

MODEL SERVICES CONTRACT

DATED (refer to date of signature via Docusign at Page 91)

December 2023

(1) NHS BUSINESS SERVICES AUTHORITY

and

(2) XEROX (UK) LIMITED

CONTRACT

Relating to

the provision of NHS Prescriptions, Cards and Print (PCP)

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THIS CONTRACT is made on

2023

BETWEEN:

- (1) **NHS BUSINESS SERVICES AUTHORITY** of Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE15 8NY (the “**Authority**”); and
- (2) **Xerox (UK) Limited** a company registered in England and Wales under company number 00330754 whose registered office is at Building 4 Uxbridge Business Park, Sanderson Road, Uxbridge, Middlesex, UB8 1DH (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

INTRODUCTION

- (A) The Authority is an Arm’s Length Body of the Department of Health and Social Care which provides business solutions to the wider NHS includes the management of certain print requirements.
- (B) The Authority wishes to establish a framework titled the NHS Prescriptions, Cards & Print framework for inter alia NHS Forms, Exemptions, Cards, GHIC and EHIC, NHS Pensions Payroll and Covid Pass services under which the Authority and Authorised Users on behalf of the Ordering Organisations are entitled to purchase the Products.
- (C) On 23rd March 2023 the Authority advertised on Find a Tender (reference 2023/S 000-008499), inviting prospective suppliers to submit proposals for the activities and services detailed in (B) above.
- (D) The Supplier is a leading provider of managed print services and has experience in the activities and services detailed in (B) above.
- (E) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (F) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

SECTION A – PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (Definitions).

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- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions);
 - (b) Schedules 2 (Services Description) and 3 (Performance Levels) and their Annexes;
 - (c) any other Schedules and their Annexes (other than Schedule 8 (Supplier Solution) and its Annexes); and
 - (d) Schedule 8 (Supplier Solution) and its Annexes (if any).
- 1.4 The Schedules and their Annexes form part of this Contract.
- 1.5 If there is any conflict between this Contract and any Call-Off arrangement made pursuant to the terms of this Contract, this Contract shall take precedence.
- 1.6 For the purposes of clauses 23.8, 37.1(b), 39.4 and/or as the context otherwise requires reference to the Authority shall also include reference to the Ordering Organisations.

1A CALL-OFF ARRANGEMENT

- 1A.1 The Parties acknowledge that whilst this Contract is between the Authority and the Supplier, it establishes a framework arrangement under which, subject to the terms of this Contract, the Authority and/or other Authorised Users on behalf of Ordering Organisations are able to directly place Orders for the Products and services specified in Schedule 2.
- 1A.2 The Supplier shall ensure that any and all Orders are placed in accordance with the provisions set out at Clause [5A] below.
- 1A.3 With the exception of any:
- 1A.3.1 Orders placed by the Authority;
 - 1A.3.2 Orders relating to HwHC forms (as defined in Clause 5A.10.1);
 - 1A.3.3 Orders relating to PEP;
 - 1A.3.4 Orders relating to Dental Forms,
- the Authority (or in the case of Orders for Dental Forms made pursuant to sub-clause 1A.3.4 which shall be payable by the Department of Health and Social Care) shall not be liable for the obligations set out in any Order placed by any Authorised User.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions where applicable:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (i) the Authority Requirements;
 - (ii) the Services Description;
 - (iii) the framework arrangements and Call-Off Terms;
 - (iv) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (v) the operating processes and procedures and the working methods of the Authority;
 - (vi) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets;
 - (vii) all matters relevant to the provision of the Services; and
 - (viii) the existing contracts (including any licences, support, maintenance and other agreements 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 Services; and
- (d) it has advised the Authority in writing of:
 - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) 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, including the Services Description and/or Authority Responsibilities as applicable.

- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
- (a) any unsuitable aspects of the Operating Environment;
 - (b) any misinterpretation of the Authority Requirements;
 - (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
 - (d) any lack of understanding relating to:
 - (i) the nature and scale of Ordering Organisations and/or Authorised Users;
 - (ii) the Call-Off Terms;
 - (iii) the volume of Orders to be placed.
- 2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 15 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

- 3.1 The Authority represents and warrants that:
- (a) it has full capacity and authority to enter into and to perform this Contract;
 - (b) this Contract is executed by its duly authorised representative;
 - (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
 - (d) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract and/or any Orders;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract and any and all Orders placed under this Contract;
- (e) it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority including the delivery of any Order;

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- (k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract and/or any Order;
 - (m) it has sufficient staff, skills and resources to carry out the Services including any and all Orders;
 - (n) it has all necessary sub-contractors and systems in place to enable it to provide the Services;
 - (o) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (p) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

4.1 This Contract shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Authority elects to extend the Initial Term by giving the Supplier at least 6 months' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the “**Condition Precedent**”). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.2:
- (a) this Contract shall automatically cease and shall not come into effect; and
 - (b) with the exception of the costs detailed at Clause 4.5 below, neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Authority

fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

- 4.5 In relation to the costs referred to at Clause 4.3.2 above, the Supplier agrees that it shall be responsible for:
- (a) the costs incurred by the Authority for re-procuring the Services;
 - (b) the additional costs incurred by the Authority and/or any Ordering Organisation in relation to any arrangements put in place to replace the Supplier in respect of the provision of the Services in accordance with the terms of the Contract.

5 SERVICES

Standard of Services

- 5.1 The Supplier shall provide:
- (a) the Implementation Services from (and including) the Implementation Services Commencement Date;
 - (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date;
 - (c) The Products specified in Orders to Ordering Organisations (or such other person or organisation specified in the Order) provided that:
 - (i) in the case of Orders placed via the Online Ordering Portal, the Order is placed by an Authorised User with permission to order products of the nature requested;
 - (ii) in the case of Exemptions, EHIC, GHIC, Covid Pass and NHS Pensions Payroll Information, the Order is placed by the Authority;
 - (iii) in the case of Orders places via the Contact Centre / Helpdesk, the Order is placed by Members of the Public; and
 - (iv) in relation to Orders referred to in Clause 5.1.3.1 the Order is subject to the Call-Off Terms set out in Schedule 33.
- 5.2 The Supplier shall ensure that:
- (a) the Services:
 - (i) comply in all respects with the Services Description;
 - (ii) in relation to Orders placed via the Online Ordering Portal they comply with the relevant Call-Off Terms; and
 - (iii) are supplied in accordance with the Supplier Solution and the provisions of this Contract.

