining parts of the Contract can still be used to effectively deliver the intended purpose.

14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

- a) reject the Variation; or
- b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

15. How much you can be held responsible for

15.1 Each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and

15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:

15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and

15.3.3 any liability that cannot be excluded or limited by Law.

15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 9.3, **Error! Reference source not found.**, 16.3 or Schedule 7 (Staff Transfer) of the Contract.

15.5 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.

15.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with the Contract, including any indemnities.

15.7 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:

15.7.1 Deductions; and

15.7.2 any items specified in Clause 15.4.

15.8 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:
 - 16.2.1 the Official Secrets Acts 1911 to 1989; and
 - 16.2.2 section 182 of the Finance Act 1989.
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law.
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

17. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

18. Data protection

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 18.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
 - 18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
 - 18.6.2 restore the Government Data itself or using a third party.

- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is entirely at fault.
- 18.8 The Supplier:
 - 18.8.1 must provide the Buyer with all Government Data in an agreed open format within 10 Working Days of a written request;
 - 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer unless required by Law to retain it; and
 - 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. What you must keep confidential

- 19.1 Each Party must:
 - 19.1.1 keep all Confidential Information it receives confidential and secure;
 - 19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and
 - 19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
 - 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
 - 19.2.4 if the information was in the public domain at the time of the disclosure;

- 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
 - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - 19.4.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 19.4.4 where requested by Parliament; and
 - 19.4.5 under Clauses 4.6 and 20.
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6 Transparency Information and any Information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

20. When you can share information

- 20.1 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.

- 20.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 20.2.1 publish the Transparency Information;
 - 20.2.2 comply with any Freedom of Information Act (FOIA) request; and
 - 20.2.3 comply with any Environmental Information Regulations (EIR) request.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

21. Invalid parts of the contract

- 21.1 If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from the Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.
- 21.2 If any removal under Clause 21.1 is so fundamental that it prevents the purpose of the Contract from being achieved or it materially changes the balance of risk and rewards between the Parties, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to rectify these issues and to amend the Contract accordingly so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that it is reasonably possible, achieves the Parties' original commercial intention.
- 21.3 If the Parties cannot agree on what amendments are required within 5 Working Days, the matter will be dealt with via commercial negotiation as set out in Clause **Error! Reference source not found.** and, if there is no resolution within 30 Working Days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.

22. No other terms apply

The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

23. Other people's rights in the Contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

24. Circumstances beyond your control

24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

24.1.1 provides a Force Majeure Notice to the other Party; and

24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

24.3 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

25. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

26. Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

27. Transferring responsibilities

27.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Buyer's written consent.

27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot subcontract the Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

- 27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
- 27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- 27.2.3 the proposed Subcontractor employs unfit persons
- 27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 27.5 The Supplier can terminate the Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.
- 27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
 - 27.7.1 their name;
 - 27.7.2 the scope of their appointment;
 - 27.7.3 the duration of their appointment; and
 - 27.7.4 a copy of the Sub-Contract.

28. Changing the contract

- 28.1 Either Party can request a Variation to the Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.
- 28.2 The Supplier must provide an Impact Assessment either:
 - 28.2.1 with the Variation Form, where the Supplier requests the Variation; and
 - 28.2.2 within the time limits included in a Variation Form requested by the Buyer.
- 28.3 If the Variation to the Contract cannot be agreed or resolved by the Parties, the Buyer can either:
 - 28.3.1 agree that the Contract continues without the Variation; and
 - 28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).
- 28.4 The Buyer is not required to accept a Variation request made by the Supplier.

- 28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
- 28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
 - 28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.7 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or the Contract and provide evidence:
- 28.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
 - 28.7.2 of how it has affected the Supplier's costs.
- 28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

29. How to communicate about the contract

- 29.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9am on the first Working Day after sending unless an error message is received.
- 29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

30. Dealing with claims

- 30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 30.2 At the Indemnifier's cost the Beneficiary must both:
- 30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

- 30.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
 - 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
 - 30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

31. Preventing fraud, bribery and corruption

- 31.1 The Supplier must during the Contract Period:
 - 31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
 - 31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 31.2 The Supplier must during the Contract Period:
 - 31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - 31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
 - 31.2.3 if required by the Buyer, within 20 Working Days of the Start Date of the Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

- 31.3 The Supplier must immediately notify the Buyer if it becomes aware of any breach of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
 - 31.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 31.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Contract; and
 - 31.3.4 suspected that any person or Party directly or indirectly related to the Contract has committed or attempted to commit a Prohibited Act.
- 31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:
 - 31.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
 - 31.5.2 immediately terminate this agreement.
- 31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:
 - 31.6.1 Prohibited Act;
 - 31.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
 - 31.6.3 action it has decided to take.

32. Equality, diversity, and human rights

- 32.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
 - 32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

33. Health and safety

- 33.1 The Supplier must perform its obligations meeting the requirements of:
 - 33.1.1 all applicable Law regarding health and safety; and
 - 33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 33.2 The Supplier must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of the Contract.

34. Environment

- 34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

35. Tax

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 35.2 Where the Charges payable under the Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within 5 Working Days including:
 - 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
 - 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Contract, the Supplier must both:
 - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
 - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection

with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

- 35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- 35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - 35.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
 - 35.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and
 - 35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

36. Conflict of interest

- 36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

37. Reporting a breach of the contract

- 37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of:
 - 37.1.1 Law;
 - 37.1.2 Clause 16.1; and
 - 37.1.3 Clauses 31 to 36.

37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 37.1 to the Buyer or a Prescribed Person.

38. Further Assurances

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

39. Resolving disputes

39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.3 to 39.5.

39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1 determine the Dispute;

39.3.2 grant interim remedies; and

39.3.3 grant any other provisional or protective relief.

39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.3, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.4.

39.6 The Supplier cannot suspend the performance of the Contract during any Dispute.

40. Which law applies

This Contract and any issues or Disputes arising out of, or connected to it, are governed by English law.

Schedule 1: Definitions

1. Definitions

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In the Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.3.5 the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words **"without limitation"**;
 - 1.3.6 references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.7 references to **"representations"** shall be construed as references to present facts, to **"warranties"** as references to present and future facts and to **"undertakings"** as references to obligations under the Contract;
 - 1.3.8 references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.9 references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and

- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
- 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.3.13 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

1.4 In the Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Achieve"	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly;
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Annex"	extra information which supports a Schedule;
"Approval"	the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly;

"Asset Register"	as defined in paragraph 2.2 in Schedule 30 Exit Management;
"Audit"	<p>the Buyer's right to:</p> <ul style="list-style-type: none"> (a) verify the integrity and content of any Financial Report; (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with the Contract); (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services; (d) verify the Open Book Data; (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law; (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations; (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables; (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; (i) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract; (j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts; (k) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
"Auditor"	<ul style="list-style-type: none"> (a) the Buyer's internal and external auditors; (b) the Buyer's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;

	<p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>(f) successors or assigns of any of the above;</p>
"Award Form"	the document outlining the Incorporated Terms and crucial information required for the Contract, to be executed by the Supplier and the Buyer;
"BACS"	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Buyer"	the public sector purchaser identified as such in the Order Form;
"Buyer Assets"	the Buyer's infrastructure, data, software, materials, assets, equipment, or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;
"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to the Contract initially identified in the Award Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence, or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Buyer's Confidential Information"	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the Contract; and</p> <p>information derived from any of the above;</p>
"Buyer Data"	means the data, text, drawings, diagrams, images, or sounds (together with any database made up of any of these) which are

	<p>embodied in any electronic, magnetic, optical or tangible media, including any Buyer's or End User's Confidential Information, and which:</p> <ul style="list-style-type: none"> (a) are supplied to the Supplier by or on behalf of the Buyer, or End User; or (b) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (c) any Personal Data for which the Buyer or End User is the Controller;
"Buyer Existing IPR"	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government Body, any Crown IPR, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
"Buyer's Senior Responsible Officer"	the representative appointed by the Buyer from time to time in relation to the Contract initially identified as the Deputy Director of HEALD Education;
"Buyer Third Party"	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its

	obligations under the Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in the Award Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities and contract data;
"Contract Period"	the term of the Contract from the earlier of the: <ul style="list-style-type: none"> (a) Start Date; or (b) the Effective Date (c) until the End Date;
"Contract Value"	the higher of the actual or expected total Charges paid or payable under the Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed

	accordingly;
"Controller"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Core Terms"	the Buyer's terms and conditions which apply to and comprise one part of the Contract set out in the document called "Core Terms";
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <ul style="list-style-type: none"> (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: <ul style="list-style-type: none"> (i) base salary paid to the Supplier Staff; (ii) employer's National Insurance contributions; (iii) pension contributions; (iv) car allowances; (v) any other contractual employment benefits; (vi) staff training; (vii) work place accommodation; (viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and (ix) reasonable recruitment costs, as agreed with the Buyer; (b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets; (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables; <p>but excluding:</p> <ul style="list-style-type: none"> (e) Overhead;

	<p>(f) financing or similar costs;</p> <p>(g) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;</p> <p>(h) taxation;</p> <p>(i) fines and penalties;</p> <p>(j) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and</p> <p>(k) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
"Critical Service Level Failure"	has the meaning given to it in the Award Form;
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown IPR"	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
"Data Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	a request made by, or on behalf of, a Data Subject in accordance

"Access Request"	with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of the Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier is liable to the Buyer;
"Delay Payments"	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;
"Delivery"	delivery of the relevant Deliverable or Milestone in accordance with the terms of the Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
"Delivery Plan" or "Detailed Delivery Plan"	the plan for provision of the Deliverables each Contract Year set out in Schedule 8 (Implementation and Delivery Plans) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof, will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the "Disaster Period");
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party
"Dispute"	any claim, dispute, or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of

	action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
"Documentation"	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the Contract as:</p> <ul style="list-style-type: none"> (a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables (b) is required by the Supplier in order to provide the Deliverables; and/or (c) has been or shall be generated for the purpose of providing the Deliverables;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
"DPA 2018"	The Data Protection Act 2018
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Date;
"Effective Date"	the date on which the final Party has signed the Contract;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"End Date"	<p>the earlier of:</p> <ul style="list-style-type: none"> (a) the Expiry Date as extended by the Buyer under Clause 14.2; or (b) if the Contract is terminated before the date specified in (a) above, the date of termination of the Contract;

"End User"	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
"Environmental Policy"	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	means for the purposes of calculating each Party's annual liability under Clause 15.1: (a) in the first Contract Year, the Estimated Year 1 Charges; or (b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or (c) after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
"Expiry Date"	the date of the end of the Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	The occurrence of one or more the following events: (a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating

	<p>Agency;</p> <ul style="list-style-type: none"> (b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects; (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity; (d) any FDE Group entity commits a material breach of covenant to its lenders; (e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute; (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate; (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate; (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors; (i) any of the following: <ul style="list-style-type: none"> (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern; (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m; (iii) non-payment by any FDE Group entity of any financial indebtedness;
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	<p>(iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;</p> <p>(v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or</p> <p>(vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with the Contract; or</p> <p>(j) any one of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold.</p>
"Financial Report"	<p>a report provided by the Supplier to the Buyer that:</p> <p>(a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;</p> <p>(b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);</p> <p>(c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Start Date for the purposes of this Contract; and</p> <p>(d) is certified by the Supplier's Chief Financial Officer or Director of Finance;</p>
"Financial Transparency Objectives"	<p>means:</p> <p>(a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;</p> <p>(b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;</p> <p>(c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;</p>

	<ul style="list-style-type: none"> (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services; (e) the Parties challenging each other with ideas for efficiency and improvements; and (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	<p>any event, circumstance, matter, or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract; (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; (c) acts of a Crown Body, local government or regulatory bodies; (d) fire, flood or any disaster; or (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and (iii) any failure of delay caused by a lack of funds, <p>and which is not attributable to any wilful act, neglect, or failure to take reasonable preventative action by that Party;</p>
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"General Anti-Abuse Rule"	<p>(a) the legislation in Part 5 of the Finance Act 2013 and; and</p> <p>(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;</p>
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Data"	<p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which:</p> <p>(a) are supplied to the Supplier by or on behalf of the Buyer; or</p> <p>(b) the Supplier is required to generate, process, store or transmit pursuant to the Contract;</p>
"Government Procurement Card"	<p>the Government's preferred method of purchasing and payment for low value goods or services</p> <p>https://www.gov.uk/government/publications/government-procurement-card--2 ;</p>
"Guarantor"	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	Her Majesty's Revenue and Customs;

"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form, which is in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> (a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract; (b) details of the cost of implementing the proposed Variation; (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party; (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and (e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Incorporated Terms"	the contractual terms applicable to the Contract specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Indexation"	the adjustment of an amount or sum in accordance with the Award Form;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of the Contract specified in the Award Form;

<p>"Insolvency Event"</p>	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person; (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days; (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (f) where that person is a company, an LLP or a partnership: <ul style="list-style-type: none"> (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; (ii) an application is made to court, or an order is made,
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	<p>for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(a) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
"Intellectual Property Rights" or "IPR"	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Invoicing Address"	the address to which the Supplier shall Invoice the Buyer as specified in the Award Form;
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under the Contract;
"IR35"	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at:

	https://www.gov.uk/guidance/ir35-find-out-if-it-applies ;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
"Joint Control"	where two or more Controllers jointly determine the purposes and means of Processing;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of Processing;
"Key Personnel"	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>any Subcontractor:</p> <ul style="list-style-type: none"> (a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or (b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or (c) with a Sub-Contract with the Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Contract, <p>and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Start Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Law Enforcement"	processing under Part 3 of the DPA 2018;

"Processing"	
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan and/or Delivery Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan and/or Delivery Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"New IPR"	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly;</p>
"New IPR Item"	means a deliverable, document, product or other item within which New IPR subsists;
"Notifiable Default"	<p>means:</p> <p>(a) the Supplier commits a material Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>
"Occasion of Tax Non – Compliance"	<p>where:</p> <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or</p>

	<p>after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>
"Open Book Data"	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables; (b) operating expenditure relating to the provision of the Deliverables including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables; (ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and (iv) Reimbursable Expenses, if allowed under the Award Form; (c) Overheads; (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables; (e) the Supplier Profit achieved over the Contract Period and on

	<p>an annual basis;</p> <p>(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>(g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>(h) the actual Costs profile for each Service Period;</p>
"Open Licence"	<p>means any material that is published for use, with rights to access and modify, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles;</p>
"Open Licence Publication Material"	<p>means items created pursuant to the Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;</p>
Operational Deliverable Commencement Date	<p>1 September 2022;</p>
"Overhead"	<p>those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";</p>
"Parliament"	<p>takes its natural meaning as interpreted by Law;</p>
"Party"	<p>the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;</p>
"Performance Levels"	<p>any performance levels applicable to the provision of the Deliverables under the Contract (which, where Schedule 10 (Performance Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);</p>
"Performance Monitoring"	<p>the reports produced by the Supplier as detailed in paragraphs 3.1 and 3.2 of Part B of Schedule 10;</p>

Reports” and “Progress Report”	
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Processing"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor Personnel"	all directors, officers, employees, agents, consultants, and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Contract;
“Programme Management Board”	the board established in accordance with paragraph 4.1 of Schedule 13;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Prohibited Acts"	<ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or

	<p>(c) committing any offence:</p> <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Protective Measures"	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"> (a) the nature of the data to be protected (b) harm that might result from Data Loss Event; (c) state of technological development (d) the cost of implementing any measures <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>
"Recall"	<p>a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;</p>
"Recipient Party"	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none"> (a) full details of the Notifiable Default that has occurred, including a root cause analysis; (b) the actual or anticipated effect of the Notifiable Default; and (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
"Rectification"	<p>the process set out in Clause 11;</p>

"Plan Process"	
"Regulations"	the Public Contracts Regulations 2015;
"Reimbursable Expenses"	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Relevant Requirements"	all applicable Law relating to bribery, corruption, and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"	any third-party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to the Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Action"	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
"Required"	the insurances required by Schedule 22 (Insurance

"Insurances"	Requirements);
"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to the Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form, in force as at the Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> (a) the Deliverables are (or are to be) provided; or (b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; (c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided)
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Social Value"	the additional social benefits that can be achieved in the delivery of the Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used)

"Social Value KPIs"	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used
"Social Value Report"	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used
"Special Terms"	any additional terms and conditions set out in the Award Form incorporated into the Contract;
"Special IPR Terms"	any additional terms and conditions relating to IPR set out in the Award Form incorporated into the Contract;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
"Specification"	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form;
"Standards"	<p>any:</p> <ul style="list-style-type: none"> (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with; (b) standards detailed in the specification in Schedule 2 (Specification); (c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time; (d) relevant Government codes of practice and guidance applicable from time to time;
"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13;
"Step-In Trigger Event"	<p>means:</p> <ul style="list-style-type: none"> (a) the Supplier's level of performance constituting a Critical

	<p>Service Level Failure;</p> <p>(b) the Supplier committing a material Default which is irremediable;</p> <p>(c) where a right of termination is expressly reserved in this Contract;</p> <p>(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor required under the Award Form;</p> <p>(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;</p> <p>(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;</p> <p>(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;</p> <p>(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or</p> <p>(i) a need by the Buyer to take action to discharge a statutory duty;</p>
"Step-Out Plan"	means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under the Contract following the completion of the Step-In Process;
"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	<p>any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party:</p> <p>(a) provides the Deliverables (or any part of them);</p> <p>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</p>
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Subsidiary"	has the meaning set out in section 1162 of the Companies Act

"Undertaking"	2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with the Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
"Supplier Existing IPR"	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
"Supplier Existing IPR Licence"	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36.
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier Non-Performance"	where the Supplier has failed to: <ul style="list-style-type: none"> (a) Achieve a Milestone by its Milestone Date; (b) provide the Goods and/or Services in accordance with the Service Levels ; and/or (c) comply with an obligation under the Contract;
"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the Contract for the relevant period;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the Contract;

"Supplier's Confidential Information"	<p>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with the Contract;</p> <p>Information derived from any of (a) and (b) above;</p>
"Supplier's Contract Manager"	the person identified in the Award Form appointed by the Supplier to oversee the operation of the Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Contract detailed in the information are properly payable;
"Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
"Termination Assistance"	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the Contract;
"Test Plan"	<p>a plan:</p> <p>(a) for the Testing of the Deliverables; and</p> <p>(b) setting out other agreed criteria related to the achievement of</p>

	Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to the Contract as set out in the Test Plan or elsewhere in the Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Third Party IPR Licence"	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36
"Transparency Information"	the Transparency Reports and the content of the Contract, including any changes to this Contract agreed from time to time, except for – (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to the Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"UK GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019
"Variation"	means a variation to the Contract;
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 28 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental

	or cultural objectives;
"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Worker"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

Schedule 2: Specification

Specification

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

Our social value priorities

[In line with public procurement guidance1](#), businesses seeking to win government work must set out how they will also deliver social value priorities. The overarching aims of the NPRC align with the wider Government and Departmental aims to prioritise the importance of social value in our commercial decision making.

The 4 themes of social value are: Supporting Covid-19 Recovery; Tackling Economic Inequality; Fighting Climate Change and Driving Equal Opportunity. Suppliers were invited to address these measures in their responses to the Specification Requirements. The priority in this procurement requires a focus on is:

(a) Driving Equal Opportunity.

In the event of a conflict between the NPRC Specification and the Technical Specification and Supplier's Response documents detailed below, the NPRC Specification will take precedence.

Introduction / Background

1. The purpose of this specification is to provide a description of the services that supplier(s) shall be required to deliver through an annual contract to be awarded by the Department for Education (the DfE) to support the undertaking of a national poetry recitation competition and the development of resources.
2. Poetry forms an important part of the National Curriculum for English at all Key Stages, as well as the specifications for English Literature GCSE and A Level English Literature. The Government wants to encourage schools to improve pupils' knowledge and enjoyment of poetry and engagement in poetry recitation and recall. This, in turn, is intended to help the overarching objectives of the Department for Education (DfE) to provide all pupils with a world class education, ensuring a rigorous academic curriculum that builds character and resilience and supports good mental health.
3. Many schools will already teach poetry recitation, as part of a structured, knowledge-rich curriculum. Increasing opportunities to benefit from cultural capital, through a knowledge-rich curriculum, is particularly important for students from disadvantaged backgrounds.
4. Since 2012, the Department has funded a National Poetry Recitation Competition (NPRC), which helps to develop and support inspiring poetry teaching in schools and to motivate pupils and teachers to explore our rich literary heritage. Pupils in

Key Stages 2, 3, 4 and 5 choose poems from the online anthology covering 1,000 years of poetry and recite these in school-based competitions. Schools then submit entries to be judged by an expert panel, and from these submissions finalists from each Key Stage are identified and invited to perform at a national final.

These are our priorities in this procurement:

- Hold an NPRC in 2022 – 2023 academic year involving pupils from KS2 to KS5, with a target of at least 1,500 schools from a wide spread of regions across the country registered for the competition.
- Improve the engagement of a wide range of pupils and schools in poetry recitation, especially those from disadvantaged backgrounds. Encouraging and facilitating the registration and participation of schools and pupils in the competition, particularly those with high levels of disadvantage.
- Curating an anthology of poems with accompanying information and context, for participating schools to use in the competition, but also to be available to all schools and pupils nationally. Producing and signposting to further resources and delivering continuing professional development (CPD) for teachers to support the wider teaching of poetry, with the aim of improving teacher knowledge and confidence in the teaching of poetry.

Specific requirements

Delivery of the National Poetry Recitation Competition - NPRC

1. The NPRC delivery model that has been used in previous years consists of local competitions held in schools, with entries submitted online, followed by regional heats, and then a national final. Other models of delivery which meet the aims of the contract may be considered and should be set out in detail by the potential provider.
2. According to the established model,
 - The provider will first support teachers to deliver the initial round of the competition within their own schools, this will include supporting teachers to register pupils on the competition website, record videos of pupils participating and uploading video entries for judging.
 - The provider will then deliver a regional round of the competition that serves as an intermediate stage between school level and national level. This will be done through live regional events and several stages of regional judging.
 - Lastly, the provider will deliver a live national round of the competition, which will serve as the competition final. This will involve a live judging process and will be held at a suitable venue. The provider should demonstrate how they would make this event a cultural experience for all pupils involved, for example by inviting well known poets to give readings.

3. The provider will have a clear, transparent, and fair process for judging the competition at each stage. This will include procedures for choosing and awarding prizes. Any prizes must be small in value and aimed at improving aspects of the school's literacy approach, e.g., book tokens, trip to see a play.
4. The provider will also provide resources and guidance to help schools participate in the competition. This will involve providing a competition overview and guidance package, regular updates via newsletter, and directed resources for each stage. These will include guides for pupils covering the main aspects of the competition, such as choosing poems, how to learn them and how to perform them, as well as guidance for teachers on how to film and upload pupils' performances.

Poetry teaching support and resources

5. The provider will curate an interactive, online anthology of poems with accompanying information and context for each poem. This should not only help pupils choose a poem to perform in the competition but should also serve as a teaching resource to support teachers to deliver lessons on poetry. The anthology will include a broad range of both pre-1914 and contemporary poems from the established literary canon. It should be ordered by time period, with poems from each major time/movement and including poems written by authors of different backgrounds. It should contain poems likely to engage children of different ages across the 7-18 range. Poems should cover a range of themes and should introduce pupils to the best poetry of our literary heritage.
6. The provider will deliver a minimum of 120 hours (per annum) of teacher workshops for teachers and trainee teachers. These should be delivered in a mixture of in person and online settings. They will be aimed at enhancing subject knowledge of poetry, providing practical activities to develop confidence in teaching and performing a poem, practising techniques for learning poetry by heart, and introducing them to the NPRC. Any materials developed for these workshops should be adapted and made available to all schools via the website.
7. The provider will develop further materials to support the teaching of poetry and poetry recitation across Key Stages 2, 3, 4 and 5. This will involve assessing existing resources, identifying gaps and then developing resources to fill these. In particular, the provider should produce and signpost to resources that support poetry teaching at GCSE, in alignment with the poems set within examination bodies' anthologies and the 'unseen poem' component.

Competition website

8. The provider will manage a website specifically for the competition. This site will facilitate the secure registration of teachers and pupils and include functionality for uploading videos of pupils' performances.
9. The website will also host resources developed to support delivery of the competition, such as filming and upload guidance, as well as the interactive

online anthology and any further materials developed to support the wider teaching of poetry.

10. The bidder shall ensure that they;

- provide a Solution Design Diagram with a suitable commentary describing (at a minimum): the technology stack its components are based upon;
 - ii. the data consumed and exported; and
 - iii. integration with other services and solutions.
- Develop and deliver a solution that is flexible enough to accommodate any future changes, where appropriate, based on legislative or other requirements; and
- provide a High-Level Design that can be submitted for evaluation to the Department's governance processes as and when required.
- Provide details around how the [accessibility requirements](#) are considered and met on the website

11. DfE will not provide any additional funding for the construction of a new website however the provider may wish to use the funding within the contract to create a new website or to add content to and make improvements to an existing domain. For example, the website will need functionality to collect data about the pupils participating in the competition.

Communications, marketing and engagement

12. The provider will run a year-round promotional campaign for the competition. This could incorporate newsletters, emails, posters, flyers and social media as appropriate

13. The provider will establish and collaborate with a network of delivery partners within the sector to increase the range of communications and distribute materials. This should include promoting the competition and workshops in wider teacher networks, particularly among trainee teachers.

Specific requirements

Delivery of the NPRC

14. The NPRC delivery model that has been used in previous years consists of local competitions held in schools, with entries submitted online, followed by regional heats, and then a national final. Other models of delivery which meet the aims of the contract may be considered and should be set out in detail by the potential provider.

15. According to the established model,

- The provider will first support teachers to deliver the initial round of the competition within their own schools, this will include supporting teachers to

register pupils on the competition website, record videos of pupils participating and uploading video entries for judging.

- The provider will then deliver a regional round of the competition that serves as an intermediate stage between school level and national level. This will be done through live regional events and several stages of regional judging.
- Lastly, the provider will deliver a live national round of the competition, which will serve as the competition final. This will involve a live judging process and will be held at a suitable venue. The provider should demonstrate how they would make this event a cultural experience for all pupils involved, for example by inviting well known poets to give readings.

16. The provider will have a clear, transparent, and fair process for judging the competition at each stage. This will include procedures for choosing and awarding prizes. Any prizes must be small in value and aimed at improving aspects of the school's literacy approach, e.g., book tokens, trip to see a play.
17. The provider will also provide resources and guidance to help schools participate in the competition. This will involve providing a competition overview and guidance package, regular updates via newsletter, and directed resources for each stage. These will include guides for pupils covering the main aspects of the competition, such as choosing poems, how to learn them and how to perform them, as well as guidance for teachers on how to film and upload pupils' performances.

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18. The provider will curate an interactive, online anthology of poems with accompanying information and context for each poem. This should not only help pupils choose a poem to perform in the competition but should also serve as a teaching resource to support teachers to deliver lessons on poetry. The anthology will include a broad range of both pre-1914 and contemporary poems from the established literary canon. It should be ordered by time period, with poems from each major time/movement and including poems written by authors of different backgrounds. It should contain poems likely to engage children of different ages across the 7-18 range. Poems should cover a range of themes and should introduce pupils to the best poetry of our literary heritage.
19. The provider will deliver a minimum of 120 hours (per annum) of teacher workshops for teachers and trainee teachers. These should be delivered in a mixture of in person and online settings. They will be aimed at enhancing subject knowledge of poetry, providing practical activities to develop confidence in teaching and performing a poem, practising techniques for learning poetry by heart, and introducing them to the NPRC. Any materials developed for these workshops should be adapted and made available to all schools via the website.
20. The provider will develop further materials to support the teaching of poetry and poetry recitation across Key Stages 2, 3, 4 and 5. This will involve assessing

existing resources, identifying gaps and then developing resources to fill these. In particular, the provider should produce and signpost to resources that support poetry teaching at GCSE, in alignment with the poems set within examination bodies' anthologies and the 'unseen poem' component.

Competition website

21. The provider will manage a website specifically for the competition. This site will facilitate the secure registration of teachers and pupils and include functionality for uploading videos of pupils' performances.
22. The website will also host resources developed to support delivery of the competition, such as filming and upload guidance, as well as the interactive online anthology and any further materials developed to support the wider teaching of poetry.
23. The Provider shall ensure that they;
 - provide a Solution Design Diagram with a suitable commentary describing (at a minimum): the technology stack its components are based upon;
 - ii. the data consumed and exported; and
 - iii. integration with other services and solutions.
 - Develop and deliver a solution that is flexible enough to accommodate any future changes, where appropriate, based on legislative or other requirements; and
 - provide a High-Level Design that can be submitted for evaluation to the Department's governance processes as and when required.
 - Provide details around how the [accessibility requirements](#) are considered and met on the website
24. DfE will not provide any additional funding for the construction of a new website however the provider may wish to use the funding within the contract to create a new website or to add content to and make improvements to an existing domain. For example, the website will need functionality to collect data about the pupils participating in the competition.

Communications, marketing, and engagement

25. The provider will run a year-round promotional campaign for the competition. This could incorporate newsletters, emails, posters, flyers and social media as appropriate
26. The provider will establish and collaborate with a network of delivery partners within the sector to increase the range of communications and distribute materials. This should include promoting the competition and workshops in wider teacher networks, particularly among trainee teachers.

27. The provider will proactively engage with schools to encourage them to register for the competition and teacher CPD events. This will include both maintaining relationships with schools that have participated in previous years and encouraging new schools to register. In particular, the provider should target engagement at schools within DfE's Education Investment Areas (EIAs). Within schools, the provider should have a strategy to ensure that pupils entitled to pupil premium participate in the competition.

Programme management, quality assurance and governance

28. The provider will develop robust programme management across their delivery structure and maintain quality throughout the delivery of the contract requirements.
29. The provider will use creative delivery strategies and solutions to ensure maximum opportunities for schools and pupils to prepare for participation in the competition.
30. The provider will ensure that programme risks are recorded systematically and appropriate mitigations put in place, with regular reporting to the Department.
31. The provider will be required to collect and supply management information on the programme to the Department. The provider will ensure that the collection, transfer and storage of this information complies with the General Data Protection Regulation (GDPR).
32. The provider will be required to contribute to, and participate in, regular reporting on management information including but not limited to application data, recruitment and retention data, marketing activity and financial spend.

Collecting management Information data for monitoring and evaluation purposes

33. The department requires careful evaluation of the project to assess how effectively it delivers on its ambitions and the benefits it brings to pupils, teachers, and schools. The department needs quality data to analyse policy successes, to learn and improve from any lessons, and to ensure that the project achieves value for money. The provider should outline their data collection and evaluation strategy approach.
34. The Provider will be asked to provide management information to meet the needs of the Department. The Department's preference is for the successful tenderer to securely collect pupil-level data including but not limited to their Unique Pupil Numbers (UPNs) and their date of birth.¹ As an absolute minimum, the department requires the successful tenderer to collect school-level data such as:
- The number of pupils participating by year group and school,
 - the level/category of engagement that pupils make (which must be clearly categorised). For example, whether a pupil participates in the national competition or engages at school or regional level only,

- Unique Reference Numbers (URNs) of schools,²
- name of school as stated in Get Information About Schools³

This is not an exhaustive list.

35. In addition, the Department expects the successful tenderer to conduct a survey of teachers engaged with the programme to gain insights such as:

- the benefits of using a competition as the format for engaging pupils with poetry,
- why schools, teachers and pupils participate,
- how the programme affects teachers' confidence in teaching poetry to pupils

36. Data and analytics on how schools use the tenderer's website should be shared with the Department if requested as this will provide some insights on how schools engage with the competition, the materials, and resources. This data should be collected, stored, and transferred to the Department in a secure and legal fashion.

37. The Provider will also;

1. Identify information about the participants of teacher CPD workshops.
 - i. Including Teacher Reference Number (TRN),⁴ teacher's full name, maiden name, date of birth, the name of the school they teach at, the school's Unique Reference Number (URN), and workshop attended, for example. The successful tenderer will be required to show how they will comply with GDPR requirements in storing, analysing, and sharing these data. Teachers must provide informed consent and it needs to be made clear that individual teachers are not being held accountable – collecting this information is to provide an understanding of how the programme is delivered.
2. Give details of the CPD workshops delivered
 - i. Including the type of CPD, how it is delivered, and topic of the CPD.
 - ii. Conduct feedback surveys with teachers participating in the NPRC and CPD workshops.
3. For these data collections and surveys, the successful tenderer should demonstrate to the Department how they have considered the potential burden the collections have on schools and the steps taken to mitigate this burden and balance that with the need to collect quality data. For example, you may decide that an application programme interface (API) to allow easier access to a school's data (with their consent) would be a fruitful way forward.