5.3 The Supplier shall:

- (a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Quality Plans;
 - (vi) the Authority IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's and Ordering Organisations' obligations to ensure value for money;
- (c) be responsible for ensuring that all Information relating to the Services and Goods are kept safe and secure and shall be liable for the costs of replacing lost or damaged Goods including in the event that such loss or damage occurs whilst on any Site(s) and/or whilst in transit;
- (d) ensure:
 - (i) Goods conform with the Services Description;
 - (ii) Products confirm with the applicable Order;
 - (iii) Products are despatched to the Delivery Address stated in the Order;
 - (iv) Goods are of satisfactory quality, fit for purpose and free of defects in design, material and workmanship;
 - (v) where Goods are manufactured products, they are free from defects in design, material and workmanship and remain so for 12 months after deliver or such longer period of time as set out in this Contract or in any Order;
 - (vi) Goods comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage and delivery of the Goods; and
 - (vii) Goods and Services comply with the Target Performance Levels;

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- (e) forthwith on execution provide to the Authority copies of all leases (including finance leases) and licences which it enters into in relation to the Services;
- (f) forthwith on execution provide to the authority copies of all contracts it has with sub-contractors in relation to the Services.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
 - (iii) 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;

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- (iv) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be if required by the Authority to be Euro Compliant;
- (d) minimise any disruption to the Services, the IT Environment and/or the operations of the Authority, any Ordering Organisations or any Authorised User when carrying out its obligations under this Contract and/or any Order;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:
 - (i) reasonable information (including any Documentation);
 - (ii) advice; and
 - (iii) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with the following collaborative working 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 such Other Suppliers;
- (C) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
- (D) providing reasonable cooperation, support, information and assistance to such Other Suppliers 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;
 - (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
 - (h) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
 - (i) provide the Authority and/or any Ordering Organisation with such assistance as the Authority and/or Ordering Organisation may reasonably require during the Term in respect of the supply of the Services;
 - (j) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
 - (k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - (l) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
 - (m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority and/or Ordering Organisation or otherwise brings the Authority and/or Ordering Organisation into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority and/or Ordering Organisation, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and
 - (n) manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-

contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

5.7 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*), Clause 31.1 (*Termination by the Authority*), Schedule 3 (*Performance Levels*) and any other rights and remedies of the Authority and/or any Ordering Organisation or Authorised User howsoever arising, the Supplier shall:

- (a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority or any Ordering Organisation or Authorised User where practicable or within such other time period as may be agreed with the Authority or any Ordering Organisation or Authorised User (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 10 Working Days of becoming aware of the breach or being notified of the breach by the Authority or any Ordering Organisation or Authorised User; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work including any costs and/or losses incurred by the Authority or any Ordering Organisation or Authorised User in connection with/arising out of the breach,

and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:

- (a) be free from material design and programming errors;
- (b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
- (c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

5.9 The Supplier shall continue to perform all of its obligations under this Contract including its obligations under any and all Orders and shall not suspend the supply of the Services, notwithstanding:

- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

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- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority or by any Ordering Organisations to pay any Charges including Charges due under an Order providing the Supplier shall first have worked in good faith with the Authority and the relevant Ordering Organisation to resolve any dispute.

5.10 In the event that any Ordering Organisation persistently fails to pay any Charges relating to Orders which have been properly satisfied within 60 days of receipt of a valid invoice, the Supplier may, in relation to the relevant Ordering Organisation only, suspend access to the Online Ordering Portal.

Optional Services

- 5.11 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.12 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.13 Following receipt of the Authority's notice pursuant to Clause 5.11:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 15 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 3 (*Performance Levels*).

Power of attorney

- 5.14 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.14 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

Authority Responsibilities

- 5.15 The Authority shall comply with its responsibilities set out in Schedule 7 (*Authority Responsibilities*).

5A CALL-OFF SERVICES

Placement of Orders – Online Ordering Portal

- 5A.1 In accordance with Schedule 2 (Services Description), the Supplier shall establish, operate and maintain an Online Ordering Portal under which Authorised Users shall (on behalf of Ordering Organisations) be able to place Orders for the Products set out/documented on the Online Ordering Portal in accordance with the terms of this Contract.
- 5A.2 Full details and requirements relating to the Products which the Supplier is required to make available via the Online Ordering Portal are set out in Schedule 2 (*Services Description*).
- 5A.3 The Supplier shall ensure it has access to sufficient stock to fulfil all Orders placed via the Online Ordering Portal.
- 5A.4 All Orders placed via the Online Ordering Portal shall be made subject to the Call-Off Terms set out in Schedule 33. The Call-Off Terms create a direct contractual arrangement between the Supplier and the Ordering Organisation and/or Authorised User placing the Order.
- 5A.5 Once an Order has been fulfilled, the Supplier shall be entitled to invoice the relevant Ordering Organisation in accordance with the Call-Off Terms, the pricing mechanisms set out in Annex 1 and Annex 2 of Schedule 15 (*Charges and Invoicing*) and/or as otherwise permitted by this Contract.

Placement of Orders – Exemptions, GHIC, EHIC, Covid Pass and NHS Pensions Payroll Information

- 5A.6 The Authority may order the following directly from the Supplier:
- 5A.6.1 Exemptions ;
 - 5A.6.2 GHIC or EHIC;

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- 5A.6.3 NHS Pensions Payroll Information; and/or
- 5A.6.4 Covid Pass.
- 5A.7 The Supplier shall ensure it has access to sufficient Goods to fulfil all Orders placed by the Authority for the Products specified at 5A.6.1 – 5A.6.4.
- 5A.8 The pricing mechanism detailed at Annex 1 of Schedule 15 (*Charges and Invoicing*) shall apply in relation to any Orders placed by the Authority.
- 5A.9 All Orders placed pursuant to this Clause 5A shall be subject to the terms of this Contract.