Key Performance Indicators

38. The provider will be expected to meet the following key performance indicators:

- o Improving the quality of poetry provision in schools by ensuring a minimum of 85% of teachers who participate in training workshops and the NPRC report increased confidence in teaching poetry.
- o Improving pupil performance by ensuring a minimum of 85% of pupils participating in the competition report increased confidence in studying and engaging with poetry as a result of participating in the NPRC and accessing supporting resources.
- o Increasing opportunities for students from disadvantaged backgrounds to engage with poetry by ensuring pupils eligible for pupil premium make up at least 25% of the total number of participating pupils.

39. Further targets will be set on the number of participating schools and pupils, in discussion between the Department and the provider. Performance indicators may be subject to further change, in discussion between the Department and the provider.

Evaluation of programme impacts and processes

40. Your overall approach to evaluation to understand programme impacts and processes will be considerably shaped by the management information data collected.

41. An evaluation that aligns to the principles of ‘independence’ must be undertaken. In most cases, this will involve procuring a qualified third-party evaluator to conduct and evaluation. The evaluation will seek to measure and assess the impact of the programme against the key aims and KPIs, and to inform how to improve delivery over the life of the programme. The evaluators will produce an interim and final report which must be published. The way the evaluation is to be written and published will be agreed with the Department when the contract is established.

42. The provider will be responsible for developing evaluation questions, the specification, and commissioning of an independent evaluator. The provider must formally consult analysts at the Department for Education in doing so. Draft reports from the independent evaluators, including those related to methodology, will need to be shared with the Department as well as the provider for feedback. The findings must also be published. When detailing proposals on the independent evaluation, please consult the Magenta book for guidance: The Magenta Book - GOV.UK (www.gov.uk).

43. Timescales of the evaluation and descriptions for how you will construct counterfactuals to measure the potential benefit of the programme on particular outcomes must be clearly communicated, along with any assumptions relied upon.

Security of Data

44. The successful provider will be asked to complete a security self-assessment (see Attachment 3b) prior to the contract being signed to help identify potential security risks. Use of data in any supporting digital or technology services must meet or exceed the expectations set out in:

- a. *The relevant Departmental Security Standards (Document 1a, incorporating GDPR)*
- b. *Cyber Essentials Plus*
- c. *The UK Government's security policy framework and National Cyber Security Centre (NCSC) guidelines*

Costs

45. The Department expects to award a 1-year contract commencing 1st September 2022, with 2 options to extend, each time for a further year. The contract will therefore run for a maximum of three years on a 1 + 1 + 1 basis. Both options to extend the initial contract term will be subject to provider performance and to DfE funding. The total (3 year) contract value will not exceed £1,576,044 (inclusive of any non-reclaimable VAT).

46. The funding outlined above represents the maximum contract value over the maximum contract length, including options to extend. However, potential providers are welcome to specify a lower funding requirement in their pricing schedule, and this will be taken into account when assessing the overall value represented by their respective bids – Please refer to Document 1, Invitation to Tender for further details. A full payment schedule will form part of the contract with the successful provider.

47. Tenderers should complete the accompanying Pricing Schedule to detail the cost breakdown for each of the potential 3 years of the contract. Bids should clearly present total and annual costs against the budget lines detailed in the Pricing Schedule.

48. Tenderers will need to demonstrate that proposed costs are based on efficient models of delivery and provide substantial value for public money. You must ensure that costs include any exit/transition costs, are auditable and can be justified. Please ensure that you separately identify and include all expenditure that you expect to incur in relation to the proposed activities detailed above. Please detail any assumptions you have made in developing your costs.

49. Bids should provide the unit cost for face-to-face and online CPD workshops as well as any fee which may be charged to participants on any programme. Bids should explain the charging strategy and charging regime for independent schools. We will scrutinise bids carefully to ensure that we are not subsidising the independent sector.

50. The successful provider will report to the Department against contract spend on a monthly basis. The contract value has a fixed ceiling, and no additional costs will

be charged to the Department. In the event that variations are required, the Department will discuss these with the supplier on a case-by-case basis. Payments to the successful provider will be made monthly by BACS transfer following receipt of a valid invoice.

VAT

51. The maximum total (3 years including extensions) contract value will not exceed £1,576,044 inclusive of any non-reclaimable VAT. Therefore, non-reclaimable VAT will need to be accounted for in the total contract price.

52. The Pricing Schedule asks for details on which budget lines would include VAT. Please use available explanatory note space to detail why you believe VAT will be charged, at what rate, and whether this will be reclaimable VAT.

53. Where the contract price agreed between the Department and Contractor is inclusive of any chargeable VAT, further amounts will not be paid by the Department should a vatable supply claim be made at any later stage.

54. Where the overall contract price is exclusive of VAT, the Department will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the Department will pay any VAT incurred at the new rate.

55. It is the responsibility of tenderers to check the VAT position with HMRC before submitting a bid.

Contract Management

56. The Provider will be expected to provide monthly reports to update the Department on progress against KPIs, key milestones, the contract risk register and the budget. The provider will then be expected to attend a monthly reporting meeting, where the report will be discussed. Discussions will also include the asset register, intellectual property rights, and exit planning throughout the duration of the contract. All of the above mentioned will be standing items on the monthly meeting agenda.

57. In the initial contract phase the provider may be expected to provide more frequent updates.

58. Where urgent matters arise, the provider will raise this with the contract manager in the Department immediately to agree a resolution and immediate next steps.

Tenders from consortia or similar delivery partnerships

59. Tenders from consortia are welcome. One tender should be submitted per consortium and include details of the lead contractor, expected role and contribution of each of the partner organisations. It is also expected that the composition of a consortium should remain the same throughout the tendering process. If any tenderer introduces new partners or changes the make-up of the tendering organisation in any way after submitting their tender, they must let the Department know as soon as possible and submit a revised tender to reflect the tendering organisation's new structure within the deadline for submission of bids.

60. For the purpose of this project, the consortium will be required to create a single organisation, which is a registered legal entity with appropriate management structures and governance arrangements agreed by all the parties. This single legal entity should be formed, at the latest, before contract award. The Department will only enter into a contract with a single legal entity and not the individual members of any proposed consortium. For sub-contract relationships, tenders must designate one principal tenderer to be the point of contact for any enquiries regarding the tender service delivery.

61. A Parent Company or Bank Guarantee may be required. In the event that your tender is identified as the most favourable / compliant tender, but the DfE assesses that a Parent Company or Bank Guarantee is required, then one will be requested. No contract will be awarded until a suitable Parent Company or Bank Guarantee, as appropriate, is in place.

62. Each member of any Consortia bid must complete a Financial Viability Risk Assessment Tool FVRAT (Document 3a)

63. Potential Providers participating in this Procurement as a member of a Consortia are required to read the guidance in paragraph 6 of Document 1 - Invitation to Tender (Contracting Arrangements (Sub-Contractors and Groups of Economic Operators)).

Schedule 3: Charges

1. How Charges are calculated

- 1.1 The Charges:
 - 1.1.1 shall be calculated in accordance with the terms of this Schedule;
 - 1.1.2 cannot be increased except as specifically permitted by this Schedule; and
- 1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

2. Are costs and expenses included in the Charges

- 2.1 The Charges shall include all costs and expenses relating to the provision of Deliverables as detailed in the tables in Annex 1. No further amounts shall be payable in respect of matters such as:
 - 2.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or
 - 2.1.2 costs incurred prior to the commencement of the Contract.

3. When the Supplier can ask to change the Charges

- 3.1 The Charges will be fixed for the Contract Period, save as detailed in this Schedule.
- 3.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time, then it will only be able to request an increase prior to the next Review Date.
- 3.3 Any notice from the Supplier requesting an increase to the Charges shall include:
 - 3.3.1 a list of the Charges to be reviewed;
 - 3.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
 - a) a breakdown of the profit and cost components that comprise the relevant part of the Charges;
 - b) details of the movement in the different identified cost components of the relevant Charge;
 - c) reasons for the movement in the different identified cost components of the relevant Charge;
 - d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and

- e) evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date.
- 3.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 3.5 Where the Buyer approves an increase then it will be implemented from a date determined by the Buyer at its sole discretion reasonably and Annex 1 shall be updated accordingly.

4. Other events that allow the Supplier to change the Charges

- 4.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
 - 4.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8;
 - 4.1.2 a review in accordance with insurance requirements in Clause 17;
 - 4.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges; and
 - 4.1.4 any extension or variation of the Contract at request of the Buyer or Supplier and agreed by both Parties

Annex 1: Rates and Prices

Table 1: Fixed Prices (exclusive of VAT)

1.1 The rates below shall not be subject to variation by way of Indexation and do not include VAT.

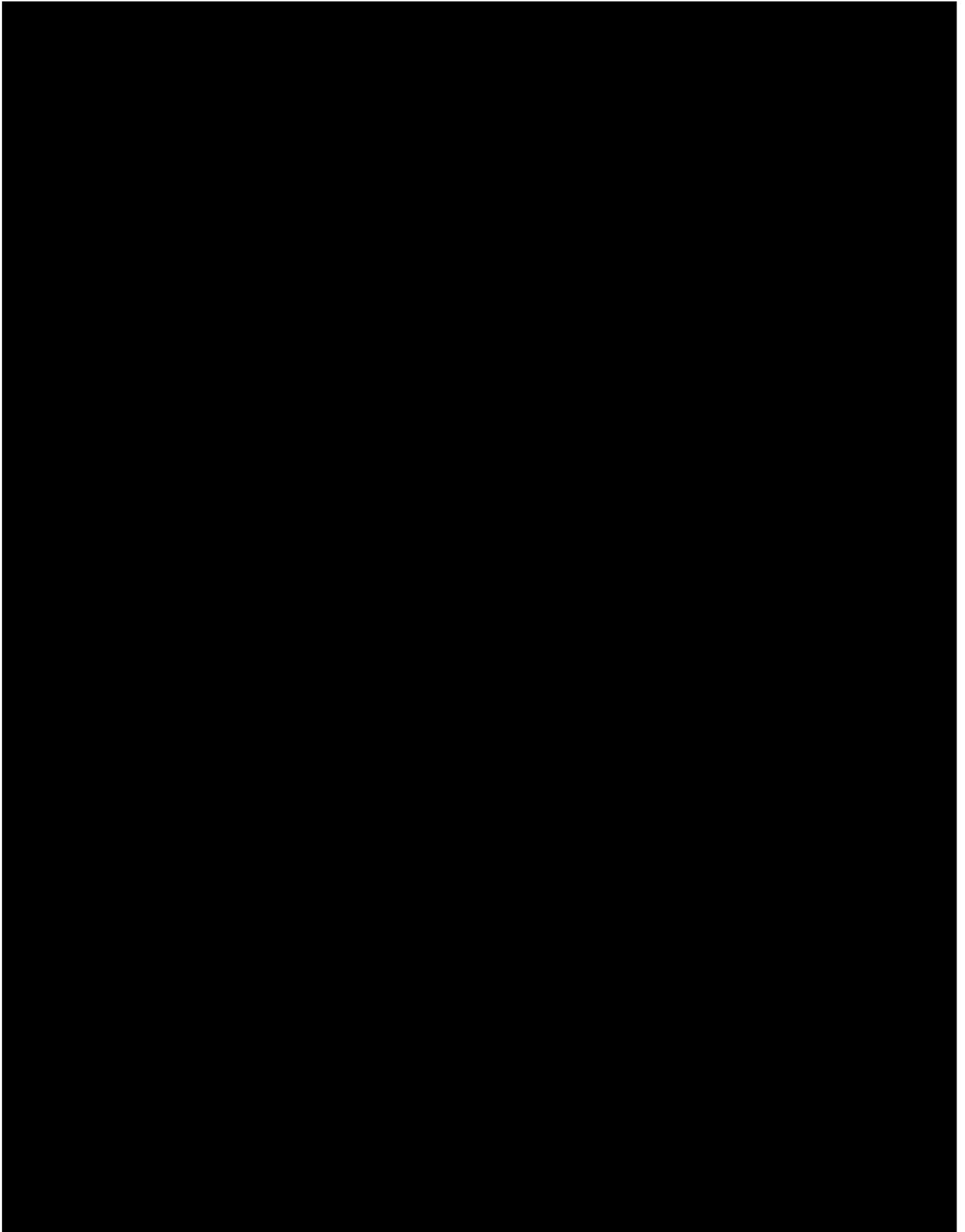
Contract Year	Period	Fixed Charge (£) net of VAT
Year 1	September 2022 - August 2023	£524,934
Year 2 (possible extension year)	September 2023 - August 2024	£506,059
Year 3 (possible extension year)	September 2024 - August 2025	£540,988
Total		£1,571,981

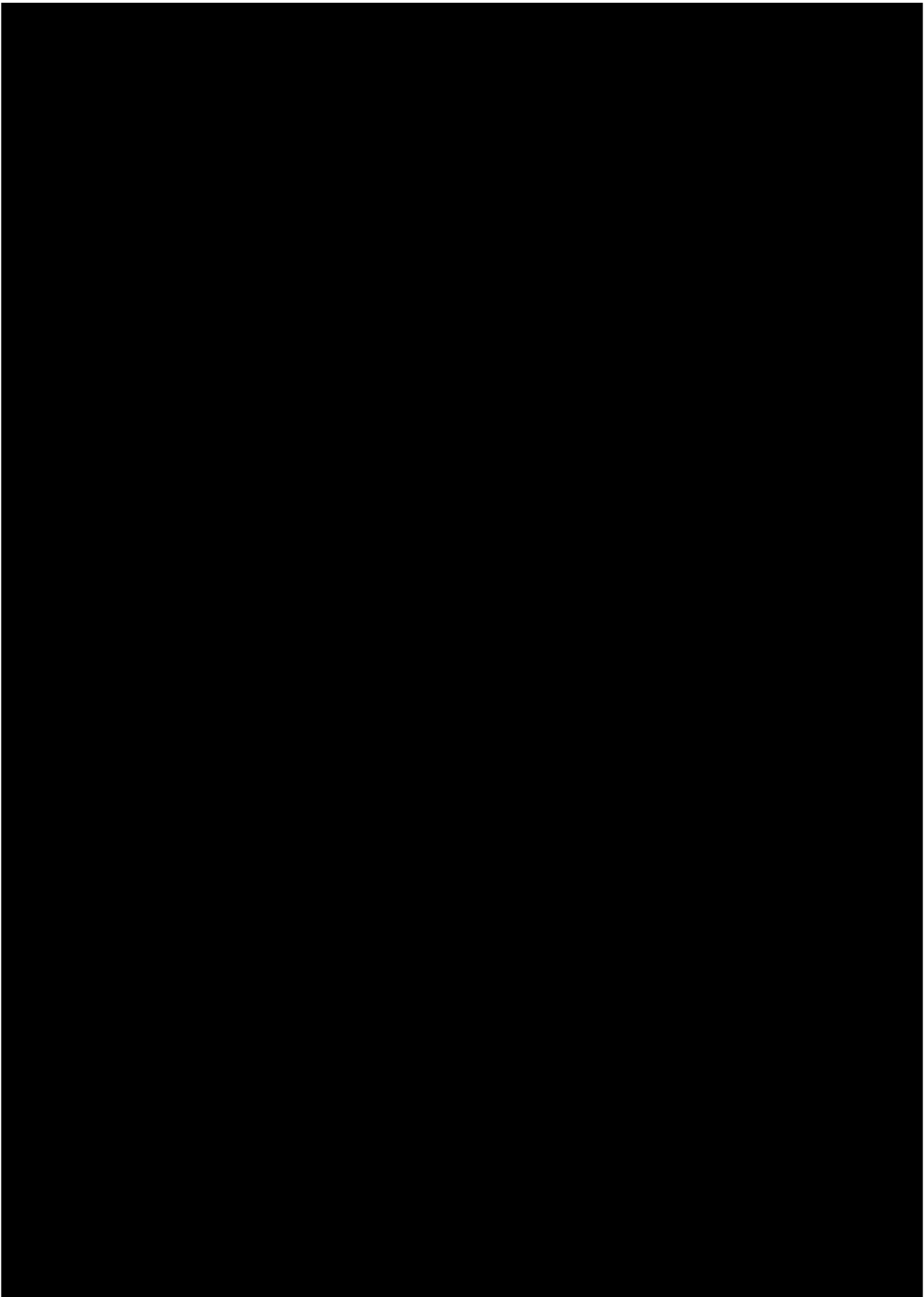
1.2 The Fixed Charges detailed in the above table have been calculated in accordance with the following financial profile submitted by the Supplier.

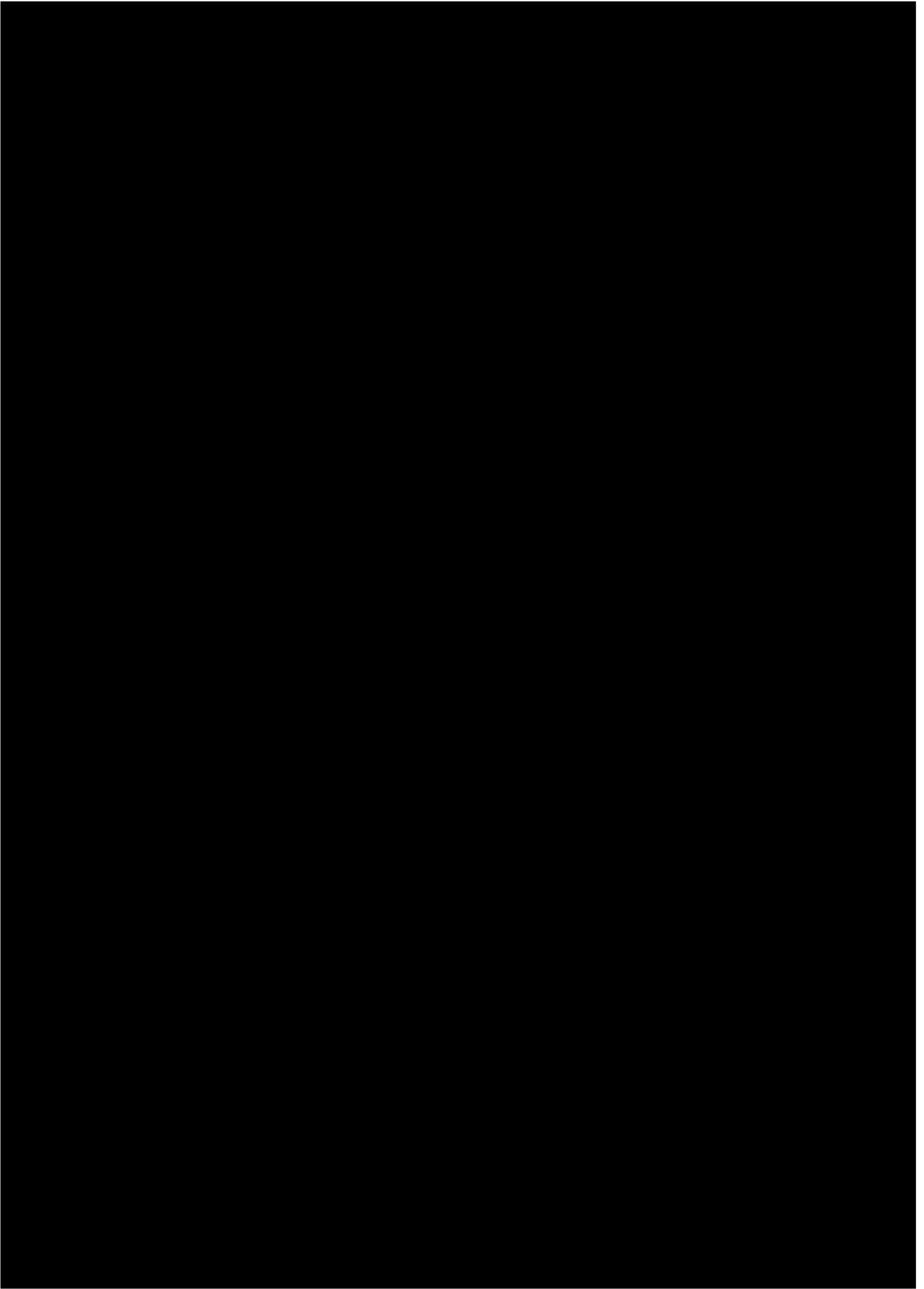
Table 2: Cost Breakdown per Contract Year (exclusive of VAT)

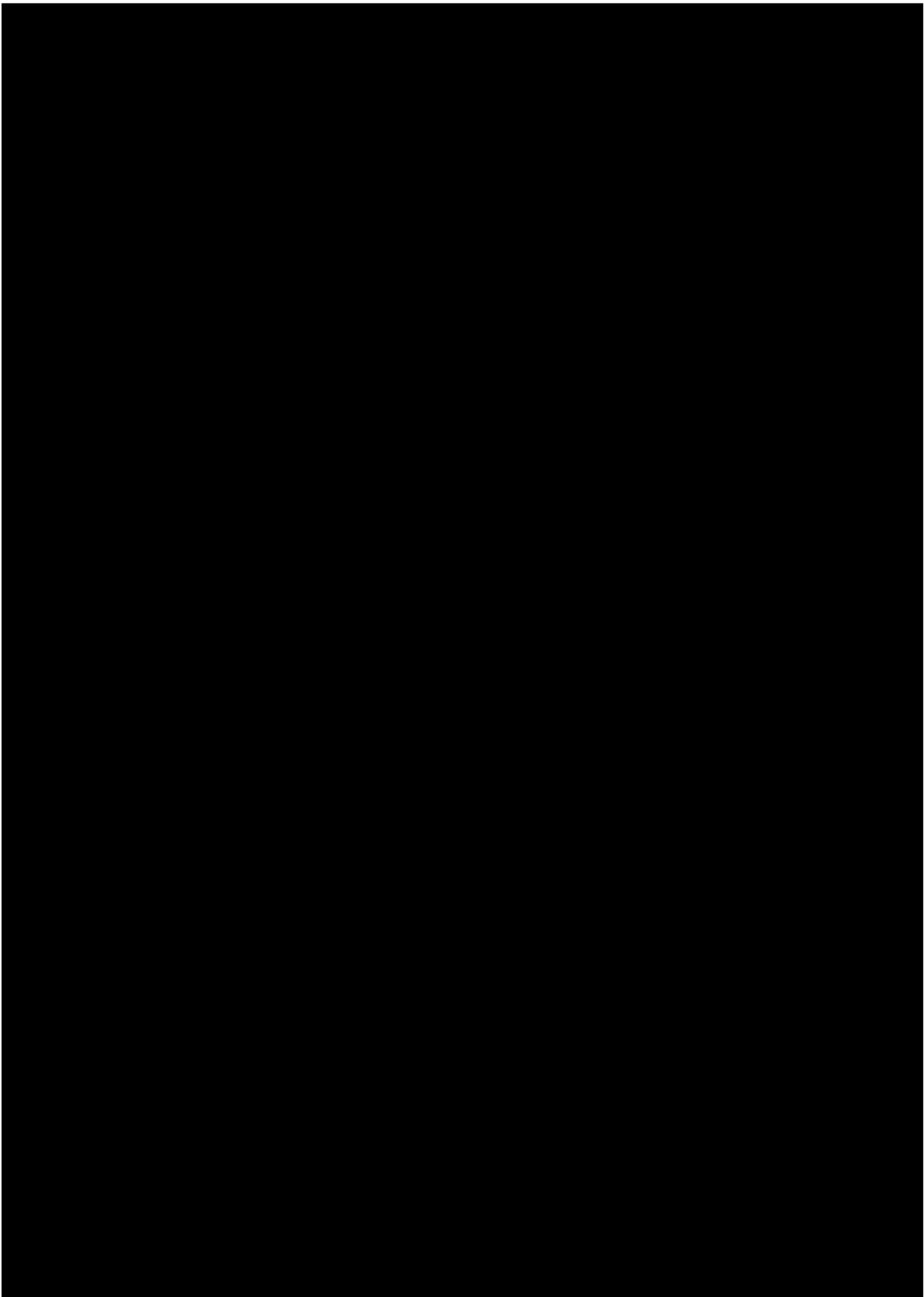
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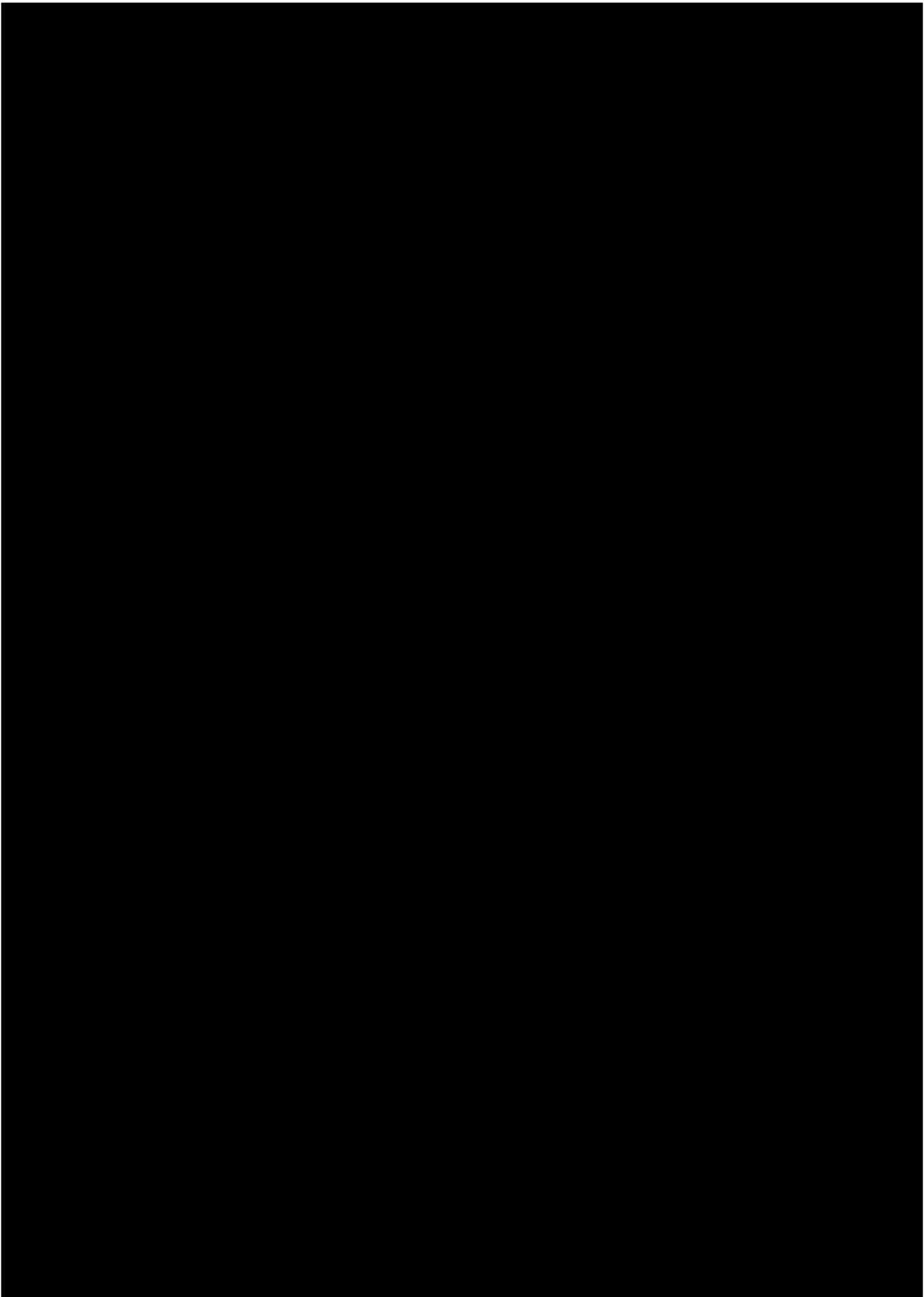
Schedule 4: Tender