Placement of Orders – Help with Health Costs

- 5A.10 In accordance with Schedule 2 (*Services Description*) the Supplier shall:
 - 5A.10.1 via the Supplier's Contact Centre/Helpdesk allow Members of the Public to order Help with Health Cost Forms ("**HwHC Forms**");
 - 5A.10.2 process all Orders placed by the Authority in respect of HwHC Forms placed following a Secure File Transfer; and
 - 5A.10.3 process all Orders of HwHC Forms placed by the Authority and/or any other Ordering Organisation(s) via the Online Ordering Portal.
- 5A.11 The forms referred to in Clause 5A.10 shall be dispatched to the address provided at the time of the request and shall be dispatched no later than the next Working Day following placement of Order.
- 5A.12 The Supplier shall invoice the Authority in respect of HwHC Forms Orders which have been received and dispatched:
 - 5A.12.1 irrespective of how the Order was placed;
 - 5A.12.2 on a monthly basis; and
 - 5A.12.3 in accordance with Annex 1 of the pricing mechanism set out in Schedule 15 (*Charges and Invoicing*).
- 5A.13 The Supplier shall ensure it has access to sufficient stock in order to fulfil all Orders placed for HwHC Forms.
- 5A.14 All Orders placed in relation to HwHC Forms shall be made subject to the terms of this Contract.

6 IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within 10 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services 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**").

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- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 6.3 Following the approval by the Authority of the Quality Plans:
- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Authority in accordance with Clause 25.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 26 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 2 (*Services Description*) and Schedule 14 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

- (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
- (b) comply with the provisions of Schedule 3 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

7.3 Save as provided otherwise in this Contract and/or the Call-Off Terms, Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:

- (a) the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or

- (iii) results in:
 - (A) the corruption or loss of any Authority Data (in which case the remedies under Clause 18.7 (*Authority Data and Security Requirements*) shall also be available); and/or
 - (B) the Authority being required to make a compensation payment to one or more third parties including but not limited to Ordering Organisations and/or Authorised Users;
- (c) the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 31.1(b) (*Termination by the Authority*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- (a) the Authority shall (subject to the Service Credit Cap set out in Clause 23.4(b) (*Financial and other limits*) and subject to Clause 7.4(c) below) be entitled to claim from the Supplier a sum equal to the value of any Orders placed in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”);
- (b) if the Authority claims from the Supplier a Compensation for Unacceptable KPI Failure in accordance with Clause 7.4(a) any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- (c) the Authority shall be entitled to recover additional costs incurred by it and/or other Ordering Organisations over and above the Compensation for Unacceptable KPI failure in the event of any shortfall between the Compensation for Unacceptable KPI Failure and the costs actually incurred by the Authority in connection with the Unacceptable KPI Failure,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

- 7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 31.1 or 31.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

- 7.7 Not more than once in each Contract Year the Authority may, on giving the Supplier at least 3 months' notice:
- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
 - (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 7.8 The Supplier shall not be entitled to object to any changes made by the Authority under Clause 7.7, or increase the Service Charges as a result of such changes provided that:
- (a) the total number of Key Performance Indicators does not exceed 33
 - (b) the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards; and
 - (c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Strategic Joint Team Programme Board once every 12 months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - (b) new or potential improvements to the Goods, the Online Ordering Portal and/or the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance

- mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority and/or other Ordering Organisations; and/or
 - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT, MAINTENANCE, GOODS AND PRODUCTS

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule**”) which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment 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 IT Environment and the Services.

Supply of Goods

- 9.7 Goods shall be in compliance with Schedule 2 (*Services Description*).
- 9.8 The Supplier shall ensure that the Goods are free from defects in design, materials and workmanship and remain so for 12 months (or such longer period as may be specified in Schedule 2 (*Services Description*) after delivery.
- 9.9 if following inspection or testing the Authority considers that the Goods do not conform with Schedule 2 (*Services Description*), the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

Supply of Products

- 9.10 Subject to Clause 9.11, where the Authority and/or any other Authorised User places an Order for any Product(s), the Supplier shall ensure that:
- (a) in the case of an Authorised User, that Authorised User is authorised to purchase the Product(s) requested whether on behalf of itself or any other Ordering Organisation;
 - (b) in the case of an Order placed via the Online Ordering Portal, the Order is subject to the Call-Off Terms set out in Schedule 33;
 - (c) the amounts payable for the Product(s) shall be calculated in accordance with the applicable pricing mechanism set out in Annex 1 and Annex 2 of Schedule 15 as may be updated from time to time in accordance with the terms of this Contract;

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- (d) the Supplier shall supply and, where relevant, install the Product(s) in accordance with the provisions of Schedule 2 (*Services Description*);
- (e) the Supplier shall ensure that the Product(s) are free from defects in design, materials and workmanship and remain so for 12 months (or such longer period as may be specified in Schedule 2 (*Services Description*)) after delivery;
- (f) if following inspection or testing the Authority considers that the Product(s) do not conform with Schedule 2 (*Services Description*), the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance;
- (g) if following delivery or attempted delivery of the Product(s), an Ordering Organisation and/or if applicable a Member of the Public, considers that the Product(s) do not conform with Schedule 2 (*Services Description*), the Supplier shall, following notification or becoming aware of the issue, immediately take such remedial action as is necessary to ensure compliance; and
- (h) without prejudice to any other rights or remedies of the Authority risk and ownership in the Products shall pass to relevant Ordering Organisation at the time of delivery.

Supply of HwHC Forms

9.11 In relation to HwHC Forms ordered by Members of the Public via the Contact Centre / Helpdesk the following shall apply:

- (a) the amounts payable for the HwHC Forms shall be calculated in accordance with the applicable pricing mechanism set out in Annex 1 of Schedule 15 (*Charges and Invoicing*);
- (b) the Supplier shall supply the Products in accordance with Schedule 2 (*Services Description*);
- (c) if following inspection or testing the Authority considers the Products do not conform with Schedule 2 (*Services Description*), the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance;
- (d) if following delivery or attempted delivery of the Product(s), an Ordering Organisation considers that the Product(s) do not conform with Schedule 2 (*Services Description*), the Supplier shall, following notification or becoming aware of the issue, immediately take such remedial action as is necessary to ensure compliance; and
- (e) without prejudice to any other rights or remedies of the Authority risk and ownership in the Products shall pass to relevant Ordering Organisation at the time of delivery.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority and/or any relevant Ordering Organisation shall pay the Charges to the Supplier in respect of Orders fulfilled in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 27 (*Remedial Adviser*) and Clause 28 (*Step-In Rights*).
- 10.3 If the Authority or Ordering Organisation fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.4 With the exception of any Orders placed by the Authority and/or referred to at Paragraph 2(1) of Part E of Schedule 15 (*Charges and Invoicing*), the Authority shall not be liable for Charges relating to any Order placed under or relating to this Contract.