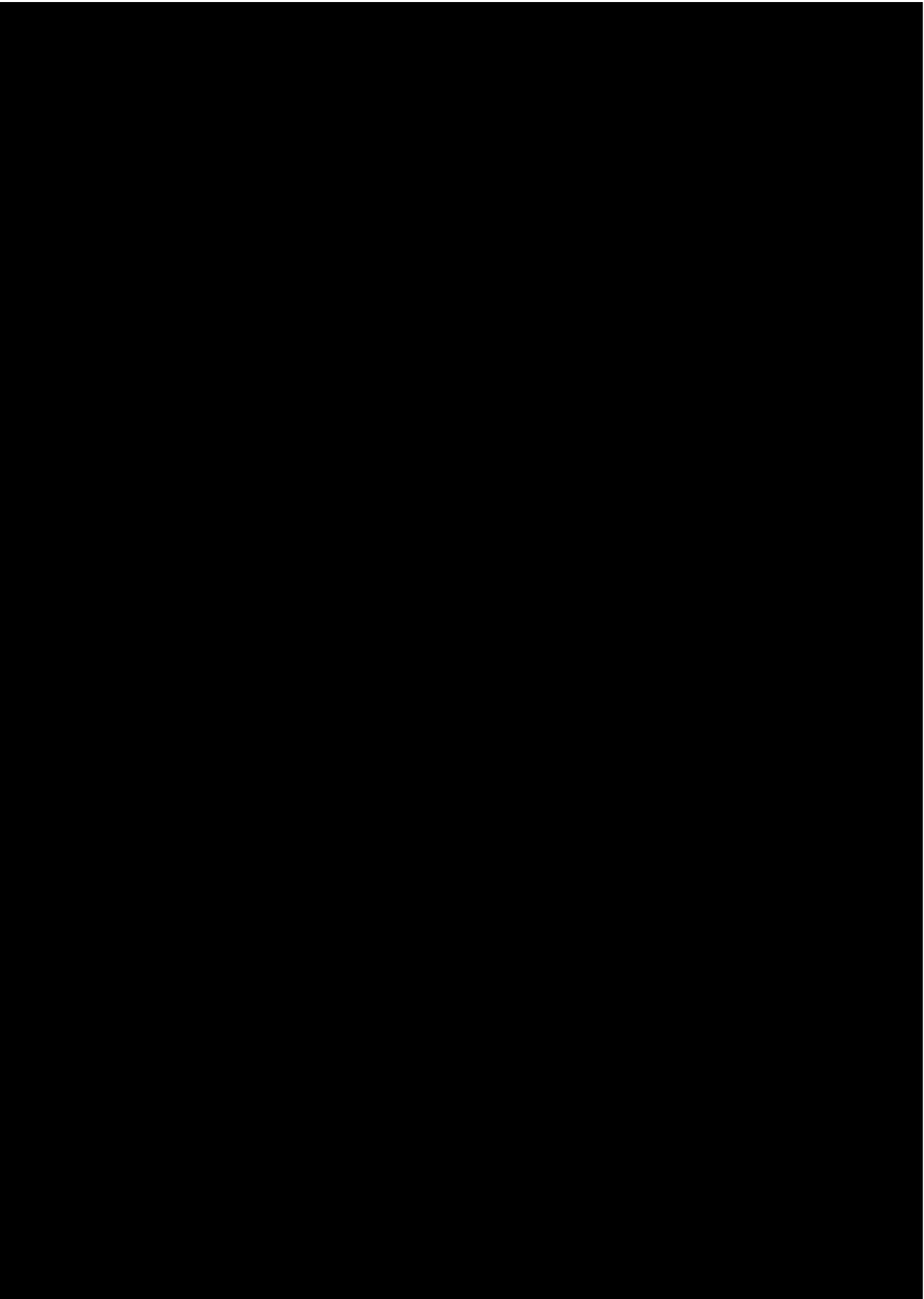


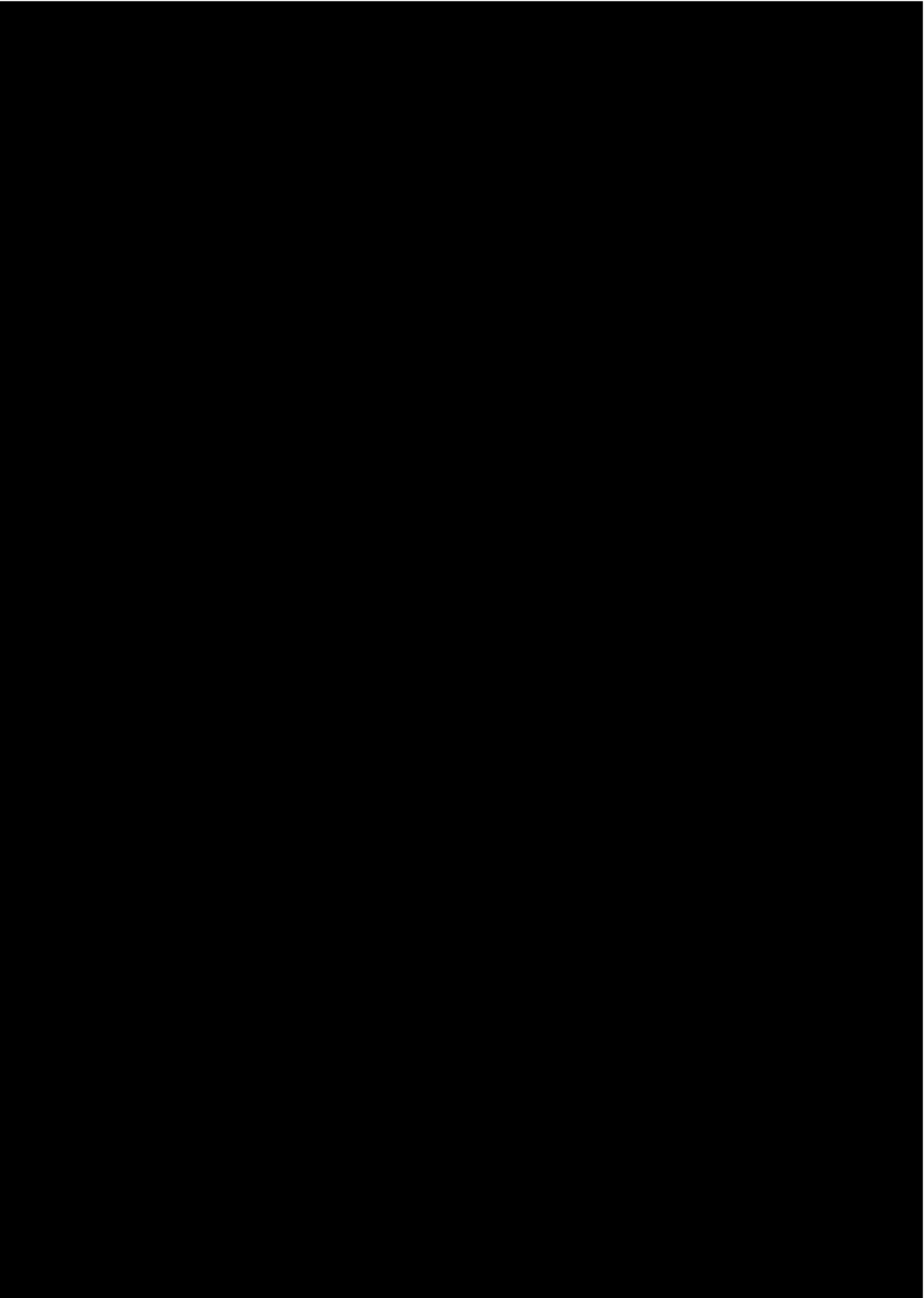


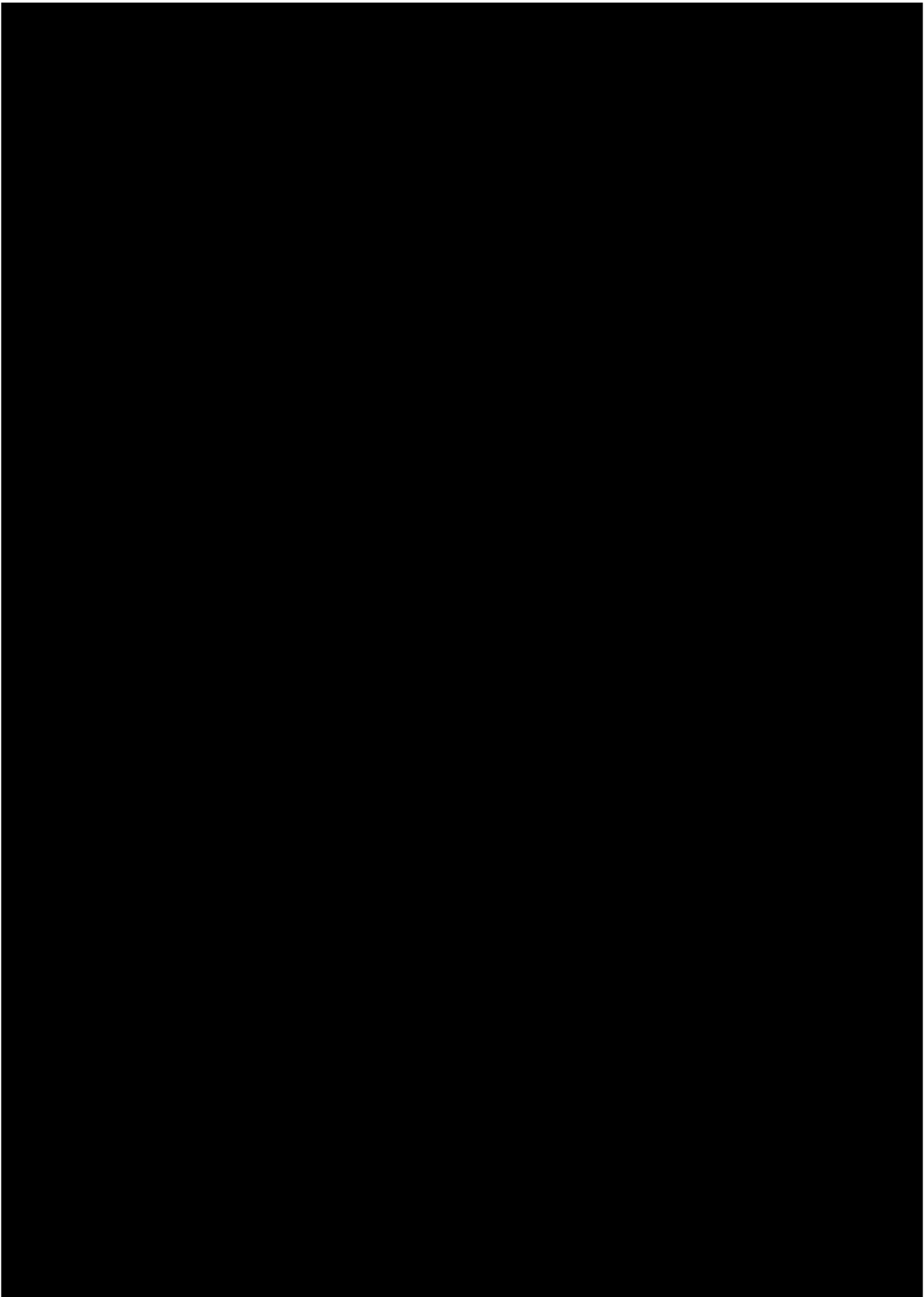


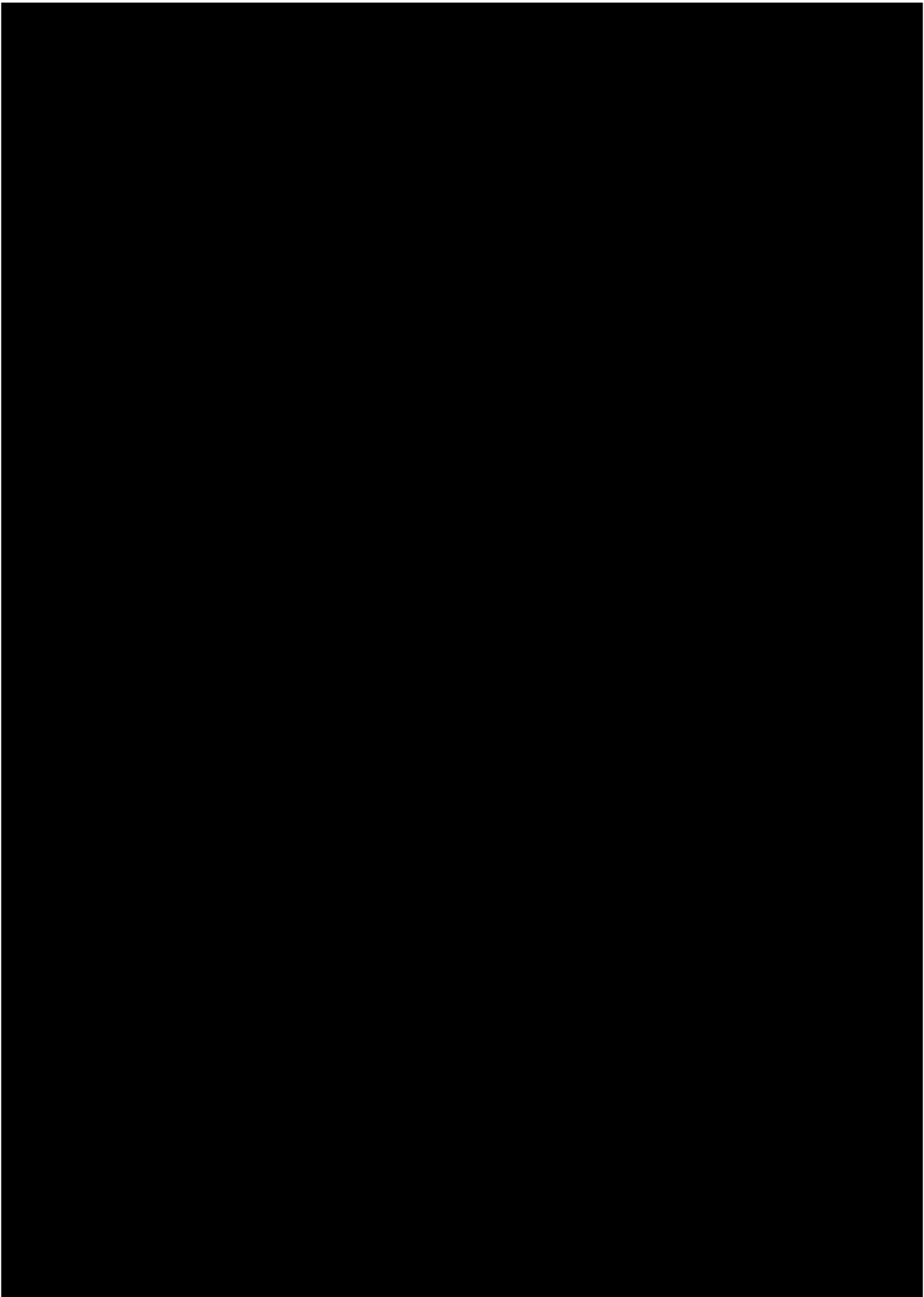


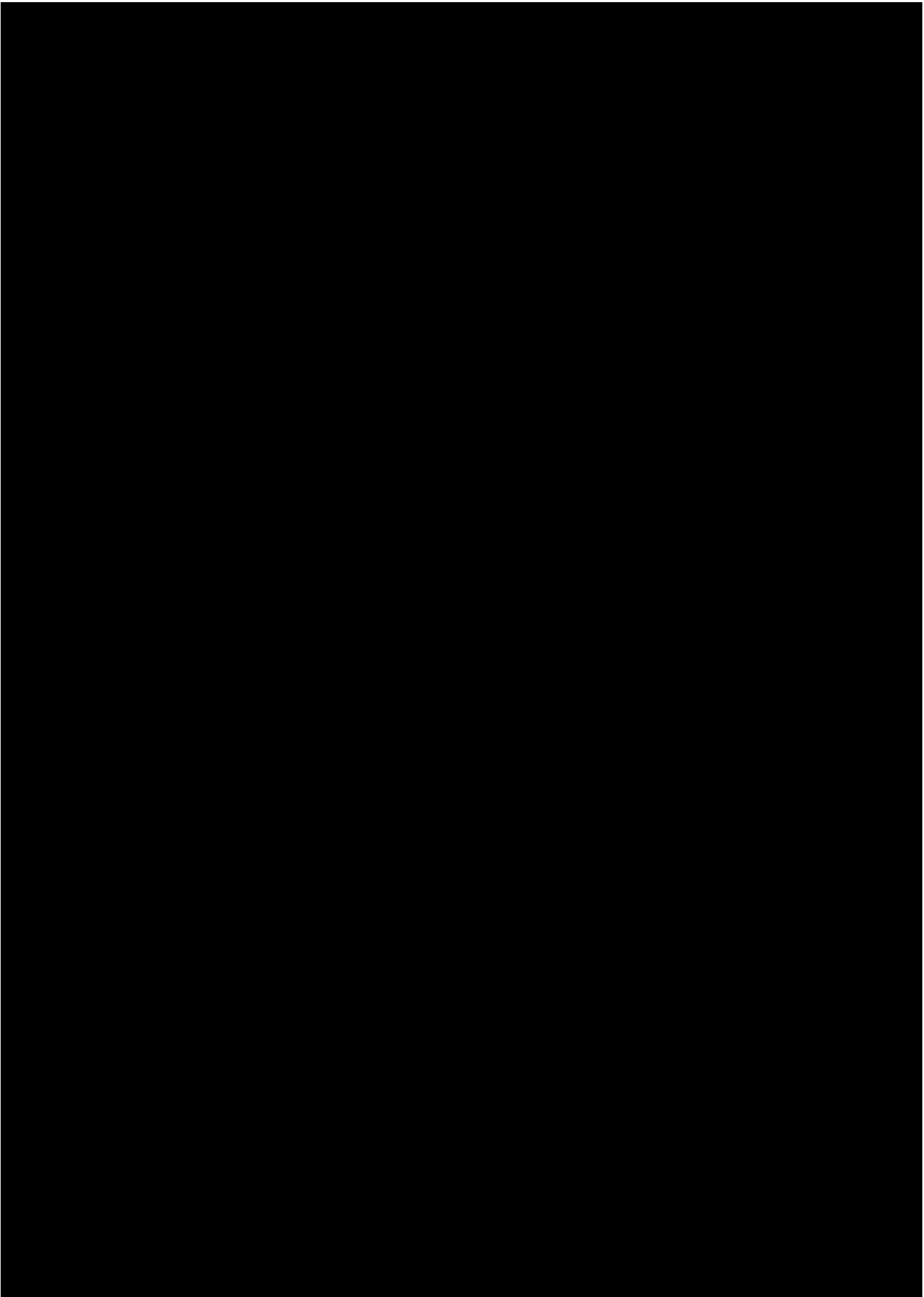


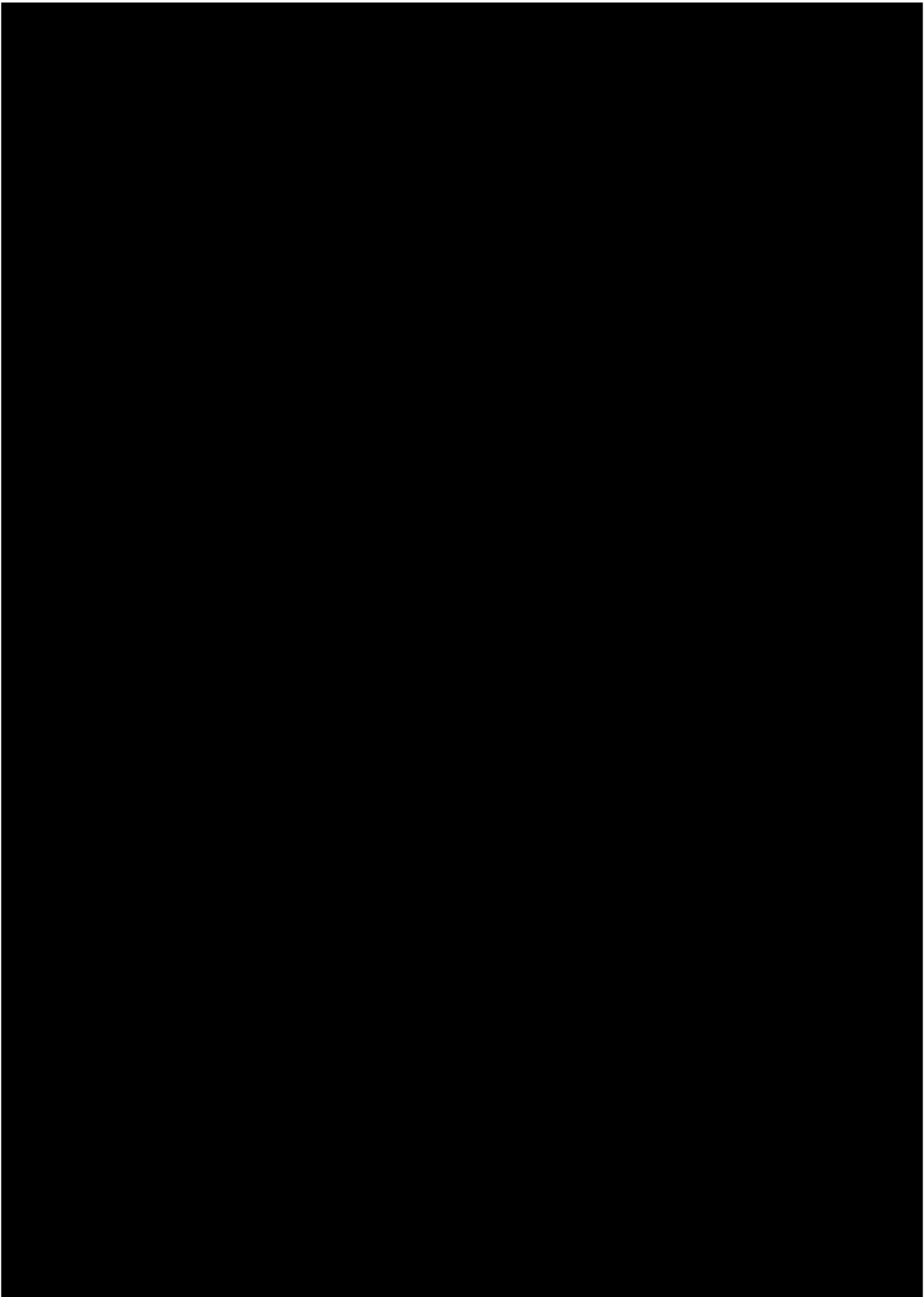


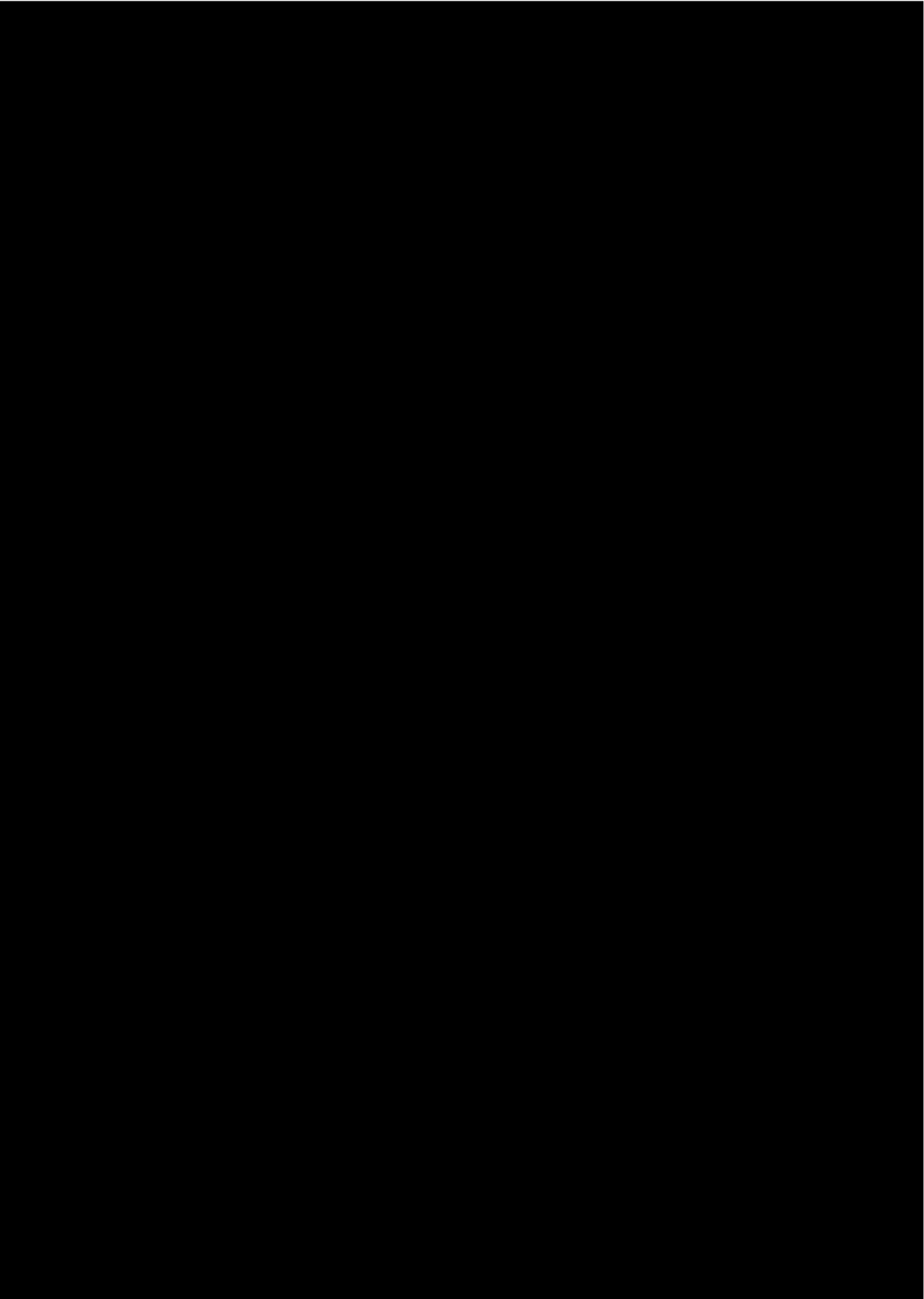


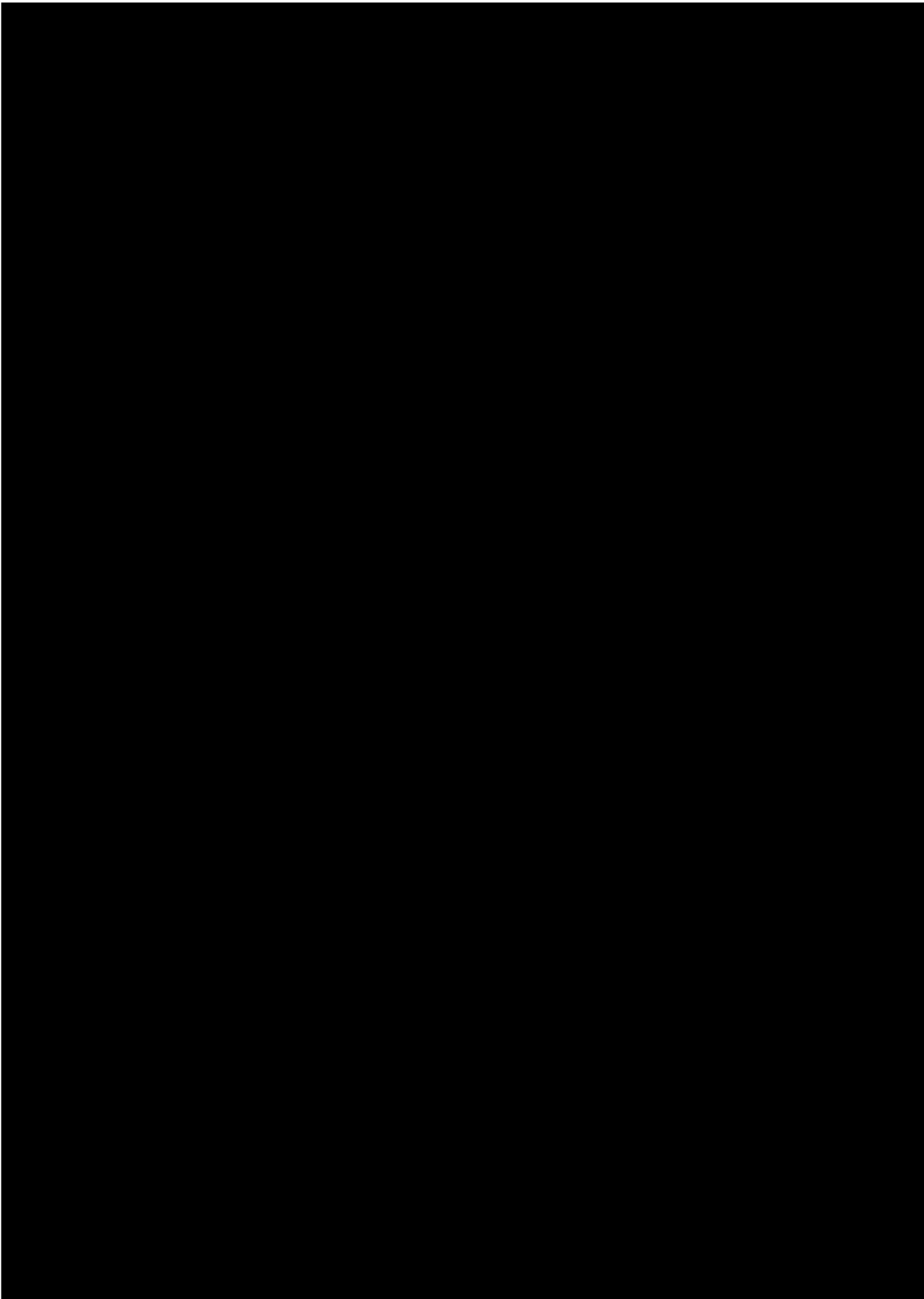


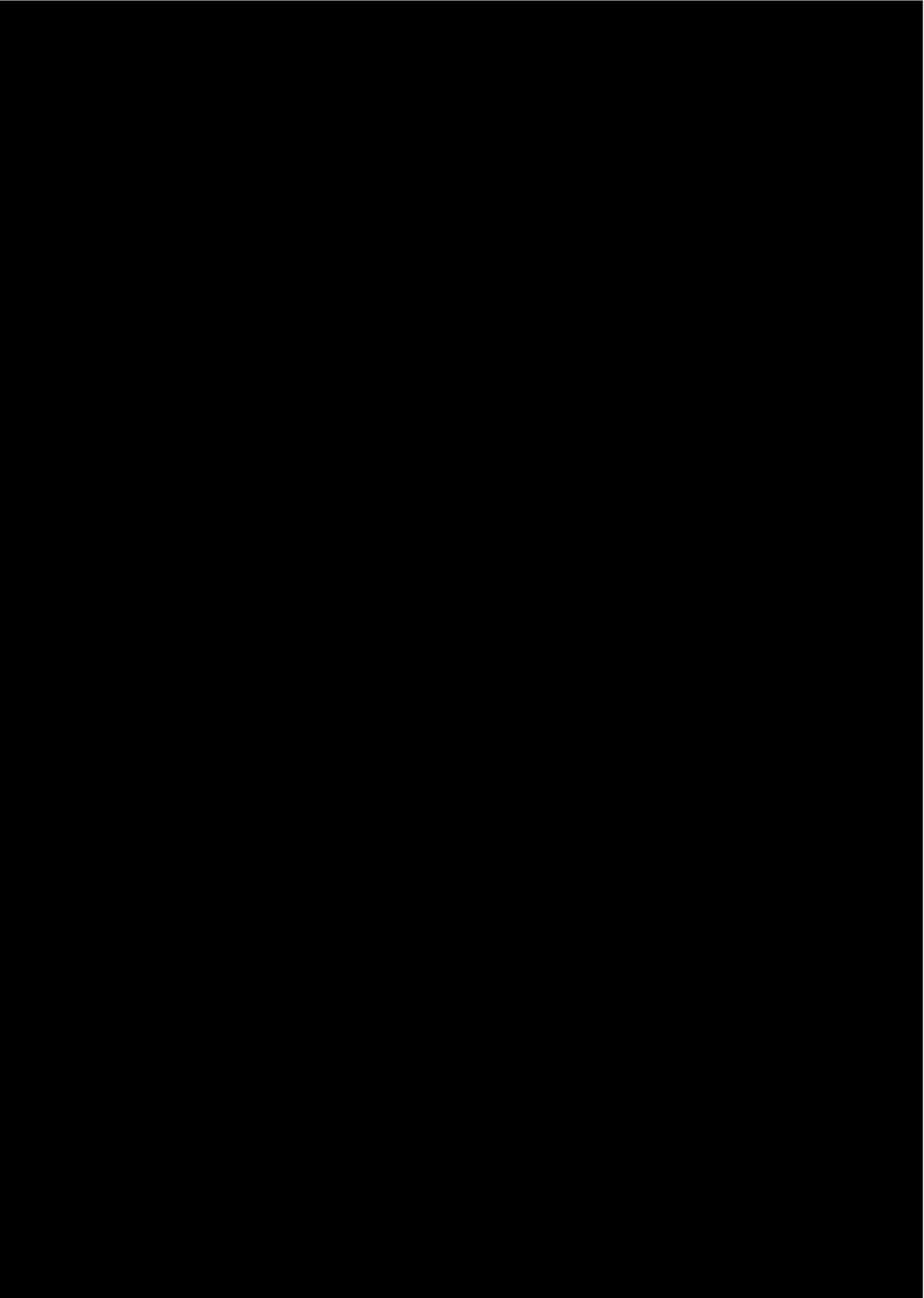


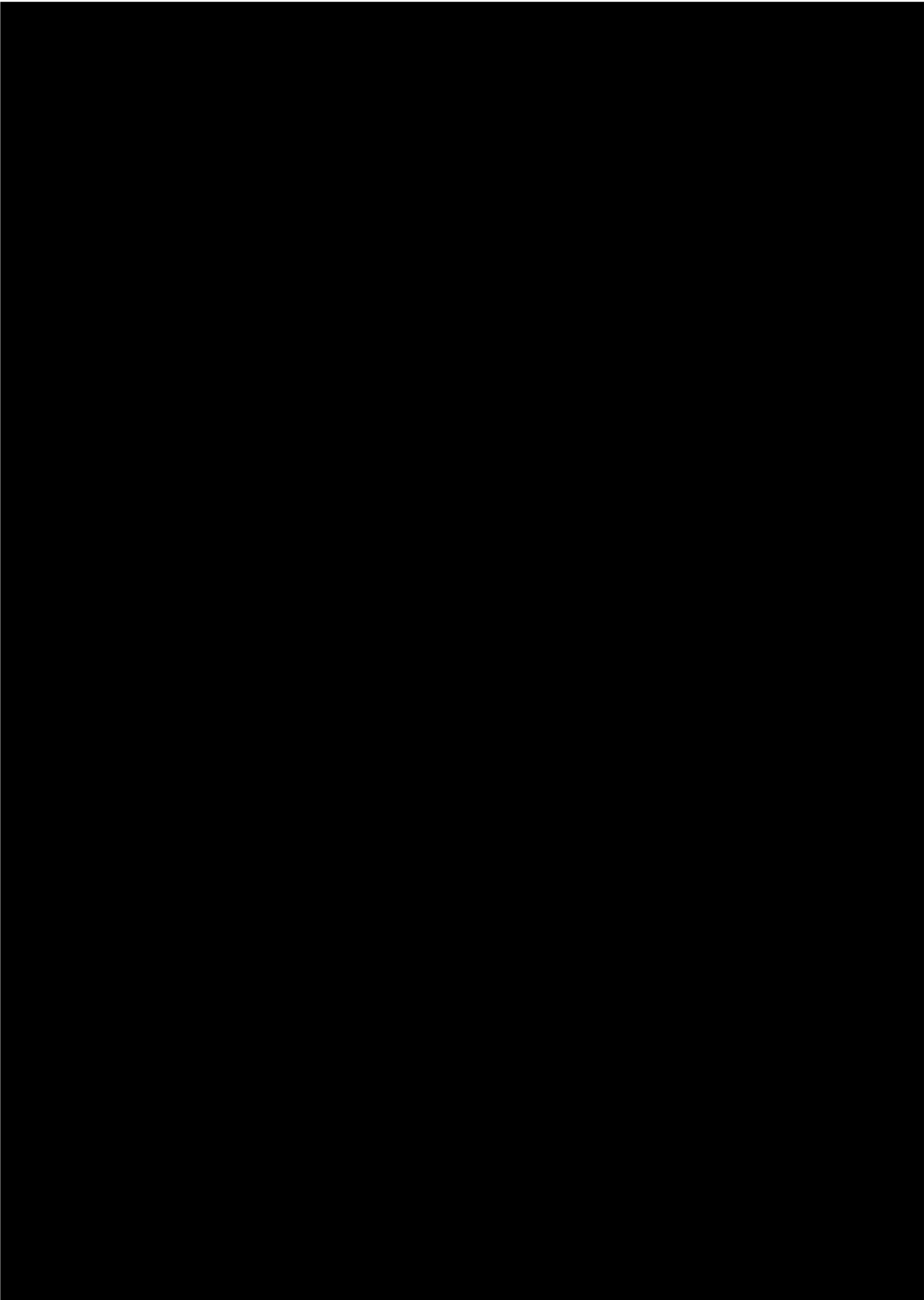


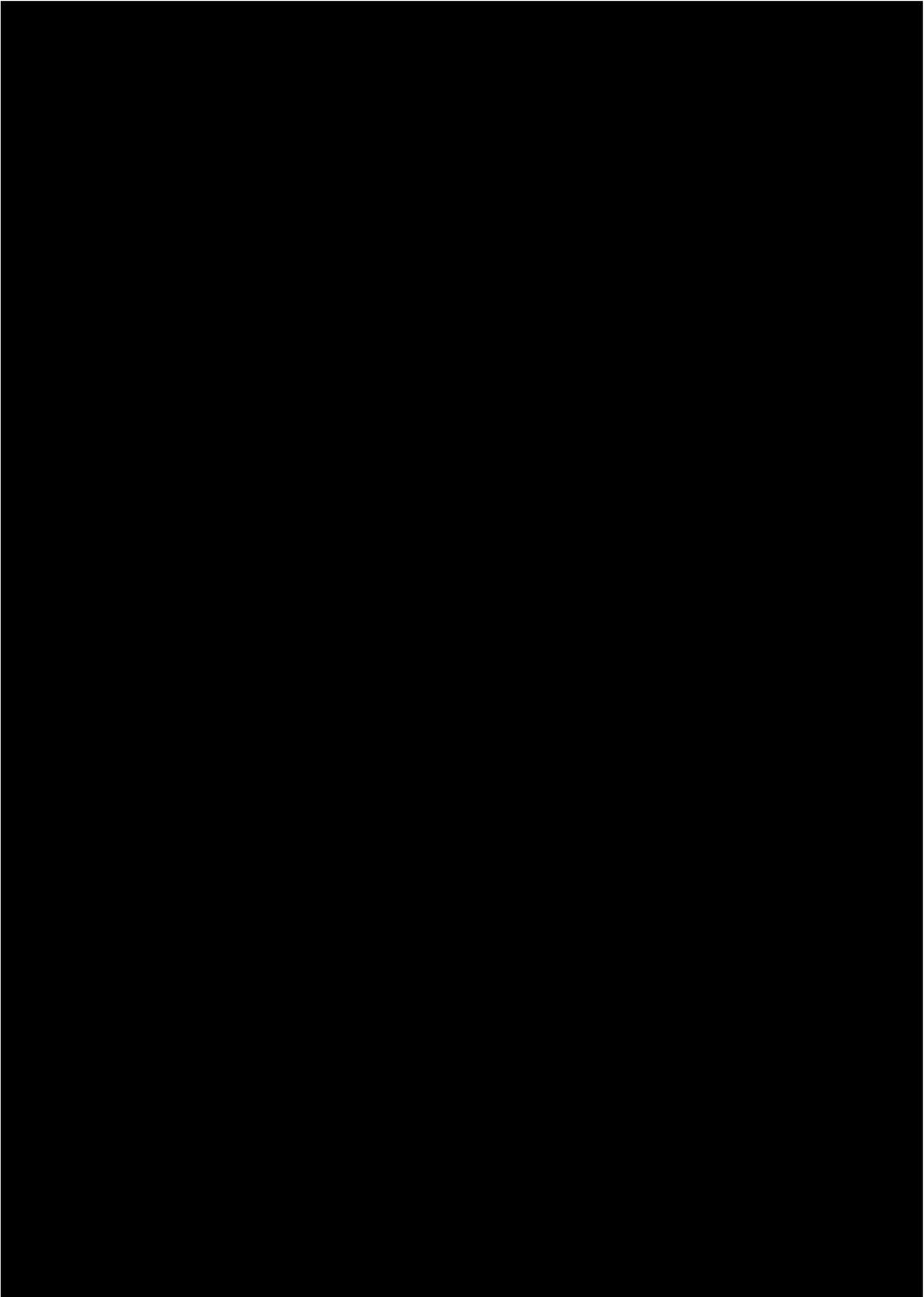


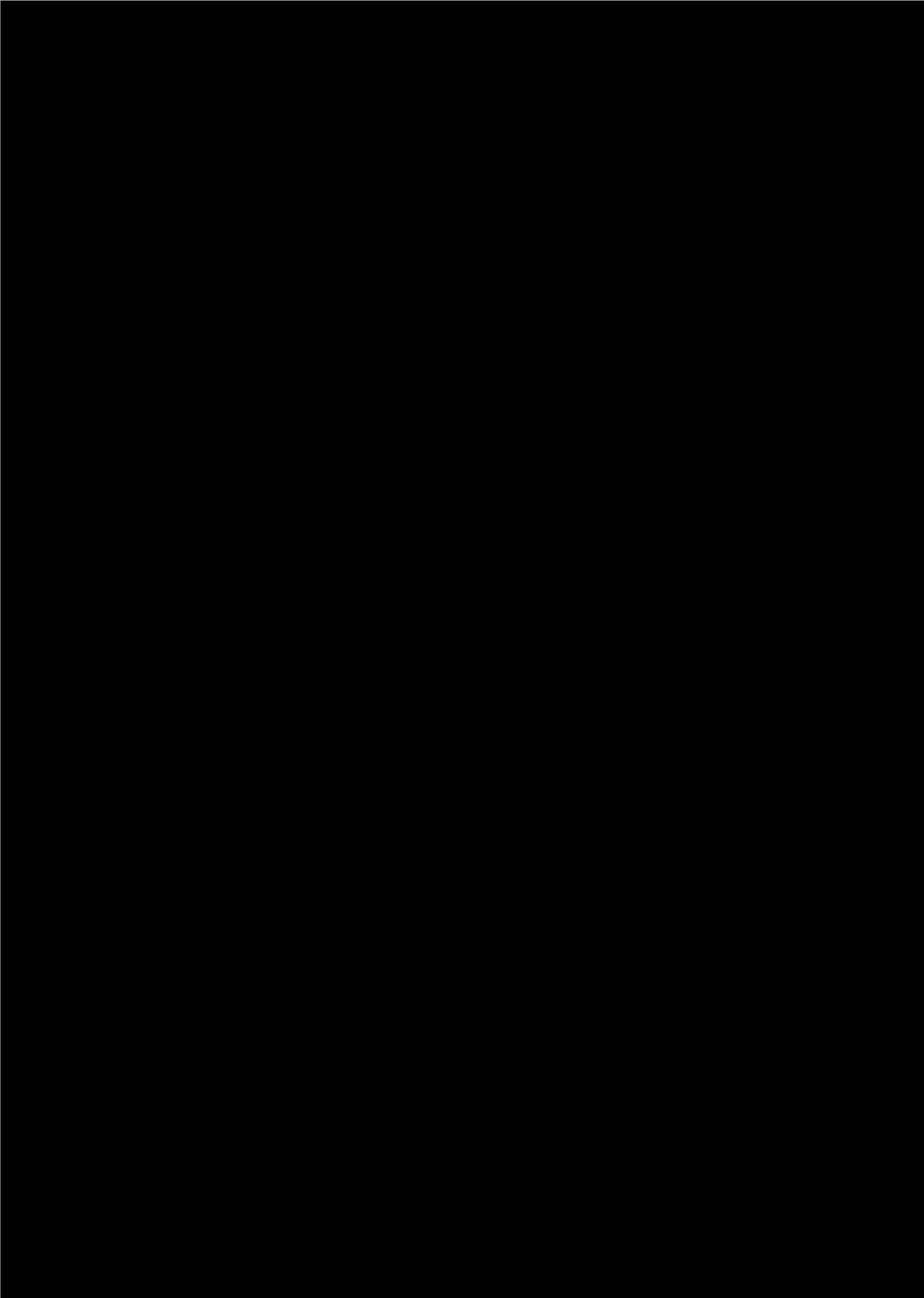


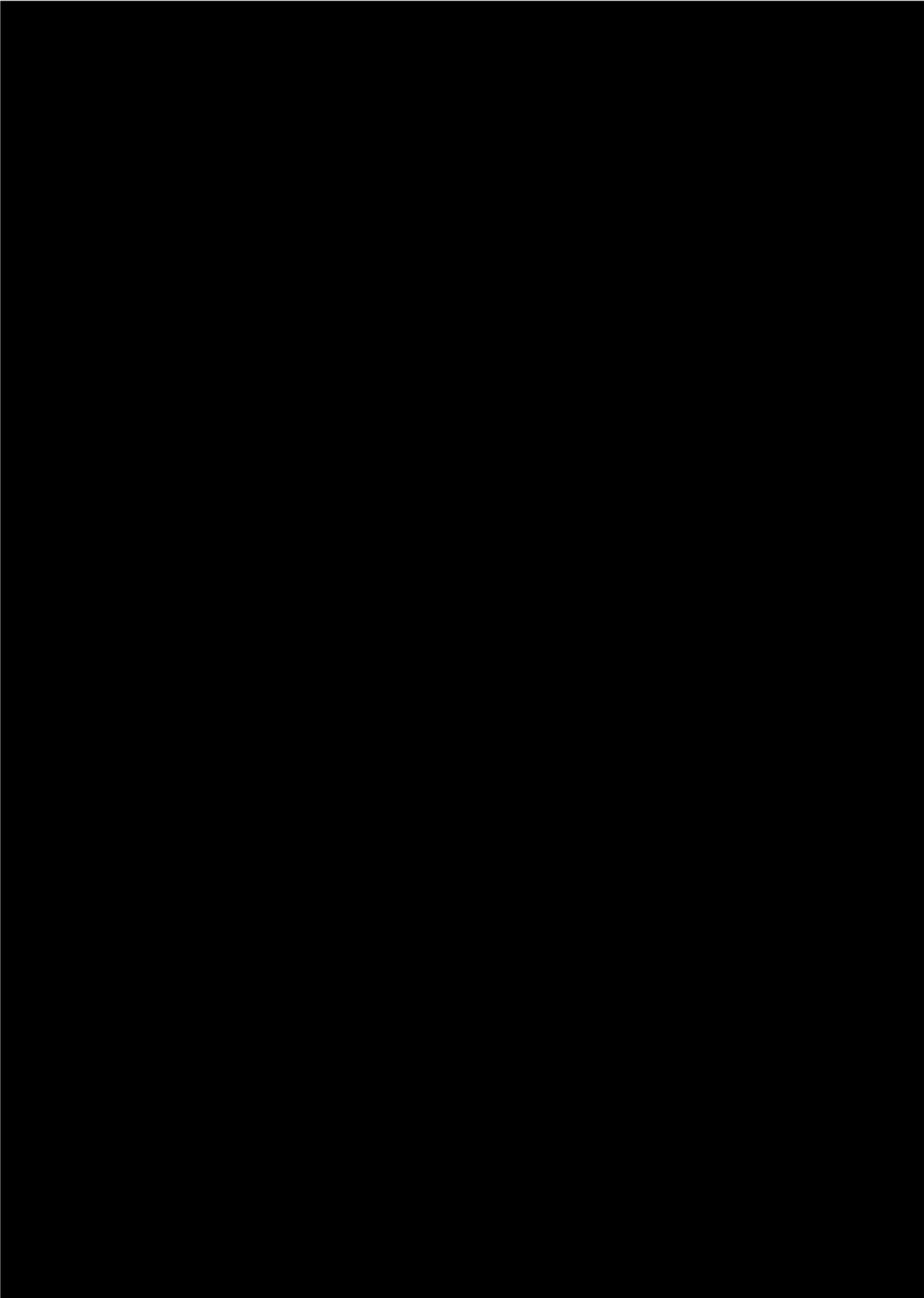




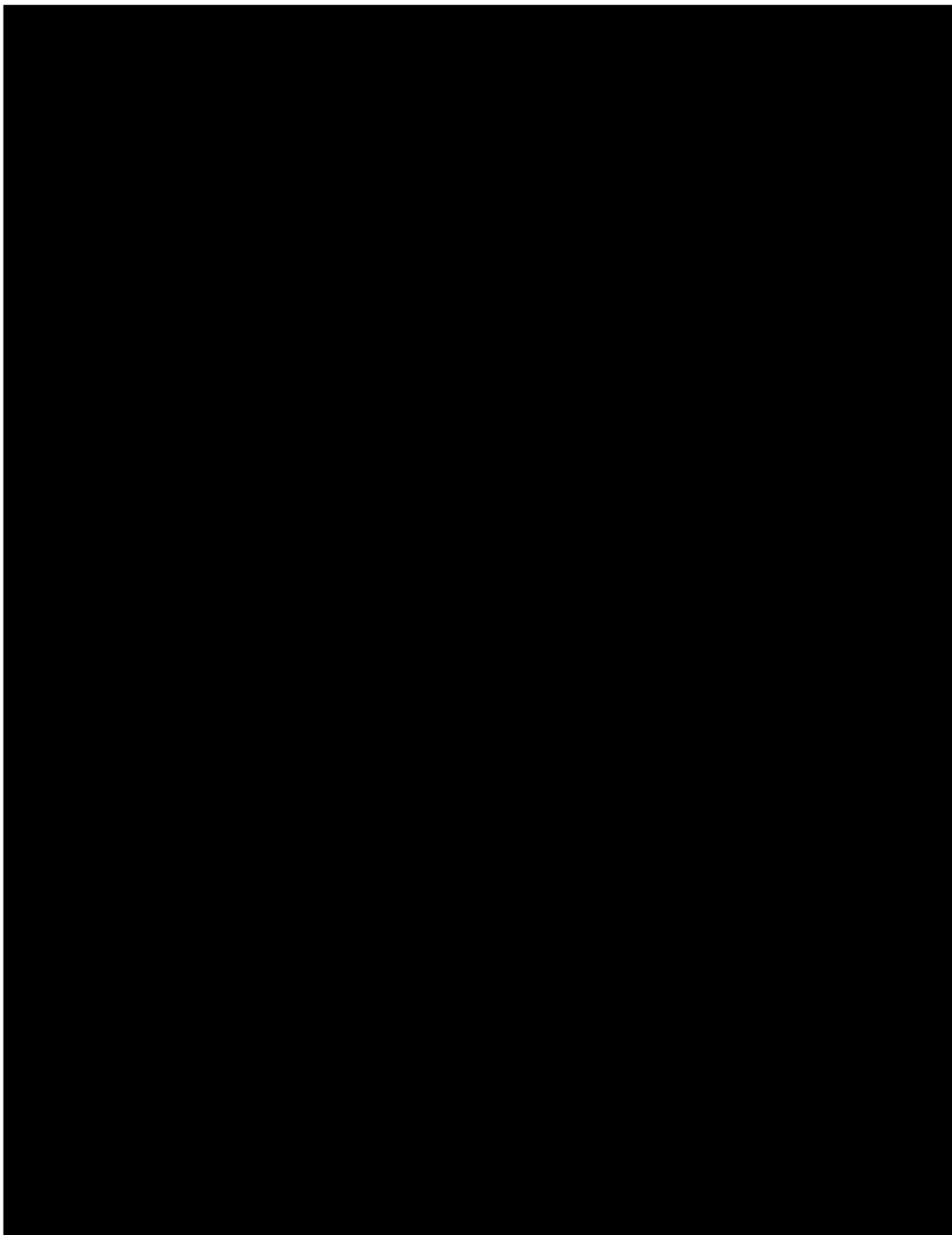








Schedule 5: Commercially Sensitive Information



Schedule 6: Transparency Reports

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

Annex 1: List of Transparency Reports

Title	Format	Frequency
Key Personnel	Schedule 29	On replacement of key personnel
Performance Monitoring report	Schedule 10, Part B	Monthly
Contract Year Performance report	Schedule 10	Annually
Security Management Plan	Schedule 16	Annually
Security Certificates	Schedule 16	Annually
Exit Plan	Schedule 30, Including policy on Net Book Value and Asset register	Within three (3) months of start date, then updated annually or when requested by the Buyer.
Implementation plan	Schedule 8	
Detailed Delivery Plan	Schedule 8	
Financial Distress Service Continuity Plan	Schedule 24	As soon as reasonably practicable, and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event
Financial Indicators report	Schedule 24	Annually
Continuous Improvement Plan	Schedule 11	Annually
Proof of Insurance	Schedule 22	Within fifteen (15) days after policy renewal or replacement
Cyber Essentials Plus Certificate or recognised equivalent	Schedule 19	Annually
Management Information	Schedule 2	Monthly, Annually, and ad hoc as appropriate for the data being shared
Rectification Plan	Template in Schedule 25	As appropriate following the process set out in Clause 11 of the Core Terms

Schedule 7: Staff Transfer

1. Definitions

- 1.1 In this Schedule, the following words have the following meanings, and they shall supplement Schedule 1 (Definitions):

“Admission Agreement”

as defined in Part D;

"Employee Liability"

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the

Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;

- (f) claims whether in tort, contract or statute or otherwise;

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Fair Deal Employees”

as defined in Part D;

“Former Supplier”

a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

“New Fair Deal”

the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes **Error! Reference source not found.-Error! Reference source not found.** inclusive to **Error! Reference source not found.** of this Schedule as notified to the Supplier by the Buyer;

“Notified Subcontractor”

a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

“Old Fair Deal”

HM Treasury Guidance *“Staff Transfers from*

Central Government: A Fair Deal for Staff Pensions” issued in June 1999 including the supplementary guidance “*Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues*” issued in June 2004;

"Partial Termination"	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);
"Replacement Subcontractor"	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

"Staffing Information"	in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, , all information required in Error! Reference source not found. (<i>Table of Staffing Information</i>) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Error! Reference source not found. from time to time.
"Statutory Schemes"	means the CSPS, NHSPS or LGPS as defined in the Annexes to Error! Reference source not found. of this Schedule;