VAT

- 10.5 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable at the time of supply and invoiced in accordance with Schedule 15 (*Charges and Invoicing*) and paid by the Authority following delivery of a valid VAT invoice.
- 10.6 The Supplier shall indemnify the Authority, the Department of Health and Social Care and/or any Ordering Organisations on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority and/or any Ordering Organisations at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.6 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 10.7 Not used.

Benchmarking

- 10.8 The Parties shall comply with the provisions of Schedule 17 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

- 10.9 The Parties shall comply with the provisions of Schedule 18 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

- 10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

Implementation and Transition Costs

- 10.11 Any and all costs associated with the Implementation Services may only be recoverable by the Supplier through the Charges calculated in accordance with Annex 1 of Schedule 16 (*Payments on Termination*).
- 10.12 The Supplier shall monitor and report on its recovery of Total Transition Costs (as defined in Schedule 16 (*Payments on Termination*)) on no less than a quarterly basis. Following recovery by the Supplier of the Total Transition Costs the Payment Mechanism set out at Annex 1 of Schedule 15 (*Charges and Invoicing*) shall be adjusted to remove costs associated with transition. Such adjustment shall be implemented following agreement of a Contract Change.

Damage to Goods and Sites

- 10.13 The Supplier shall comply with the provisions of this Contract including Schedule 2 (Services Description) in relation to damaged, degraded or lost Goods.
- 10.14 Notwithstanding any other provision of this Contract, the Authority shall not be liable to the Supplier in respect of storage costs, disposal costs, quarantine costs or any losses whatsoever arising out of or in connection

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with damaged Goods if such costs or losses are incurred by or attributable in whole or in part to any act or omission of the Supplier.

- 10.15 The sole risk of replacing, disposing, quarantining, storing or otherwise handling Goods which are damaged, degraded or lost is the sole responsibility of the Supplier and the Supplier agrees to insure against such risk in accordance with the terms of this Contract.
- 10.16 Unless otherwise agreed in writing by the Authority, in the event of any damage or loss to Goods the Supplier shall use its best endeavours to arrange for the replacement thereof as soon as is practicable.
- 10.17 Upon the occurrence of any incident or other event which has the effect of making the Site or Sites unsuitable to continue to store the Goods in accordance with the terms of this Contract, the Supplier shall, at its own cost, immediately relocate the Goods to suitable alternative storage facilities.

SECTION D – CONTRACT GOVERNANCE

11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 12.1 The Supplier shall comply with the provisions of:
- (a) Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - (b) Part A of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- (a) Part B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - (b) Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 CHANGE

Change Control Procedure

- 13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
- (a) a General Change in Law; or

- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

13.5 Any costs associated with a Specific Change in Law (other than as referred to in Clause 13.2(b)) may only be recoverable by way of an adjustment to the Charges agreed between the Parties in writing and implemented in accordance with Clause 13.4.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including conduct in providing the Services, whether at Delivery Addresses and/or at the Sites, including the security requirements as set out in Schedule 5 (*Security Management*) and/or such other security requirements as may be notified to the Supplier by the Authority;
- (c) subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority, any Ordering Organisation or Authorised User;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever, ensuring at all times that there are sufficient number of Supplier Personnel to deliver the Services;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

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- (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.

14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.

14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key

Personnel's employment contract, this will mean at least 60 Working Days' notice;

- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role;
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and
 - (iii) has been notified to and agreed in advance by the Authority;
- (f) procure that any Sub-contractor shall not remove or replace any Key Personnel during the Term without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

Employment Indemnity

14.7 The Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority and any Ordering Organisation by any person where such claim arises from any act or omission of the Supplier, any Supplier Personnel or any Sub-contractor personnel; and
- (b) the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction,

contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28 (*Staff Transfer*) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 28 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 28 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 28 (*Staff Transfer*) shall apply; and
 - (iv) Part C of Schedule 28 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 28 (*Staff Transfer*) shall apply, Part D of Schedule 28 may apply and Parts A and B of Schedule 28 (*Staff Transfer*) shall not apply; and
- (c) Part E of Schedule 28 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

Further provisions

14.10 The decision of the Authority as to whether any person is to be refused access to any Site(s) shall be final and conclusive.

14.11 The Authority may require the Supplier to remove any Key Personnel, staff of the Supplier or Sub-contractor personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the

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- provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
 - (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
 - (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - (d) provide reports on the information at Clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and

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- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on “arm’s-length” terms.

15.7 If requested by the Authority within 10 Working Days of receipt of the Supplier’s notice issued pursuant to Clause 15.6, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Authority.

15.8 The Authority may, within 10 Working Days of receipt of the Supplier’s notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*);

in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-contractor’s appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier’s notice issued pursuant to Clause 15.6; and
 - (ii) any further information requested by the Authority pursuant to Clause 15.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority and/or any Ordering Organisation;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.23 (*Termination of sub-contracts*).
- 15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).
- 15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
 - (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 18 (*Authority Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority and/or Ordering Organisations or otherwise bring the Authority and/or

Ordering Organisations into disrepute set out in Clause 5.5(m) (*Services*);

- (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
- (v) the conduct of Audits set out in Part C of Schedule 19 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1(a) (*Termination by the Authority*) and 1.1 (*Payments by the Authority*) and Schedule 16 (*Payments on Termination*) of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 28 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial

Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 18 (*Financial Distress*);

- (l) a provision requiring the Key Sub-contractor to obtain the consent of the Supplier and the Authority prior to any change of Control of the Key Sub-contractor.

15.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

15.14 The Supplier shall ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into after the Effective Date 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:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.14(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.14(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.15 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the Effective Date 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:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.15(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.15(d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.16 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.16(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.17 Without prejudice to Clause 15.16(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or

- (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
 - (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (Performance Levels) a summary of its compliance with Clause 15.17(a), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 15.18 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest Balanced Scorecard Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:
 - (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - (b) actions to address each of the causes set out in Clause 15.18(a); and
 - (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 15.19 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.20 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.21 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included).
- 15.22 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor’s undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for

payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.23 The Authority may require the Supplier to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1(b) (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority and/or Ordering Organisation or otherwise brought the Authority and/or Ordering Organisation into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.28; and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

15.24 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any Goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

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- (b) subject to Clause 15.26, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.25 If the Authority exercises either of its option pursuant to Clause 15.24(a), then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.26 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

- 15.27 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

- 15.28 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
 - (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

- 15.29 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule

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24 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

- 15.30 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F – INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

17 IPRs INDEMNITY

- 17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2(a) or to modify or replace an item pursuant to Clause 17.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
 - (b) without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18 AUTHORITY DATA AND SECURITY REQUIREMENTS

- 18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).
- 18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

- 18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 18.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 18.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. 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 then be agreed in accordance with the Change Control Procedure.
- 18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 18.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 18.13 In relation to any Order, the Supplier shall comply with any additional security related requirements set out in this Contract, any Order and if applicable, the Call-Off Terms.

19 CONFIDENTIALITY

- 19.1 For the purposes of this Clause 19, the term “Disclosing Party” shall mean a Party and/or Ordering Organisation and/or Authorised User and/or Members of the Public which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
 - (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner’s prior written consent;
 - (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

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- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Authority and/or Ordering Organisations and/or Authorised Users and/or Members of the Public on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 19.6 The Authority may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 28 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing and Clause 19.5, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

- 19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

20 TRANSPARENCY AND FREEDOM OF INFORMATION

20.1 The Parties acknowledge that:

- (a) the Transparency Reports;
- (b) the content of this Contract, including any changes to this Contract agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information; and
- (c) the Publishable Performance Information,

(together the “**Transparency Information**”) are not Confidential Information.

- 20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).
- 20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 20.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

- (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

21 PROTECTION OF PERSONAL DATA

Status of the Controller

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- (a) "Controller" (where the other Party acts as the "Processor");
- (b) "Processor" (where the other Party acts as the "Controller");
- (c) "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
- (d) "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

21.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller.

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- 21.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 21.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 21.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 31 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Processor's duties under this Clause 21, Clauses 19 (*Confidentiality*) and 18 (*Authority Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018);
- (e) where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the transfer is in accordance with Article 45 of the EU GDPR;
- (f) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

21.6 Subject to Clause 21.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

- 21.7 The Processor's obligation to notify under Clause 21.6 shall include the provision of further information to the Controller in phases, as details become available.
- 21.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 21.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 21.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

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21.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

21.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

21.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

21.16 Not Used.

Where the Parties are Independent Controllers of Personal Data

21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.

21.21 The Parties shall only provide Personal Data to each other:

- (a) to the extent necessary to perform the respective obligations under this Contract;
- (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
- (c) where the Personal Data is subject to UK GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - (i) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31(*Processing Personal Data*), as well as any additional measures determined by the non-transferring Party;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data;
- (d) where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

- (i) the transfer is in accordance with Article 45 of the EU GDPR;
or
 - (ii) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Annex 3 to Schedule 31 (*Processing Personal Data*) or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;
 - (iii) the Data Subject has enforceable rights and effective legal remedies;
 - (iv) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (v) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- (e) where it has recorded it in Schedule 31 (*Processing Personal Data*).

21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

21.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.

21.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract (**"the Request Recipient"**):

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- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

21.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:

- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
- (b) implement any measures necessary to restore the security of any compromised Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31 (*Processing Personal Data*).

21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31 (*Processing Personal Data*).

21.28 Notwithstanding the general application of Clauses 21.2 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.16 to 21.27.

Standard Contractual Clauses

21.29 Not Used.

22 PUBLICITY AND BRANDING

22.1 The Supplier shall not:

- (a) make any press announcements or publicise this Contract, any Orders or its contents in any way; or
- (b) use the Authority's name or brand or any Ordering Organisation or Authorised Users' name in any promotion or marketing or announcement of Orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

22.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G – LIABILITY, INDEMNITIES AND INSURANCE

23 LIMITATIONS ON LIABILITY

Unlimited liability

23.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

23.2 The Supplier's liability in respect of the indemnities in Clause 10.6 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

23.3 The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

Financial and other limits

23.4 Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*) and Clauses 23.7 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) the Supplier's aggregate liability in respect of loss of or damage to Authority Data or Losses incurred by the Authority due to breach of Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- (c) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and

- (d) without prejudice to any liability of the Supplier in relation to any Order, the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 23.4(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

23.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.4(c).

23.6 Subject to Clauses 23.1 and 23.3 (*Unlimited Liability*) and Clause 23.7 (*Consequential Losses*):

- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3(a) (*Termination by the Supplier*) shall in no event exceed the relevant level set out in Annex 1 of Schedule 16; and
- (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed the amount invoiced by the Authority in respect of the Authority's Management Fee during the previous 12 month period, and

for the avoidance of doubt, the Authority shall not be liable to the Supplier in any circumstances for any Charges payable by the Ordering Organisations to the Supplier.

Consequential Losses

- 23.7 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited Liability*) and Clause 23.8, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.8 Notwithstanding Clause 23.7 but subject to Clause 23.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
 - (d) any compensation or interest paid to a third party by the Authority;
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;
 - (f) any anticipated savings identified in Schedule 20 (*Anticipated Savings*);
 - (g) handling costs for any Orders placed which need to be managed by the Authority including in relation to any dispute arising out of an Order; and
 - (h) costs of replacing or disposing of the Goods.