"Supplier's Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Staff List"	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Transferring Buyer Employees"	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date; and
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such

obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Contract:

- Part C (No Staff Transfer On Start Date)
- Part E (Staff Transfer on Exit)

Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.7, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier; and;
 - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment;
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the fifteen (15) Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
 - 1.5.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief;
 - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Supplier and/or Subcontractor;
or
 - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Start Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

2. Limits on the Former Supplier's obligations

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part E: Staff Transfer on Exit

1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
 - 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
 - 1.1.3 the date which is 12 Months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
 - 1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraphs 1.1.1 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
 - 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
 - 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions,

retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);

- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
- 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
- 1.5.11 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;

- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
 - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph **Error! Reference source not found.** of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;

- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. Staff Transfer when the contract ends

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee
- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
 - 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
 - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring on or before the Service Transfer Date of:
 - a) any collective agreement applicable to the Transferring Supplier Employees; and/or

- b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
 - 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 any claim for:

- a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 6 Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.9.1 the Supplier and/or any Subcontractor; and

2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.

2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the

Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.11 Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:

2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:

a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or

b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;

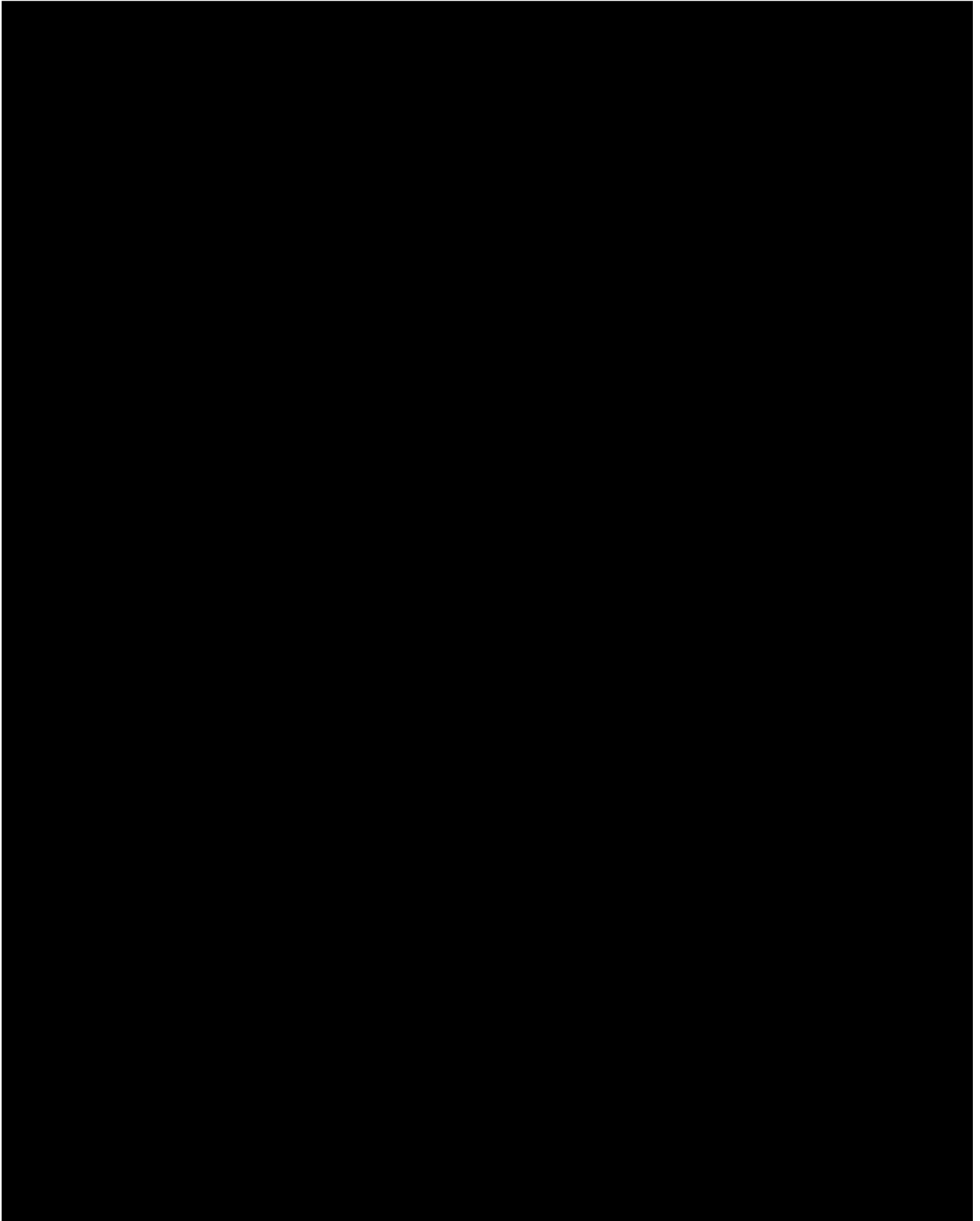
2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

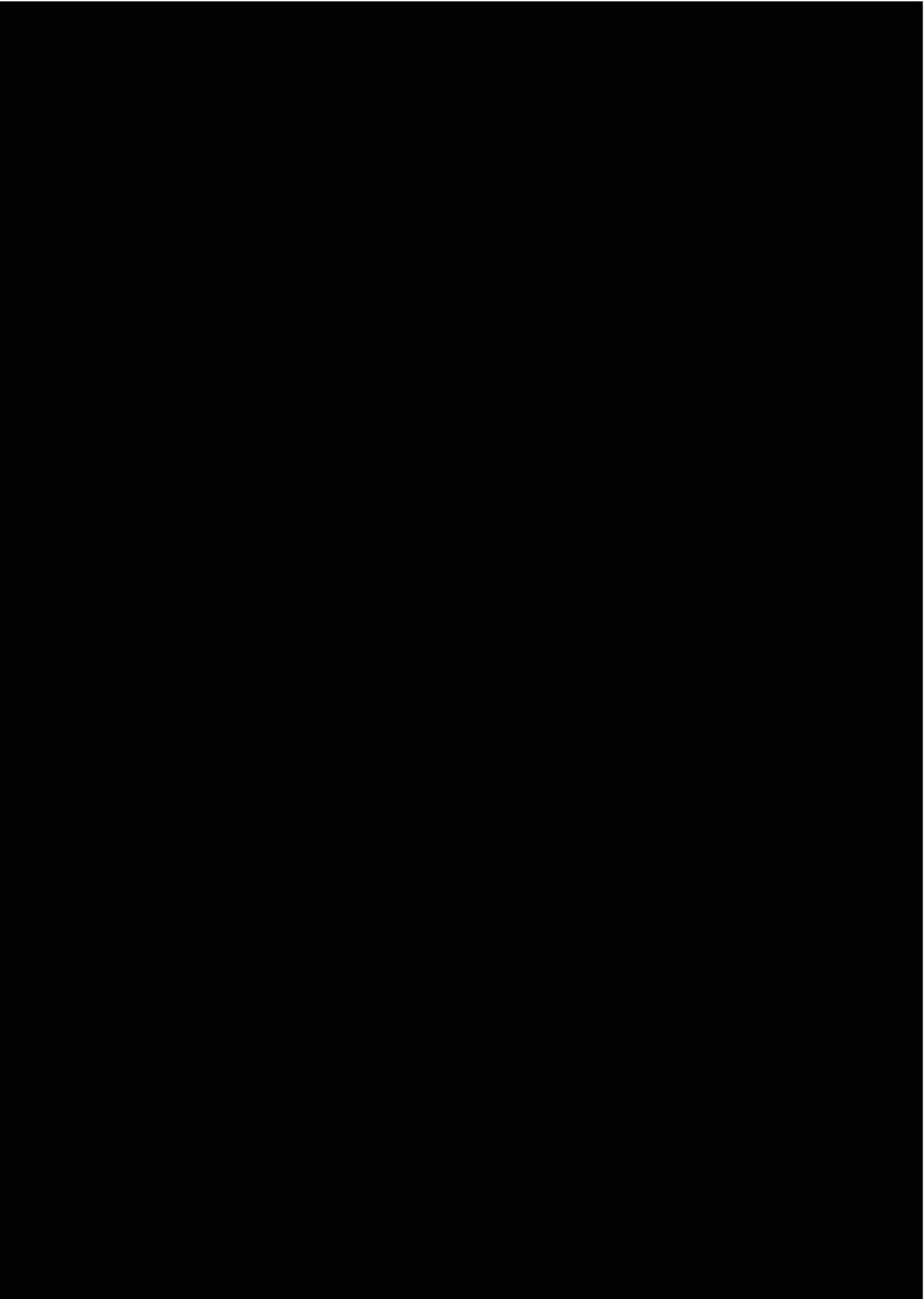
2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

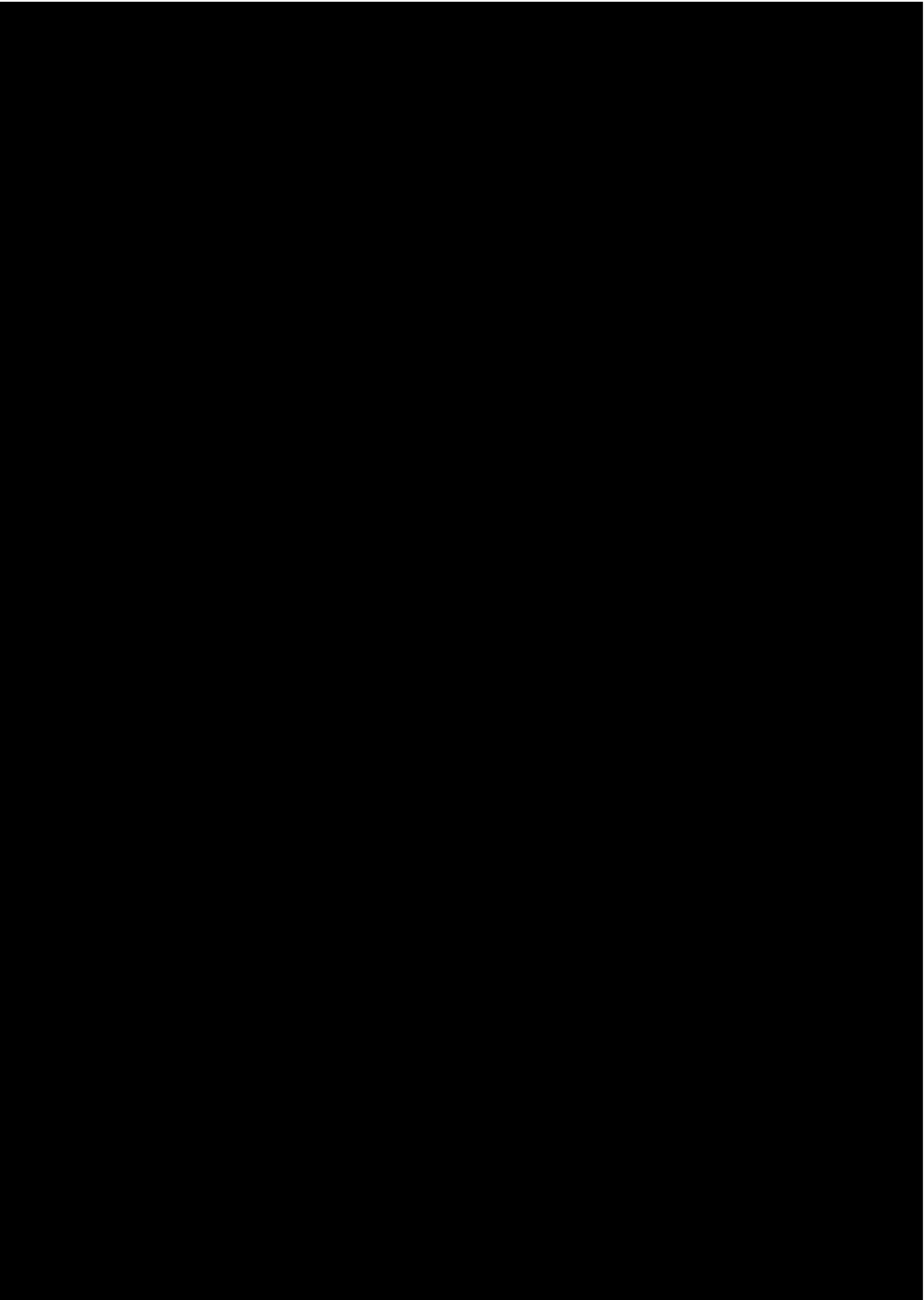
2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

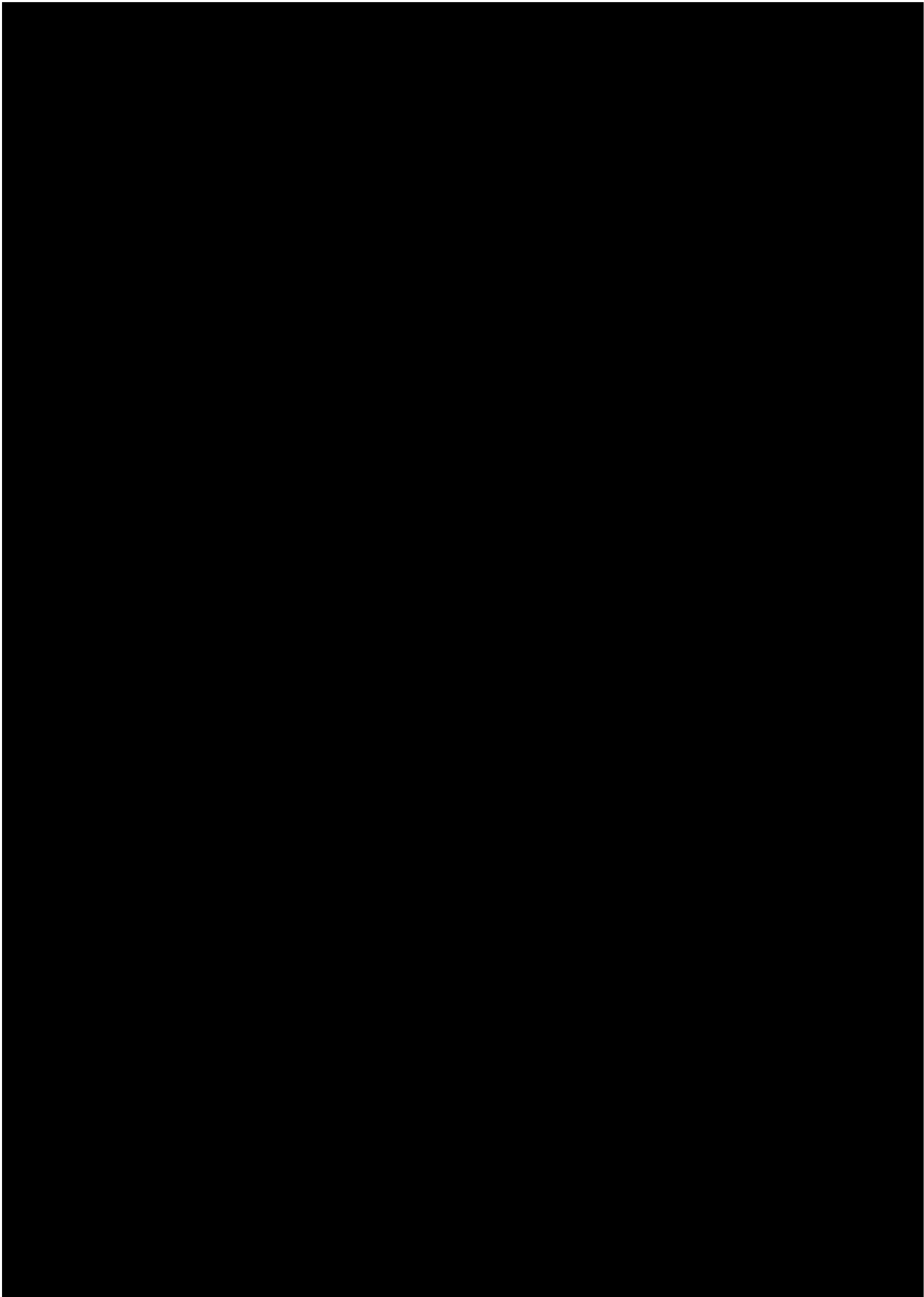
- 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.12 The indemnity in Paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

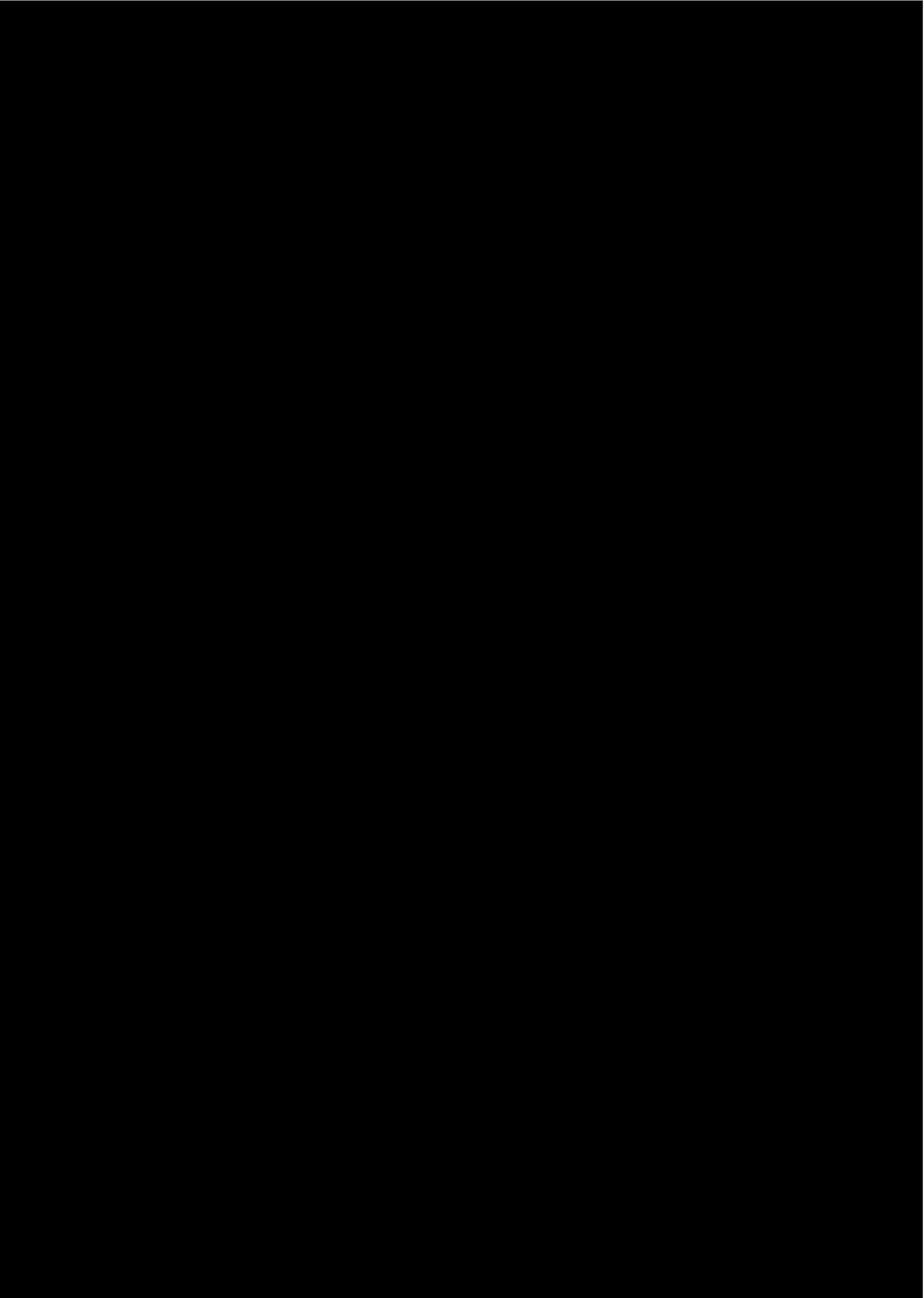
Schedule 8: Implementation and Delivery Plans



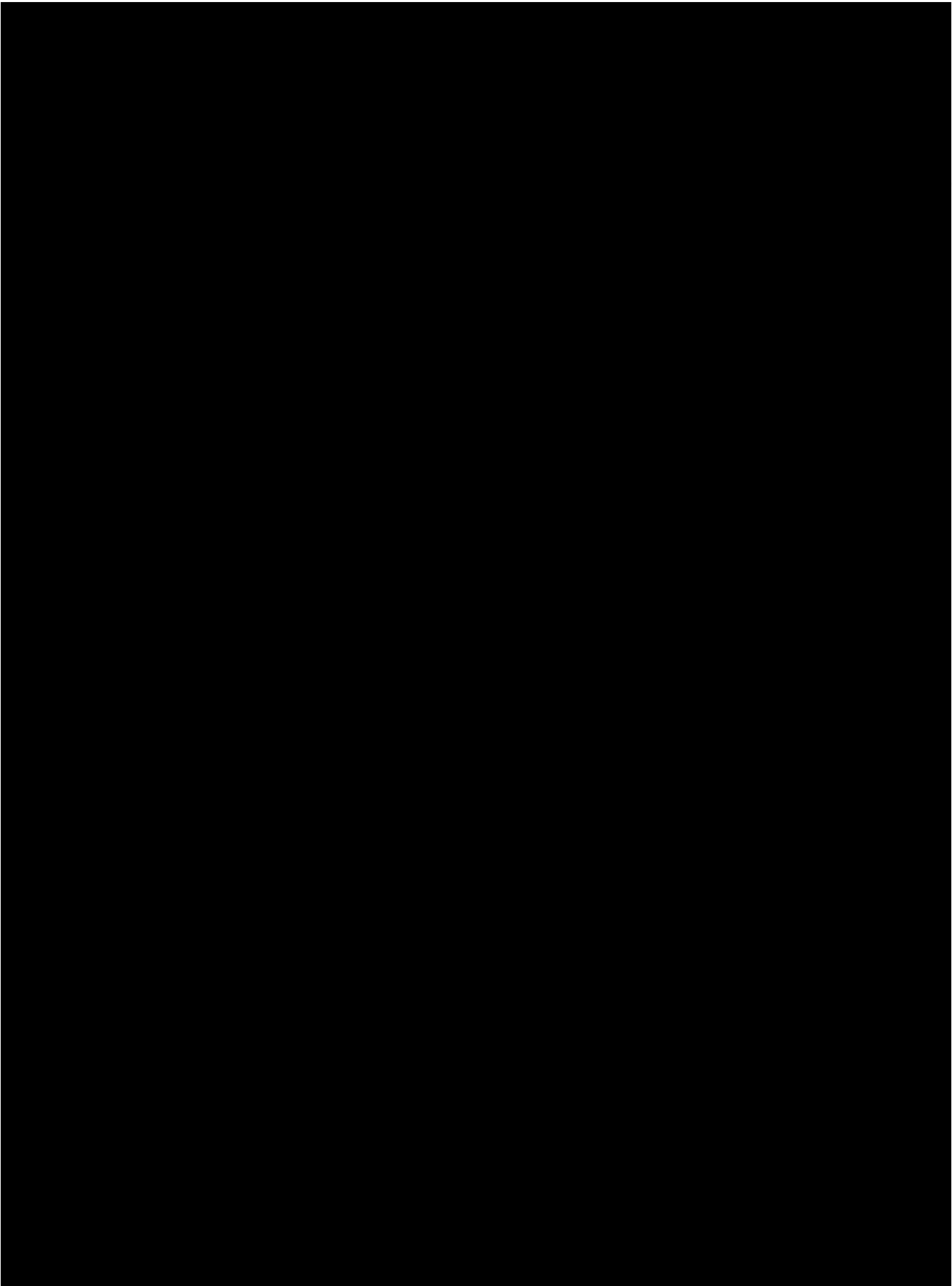


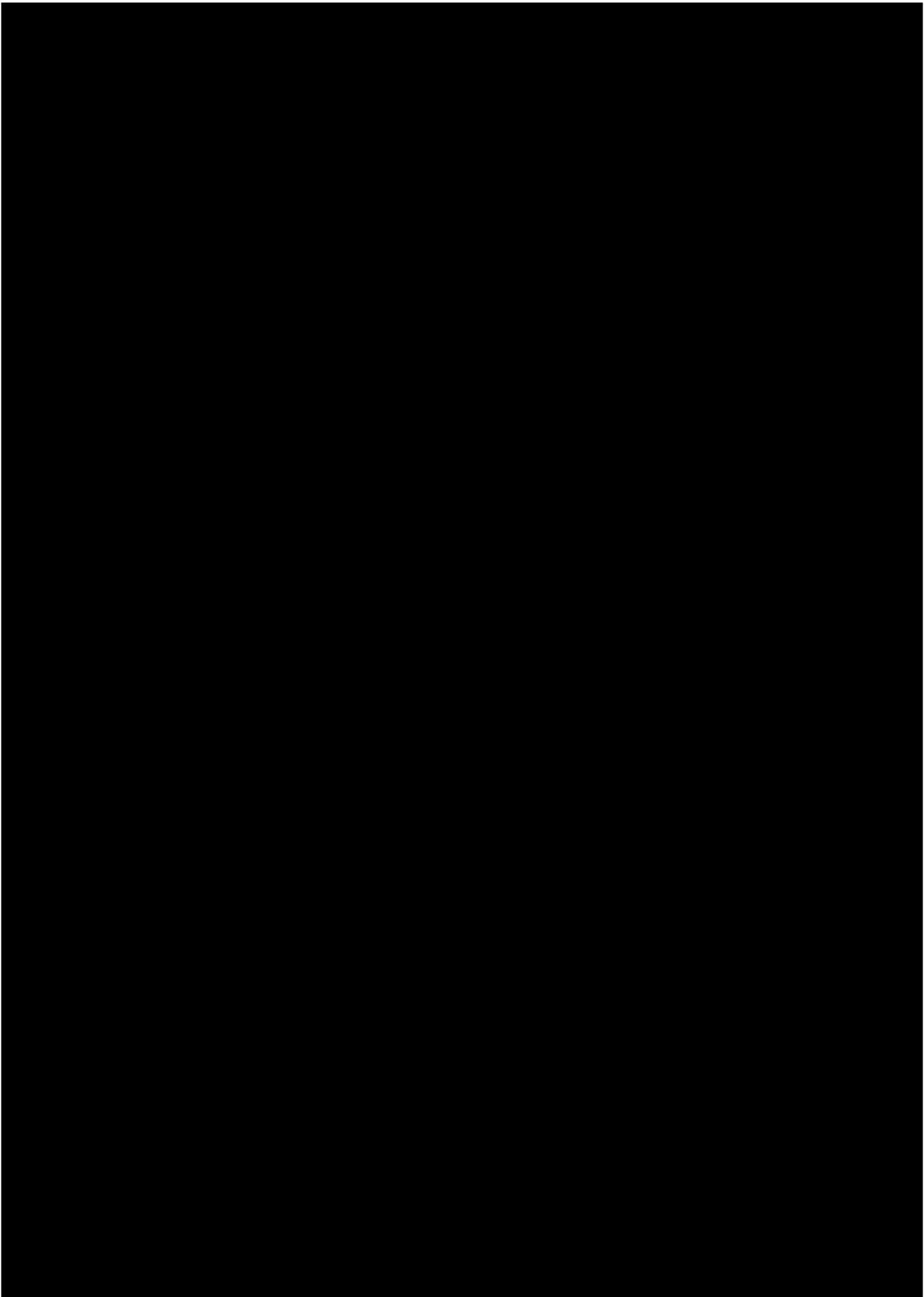












Schedule 9: Installation Works (Not Applicable)

Schedule 10: Performance Levels

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

“Critical KPI Failure”	means failure to achieve more than 50% of the Performance Measure;
“Deliverable Period”	a calendar month, save that: the first deliverable period shall begin on the first Operational Deliverable Commencement Date and shall expire at the end of the calendar month in which the first Operational Deliverable Commencement Date falls; and the final deliverable period shall commence on the first day of the calendar month in which the Contract Period expires or terminates and shall end on the expiry or termination of the Contract Period (the “Final Deliverable Period”);
“Key Performance Indicator” / “KPI”	shall be as set out against the relevant Performance Measure in Annex 1 to Part A of this Schedule;
"KPI Failure"	means a failure to meet the Performance Measure in respect of one or more KPIs;
“Performance Measure”	means the measure of performance for each KPI as detailed in Annex 1 to Part A of this Schedule;
"Service Credits"	any service credits specified in Annex 1 to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more KPI;
"Service Credit Cap"	has the meaning given to it in the Award Form;
“Service Credit Ceiling”	means the maximum applicable Service Credit applied in relation to any KPI Failure in each Contract Year calculated as set out in Annex 1 to Part A of this Schedule;
"Service Credit Floor"	means the minimum applicable Service Credit applied in relation to a KPI Failure in each Contract Year calculated as set out in Annex 1 to Part A of this Schedule;

2. What happens if you don't meet the Performance Measures

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Performance Measure (98%) for each KPI (which attract Service Credits).

- 2.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any KPIs.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing progress against each KPI in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:
- 2.4.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
 - 2.4.2 the KPI Failure:
 - (a) exceeds the relevant Service Credit Ceiling;
 - (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
 - (c) results in the corruption or loss of any Government Data; and/or
 - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
 - 2.4.3 the Buyer is otherwise entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (Buyer Termination Rights).
- 2.5 The Buyer reserves the right to revise KPIs on an annual basis following the first Contract Year. Amendments to the KPIs should be agreed by both Parties in accordance with the Variation Procedure.

3. Critical KPI Failure

- 3.1 On the occurrence of a Critical KPI Failure:
- 3.1.1 any Service Credits that would otherwise have accrued during the relevant Deliverable Period shall not accrue; and
 - 3.1.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Deliverable Period ("Compensation for Critical KPI Failure"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

Part A: Performance Levels and Service Credits

1. Key Performance Indicators

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any KPI; or
- 1.2 is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Critical KPI Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a KPI Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical KPI Failure has occurred, exercise its right to Compensation for Critical KPI Failure (including the right to terminate for material Default).

2. Service Credits

- 2.1 The Buyer shall use the Performance Monitoring Reports and any supplementary reports as may be needed to verify the KPI measure supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Contract Year.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex 1 to Part A of this Schedule.
- 2.3 The Buyer may, at its sole discretion, determine that Service Credits should not be applied with respect to an incident of failure to meet the KPIs, or determine that the Service Credit to be applied should be in an amount lower than the maximum applicable as calculated in accordance with the Contract. Any such determination shall not affect the Buyers right to apply Service Credits with respect to future instances in which the Supplier fails to meet the KPIs, whether in relation to the same KPI or others, subject to not exceeding the maximum applicable Service Credit Ceiling in relation to any individual KPI in any given Contract Year.
- 2.4 Any decision by the Buyer to apply Service Credit will not affect the Buyers future right to additionally exercise any other right for which provision is made in the Contract including a material Default. A material Default shall specifically include any breach of the Supplier's obligations as set out in Schedule 2 (Specification) which is serious in the widest sense of having a serious effect on the benefit which the Buyer would otherwise derive from the KPIs.

Annex 1 to Part A: Key Performance Indicators (KPI) Table

Theme	KPI Definition	Performance Measure (Minimum 98% delivery of the KPI)	Monitoring Method and Frequency	Service credit ceiling	Service credit floor
Teacher confidence	Improving the quality of poetry provision in schools by ensuring a minimum of 85% of teachers who participate in training workshops and the NPRC report increased confidence in teaching poetry.	Via a survey developed with DfE Analysts.	Annually	1% of the yearly contract value	£1,000
Pupil performance	Improving pupil performance by ensuring a minimum of 85% of pupils participating in the competition report increased confidence in studying and engaging with poetry as a result of participating in the NPRC and accessing supporting resources.	Via a survey developed with DfE Analysts.	Annually	1% of the yearly contract value	£1,000
Supporting disadvantaged students	Increasing opportunities for students from disadvantaged backgrounds to engage with poetry by ensuring pupils eligible for Pupil Premium make up at least 25% of the total number of participating pupils.	Supplier to provide an annual report on the numbers of pupils participating in the competition by schools (with specified URN), broken down by year group and Pupil Premium status.	Annually	N/A	N/A
Digital – Maintaining	Providing a high-quality online service, ensuring Schools	Supplier to	Quarterly	1% of the	£1,000

a high-quality online service	(teachers and pupils) have access for the duration of the NPRC competition. The Website is required to be accessible for a minimum of 98% of the time after launch, between the hours of 08:00 and 18:00 Monday to Friday. Website maintenance should be scheduled outside of these hours and contingency measures should be in place if there is any disruption.	provide a quarterly report on the accessibility of the Website over the last deliverable period. This should include any downtime and scheduled maintenance during the period.		yearly contract value	
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The Service Credits shall be calculated on the basis of the following formula:

Formula: x% (Performance Level Performance Measure) - x% (actual Performance Level performance)	=	x% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer
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Worked example:

KPI example: Recruit 1000 teachers to the programme per academic year.

£25,000 charges per academic year for delivery of the KPI.

98% (980 teachers) Performance Level Performance Measure requirement for accurate and timely billing for delivery of the KPI.

83% (830 teachers) actual performance achieved against this KPI in deliverable period.

=	98% – 83% = 15% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice by the Buyer.
	15% of £25,000 = £3,750.
	£3,750 of the total £25,000 Charges payable to the Buyer as Service Credits to be deducted from the next Invoice by the Buyer.

Part B: Performance Monitoring

3. Performance Monitoring

- 3.1 Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Performance Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible. The Supplier shall provide the Buyer with Performance Monitoring Reports which shall contain, as a minimum, the following information in respect of the relevant Deliverable Period just ended:
- 3.1.1 for each KPI the actual performance achieved for the relevant Deliverable Period;
 - 3.1.2 a summary of all achievements and failures to achieve KPIs that occurred during that Deliverable Period;
 - 3.1.3 details of any Critical Service Level Failures;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 a register of risks and issues which must include a description of the risk or issue, contingencies and countermeasures identified to reduce the likelihood and impact of the risk or issue and a considered reasonable assessment of likelihood and impact of the risk or issue;
 - 3.1.6 a breakdown of the Charges for the Deliverable Period;
 - 3.1.7 details of any deviation to Milestones within the approved Implementation and Delivery Plan as set out in Schedule 8 including as a minimum, mitigating actions; and
 - 3.1.8 such other details as the Buyer may reasonably require from time to time.
- 3.2 The Parties shall discuss Performance Monitoring Reports at the Programme Management Board on a Monthly basis unless agreed otherwise by the Buyer. The Programme Management Board will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Programme Management Board shall:
- 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 3.2.2 be attended by the Supplier's Contract Manager and the Buyer's Representative; and
 - 3.2.3 be fully minuted by the Supplier. The minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 3.3 The minutes of the preceding Month's Programme Management Board will be

agreed through email correspondence within two (2) weeks of the Programme Management Board by both the Supplier's Contract Manager and the Buyer's Representative.

- 3.4 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Deliverable Period.
- 4. Contract Year Performance Report
 - 4.1 The Supplier shall provide the Buyer with a performance report at the end of each Contract Year ("Contract Year Performance Report") in such format as agreed between the Parties and contain, as a minimum, the following:
 - 4.1.1 for each KPI, the actual performance achieved by the Supplier over the previous Contract Year;
 - 4.1.2 a summary of all KPI Failures that occurred over the previous Contract Year including the circumstances surrounding the failures and any remedial actions undertaken;
 - 4.1.3 which KPI Failures remain outstanding and progress in resolving them;
 - 4.1.4 for any Critical KPI Failures or material Defaults occurring during the Contract Year, the cause of the Failure or Default and the action being taken to reduce the likelihood of recurrence;
 - 4.1.5 the status of any outstanding Rectification Plan Process, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
 - 4.1.6 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 4.1.7 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Security Management Plan;
 - 4.1.8 a full breakdown of Charges invoiced to the Buyer within the Contract Year with comparison to the original Charges profile contained within Schedule 3;
 - 4.1.9 a summary of the impact of the Supplier's communications and digital strategy;
 - 4.1.10 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract; and
 - 4.1.11 such other details as the Buyer may reasonably require.

- 4.2 The Contract Year Performance Report shall be reviewed, and the contents agreed by the Parties at the Annual Performance Meeting held in accordance with Schedule 13.
- 4.3 The Buyer shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.
- 4.4 The Contract Year Performance Report shall be submitted to the Buyer no more than two (2) months following the end of the Contract Year or one (1) month before the Contract is due to expire or a Termination Notice has been issued in accordance with the Contract.

Schedule 11: Continuous Improvement

3. Supplier's Obligations

- 3.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 3.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 3.3 In addition to Paragraph 3.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 3.3.1 identifying the emergence of relevant new and evolving technologies;
 - 3.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 3.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
 - 3.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 3.4 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Start Date.
- 3.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

- 3.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 3.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 3.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 3.5:
 - 3.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 3.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 3.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 3.3.
- 3.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 3.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.

Schedule 12: Benchmarking (Not Applicable)

Schedule 13: Contract Management

1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Programme Management Board"	the board established in accordance with Paragraph 4.1 of this Schedule;
"Project Manager"	the manager appointed in accordance with Paragraph 2.1 of this Schedule;

2. Project Management

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

3. Role of the Supplier Project Manager

- 3.1 The Supplier Project Manager shall be:
 - 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
 - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
 - 3.1.3 able to cancel any delegation and recommence the position himself; and
 - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to the Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

4. Role of The Programme Management Board

- 4.1 The Programme Management Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Programme Management Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex 1 to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Programme Management Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Programme Management Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

5. Additional Meetings

- 5.1 Each Party shall ensure that if any members of the additional meetings detailed in Annex 1 to this Schedule shall make all reasonable efforts to attend the meetings at which their attendance is required. If any required member is not able to attend a meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the meeting in their place (wherever possible) and that the delegate is properly briefed and prepared and that they are debriefed by such delegate after the meeting.

6. Contract Risk Management

- 6.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 6.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
 - 6.2.1 the identification and management of risks;
 - 6.2.2 the identification and management of issues; and
 - 6.2.3 monitoring and controlling project plans.
- 6.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.

- 6.4 The Supplier will maintain a risk register of the risks relating to the Contract which the Buyer and the Supplier have identified.

Annex 1: Programme Management Board

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

Board/Meeting Name	Purpose	Frequency
Programme Management Board	To monitor the performance of the Contract and formalise decisions impacting delivery of the Contract	Monthly
Annual Performance Meeting	To discuss and agree content within the Contract Year Performance Report	Within 2 months after the end of the Contract Year, or two months before the end of the Contract
KIT meetings	To discuss and agree day-to-day management and/or the Supplier's future policy changes (confirmed or potential) which impact the delivery of the Contract	Monthly
Ad hoc meetings	To make informal or formal decisions, or provide direction for, the day-to-day management of the Contract, which do not require input from Senior authority within the Buying or Supplying organisation	As appropriate

Annex 2: Obligations

Schedule 14: Business Continuity and Disaster Recovery

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule;

2. BCDR Plan

- 2.1 No later than two (2) months after the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
 - 2.1.2 the recovery of the Deliverables in the event of a Disaster
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20)

Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3. General Principles of the BCDR Plan (Section 1)

3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
 - d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;

- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
 - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
 - 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and

- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Buyer Premises;
 - 5.2.2 loss of utilities to the Buyer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or Computer Aided Facilities Management (CAFM) system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
 - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
 - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting

its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

9. Circumstances beyond your control

- 9.1 The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

Schedule 15: Minimum Standards of Reliability (Not Applicable)

Schedule 16: Security

Part A: Short Form Security Requirements

4. Definitions

- 4.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Breach of Security"	<p>the occurrence of:</p> <ul style="list-style-type: none">a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/orb) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract, <p>in either case as more particularly set out in the Security Policy where the Buyer has required compliance there with in accordance with Paragraph 5.1;</p>
"Security Management Plan"	<p>the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.</p>

5. Complying with security requirements and updates to them

- 5.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 5.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 5.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.

- 5.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

6. Security Standards

- 6.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 6.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 6.2.1 is in accordance with the Law and this Contract;
 - 6.2.2 as a minimum demonstrates Good Industry Practice;
 - 6.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
 - 6.2.4 where specified by the Buyer in accordance with Paragraph 5.1 complies with the Security Policy and the ICT Policy.
- 6.3 The references to standards, guidance and policies contained or set out in Paragraph 6.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 6.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

7. Security Management Plan

7.1 Introduction

- 7.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

7.2 Content of the Security Management Plan

- 7.2.1 The Security Management Plan shall:
- (a) comply with the principles of security set out in Paragraph 6 and any other provisions of this Contract relevant to security;
 - (b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
 - (c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the

- Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- (d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
 - (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
 - (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 5.1 ; and
 - (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

7.3 Development of the Security Management Plan

- 7.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 7.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 7.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 7.3.1, or any subsequent revision to it in accordance with Paragraph 7.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working

Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

7.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 7.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 7.2 shall be deemed to be reasonable.

7.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 7.3.2 or of any change to the Security Management Plan in accordance with Paragraph 7.4 shall not relieve the Supplier of its obligations under this Schedule.

7.4 Amendment of the Security Management Plan

7.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Deliverables and/or associated processes;
- (c) where necessary in accordance with Paragraph 5.2, any change to the Security Policy;
- (d) any new perceived or changed security threats; and
- (e) any reasonable change in requirements requested by the Buyer.

7.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:

- (a) suggested improvements to the effectiveness of the Security Management Plan;
- (b) updates to the risk assessments; and
- (c) suggested improvements in measuring the effectiveness of controls.

7.4.3 Subject to Paragraph 7.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 7.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.

7.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and

amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

8. Security breach

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:
 - 8.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:
 - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) prevent an equivalent breach in the future exploiting the same cause failure; and
 - (d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.
- 8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 5.1) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

Part B: Long Form Security Requirements (Not Used)

Annex 1: Departmental Security Standards

1. Definitions

“BPSS”	means the Government’s HMG Baseline Personal Security Standard. Further information can be found at: https://www.gov.uk/government/publications/government-baseline-personnel-security-standard
“Baseline Personnel Security Standard”	
“CCSC”	is the National Cyber Security Centre’s (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards.
“Certified Cyber Security Consultancy”	See website: https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy
“CCP”	is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession. See website: https://www.ncsc.gov.uk/information/about-certified-professional-scheme
“Certified Professional”	
“CPA”	is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards.. See website: https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa
“Commercial Product Assurance”	
[formerly called “CESG Product Assurance”]	
“Cyber Essentials”	Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.
“Cyber Essentials Plus”	There are a number of certification bodies that can be approached for further advice on the scheme; the link below points to these providers: https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body

“Data”	shall have the meanings given to those terms by the Data Protection Act 2018
“Data Controller”	
“Data Protection Officer”	
“Data Processor”	
“Personal Data”	
“Personal Data requiring Sensitive Processing”	
“Data Subject”, “Process” and “Processing”	
“Department’s Data”	is any data or information owned or retained in order to meet departmental business objectives and tasks, including:
“Department’s Information”	<p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
“DfE”	means the Department for Education
“Department”	
“Departmental Security Standards”	means the Department’s security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
“Digital Marketplace / G-Cloud”	means the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.
End User Devices	means the personal computer or consumer devices that store or process information.

“Good Industry Practice”	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“Industry Good Practice”	
“Good Industry Standard”	means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
“Industry Good Standard”	
“GSC”	means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at:
“GSCP”	https://www.gov.uk/government/publications/government-security-classifications
“HMG”	means Her Majesty’s Government
“ICT”	means Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
“ISO/IEC 27001”	is the International Standard for Information Security Management Systems Requirements
“ISO 27001”	
“ISO/IEC 27002”	is the International Standard describing the Code of Practice for Information Security Controls.
“ISO 27002”	
“ISO 22301”	is the International Standard describing for Business Continuity
“IT Security Health Check (ITSHC)”	means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.
“IT Health Check (ITHC)”	
“Penetration Testing”	
“Need-to-Know”	means the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.
“NCSC”	The National Cyber Security Centre (NCSC) is the UK government’s National Technical Authority for Information Assurance. The NCSC website is

<https://www.ncsc.gov.uk>

“OFFICIAL”

the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP).

“OFFICIAL-SENSITIVE”

the term ‘OFFICIAL–SENSITIVE is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the GSCP.

“RBAC”

“Role Based Access Control”

means Role Based Access Control. A method of restricting a person’s or process’ access to information depending on the role or functions assigned to them.

“Storage Area Network”

“SAN”

means an information storage system typically presenting block based storage (i.e. disks or virtual disks) over a network interface rather than using physically connected storage.

“Secure Sanitisation”

means the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.

NCSC Guidance can be found at:

<https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>

The disposal of physical documents and hardcopy materials advice can be found at:

<https://www.cpni.gov.uk/secure-destruction>

“Security and Information Risk Advisor”

means the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:

“CCP SIRA”

<https://www.ncsc.gov.uk/articles/about-certified-professional-scheme>

“SIRA”

“Senior Information Risk Owner”

“SIRO”

means the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arms length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.

“SPF”

means the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary

**“HMG Security
Policy
Framework”**

and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely.

<https://www.gov.uk/government/publications/security-policy-framework>

2. Departmental Security Standards

- 2.1. The Supplier shall be aware of and comply the relevant [HMG security policy framework](#), [NCSC guidelines](#) and where applicable DfE Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 2.2. Where the Supplier will provide products or services or otherwise handle information at OFFICIAL for the Department, the requirements of [Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - Action Note 09/14](#) dated 25 May 2016, or any subsequent updated document, are mandated, namely that contractors supplying products or services to HMG shall have achieved, and will be expected to retain Cyber Essentials Plus certification at the appropriate level for the Contract Period The certification scope shall be relevant to the services supplied to, or on behalf of, the Department.
- 2.3. Where clause 2.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements).

The ISO/IEC 27001 certification must have a scope relevant to the services supplied to, or on behalf of, the Department. The scope of certification and the statement of applicability must be acceptable, following review, to the Department, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 2.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 2.5. Departmental Data being handled in the course of providing an ICT solution or service must be separated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required in line with clause 2.3.
- 2.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access), CCTV, alarm systems, etc.

- 2.7. The Supplier shall have in place and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Departmental Data. This policy should include appropriate segregation of duties and if applicable role based access controls (RBAC). User credentials that give access to Departmental Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 2.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to:
- physical security controls;
 - good industry standard policies and processes;
 - malware protection;
 - boundary access controls including firewalls, application gateways, etc;
 - maintenance and use of fully supported software packages in accordance with vendor recommendations;
 - use of secure device configuration and builds;
 - software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
 - user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
 - any services provided to the department must capture audit logs for security events in an electronic format at the application, service and system level to meet the department's logging and auditing requirements, plus logs shall be:
 - retained and protected from tampering for a minimum period of six months;
 - made available to the department on request.
- 2.9. The Supplier shall ensure that any departmental data (including email) transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 2.10. The Supplier shall ensure that any departmental data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Department except where the Department has given its prior written consent to an alternative arrangement.
- 2.11. The Supplier shall ensure that any device which is used to process departmental data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>
- 2.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional

secure disposal organisation. The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".