Conduct of indemnity claims

- 23.9 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 23.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract,

including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

24 INSURANCE

- 24.1 The Supplier shall comply with the provisions of Schedule 6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

25 RECTIFICATION PLAN PROCESS

25.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) in any Service Period there has been:
 - (i) a Material KPI Failure; and/or
 - (ii) a Material PI Failure; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default); and/or
- (d) there are circumstances arising requiring a Rectification Plan, in accordance with the provisions of this Clause 25 (*Rectification Plan Process*),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

25.2 If:

- (a) the Supplier notifies the Authority pursuant to Clause 25.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

25.3 The “**Rectification Plan Process**” shall be as set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

- 25.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.
- 25.5 The draft Rectification Plan shall set out:
- (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).
- 25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 25.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Notifiable Default; and/or
 - (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 25.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

25.9 If the Authority consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

26 DELAY PAYMENTS

26.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 15 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

26.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- (a) the Authority is entitled to or does terminate this Contract pursuant to Clause 31.1(b) (*Termination by the Authority*); or
- (b) the Delay exceeds the Delay Deduction Period.

27 REMEDIAL ADVISER

27.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an “**Intervention Cause**”), the Authority may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 27.1 prior to or instead of exercising its right to terminate this Contract.

27.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:

- (i) a person selected by the Supplier and approved by the Authority; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- (c) any right of the Authority to terminate this Contract pursuant to Clause 31.1(b) (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the **"Intervention Period"**).

27.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

27.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;

- (c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

27.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 27.

27.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (ii) is in Default of any of its obligations under Clause 27.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Contract pursuant to Clause 31.1(b) (*Termination by the Authority*).

28 STEP-IN RIGHTS

28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 28 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;

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- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

28.2 Following service of a Step-In Notice, the Authority shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 28.

28.3 For so long as and to the extent that the Required Action is continuing, then the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action.

28.4 Not Used.

28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 28.5.

28.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account

and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

28.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (b) limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

28.9 The Supplier shall be liable for all costs reasonably incurred by the Authority in taking the Required Action.

29 AUTHORITY CAUSE

29.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- (a) Achieve a Milestone by its Milestone Date;
- (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Contract,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 29):

- (i) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 31.1(b) (*Termination by the Authority*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

- (B) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
 - (D) where applicable, the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 15 (*Charges and Invoicing*); and/or
 - (iv) where the Supplier Non-Performance constitutes a Performance Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits to the extent that the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.
- 29.2 In order to claim any of the rights and/or relief referred to in Clause 29.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract;
 - (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
 - (d) the relief claimed by the Supplier.
- 29.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.
- 29.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

29.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

29.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 29 shall be implemented in accordance with the Change Control Procedure.

30 FORCE MAJEURE

30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated, but the Supplier has failed to do so;
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
- (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 31.1(c) (*Termination by the Authority*) or Clause 31.3(b) (*Termination by the Supplier*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Contract:
 - (i) the Authority shall not be entitled:
 - (A) Not Used;
 - (B) to receive Delay Payments pursuant to Clause 26 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event;
 - (ii) the Supplier shall be entitled to invoice Ordering Organisations in accordance with Schedule 15 (Charges and Invoicing) only in relation to Services (or part of the Services) performed by the Supplier in accordance with the terms of

this Contract during the occurrence of the Force Majeure Event; and

- (iii) the Authority shall be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 28 (*Step-in Rights*).

30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

30.8 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 30.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

31 TERMINATION RIGHTS

Termination by the Authority

31.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

- (a) for convenience at any time;
- (b) if a Supplier Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- (d) if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Contract shall terminate on the date specified in the Termination Notice.

31.2 Where the Authority:

- (a) is terminating this Contract under Clause 31.1(b) due to the occurrence of either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Contract under Clause 31.1(b) or Clause 31.1(c), it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

31.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Contract by providing a minimum of 18 months written notice; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination

Notice). If the operation of Clause 31.3(b) would result in a Partial Termination, the provisions of Clause 31.4 (*Partial Termination*) shall apply.

Partial Termination

- 31.4 If the Supplier notifies the Authority pursuant to Clause 31.3(b) (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 31.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 31.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

32 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 32.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.5 and 10.6 (*VAT*), 10.7 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*), shall survive the termination or expiry of this Contract.

Exit Management

- 32.2 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

- 32.3 If this Contract is terminated by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) the Authority shall pay the Supplier the applicable Termination Payment set out in Annex 1 of Schedule 16 (which shall be the Supplier's sole remedy for the termination of this Contract).
- 32.4 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1(b), 31.1(c) and/or 31.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date but the Authority shall not pay for any unpaid Charges for Services received by an Ordering Organisation up until the Termination Date which shall be paid for by the Ordering Organisation in accordance with the Call-Off Terms.
- 32.5 The costs of termination incurred by the Parties shall lie where they fall if:
- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 31.1(c) or 31.2(b) (*Termination by the Authority*) or 31.3(b) (*Termination by the Supplier*); or
 - (b) the Authority terminates this Contract under Clause 31.1(d) (*Termination by the Authority*).

Payments by the Supplier

- 32.6 In the event of termination or expiry of this Contract, the Supplier shall repay to the Authority or any other Ordering Organisation:
- (a) all Charges it has been paid in advance in respect of Services not provided and/or Products not supplied by the Supplier as at the date of expiry or termination; and
 - (b) in the event of termination prior to the commencement of the Operational Service Commencement Date, any payments made to the Supplier in respect of the Implementation Services notwithstanding whether they have been properly made unless:
 - (i) such termination arises as a result of an Authority Cause; or

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- (ii) such termination arises due to an Event of Force Majeure in which case 50% of the payments referred to in Clause 32.6(b) shall become repayable to the Authority.

32.7 Not used.

32.8 Not used.

32.9 Not used.

32.10 Not used.

32.11 Not used.

32.12 If this Contract is terminated by the Supplier pursuant to Clause 31.3(a) the Supplier shall pay to the Authority:

- (a) costs incurred by the Authority including legal costs and the costs of re-procuring the Service; and
- (b) the balance of any price increase associated with any Replacement Supplier provisions.

SECTION J – MISCELLANEOUS AND GOVERNING LAW

33 COMPLIANCE

Health and Safety

- 33.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Employment Law

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

Equality and Diversity

- 33.4 The Supplier shall:
- (a) perform its obligations under this Contract and/or any Order (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

- 33.5 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and

- (b) section 182 of the Finance Act 1989.