- 2.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises. The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.
- 2.14. In the event of termination of contract due to expiry, liquidation or non-performance, all information assets provided, created or resulting from the service shall not be considered as the Supplier's assets and must be returned to the department and written assurance obtained from an appropriate officer of the supplying organisation that these assets regardless of location and format have been fully sanitised throughout the organisation in line with clause 2.14.
- 2.15. In the event of termination, equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier or Sub-contractor shall protect the Department's information and data until such time, which may be long after the end of the contract, when it can be securely cleansed or destroyed. Evidence of secure destruction will be required in all cases.
- 2.16. Access by Supplier or Sub-contractor staff to Departmental Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Supplier or Sub-contractor staff must complete this process before access to Departmental Data is permitted. Any Supplier or Sub-contractor staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- 2.17. All Supplier or Sub-contractor employees who handle Departmental Data shall have annual awareness training in protecting information.
- 2.18. The Supplier shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not

available the Supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.

2.19. Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data, including user credentials, used or handled in the course of providing this service shall be recorded as an incident. This includes any non-compliance with these Departmental Security Standards for Suppliers, or other Security Standards pertaining to the solution.

- Incidents shall be reported to the department immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery. If incident reporting has been delayed by more than 24 hours, the contractor should provide an explanation about the delay.
- Incidents shall be reported through the department's nominated system or service owner.
- Incidents shall be investigated by the contractor with outcomes being notified to the Department.

2.20. The Supplier shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.

2.21. The Supplier or Sub-contractors providing the service will provide the Department with full details of any actual or future intent to develop, manage, support, process or store Departmental Data outside of the UK mainland. The Supplier or Sub-contractor shall not go ahead with any such proposal without the prior written agreement from the Department.

2.22. The Department reserves the right to audit the Supplier or Sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Supplier's, and any Sub-contractors', compliance with the clauses contained in this Section.

2.23. The Supplier and Sub-contractors shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Department. This will include obtaining any necessary professional security resources required to support the Supplier's and Sub-contractor's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.

2.24. Where the Supplier is delivering an ICT solution to the Department they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Supplier will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Supplier shall provide written evidence of:

- Compliance with HMG Minimum Cyber Security Standard.
- Any existing security assurance for the services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification.
- Any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.
- Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be and date expected.

2.25. The Supplier shall contractually enforce all these Departmental Security Standards for Suppliers onto any third-party suppliers, Sub-contractors or partners who could potentially access Departmental Data in the course of providing the Deliverables.

Schedule 17: Service Recipients (Not Applicable)

Schedule 18: Supply Chain Visibility (Not Applicable)

Schedule 19: Cyber Essentials Scheme

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

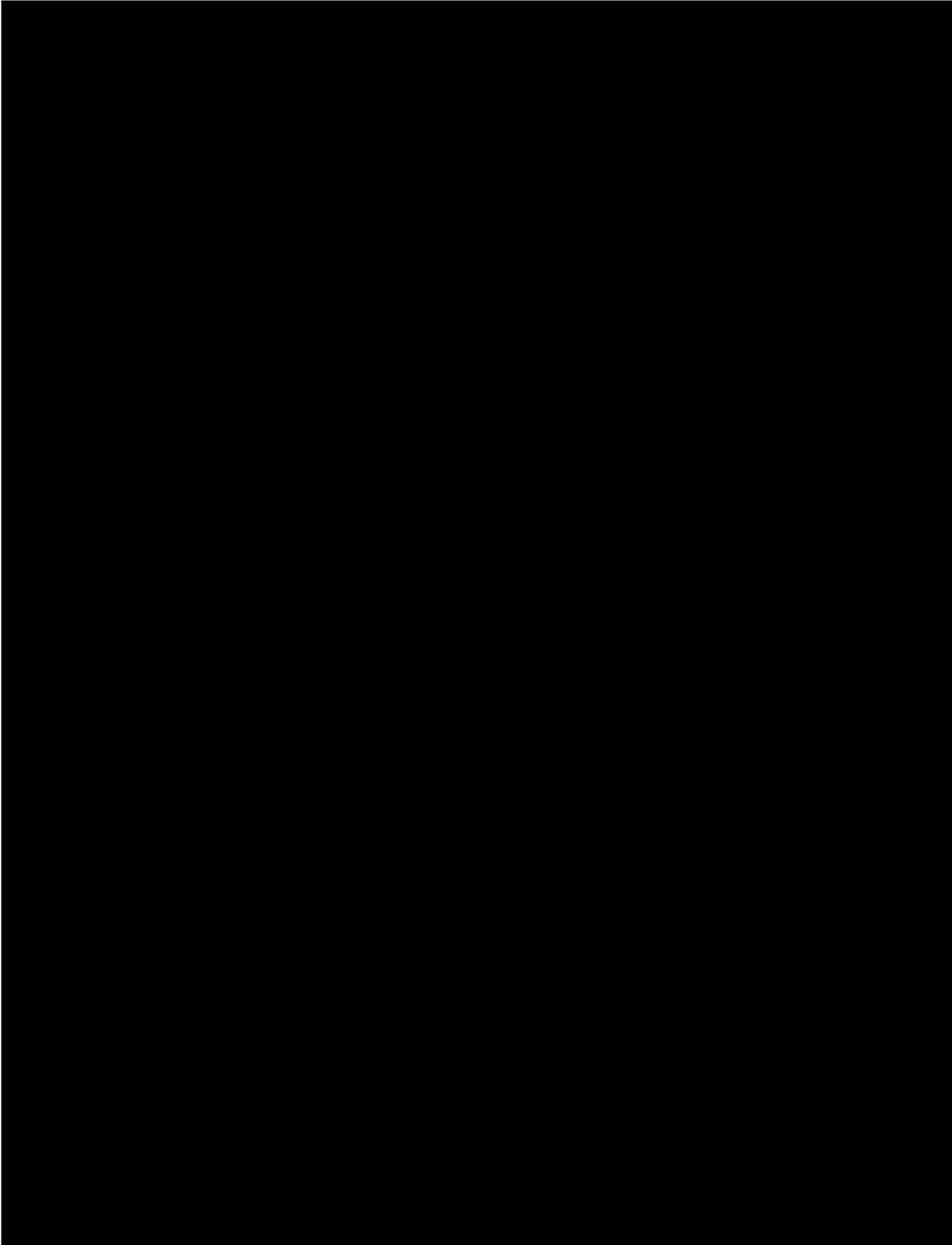
"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet-based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview
"Cyber Essentials Certificate"	Cyber Essentials Certificate to be provided by the Supplier as set out in the Award Form
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

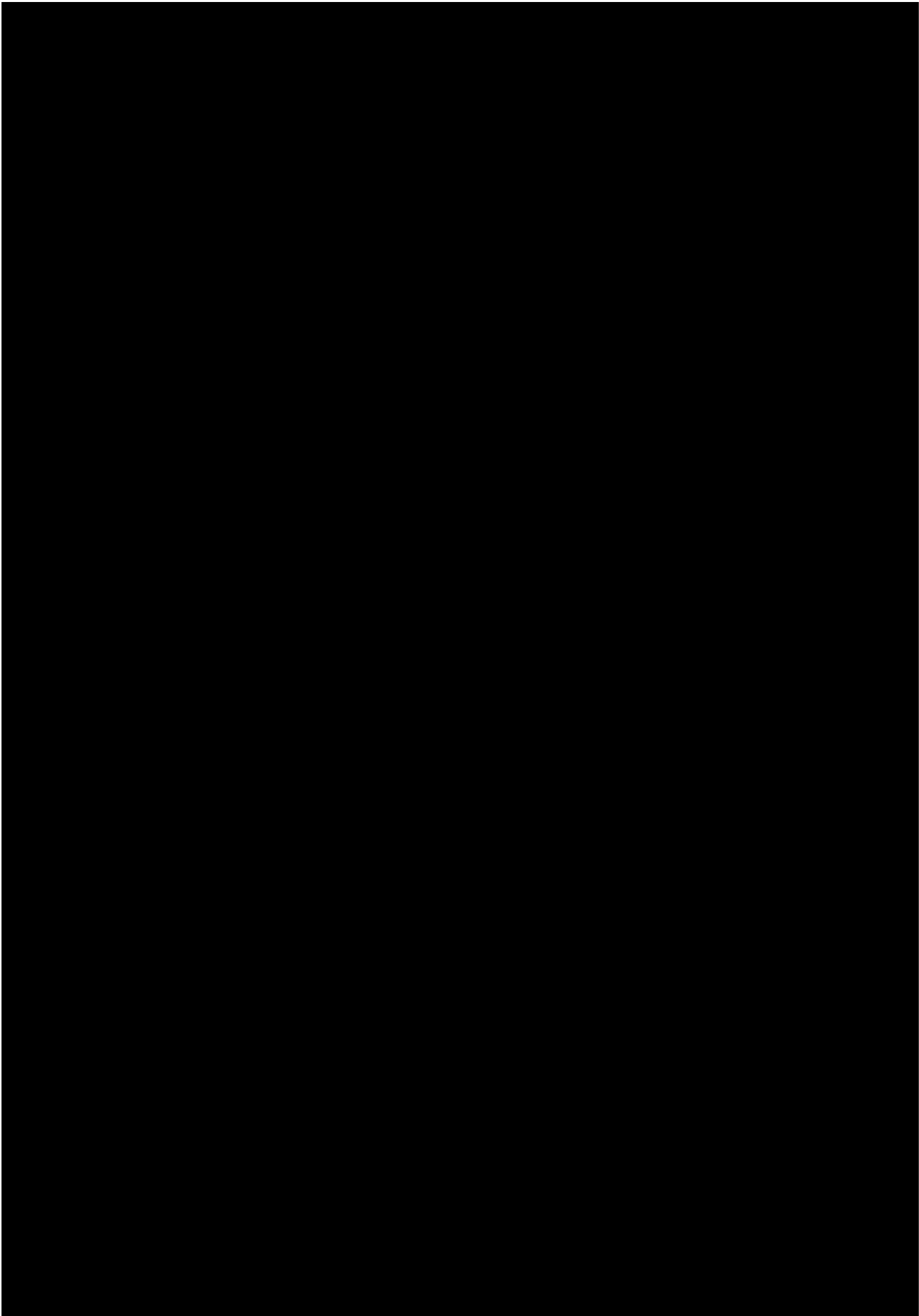
2. What Certification do you need

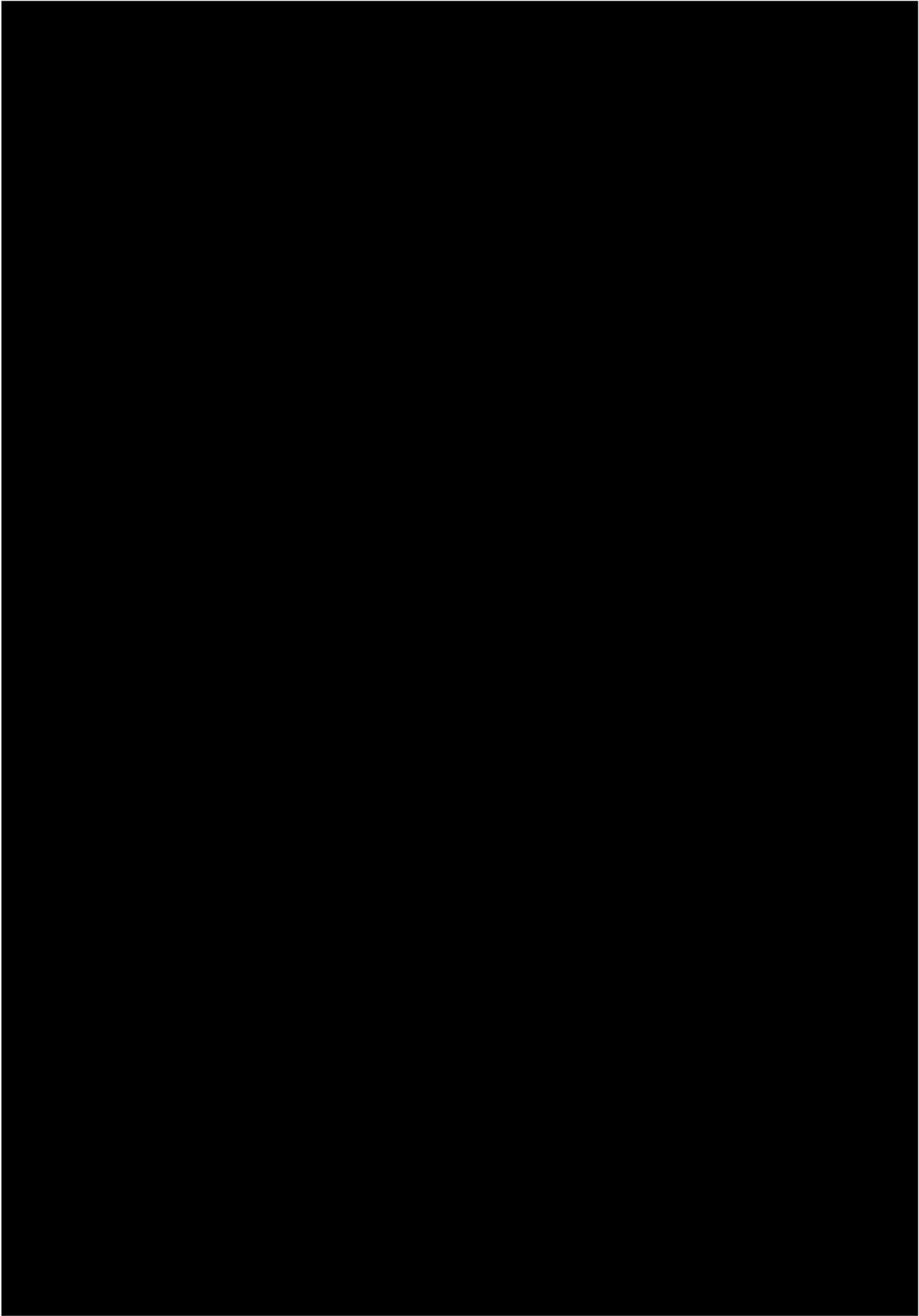
- 2.1 The Supplier must provide a valid **Cyber Essentials Certificate** within three (3) months of the Contract Start Date and a valid **Cyber Essentials Plus Certificate** within six (6) months of the Contract Start Date to provide the appropriate assurance level to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from continuing with the provision of Deliverables under the Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process **Cyber Essentials Scheme Data** during the Contract Period of the Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificates on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.

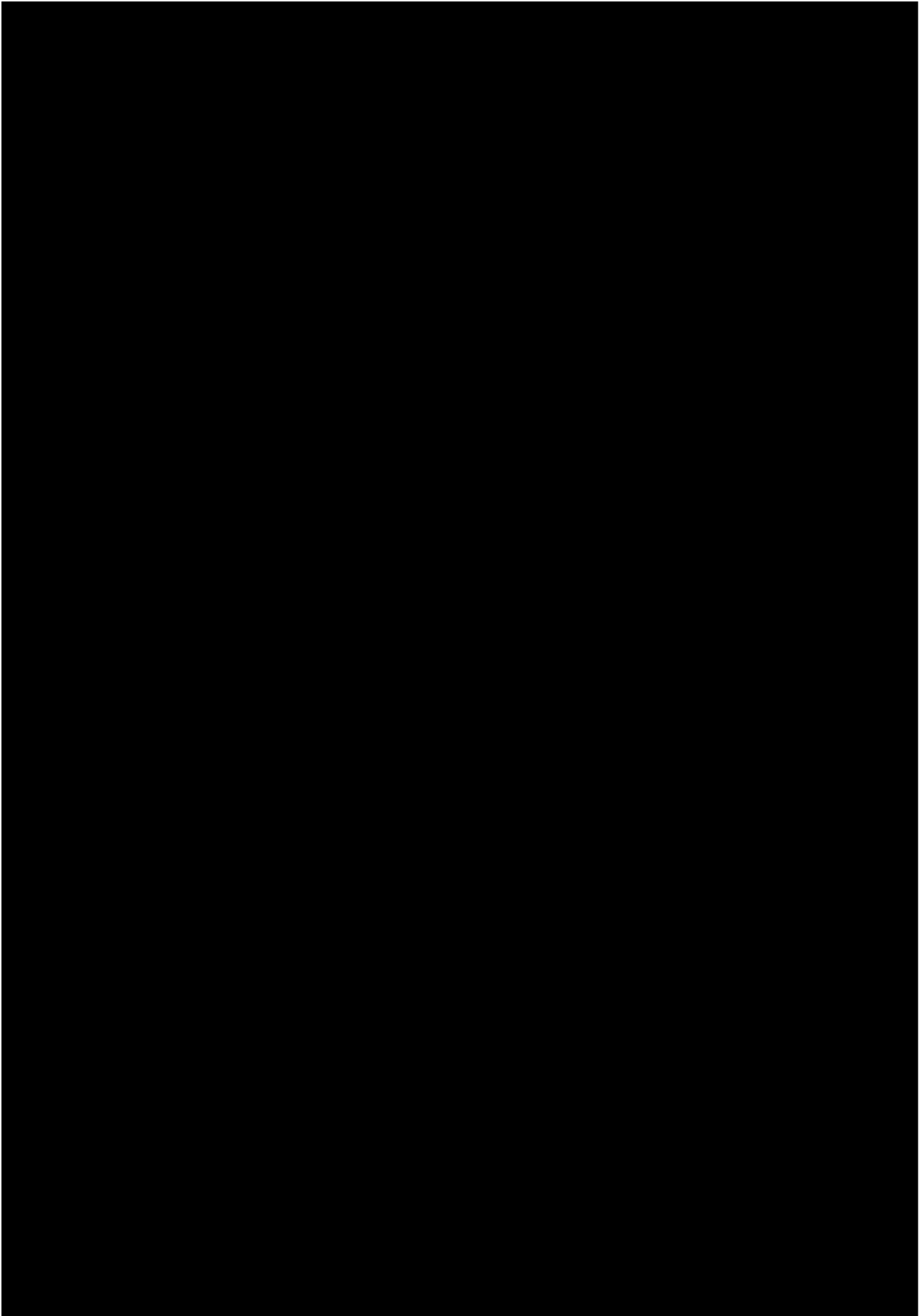
- 2.3 Where the Supplier is due to Process **Cyber Essentials Scheme Data** after the Start date of the Contract but before the end of the Contact Period, the Supplier shall deliver to the Buyer evidence of:
 - 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
 - 2.3.2 renewal of the valid Cyber Essentials Certificates on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for material Default.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
- 2.6 This Schedule shall survive termination or expiry of this Contract.

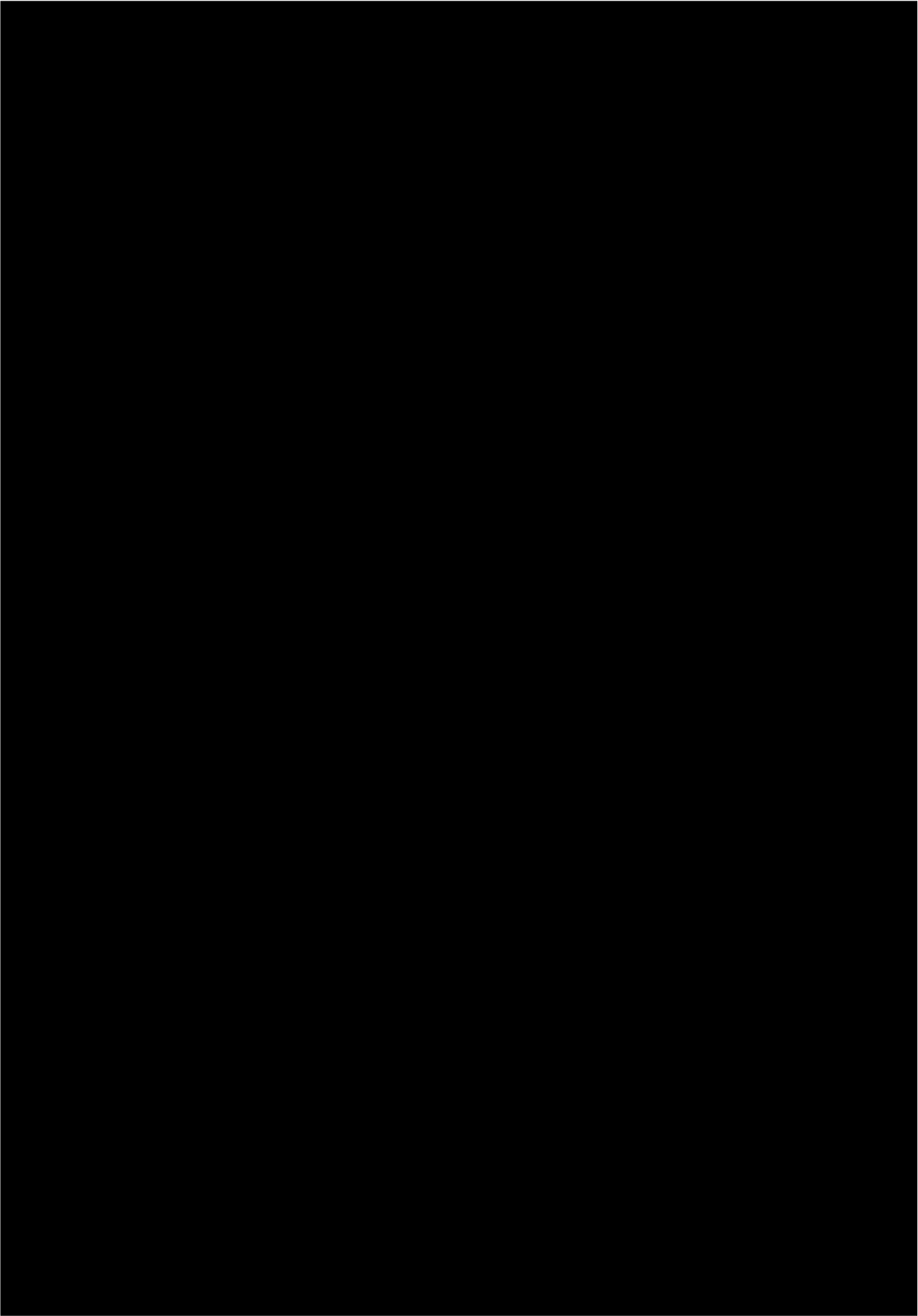
Schedule 20: Processing Data

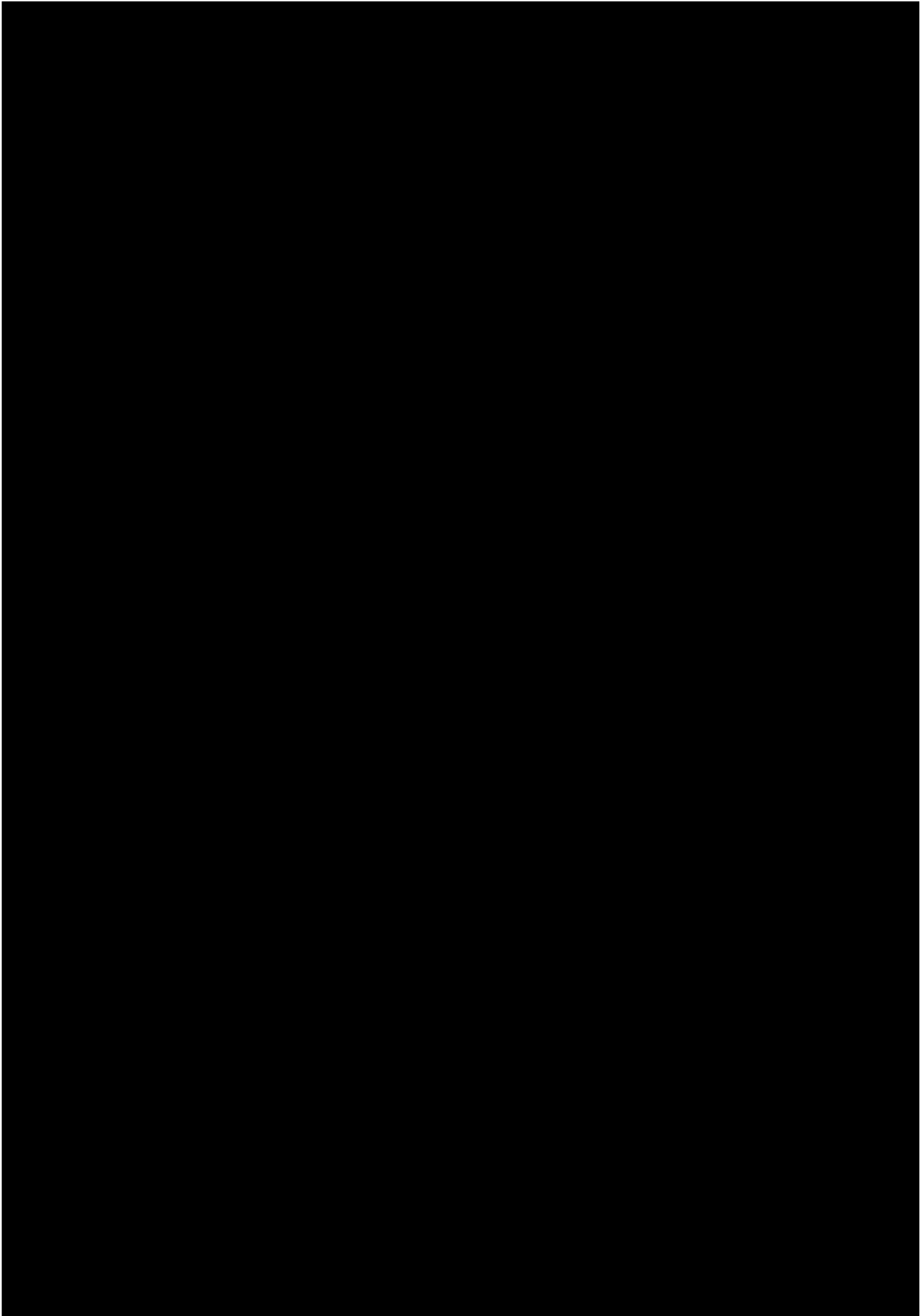


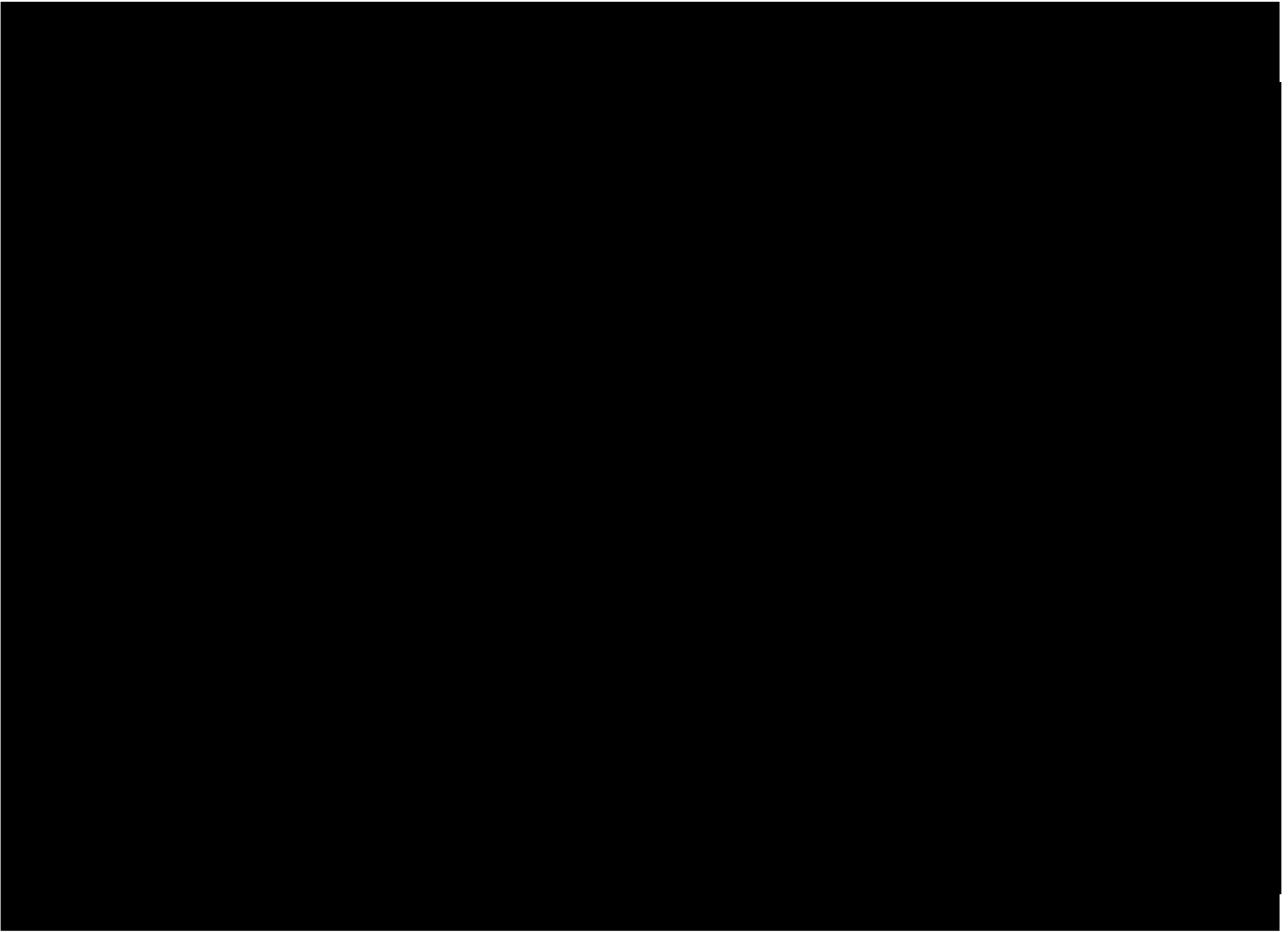












Schedule 21: Variation Form

This form is to be used in order to change a Contract in accordance with Clause 28 of the Core Terms (Changing the Contract).

Contract Details		
This variation is between:	The Secretary of State for Education (" the Buyer ") And The Full English (Education) Limited (" the Supplier ")	
Contract name:	The National Poetry Recitation Competition (NPRC) Mid-Tier Contract (" the Contract ")	
Contract reference number:	con_15235	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: Buyer/Supplier]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> • [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause] 	
Financial variation:	Original Contract Value:	£476,814
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by the Buyer
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

Schedule 22: Insurance Requirements

1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
 - 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. What happens if you aren't insured

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which

would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of insurance you must provide

- 4.1 The Supplier shall upon the Start Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5. Making sure you are insured to the required amount

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity.

6. Cancelled Insurance

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or the Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of the Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract

on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Annex 1: Required Insurances

1. The Supplier shall hold the following insurance cover from the Start Date in accordance with this Schedule:
 - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
 - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000); and
 - 1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

Schedule 23: Guarantee (Not Applicable)

Schedule 24: Financial Difficulties

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

“Applicable Financial Indicators” means the financial indicators from Annex 1;

“Financial Distress Service Continuity Plan” a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;

“Financial Indicators” in respect of the Supplier, Key Sub-contractors, and the Guarantor, means each of the financial indicators set out at Annex 1; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;

“Financial Target Thresholds” means the target thresholds for each of the Financial Indicators set out at Annex 1;

“Primary Metric” financial indicators pursuant to Paragraph 3.4.

2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under the Contract until the termination or expiry of the Contract.

3. Financial Indicators

- 3.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Annex 1 (where specified) and in any

event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date

- 3.2 Subject to the calculation methodology set out at 1 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: Standard Financial Ratios of *Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Start Date can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf

- 3.3 Each report submitted by the Supplier pursuant to Paragraph 3.1 shall:

- 3.3.1 be a single report with separate sections for each of the FDE Group entities;
- 3.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
- 3.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- 3.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- 3.3.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.

- 3.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 6 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:

- 3.4.1 a report submitted by the Supplier pursuant to Paragraph 3.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any one of the Financial Indicators set out in Annex 1 of this Schedule;
- 3.4.2 a report submitted by the Supplier pursuant to Paragraph 3.1 does not comply with the requirements set out in Paragraph 3.3; or

- 3.4.3 the Supplier does not deliver a report pursuant to Paragraph 3.1 in accordance with the applicable monitoring and reporting frequency.

4. What happens if there is a financial distress event

- 4.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 4.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 4.4 to 4.6.
- 4.3 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 4.4 without first giving the Supplier ten (10) Working Days to:
 - 4.3.1 rectify such late or non-payment; or
 - 4.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
 - 4.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of the Contract and delivery of the Deliverables in accordance the Contract; and
 - 4.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 4.4.1) that the Financial Distress Event could impact on the continued performance of the Contract and delivery of the Deliverables in accordance with the Contract:
 - a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days

of the initial notification (or awareness) of the Financial Distress Event);

- b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and
- c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.