Conflicts of Interest

33.6 The Supplier:

- (a) must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- (b) must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

33.7 The Authority 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 Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest.

Modern Slavery

33.8 The Supplier:

- (a) shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) 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;
- (e) shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) 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 sub-contractors anti-slavery and human trafficking provisions;
- (g) 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;

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- (h) shall prepare and deliver to the Authority, 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;
- (i) shall not use, nor allow its employees or sub-contractors 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 sub-contractors;
- (j) shall not use or allow child or slave labour to be used by its sub-contractors; [and]
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline[.]/[;]
- (l) shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;
- (m) shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf

and such remedial action plan shall be deemed to be a Rectification Plan;

- (n) shall comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) days of such request;
- (o) shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
- (p) shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and
- (q) shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its

operations and supply chains to the Authority and relevant national or local law enforcement agencies.

33.9 The following shall be added to the definition of “Audit” in Paragraph 1.1 of Schedule 19 (*Financial Reports and Audit Rights*) immediately after limb (t):

“(u) to carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Personnel in a confidential manner and in the native language of such Supplier Personnel in respect of workforce conditions, working or employment practices and recruitment practices;”

33.10 For the purposes of an audit carried out pursuant to limb (u) of the definition of “Audit”, in addition to any other rights under the Contract, the Authority may instruct the Supplier to carry out such an audit of any Sub-Contractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Authority within ninety (90) days of such instruction.

33.11 If the Supplier notifies the Authority pursuant to Clause 33.13 it shall respond promptly to the Authority’s enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

33.12 If the Supplier is in Default under Clause 33.8 the Authority may by notice:

- (a) require the Supplier to remove from performance of the Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

Whistleblowing

33.13 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:

- (a) Law;
- (b) Clauses 33.1 to 33.8 or 33.14; or
- (c) Clause 37.

33.14 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

34 ASSIGNMENT AND NOVATION

34.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.

34.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

34.3 and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2. Unless otherwise agreed by the Parties, any successor to or transferee of the Authority's role and responsibility in respect of the subject matter of this Contract shall be substituted for the Authority.

34.4 Not Used.

34.5 Not Used.

35 WAIVER AND CUMULATIVE REMEDIES

35.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

35.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

36 RELATIONSHIP OF THE PARTIES

36.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

37 PREVENTION OF FRAUD AND BRIBERY

37.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Supplier shall not during the term of this Contract:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

37.3 The Supplier shall during the term of this Contract:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
- (c) keep appropriate records of its compliance with its obligations under Clause 37.3(a) and make such records available to the Authority on request; and
- (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Contract.
- 37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

38 SEVERANCE

- 38.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 38.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 23 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 38.3.

39 FURTHER ASSURANCES

- 39.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.
- 39.2 In the event of any change in the financial standing of the Guarantor during the term of this Contract or any other change in the circumstances of the Guarantor which, in the Authority's reasonable opinion, weakens the strength or otherwise prejudices the strength of the Condition Precedent/Guarantee referred to in Clause 4.2 (*Condition Precedent*), the Supplier shall, at its own expense provide:
- (a) an alternative guarantee in a form acceptable to the Authority;
and/or
 - (b) an alternative guarantor of the standing acceptable to the Authority;
and/or
 - (c) a performance bond in a form acceptable to the Authority,
- no less than 10 days following a written request to do so by the Authority.
- 39.3 In the event that a Supplier Termination Event occurs within the first 6 months' of this Contract and the Authority exercises its right to terminate this Contract in accordance with Clause 31.1(b), the Authority may enter into a new agreement with the Second Placed Bidder in connection with the Services.
- 39.4 In the event of termination referred to in Clause 39.3, the Supplier shall continue to remain responsible for all acts and omissions of the Supplier prior to the relevant Termination Date and shall indemnify the Authority and/or the Replacement Supplier in respect of any costs and/or losses they may incur as a result of the Supplier's performance of this Contract prior to the Termination Date.

40 ENTIRE AGREEMENT

- 40.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 THIRD PARTY RIGHTS

- 41.1 The provisions of Clause 17.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 28 (Staff Transfer), the provisions of Paragraph 6.9 of Schedule 25 (Exit Management), and any and all clauses and paragraphs in this Contract together with for the avoidance of doubt any Schedules and/or Annexures to it which confer rights and/or benefits upon Ordering Organisations and/or Authorised Users (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 41.2 Subject to Clause 41.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 41.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42 NOTICES

- 42.1 Any notices sent under this Contract must be in writing.
- 42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will	Properly addressed and delivered as evidenced by signature of a delivery receipt

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	occur at 9.00am on the next Working Day.	
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 42.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Supplier	Authority
Contact	Associate General Counsel	Head of Commercial Services
Address	Xerox (UK) Limited, Building 4, Uxbridge Business Park, Sanderson Road, Uxbridge.	NHSBSA, Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE15 8NY
Email	Richard.pitceathly@xerox.com	Sean.murphy@nhsbsa.net.uk

- 42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

- 42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 shall invalidate the service of the

related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 42.6 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).

43 DISPUTES

- 43.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 43.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

44 GOVERNING LAW AND JURISDICTION

- 44.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 44.2 Subject to Clause 43 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

This Contract has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of
Xerox (UK) Limited by a director:

)
)
)
) Signature:

Name (block
capitals):

Director

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SIGNED for and on behalf of)
NHS Business Services Authority)

)

) Signature:

Name (block
capitals):

Position:

MODEL SERVICES AGREEMENT COMBINED SCHEDULES

MODEL AGREEMENT FOR SERVICES

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SCHEDULE 1

DEFINITIONS

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):
- (a) 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 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
 - (b) 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 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

"Accounting Reference Date"	means in each year the date to which the Supplier prepares its annual audited financial statements;
"Access Management"	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
"Account Manager"	has the meaning given in Schedule 2 (<i>Services Description</i>);
"Achieve"	(a) in respect of a Test, to successfully pass a Test without any Test Issues; and

- (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 14 (*Testing Procedures*),

and “**Achieved**” and “**Achievement**” shall be construed accordingly;