4.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:

- 4.5.1 Approved;
- 4.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
- 4.5.3 finally rejected by the Buyer.

4.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:

- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance the Contract and delivery of the Deliverables in accordance with the Contract;
- 4.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 4.6.1 to the Buyer;
- 4.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 4.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

4.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.

5. When the Buyer can terminate for financial distress

5.1 The Buyer shall be entitled to terminate this Contract for material Default if:

5.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 4.1;

5.1.2 the Supplier fails to comply with any part of Paragraph 4.4;

5.1.3 subject to Paragraph 5.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.5.3;

5.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within twenty-eight (28) days of the date of the notice of referral pursuant to Paragraph 4.5.2;

5.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 4.5.2; and/or

5.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.4.

5.2 A material Default may only occur under Paragraph 5.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

6. What happens If your Primary Metric is still good

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 4, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

6.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.4 to 4.6; and

6.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.4.2c).

Annex 1: Financial Indicators

Financial Indicators

Financial Indicator	Calculation	Financial Target Threshold	Monitoring and Reporting Frequency
2 Net Debt to EBITDA Ratio	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>	<i><3.5 times</i>	<i>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon EBITDA for the 12 months ending on, and Net Debt at, the relevant accounting reference date</i>
3 Acid Ratio	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities</i>	<i>> 0.8 times</i>	<i>Tested and reported yearly in arrears within 90 days of each accounting reference date based upon figures at the relevant accounting reference date</i>

Schedule 25: Rectification Plan

Request for [Revised] Rectification Plan			
Details of the Notifiable Default:	[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by Buyer:		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Notifiable Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Notifiable Default:	[add effect]		
Steps to be taken to rectification:	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Notifiable Default	[X] Working Days		
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	

	[...]	[date]	
Signed by the Supplier:		Date:	
Review of Rectification Plan Buyer			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

Schedule 26: Sustainability

Definitions

“Modern Slavery Assessment Tool”	means the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat
“Supply Chain Map”	<p>means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:</p> <ul style="list-style-type: none">(c) the name, registered office and company registration number of each entity in the supply chain;(d) the function of each entity in the supply chain; and(e) the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]
“Waste Hierarchy”	<p>means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:</p> <ul style="list-style-type: none">(f) Prevention;(g) Preparing for re-use;(h) Recycling;(i) Other Recovery; and(j) Disposal.

Part A

1. Public Sector Equality Duty

1.1. In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

1.1.1. eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2. advance:

1.1.2.1. equality of opportunity; and

1.1.2.2. good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2. Employment Law

2.1. The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

3. Modern Slavery

3.1. The Supplier:

- 3.1.1. shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2. shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
- 3.1.3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 3.1.4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 3.1.5. shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 3.1.8. shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
- 3.1.9. shall not use, nor allow its employees or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or

other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

3.1.10. shall not use or allow child or slave labour to be used by its Subcontractors; and

3.1.11. shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to the Buyer and Modern Slavery Helpline.

4. Environmental Requirements

4.1. The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.

4.2. In performing its obligations under the Contract, the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Buyer:

4.2.1. prioritise waste management in accordance with the Waste Hierarchy as set out in Law;

4.2.2. be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and

4.2.3. ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.

4.3. In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.

4.4. In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

4.5. The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

The Buyer expects to meet, and expects its Suppliers and Subcontractors to meet, the standards set out in the Environmental Policy found at Annex 1. The Buyers also aligns with wider Government Environmental Policies.

5. Supplier Code of Conduct

5.1. In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

8.4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf

8.5 The Buyer expects to meet, and expects its Suppliers and Subcontractors to meet, the standards set out in that Code.

6. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request.

Part B

1. Equality, Diversity, and Inclusion – Further Requirements

1.1. In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity, and inclusion requirements, to be provided to the Supplier by the Buyer.

1.2. The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

2. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraph 1 of this Part B above within thirty (30) days of such request.

Annex 1: Environmental Policy

Overview

The Department for Education recognises that the delivery of its operations inevitably impacts on the environment in a number of ways, for example, through the generation of waste and the use of energy for heating and lighting. Through the DfE's Sustainability and Climate Change Strategy, it aims to respond and adapt to the effects of climate change, thus ensuring that our business operation is undertaken in such a manner as to have a positive impact on the environment and achieve biodiversity net gain.

DfE's Sustainability and Climate Change Strategy

The DfE published [a strategy](#) in April 2022, which sets out ambitious activity to respond to recommendations for education from the Committee for Climate Change, the Dasgupta Review, Green Jobs Taskforce report and supports the delivery of the Government's 25 Year Environment Plan and Net Zero Strategy.

Greening Government Commitments

The [Greening Government Commitments](#) set out the actions UK government departments and their agencies undertook to reduce their impacts on the environment in the period 2016 to 2020 and their Commitments for the period 2021 to 2025.

Individual departments are required to publish their own sustainability reports either as part of their annual report, or as separate reports. The latest report for DfE can be found [here](#).

The DfE is committed to minimising the impact of its activities on the environment throughout all its procurement supply chains.

The Social Value Act

In line with [The Social Value Act](#) using [The Social Value Model](#), Environmental Criteria may be included, where appropriate, in our tender document sets.

Any social value benefit proposed by tenderers must relate to additional improvements in the economic, social and/or environmental wellbeing of the relevant area to be delivered through the contract, and not replace the assessment and management of the environmental impacts of the core contract elements (direct and through the supply chain) and how they can be reduced, which must instead form a part of the core tender (i.e. not the social value element)

The social value 'Reporting Metrics' are based around the reduction of three of the target areas in the [Greening Government Commitments](#): greenhouse gases, waste and water. In addition, there are Reporting Metrics relating to protecting and improving the environment and creating green spaces.

Sustainable procurement: the Government Buying Standards (GBS)

The DfE will make sure that we meet the minimum mandatory Government Buying Standards (GBS) standards on [Sustainability](#) when buying goods and services. We encourage our suppliers to meet, where possible, the best practice standards, which go further than the mandatory standards.

Greening government: ICT and digital services strategy 2020 to 2025

This strategy sets out how the government will work in partnership with industry and other sectors to provide ICT and digital services to help:

- achieve the United Nation's Sustainable Development Goals
- implement Defra's 25 Year Environment Plan
- meet the government's net zero commitments

The strategy is to be used by everyone involved and interested in government ICT and digital services, including suppliers and supply chains.

Taking account of Carbon Reduction Plans in the procurement of major government contracts

In 2019, the UK became the first major economy to adopt a legal commitment to achieve 'Net Zero' carbon emissions by 2050. To support this, the Government Commercial Function has developed a new commercial policy measure for all central government departments and arm's length bodies.

This measure requires suppliers bidding for major government contracts to commit to achieving Net Zero by 2050 when procuring goods and/or services and/or works with an anticipated contract value above £5 million per annum (excluding VAT) by publishing a '[Carbon Reduction Plan](#)' and to provide their current GHG emissions. This is subject to the Public Contracts Regulations 2015 save where it would not be related and proportionate to the contract.

Suppliers will be deselected from the procurement if they fail to comply with the policy.

Further Information

[Sustainability and Climate Change Strategy:](#)

<https://www.gov.uk/government/publications/sustainability-and-climate-change-strategy>

Sustainable procurement | Crown Commercial Service:

<https://www.crowncommercial.gov.uk/buy-and-supply/making-responsible-decisions/sustainability/>

Carbon Net Zero - CCS (crowncommercial.gov.uk):

<https://www.crowncommercial.gov.uk/buy-and-supply/carbon-net-zero>

Microsoft Word - Glossary-of-terms -Carbon-Net-Zero-and-Smart-Solutions-.odt

(crowncommercial.gov.uk): https://assets.crowncommercial.gov.uk/wp-content/uploads/Glossary-of-terms_-Carbon-Net-Zero-and-Smart-Solutions-.pdf

Greenhouse Gas Protocol | (ghgprotocol.org): <https://ghgprotocol.org/>

National Procurement Policy Statement.pdf (publishing.service.gov.uk):

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990289/National_Procurement_Policy_Statement.pdf

Schedule 27: Key Subcontractors (Not Applicable)

Schedule 28: ICT Services

1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Commercial off the shelf Software" or "COTS Software"	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
"Defect"	<p>any of the following:</p> <ul style="list-style-type: none">a) any error, damage or defect in the manufacturing of a Deliverable; orb) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; orc) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; ord) any failure of any Deliverable to operate in conjunction with or interface with any other

	Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in Paragraph 8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating"	means the Buyer System and any premises

Environment"	(including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or c) where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in Paragraph 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in Paragraph 6.1 of this Schedule;
"Sites"	has the meaning given to it in Schedule 1 (Definitions), and for the purposes of this Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software, COTS Software and non-COTS Supplier and third party Software;
"Software Supporting Materials"	has the meaning given to it in Paragraph Error! Reference source not found. of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the

Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

2. When this Schedule should be used

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

3. Buyer due diligence requirements

- 3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
 - 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
 - 3.1.2. operating processes and procedures and the working methods of the Buyer;
 - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
 - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- 3.2. The Supplier confirms that it has advised the Buyer in writing of:
 - 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
 - 3.2.2. the actions needed to remedy each such unsuitable aspect; and
 - 3.2.3. a timetable for and the costs of those actions.

4. Licensed software warranty

- 4.1. The Supplier represents and warrants that:
 - 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
 - 4.1.2. all components of the Specially Written Software shall:
 - 4.1.2.1. be free from material design and programming errors;

- 4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Schedule 10 (Service Levels) and Documentation; and
- 4.1.2.3. not infringe any IPR.

5. Provision of ICT Services

5.1. The Supplier shall:

- 5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
- 5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3. ensure that the Supplier System will be free of all encumbrances;
- 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

6. Standards and Quality Requirements

- 6.1. The Supplier shall develop, in the timescales specified in the Award Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Contract Period:
 - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
 - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

- 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
 - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
 - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Award Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.
- 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

9. Intellectual Property Rights in ICT

9.1. Assignments granted by the Supplier: Specially Written Software

- 9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
 - 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially

Written Software and the New IPR (together the "**Software Supporting Materials**").

9.1.2. The Supplier shall:

9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;

9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and

9.1.2.3. without prejudice to Paragraph **Error! Reference source not found.**, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

9.2. **Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

9.2.1.1. of its own Existing IPR that is not COTS Software;

9.2.1.2. third party software that is not COTS Software.

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution,

storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

- 9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph **[Error! Reference source not found.Error! Reference source not found.]**. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at Paragraph **[Error! Reference source not found.]** if the Buyer Approves the terms of the licence from the relevant third party.

- 9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph **[Error! Reference source not found.]** above, it must meet the requirement by making use of COTS Software or Specially Written Software.

- 9.2.5. The Supplier may terminate a licence granted under Paragraph **[Error! Reference source not found.]** by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

9.3. **Licences for COTS Software by the Supplier and third parties to the Buyer**

- 9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

- 9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

- 9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph **[Error! Reference source not found.]** the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those

standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer;
or

9.3.4.2. will no longer be made commercially available.

9.4. **Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph **[Error! Reference source not found.]** (*Licences for non-COTS IPR from the Supplier and third parties to the Buyer*) to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs **[Error! Reference source not found.]** and/or [9.2].

9.5. **Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).

9.6. **Open Source Publication**

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

9.6.1.1. suitable for publication by the Buyer as Open Source; and

9.6.1.2. based on Open Standards (where applicable),

and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing

the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

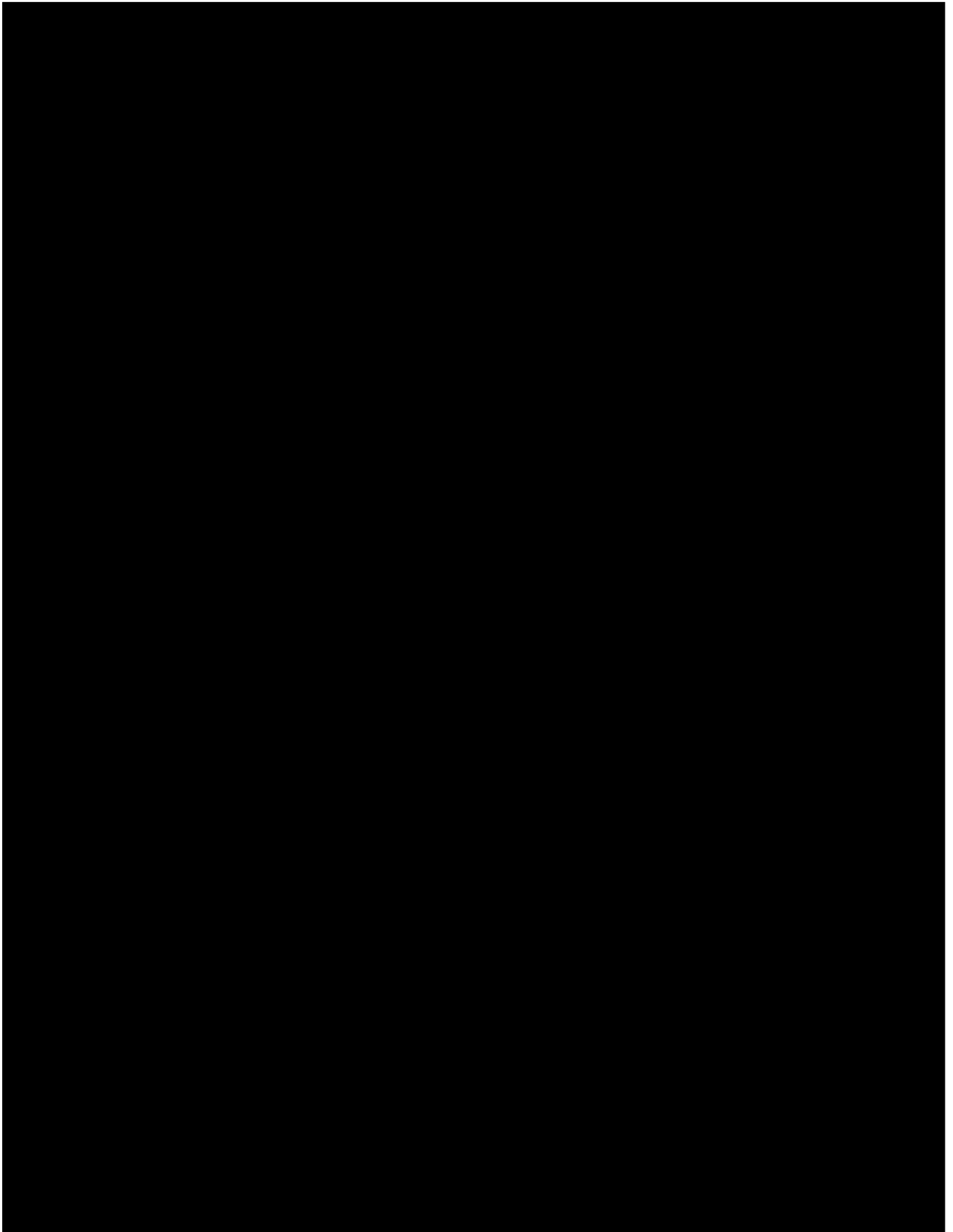
- 9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
 - 9.6.2.3. do not contain any material which would bring the Buyer into disrepute;
 - 9.6.2.4. can be published as Open Source without breaching the rights of any third party;
 - 9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and
 - 9.6.2.6. do not contain any Malicious Software.
- 9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
- 9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
 - 9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

9.7. Malicious Software

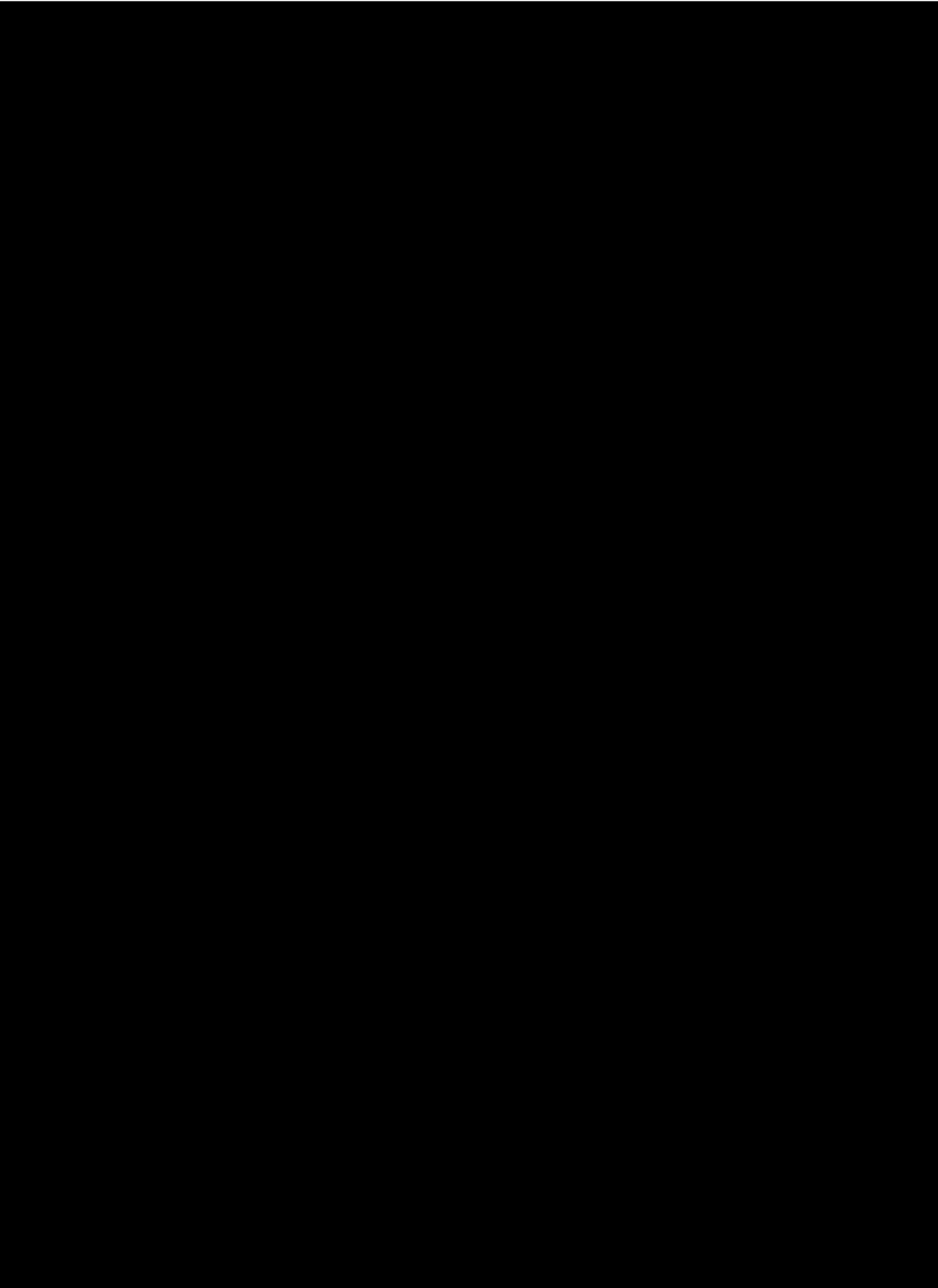
- 9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph [9.7.2] shall be borne by the Parties as follows:

- 9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
- 9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

Schedule 29: Key Supplier Staff







Schedule 30: Exit Management

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Asset Register"	a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables;
"Exclusive Assets"	Supplier Assets used exclusively by the Supplier or a Key Subcontractor in the provision of the Deliverables;
"Exit Information"	has the meaning given to it in Paragraph 3.1 of this Schedule;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule;
"Net Book Value"	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Supplier Assets used by the Supplier or a Key Subcontractor in connection with the Deliverables but which are also used by the Supplier or Key Subcontractor for other purposes;
"Registers"	the Asset Register and configuration database referred to in Paragraph 2.2 of this Schedule;
"Replacement Goods"	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Buyer;
"Transferable Contracts"	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the

	Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in Paragraph 8.2.3 of this Schedule;
"Virtual Library"	the data repository hosted by the Supplier containing the accurate information about the Contract and the Deliverables in accordance with Paragraph 2.2 of this Schedule.

2. Supplier must always be prepared for contract exit

- 2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Supplier shall within 30 days from the Start Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
 - 2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables ("**Asset Register**"); and
 - 2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,
 - 2.2.3 The Asset Register and the configuration database are together known as the "**Registers**".

and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.

- 2.3 The Supplier shall:
 - 2.3.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
 - 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly

notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. **Assisting re-competition for Deliverables**

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

4. **Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph **Error! Reference source not found.** of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 how the Exit Information is obtained;
 - 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
 - 4.3.3 the management structure to be employed during the Termination Assistance Period;
 - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
 - 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
 - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
 - 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
 - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
 - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
 - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
 - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
 - 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
 - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;

- 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 The Supplier shall:
 - 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - a) every six (6) months throughout the Contract Period;
 - b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
 - c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
 - 4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5. Termination Assistance

- 5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - 5.1.1 the nature of the Termination Assistance required; and
 - 5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

- 5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
- 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

6. Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
 - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
 - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
 - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
 - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
 - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
 - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. Obligations when the contract is terminated

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
 - 7.2.1 cease to use the Government Data;
 - 7.2.2 vacate any Buyer Premises;
 - 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
 - 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
 - a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
 - b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.
- 7.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

8. Assets, Sub-contracts and Software

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
 - 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
 - 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
 - 8.2.2 which, if any, of:
 - a) the Exclusive Assets that are not Transferable Assets; and
 - b) the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and
 - 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
 - 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a

right of sub-licence or assignment on the same terms); or failing which

- 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
 - 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

9. No charges

- 9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

10. Dividing the bills

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Annex 1: Scope of Termination Assistance

1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:

1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;

1.1.3 providing details of work volumes and staffing requirements over the 12 Months immediately prior to the commencement of Termination Assistance;

1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re writing and implementing these during and for a period of 12 Months after the Termination Assistance Period;

1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;

1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;

1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;

1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;

1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;

1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;

1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 Months

afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:

- a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
- b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;

1.1.12 knowledge transfer services, including:

- a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
- b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
- c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier will:

1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and

1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

1.4.1 copies of up-to-date procedures and operations manuals;

1.4.2 product information;

1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and

1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:

a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Schedule 31: Buyer Specific Terms (Not Applicable)

Schedule 32: Background Checks (Not Applicable)

Schedule 33: Scottish Law (Not Applicable)

Schedule 34: Northern Ireland Law (Not Applicable)

Schedule 35: Lease Terms (Not Applicable)

Schedule 36: Intellectual Property Rights

10. Intellectual Property Rights

10.1. Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos, or trademarks, except as expressly granted elsewhere under the Contract or otherwise agreed in writing.

10.2. Except as expressly granted elsewhere under the Contract, neither Party acquires any right, title, or interest in or to the IPR owned by the other Party or any third party.

10.3. Licences granted by the Supplier: Supplier Existing IPR

10.3.1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 10.3.2.

10.3.2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:

10.3.2.1. or any End User to use and receive the Deliverables; or

10.3.2.2. to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

10.4. Licences granted by the Buyer and New IPR

10.4.1. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations during the Contract Period.

10.4.2. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

- 10.4.3. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.

10.5. Open Licence Publication

- 10.5.1. Subject to Paragraph 10.5.4, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.
- 10.5.2. Subject to Paragraph 10.5.4, the Supplier hereby warrants that the New IPR Items are suitable for release under Open Licence.
- 10.5.3. The Supplier will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from the Buyer ("Buyer Open Licence Request").
- 10.5.4. The Supplier may within 15 days of a Buyer Open Licence Request under Paragraph 10.5.3 request in writing that the Buyer excludes all or part of:
- 10.5.4.1. the New IPR; or
- 10.5.4.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 10.5.3
- from Open Licence publication.
- 10.5.5. Any decision to Approve any such request from the Supplier pursuant to Paragraph 10.5.4 shall be at the Buyer's sole discretion, not to be unreasonably withheld, delayed or conditioned.
- 10.5.6. Subject to Clause 15 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.

10.6. Third Party IPR

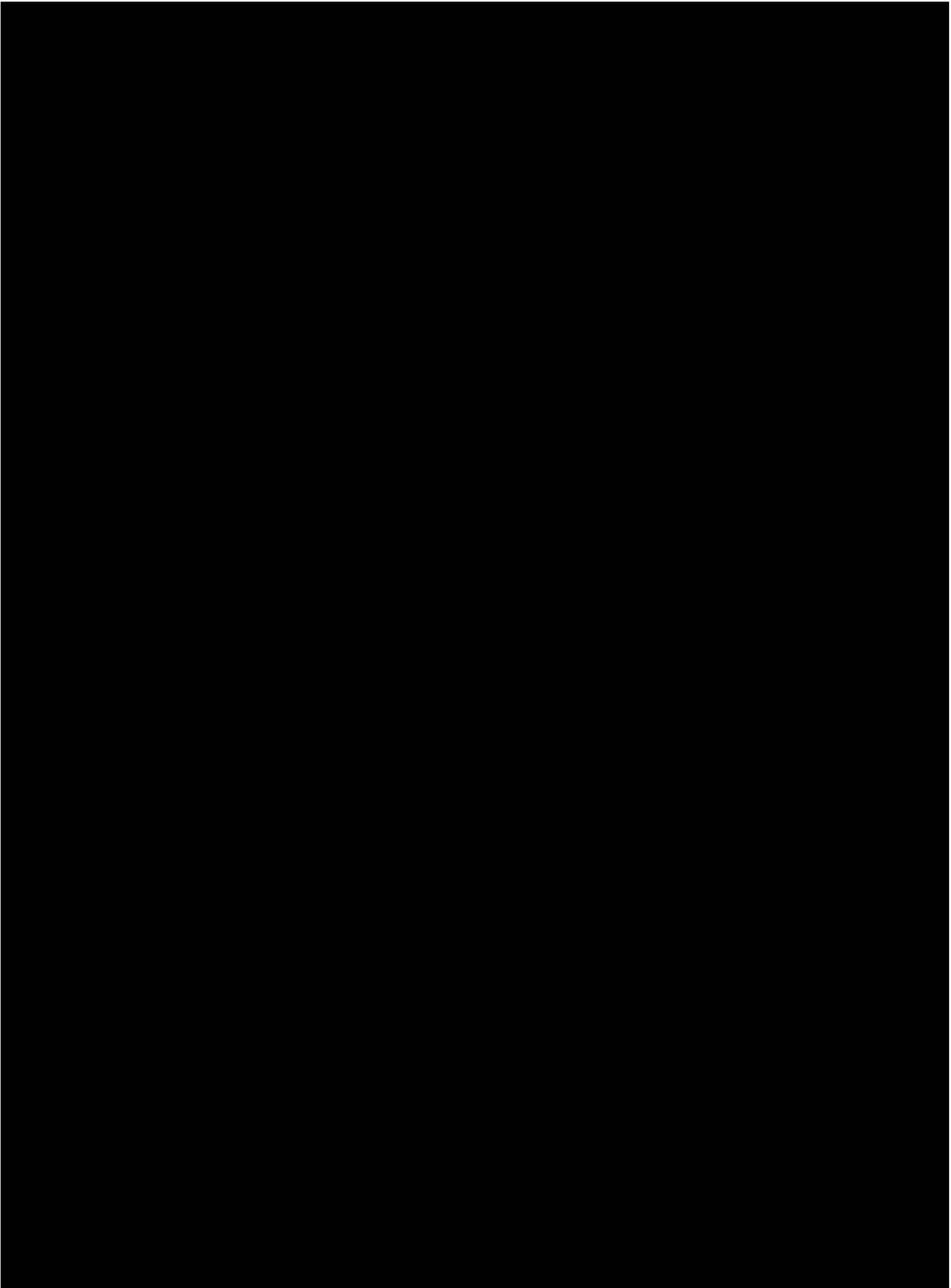
- 10.6.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 10.6.3. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 10.6.3 in respect of any Third Party IPR the Supplier shall:
- 10.6.1.1. notify the Buyer in writing; and

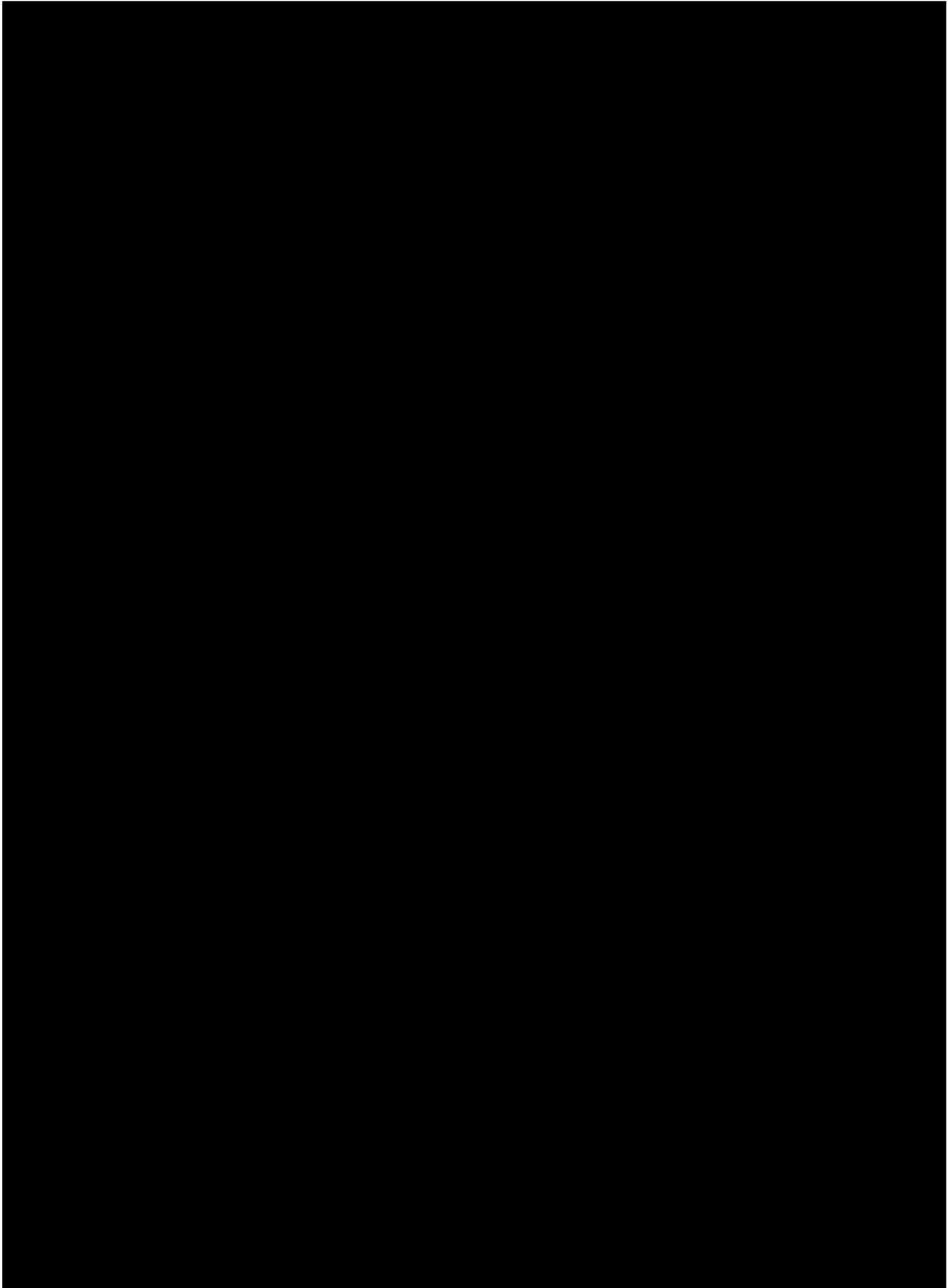
- 10.6.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.
- 10.6.2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
- 10.6.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.

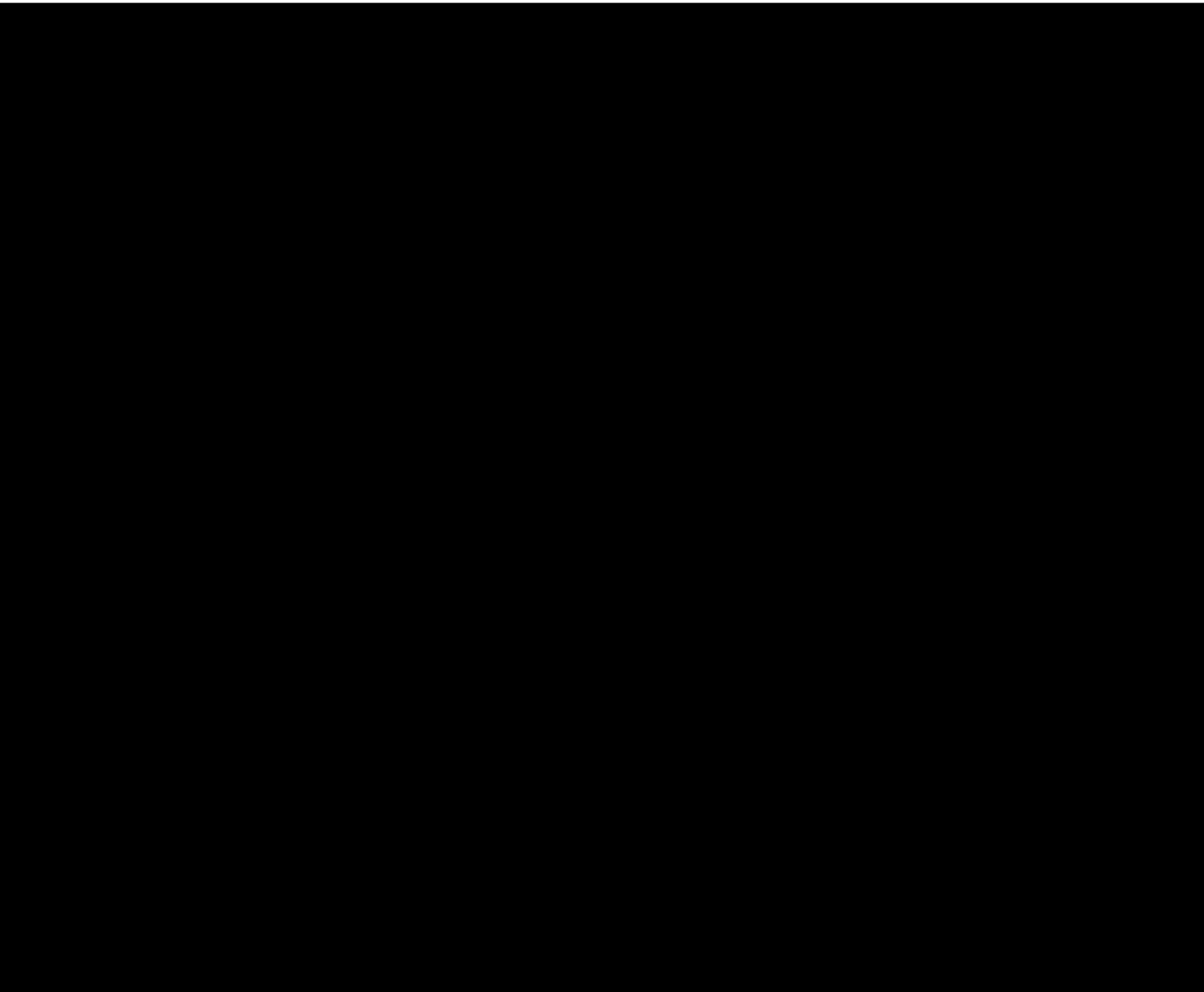
10.7. Termination of licences

- 10.7.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 10.3 and the Third Party IPR Licence granted pursuant to Paragraph 10.6 shall survive the Expiry Date and termination of this Contract.
- 10.7.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 10.7.3. Any licence granted to the Supplier pursuant to Paragraph 10.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:
- 10.7.3.1. immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);
- 10.7.3.2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and

10.7.3.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.







Special Term 1: Safeguarding Arrangements

1. Definitions And Interpretation

1.1 In this schedule, the following expressions have the following meanings, unless inconsistent with the context:

“16–19 Academy” has the meaning of section 1B of the Academies Act 2010.

“Candidate” means any individual who is currently under consideration by the Contractor for employment to perform its obligations under the Contract, or who is under consideration by the Contractor for any other form of direct engagement in connection with the Contractor’s performance of its services under the Contract. The term “Candidates” shall be construed accordingly.

“Childcare” takes the definition contained in section 18 of the Childcare Act 2006 and will include ‘relevant childcare’ as set out in the ‘staff covered section’ of Disqualification Under the Childcare Act 2006. In accordance with Disqualification Under the Childcare Act 2006, the meaning of relevant childcare includes education for a child who has not yet attained the age of six and any other supervised activity for such a child, but does not include education (or any other supervised activity) provided by a school during school hours for a registered pupil who is not a Young Child.

“DBS ID Checking Guidelines”¹ mean the guidelines issued by the Disclosure and Barring Service for the purpose of verifying the identification of applicants for criminal record checks, as amended from time to time.

“Disclosure and Barring Service” and **“DBS”** mean the non-departmental public body of that name, or such other successor body or organisation as may be appropriate.

“Disclosure and Barring Service Certificate” means a criminal record certificate issued by the Disclosure and Barring Service with respect to an individual.

“Disqualification Criteria” means the criteria for disqualification from registration contained within Part 2 of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.²

“Disqualification Under the Childcare Act 2006”³ means the statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

¹ <https://www.gov.uk/government/publications/dbs-identity-checking-guidelines>

² S.I. 2018/794. In interpreting the Disqualification Criteria, it may be helpful to refer to: the information contained within the sections ‘Disqualification criteria’ and ‘Relevant offences and orders’ contained within Disqualification Under the Childcare Act 2006; the list of offences contained within table A of the appendices to Disqualification Under the Childcare Act 2006; and the list of orders contained within table B of the appendices to Disqualification Under the Childcare Act 2006. It should be noted that this information is not exhaustive. A summary of additional offences that can lead to disqualification can be found on page 3 of the appendices to Disqualification Under the Childcare Act 2006.

³ <https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>

“Disqualification Waiver” means a waiver issued by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills in exercise of his or her powers under:

- (a) Regulation 10 of The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018;
- (b) Regulation 10 of The Childcare (Disqualification) Regulations 2009 (which is now revoked); or
- (c) any appropriate successor regulations made by the Secretary of State for Education in exercise of the powers conferred by section 75 of the Childcare Act 2006.

An individual is **“Disqualified from Registration”** if that individual meets the Disqualification Criteria, unless that individual has also been granted a Disqualification Waiver with respect to the information pertaining to him or her and which causes the Disqualification Criteria to be met.

“Early Years Safeguarding and Welfare Requirements” means the requirements contained in section 3 of the Statutory Framework for the Early Years Foundation Stage.

A person satisfies the **“Harm Test”** if that person may harm a child or vulnerable adult or put them at risk of harm. It is something a person may do to cause harm or pose a risk of harm to a child or vulnerable adult.

“Keeping Children Safe in Education” means the statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

“Independent School” as defined in section 463 of the Education Act 1996, means any school at which full-time education is provided for:

- (a) five or more pupils of compulsory school age; or
- (b) at least one pupil of that age for whom an EHC plan is maintained or for whom a statement is maintained under section 324 or an individual development plan is maintained, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014;

and which is not a school maintained by a local authority non-maintained special school.

It shall specifically include Academy schools and alternative provision Academies as defined in accordance with the Academies Act 2010.

“Institution within the Further Education Sector” has the meaning in section 91(3) of the Further and Higher Education Act 1992.

“Maintained School” means a community, foundation or voluntary school or a community or foundation special school, or any other school maintained by a local authority.

“Non-Maintained Special School” means a school which is approved under section 342 (1) of the Education Act 1996 (as amended).

“Non-Relevant Conviction”:

- (a) in the case of an individual who is engaged:
- (i) in any office or employment which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable that individual, in the course of his or her normal duties, to have access to vulnerable adults in receipt of such services.
 - (ii) in any work which is Regulated Activity relating to vulnerable adults, which for the purpose of this definition shall include regulated activity within the meaning of Part 2 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 66 of the Protection of Freedoms Act 2012;
 - (iii) in any work in an Institution within the Further Education Sector or 16–19 Academy where the normal duties of that work involve regular contact with persons aged under 18;
 - (iv) in any work which is Regulated Activity relating to children, which for the purpose of this definition shall include regulated activity within the meaning of Part 1 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
 - (v) in any work done infrequently which, if done frequently, would be Regulated Activity relating to children;
 - (vi) in any employment or other work that is carried out at a children’s home or residential family centre;
 - (vii) as a chartered or certified accountant; or
 - (viii) in any other employment or activity deemed to fall within the scope of schedule 1 to The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended);

means any conviction which is ‘protected’ as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended); and

- (b) in the case of an individual who is engaged in employment or activity which does not fall within the scope of points (a)(i)–(a)(viii) above, means any conviction which is ‘spent’ as defined in accordance with Section 1 of the Rehabilitation of Offenders Act 1974.

“Pre-Appointment Checks” means such checks and searches as are appropriate and necessary to assess an individual’s suitability for employment and to perform the duties of a particular role, as determined in accordance with clause 3.2.

“Proprietor” means the person or body of persons responsible for the management of a school, including (but not limited to):

- (a) in relation to a Maintained School, the governing body; and
- (b) in relation to an Academy, a qualifying Academy proprietor, as defined by section 12(2) of the Academies Act 2010.

“Real-Time Online Tuition” means any teaching provision for one or more Relevant Students which is delivered through the use of information and communications technology and during which the student and the teacher

communicate in real time through the use of video, audio, text or any other electronic medium, but excluding any provision for which the sole intended audience is one or more members of staff employed by a school, an Institution within the Further Education Sector or a 16–19 Academy.

“Regulated Activity”:

- (a) in relation to children, takes the definitions contained in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 1 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended); and
- (b) in relation to vulnerable adults, takes the definitions contained in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 2 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended).

“Relevant Student” means any person who is enrolled at a school, an Institution within the Further Education Sector or a 16–19 Academy, or who is otherwise deemed to be in receipt of education whether by virtue of provision made by a local authority or otherwise, and with whom Personnel are likely to directly interact, whether such interaction takes place in person or via such communication medium as may be appropriate to the nature of the Services.

“Safeguarding” takes the meaning given in “Keeping Children Safe in Education”. The term “safeguard” shall be construed accordingly.

“Safeguarding Incident” means any event which has:

- (a) caused harm or had the potential to cause harm to one or more Relevant Students, Young Children, children or vulnerable adults;
- (b) involved the abuse or maltreatment of one or more Relevant Students, Young Children, children or vulnerable adults;
- (c) involved a criminal offence being committed or potentially being committed against one or more Relevant Students, Young Children, children or vulnerable adults; or
- (d) resulted in a substantially elevated risk to the welfare of one or more Relevant Students, Young Children, children or vulnerable adults.

“Statutory Framework for the Early Years Foundation Stage”⁴ means the statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

“Working Together to Safeguard Children” means the Government interagency statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

“Young Child” means a child during the period beginning with his/her birth and ending on 31 August next following the date on which he/she attains the age of five.

“Young Children” shall be construed accordingly.

⁴ <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

1.2 All other terms shall take the definitions contained in schedule 2.

2. Safeguarding Policy

2.1 The Contractor must ensure that it at all times has in place an effective and appropriate policy ("**Safeguarding Policy**") in order to safeguard and promote the welfare of Relevant Students, Young Children, children and vulnerable adults with whom Personnel may come into contact or to whom Personnel may have access in the course of performance of the Contract. This shall specifically include provisions to:

- (a) promote a learning environment which is consistent with the provision of safe and effective care;
- (b) minimise the risk of harm to the welfare and development of Relevant Students, Young Children, children and vulnerable adults, including (but not limited to) their physical, emotional and psychological welfare and development;
- (c) ensure the suitability of Personnel in accordance with clause 3 for the activities in which they are to be engaged, including provisions on when to obtain a criminal record certificate;
- (d) ensure the appropriate conduct of Personnel;
- (e) ensure that in the event that concerns are raised in relation to the welfare of one or more Relevant Students, children or vulnerable adults, the school or college's designated safeguarding lead is informed immediately in line with the organisation's child protection policy, to investigate this to minimise any further risk of harm, and to ensure escalation procedures are in place should this not be done; and
- (f) ensure arrangements setting out processes for sharing information with practitioners and safeguarding partners. Provide information on the role of the contractor's Designated Safeguarding Officer.
- (g) ensure adequate procedures are in place for recording and informing the school or college's designated safeguarding lead, of any disclosure of abuse which may be made to a member of Personnel by a Relevant Student or other child or vulnerable adult, but which does not relate to the conduct or behaviour of Personnel; and
- (b) ensuring that any such disclosure is reported to the designated officer(s) at the relevant local authority, and such other body or authority as may be appropriate in the circumstances.

2.2 The Contractor must at all times ensure that it complies with the provisions of this schedule 9, with the provisions of Keeping Children Safe in Education, with the provisions of Working Together to Safeguard Children, with the provisions of Disqualification Under the Childcare Act 2006, with the provisions of the Early Years Safeguarding and Welfare Requirements and with such other legislative provisions and statutory guidance as may be deemed appropriate by:

- (a) the Contractor;
- (b) the Secretary of State for Education; and/or

- (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills; in view of the functions to be performed under the Contract.
- 2.3 The Contractor must review and (if appropriate) update the Safeguarding Policy within the first month of each year of the Term, and additionally:
- (a) whenever the Secretary of State for Education publishes a revised version of Keeping Children Safe in Education, Working Together to Safeguard Children, Disqualification Under the Childcare Act 2006, or the Statutory Framework for the Early Years Foundation Stage;
 - (b) in the event of any change to the Services provided which has a material impact on the nature of the risks to Relevant Students' welfare or to the welfare of Young Children or children or vulnerable adults;
 - (c) in the event that the Contractor is made aware of any concerns regarding the adequacy and effectiveness of the Safeguarding Policy in meeting the aims detailed in clause 2.1; and
 - (d) following any Safeguarding Incident or alleged Safeguarding Incident.
- 2.4 The Contractor must, if requested to do so by DfE, make available a copy of the Safeguarding Policy for inspection. If, following this, DfE raises concerns about the arrangements contained within the Safeguarding Policy, the Contractor shall review and update the relevant provisions and resubmit the Safeguarding Policy to DfE for approval within 14 days. DfE may request such further iterative amendments as it deems appropriate to ensure compliance with the Contract and the relevant statutory requirements. If, following this, the Parties remain unable to reach agreement on the provisions of the Safeguarding Policy, either Party may refer the dispute to the dispute resolution procedure in clause 37 of schedule 2.
- 2.5 The Contractor must ensure that a copy of the Safeguarding Policy, Keeping Children Safe In Education and Working Together is made available upon request:
- (a) to Personnel; and
 - (b) to the Proprietors of schools, the governing bodies of Institutions within the Further Education Sector, local authorities and such other individuals and organisations as may have legitimate professional grounds to see it for the purpose of ensuring the welfare of Relevant Students, Young Children, children and vulnerable adults.
- 2.5 The Contract must ensure that the parties referred at clause 2.5(a) read at least Part 1 of the Keeping Children Safe in Education.
- 2.6 The Contractor must satisfy itself that any Sub-Contractor or agent engaged by it in connection with the performance of services under the Contract has in place measures which are compliant with the requirements of this schedule 9 with respect to those individuals employed or otherwise engaged by that Sub-Contractor or agent for the purpose of performing obligations under the Contract.
- 2.7 The Contractor must at all times ensure that it has a Designated Safeguarding Officer. The Designated Safeguarding Officer shall be required to lead on

implementing the Safeguarding Policy and act as the lead Safeguarding contact for the programme in all circumstances. The Contractor must ensure that an alternative reporting procedure is in place for any circumstances in which:

- (a) the Designated Safeguarding Officer is not available; or
- (b) any Safeguarding concerns relate to the conduct or behaviour of the Designated Safeguarding Officer or those with management responsibility for the Designated Safeguarding Officer.

3. Ensuring The Suitability Of Staff On Appointment

- 3.1 The Contractor shall have in place appropriate policies and procedures to establish safer recruitment practices, which minimise the risk of harm to Relevant Students and other children and vulnerable adults, and which ensure the suitability of Personnel who will administer and deliver the programme.
- 3.2 When appointing a Candidate to a post, the Contractor shall consider the range and nature of activities likely to be performed by the Candidate in the course of that Candidate's duties and shall ensure that it implements a system of Pre-Appointment Checks appropriate to that assessment. This shall, as a minimum, include:
 - (a) in relation to any role in which an individual will be engaged in Regulated Activity or will be managing one or more other individuals who are engaged in Regulated Activity:
 - (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
 - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
 - (iii) obtaining an enhanced criminal record certificate, which must have been issued by the Disclosure and Barring Service not more than three months before the Candidate is due to commence employment or other direct engagement in the role for which the Candidate is being considered; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
 - (iv) establishing that the Candidate is not barred from engaging in Regulated Activity relating to children and/or vulnerable adults as appropriate to the role for which the Candidate is under consideration (i.e. subject to a "Disclosure and Barring Service Bar");
 - (v) establishing that:
 - (a) the Candidate is not subject to any direction, prohibition or restriction issued by the General Teaching Council for England (prior to its abolition in 2012), the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor body

- or successor that would prevent that Candidate from taking up the position for which that individual is being considered; and
- (b) for any Candidate to be employed in a teaching position, that the Candidate is not subject to a prohibition order or interim prohibition order issued by the Secretary of State for Education and which would prevent that Candidate from taking up the position for which that individual is being considered;
- (c) that the candidate is not subject to a section 128 direction made by the Secretary of State. A section 128 direction will be disclosed when an enhanced DBS check with children's barred list information is requested, provided that 'child workforce independent schools' is specified on the application form as the position applied for. Where a person is not eligible for a children's barred list check but will be working in a management position in an independent school.

The checks a – c above can be carried out using the Teaching Regulation Agency's Employer Access service.

- (vi) verifying that the Candidate has the appropriate qualification(s) the Contractor considers are necessary for the position for which that individual is under consideration;
- (vii) obtaining at least two references, one of which should be from the Candidate's most recent employment. Where the Candidate has worked in more than two employments in the preceding two years, such additional references should be sought as are necessary to cover the whole of that period. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;
- (viii) scrutinising the Candidate's employment history in the ten years preceding the application and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Contractor should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;
- (ix) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal record-related information to be identified.⁵ Where it proves impossible to obtain this information (for example, in cases where

⁵ The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

the person must be resident in a country at the time of application), the Contractor must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer;

- (x) where the Candidate will be deployed in the provision of Childcare, or will be directly concerned in the management of such provision, establishing that the Candidate is not Disqualified from Registration; and
 - (xi) carrying out such additional searches as the Contractor considers appropriate in order to help assess the suitability of the person to work with Relevant Students, Young Children, children and/or vulnerable adults;
- (b) in relation to any role in which an individual will have access to the Personal Data of one or more Relevant Students, Young Children, children or vulnerable adults or will be managing one or more other individuals who have access to such Personal Data:
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
 - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
 - (iii) obtaining a basic criminal record certificate; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
 - (iv) establishing whether the Candidate is:
 - (a) subject to any direction, prohibition or restriction issued by the General Teaching Council for England (prior to its abolition in 2012, the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor or successor body; or
 - (b) prohibited (by prohibition order or interim prohibition order) from teaching by the Secretary of State for Education.

Whilst these sanctions will not themselves prevent the person from being appointed, the Contractor will need to determine whether the circumstances that led to the 'sanction' are relevant to the Candidate's suitability for the role for which that individual is under consideration;

- (v) verifying that the Candidate has the appropriate qualification(s) the Contractor considers are necessary for the position for which that individual is under consideration;
- (vi) obtaining at least two references, one of which should be from the Candidate's most recent employment. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted

where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;

- (vii) scrutinising the Candidate's employment history and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Contractor should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;
 - (viii) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal record-related information to be identified.⁶ Where it proves impossible to obtain this information (for example, in cases where the person must be resident in a country at the time of application), the Contractor must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer; and
 - (ix) carrying out such additional searches as the Contractor considers appropriate in order to help assess the suitability of the person to undertake the duties of the role;
- (c) in relation to any role which falls outside the scope of subclauses 3.2(a) and 3.2(b):
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
 - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
 - (iii) verifying that the Candidate has the appropriate qualification(s) the Contractor considers are necessary for the position for which that individual is under consideration;
 - (iv) carrying out such additional searches as the Contractor considers appropriate in order to help assess the suitability of the Candidate to undertake the duties of the role.

3.3 In determining the suitability of an individual to carry out a role, the Contractor shall ensure that it does not take into consideration any conviction which is a Non-Relevant Conviction, including any conviction which does not appear on any Disclosure and Barring Service Certificate obtained by the Contractor in accordance with subclause 3.2(a)(iii) or 3.2(b)(iii) as appropriate to the role for which the individual's suitability is being considered.

⁶ The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

- 3.4 The Contractor shall ensure that, before carrying out the Pre-Appointment Checks, it makes clear to the Candidate the range and nature of the Pre-Appointment Checks which it intends to carry out.
- 3.5 The Contractor shall ensure that no Candidate is engaged in duties which fall within the scope of subclauses 3.2(a) and 3.2(b) unless and until all relevant Pre-Appointment Checks have been completed and the suitability of the Candidate to undertake such duties has been assured.
- 3.6 In the event that:
- (a) a Candidate has previously been resident outside the United Kingdom; and
 - (b) in the case of a role which falls within the scope of subclause 3.2(a), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(a)(ix) have been completed to the Contractor's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; or
 - (c) in the case of a role which falls within the scope of subclause 3.2(b), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(b)(viii) have been completed to the Contractor's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; and
 - (d) the Contractor has made all reasonable endeavours to obtain the information specified under subclause 3.2(a)(ix) or 3.2(b)(viii), but has been unable to do so prior to the commencement of the Candidate's employment; and
 - (e) the Contractor has undertaken an assessment of the risks which the Candidate could present to Relevant Students, children and vulnerable adults in the course of that Candidate's duties and considered any additional safeguards which may be appropriate in order to mitigate those risks;

the Contractor may, at its discretion, choose to disapply clause 3.5 with respect to that Candidate until such time as the checks for which provision is made under subclause 3.2(a)(ix) or subclause 3.2(b)(viii) have been completed, subject to any additional safeguards identified under subclause 3.6(e) having been implemented for the period during which clause 3.5 is disapplied.

- 3.7 The Contractor shall require all Personnel employed or directly engaged by it and who are to be engaged in duties falling within the scope of subclauses 3.2(a) or 3.2(b) to register with the Disclosure and Barring Service Update Service upon appointment. Except in the circumstances for which provision is made in clause 4.2, this requirement shall not apply to any Personnel already employed or otherwise directly engaged by the Contractor prior to the Effective Date for so long as that employment or other direct engagement continues without interruption.
- 3.8 The Contractor shall ensure that it informs all Personnel employed or directly engaged by it and who:

- (a) are deployed, or are likely to be deployed, in the provision of Childcare; or
- (b) are directly concerned with, or are likely to be directly concerned with, the management of the provision of Childcare;

that they will be committing an offence if they do so and they are disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, and that they must immediately inform the Contractor in the event that their circumstances change in such a way as would result in them being disqualified from registration under those regulations.

3.9 Subject to the requirements of the DPA and the GDPR, the Contractor shall keep written records:

- (a) confirming which Pre-Appointment Checks have been undertaken in relation to which Personnel and the date on which those checks were carried out;
- (b) of all decisions made on the suitability of Personnel for employment or to undertake the duties of the role for which those Personnel were Candidates, including the names and positions of those by whom the decisions were made and approved;
- (c) of all instances where in accordance with clause 3.6, it is determined that a Candidate previously resident outside the United Kingdom may commence duties within the scope of clause 3.2(a) or 3.2(b) prior to completion of the checks provided for in subclause 3.2(a)(ix) or 3.2(b)(viii); and
- (d) confirming in relation to which Personnel it has issued information in accordance with clause 3.8, and the date on which that information was issued.

3.10 If requested to do so by DfE, the Contractor shall submit copies of records retained in accordance with clause 3.9 to DfE for inspection within a period not exceeding 5 Business Days following receipt of such a request.

3.11 DfE undertakes that any information disclosed to it following a request under clause 3.10:

- (a) shall be used solely for the purpose of ensuring the Contractor's compliance with relevant legal requirements and with the provisions of the Contract; and
- (b) shall be handled securely whilst in DfE's possession and disclosed only to those employees of DfE who have a legitimate need to inspect the information for the purpose of undertaking the duties outlined in subclause 3.11(a); and
- (c) shall be returned to the Contractor or securely destroyed when no longer required.

4. Ongoing Due Diligence

4.1 Where an individual is registered with the Disclosure and Barring Service Update Service in accordance with clause 3.7, the Contractor shall:

- (a) seek that individual's permission to utilise the Disclosure and Barring Service Update Service to regularly check that individual's Disclosure and Barring Service record for details of convictions;
- (b) agree with that individual the frequency with which such checks shall be carried out;
- (c) implement procedures to ensure that it conducts such checks according to the frequency agreed with the individual in accordance with subclause 4.1(b);
- (d) in the event that the individual is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three months during which that individual has not been engaged in such activity or the management of such activity, seek that individual's consent for and conduct an additional check of that individual's Disclosure and Barring Service record regardless of whether or not such a check is foreseen under the schedule agreed in accordance with subclause 4.1(b), prior to the resumption of the individual's engagement in Regulated Activity or the management thereof; and

4.2 In the event that:

- (a) the Contractor becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it have changed in such a way as could affect that individual's suitability to perform the duties for which that individual is engaged;
- (b) the Contractor becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it are substantially different from what it previously understood that individual's circumstances to be, and that that individual's circumstances differ from its previous understanding in such a way as might have affected its decision regarding the individual's suitability to perform the duties for which that individual is engaged;
- (c) an individual employed or otherwise directly engaged by the Contractor but who is not currently engaged in Regulated Activity or the management of other individuals who are engaged in Regulated Activity, is to transfer to a role in which that individual is to undertake Regulated Activity or the management of other individuals who are engaged in Regulated Activity;
- (d) an individual employed or otherwise directly engaged by the Contractor but who is not currently deployed in the provision of Childcare or directly concerned with the management of Childcare, is to transfer to a role in which that individual is to be deployed in the provision of Childcare or directly concerned with the management of Childcare;
- (e) an individual employed or otherwise directly engaged by the Contractor but who is not currently engaged in Regulated Activity or the management

of others who are engaged in Regulated Activity and does not currently have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or manage others who have access to such Personal Data, is to transfer to a role in which that individual will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will be engaged in the management of one or more individuals with access to such Personal Data;

- (f) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three months during which that individual has not been engaged in such activity or the management of such activity; or
- (g) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume duties in which he or she will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will manage others who have access to such Personal Data following a period in excess of three months during which that individual has not been engaged in such duties or the management of individuals engaged in such duties;

the Contractor shall perform or repeat such Pre-Appointment Checks as may be necessary to enable it to reach a decision regarding the suitability of the individual to perform the duties of that individual's role or intended role; and shall ensure that the individual is not engaged in the performance of the duties for which it is necessary to reassess that individual's suitability unless and until the Contractor has satisfied itself of the individual's suitability to perform those duties.

4.3 The Contractor undertakes that, where an individual employed or otherwise directly engaged by it is required to visit the premises of a school, an Institution within the Further Education Sector or a 16–19 Academy in the course of that individual's duties, and it is likely that that individual will during the course of that visit come into direct contact with one or more Relevant Students, children or vulnerable adults, it shall:

- (a) provide in writing to the school, Institution within the Further Education Sector or 16–19 Academy:
 - (i) confirmation of whether the Pre-Appointment Checks in subclauses 3.2(a)(i)–3.2(a)(xi) have been carried out with respect to that individual; and
 - (ii) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
 - (iii) the name and contact details of the Designated Safeguarding Officer; and
 - (iv) in the event that the individual will, whilst on the premises of the school, Institution within the Further Education Sector or 16–19 Academy, be employed or otherwise engaged in the provision of

Childcare or directly concerned with the management of such provision:

- (a) confirmation that the individual is not Disqualified from Registration; and
- (b) confirmation that the individual has been informed that:
 - (i) if he or she is disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, he or she will be committing an offence if he or she is deployed to work in Childcare or directly concerned with the management of such provision; and
 - (ii) he or she must immediately inform the Contractor in the event that his or her circumstances change in such a way as would result in him or her being disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.
- (b) arrange for the individual to provide to the school, Institution within the Further Education Sector or 16–19 Academy:
 - (i) adequate proof of that individual's identity; and
 - (ii) where the individual is to visit the premises of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
 - (iii) where the individual is to visit the premises of an Independent School, a Non-Maintained Special School, or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; or
 - (iv) where the individual is to visit the premises of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and
- (c) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to perform the duties for which that individual is to be engaged whilst on the premises of that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.

- 4.4 The Contractor undertakes that, where an individual employed or otherwise directly engaged by it is required to provide Real-Time Online Tuition in the course of that individual's duties, it shall:
- (a) ensure that the individual's consent is obtained to monitor and record that individual's direct interaction with Relevant Students where this interaction takes place remotely;
 - (b) implement arrangements to ensure that real-time direct interaction between the individual and Relevant Students and which takes place remotely is monitored in a way which is suitable for identifying Safeguarding Incidents, including random sampling of not less than one session of Real-Time Online Tuition for every 14 such sessions delivered as part of the Services;
 - (c) implement arrangements to ensure that any real-time direct interaction between the individual and Relevant Students is recorded and that these records are retained for a minimum of 90 days, or longer if required for the purpose of investigating a Safeguarding Incident or alleged Safeguarding Incident; and
 - (d) where Real-Time Online Tuition is provided for or on behalf of a school, an Institution within the Further Education Sector or a 16–19 Academy:
 - (i) provide in writing to the school or Institution within the Further Education Sector or 16–19 Academy:
 - (a) a list of the Pre-Appointment Checks which have been carried out with respect to that individual; and
 - (b) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
 - (ii) arrange for the individual to provide to the school, an Institution within the Further Education Sector or 16–19 Academy:
 - (a) adequate proof of that individual's identity; and
 - (b) where the individual is to provide Real-Time Online Tuition on behalf of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
 - (c) where the individual is to provide Real-Time Online Tuition on behalf of an Independent School or a Non-Maintained Special School or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate;
 - (d) where the individual is to provide Real-Time Online Tuition on behalf of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and

- (iii) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to deliver Real-Time Online Tuition to students enrolled at that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed with respect to those students by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.

5. Addressing Safeguarding Concerns/Allegations Regarding Employees

- 5.1 The Contractor shall have in place procedures for managing allegations that might indicate an individual employed or otherwise directly engaged by it would pose a risk of harm if that individual continued to work in regular contact with Relevant Students, children and/or vulnerable adults.
- 5.2 Where an allegation indicates an individual employed or otherwise directly engaged by Contractor might pose a risk of harm if that individual continues to work in regular or close contact with children or vulnerable adults, the Contractor must immediately inform:
 - (a) the schools, Institutions within the Further Education Sector and 16–19 Academies at which any Relevant Students, children or vulnerable adults who may have been harmed by that individual are enrolled, in order that appropriate support for those Relevant Students, children or vulnerable adults can be implemented in a timely manner; and
 - (b) the designated officer(s) at the relevant local authority, so that the designated officer can consult police and children’s social care services as appropriate.

The Contractor shall afford to the designated officer(s) all reasonable assistance in considering the nature, content and context of the allegation and agreeing a course of action and shall undertake to comply with any direction issued by the designated officer(s).

The contractor should also have policies and processes to deal with concerns (including allegations) which do not meet the harms threshold, as described above.. Concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent or other adult within or outside of the organisation. It is important that the contractor has appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children. Further information on the importance of dealing with concerns such as these can be found in Part 4, Section two of Keeping children safe in education.

- 5.3 Where the Contractor dismisses or ceases to use the services of an individual who has been engaging in teaching work, because of serious misconduct, or might have dismissed that individual or ceased to use that individual’s services had that individual not left first, it must consider whether to refer the case to the Secretary of State for Education, as required by section 141E of the Education Act 2002.
- 5.4 The Contractor must refer to the Disclosure and Barring Service any individual:

- (a) who is or has recently been employed or otherwise directly engaged by the Contractor; and
 - (i) who has harmed, or poses a risk of harm, to a child or vulnerable adult;
 - (ii) who satisfies the Harm Test;
 - (iii) who has received a caution or conviction for a relevant offence; or
 - (iv) who there is reason to believe has been cautioned for or convicted of a relevant barred-list offence;
- (b) if that individual:
 - (i) has been removed from engaging in Regulated Activity or has been moved to another area of work that is not Regulated Activity; or
 - (ii) would have been removed from engaging in Regulated Activity had they not, for example, been re-deployed, resigned, retired or left.