“ Ad Hoc Jobs ”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“ Affected Party ”	the Party seeking to claim relief in respect of a Force Majeure Event;
“ Affiliate ”	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 with, that body corporate from time to time;
“ Allowable Assumptions ”	where applicable, the assumptions set out in Annex 5 of Schedule 15 (<i>Charges and Invoicing</i>);
“ Annual Contract Report ”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“ Annual Revenue ”	<p>means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:</p> <p>(a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and</p> <p>(b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;</p>
“ Anticipated Contract Life Profit Margin ”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);

“API”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Approved Sub-Licensee”	any of the following: <ul style="list-style-type: none"> (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (c) 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 Authority;
“Assets”	all assets and rights used by the Supplier or any Sub-contractor providing the Services in accordance with this Contract but excluding the Authority Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
“ATP Milestone”	means the CPP Milestone;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none"> (a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed

	representatives of the National Audit Office;
	(d) HM Treasury or the Cabinet Office;
	(e) any party formally appointed by the Authority to carry out audit or similar review functions; and
	(f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Authorised Users”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Authorised User Profile”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Authority Applications”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Authority Assets”	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
“Authority Background IPRs”	<p>(a) IPRs owned by the Authority or Ordering Organisations before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Authority or Ordering Organisations independently of this Contract; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p> <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>
“Authority Cause”	any material breach by the Authority of any of the Authority Responsibilities, except to the

extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“Authority Data”

- (a) the Prescriber Data, 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 or any records, Orders, details, information in whatever form provided in respect of the provision of the Services, and which are:
 - (i) supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Authority Personal Data and any other Personal Data for which the Authority is the Controller;

“Authority IT Strategy”

the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

“Authority Materials”

the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Authority; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party

	Software;
“Authority Personal Data”	any Personal Data which is Processed by the Supplier or any Sub-contractor on behalf of the Authority, Ordering Organisation, Authorised Users, the public, a Central Government Body or any NHS body pursuant to or in connection with this Contract;
“Authority Premises”	premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“Authority Representative”	the representative appointed by the Authority pursuant to Clause 11.4 (Representatives);
“Authority Requirements”	the requirements of the Authority set out in Schedule 2 (<i>Services Description</i>)), Schedule 3 (<i>Performance Levels</i>), Schedule 4, Schedule 5 (<i>Security Management</i>), Schedule 6 (<i>Insurance Requirements</i>), Schedule 13 (<i>Implementation Plan</i>), Schedule 24 (<i>Reports and Records Provisions</i>), Schedule 25 (<i>Exit Management</i>) and Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Authority Responsibilities”	the responsibilities of the Authority specified in Schedule 7 (<i>Authority Responsibilities</i>);
“Authority SIAM Reports”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Authority Software”	software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;
“Authority's Service Desk”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Authority System”	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System

	or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services or any part of them to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 3 (<i>Performance Levels</i>);
“Baseline Personnel Security Standard”	has the meaning given in Schedule 5 (<i>Security Management</i>);
“Baseline Security Requirements”	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 (Baseline Security Requirements) of Schedule 5 (<i>Security Management</i>), as updated from time to time by the Authority and notified to the Supplier;
“Board”	means the Supplier's board of directors;
“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 18 (<i>Financial Distress</i>);
“Breach of Security”	has the meaning given in Schedule 5 (<i>Security Management</i>);
“Breakage Costs Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Business Hours”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Cabinet Office Markets and Suppliers Team”	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Call-Off Terms”	the call-off terms set out at Schedule 33 of this Contract;
“Capacity”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Capacity Management”	has the meaning given in Annex 1 of Schedule

	2 (<i>Services Description</i>);
“Card”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Carrier”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Catalogue”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“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;
“Certificate”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2: Change Authorisation Note;
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 22 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Management”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 (<i>Change Request Form</i>);

“Charges”	the charge or charges relating to any Products purchased under any Order calculated in accordance with the charges set out in Annex 1 and Annex 2 of Schedule 15 (<i>Charges and Invoicing</i>) as may be updated from time to time in accordance with the terms of this Contract;
“CHECK Scheme”	<i>has the meaning set out in Schedule 5 (Security Management);</i>
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	<p>the information listed in Schedule 9 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4(a) (Unacceptable KPI Failure);
“Condition Precedent”	has the meaning given in Clause 4.2 (Condition Precedent);
“Confidential Information”	<ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or

- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the

	time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
	(iv) was independently developed without access to the Confidential Information; or
	(v) relates to the Supplier's:
	(1) performance under this Contract; or
	(2) failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (Supply Chain Protection);
“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority;
“Contact Centre / Helpdesk”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Contingency Stock Holding”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Continual Service Improvement”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Continual Service Improvement Programme”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Contract Change”	any change to this Contract other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
“Contracts Finder”	the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015;
“Contract Year”	(a) a period of 12 months commencing on the Operational Service

Commencement Date; or

- (b) thereafter a period of 12 months commencing on each anniversary of the Operational Service Commencement Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

“Control”

the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Controller”

has the meaning given in the UK GDPR or the EU GDPR as the context requires;

“Corporate Change Event”

means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or

the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;

- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Change Event Grace Period”

means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event

“Corporate Resolvability Assessment (Structural Review)”

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 2: Corporate Resolvability Assessment (Structural Review) of Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);

“Costs”

has the meaning given in Schedule 15

(*Charges and Invoicing*);

“Covid Pass”

the NHS COVID Pass Service, which allows members of the public to obtain and share a copy of their coronavirus (COVID-19) status for the purposes of international travel, either:

- (a) digitally on the COVID Pass feature of the NHS app or NHS.UK website,
- (b) via email or
- (c) in hard copy letter form, as well as the associated service provided by the 119 call centre;

“CPP Milestone”

a contract performance point as set out in the Implementation Plan as TM11, in relation to which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 14 (*Testing Procedures*);

“Critical National Infrastructure”

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on the national security, national defence, or the functioning of the UK;

“Critical Performance Failure”

- (a) the Supplier accruing in aggregate 200 or more Service Points (in terms of the number of points allocated) in any period of 3 months; or
- (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI

	Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Authority and specified in Paragraph 1.1 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Crown Body”	means 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 Copyright”	has the meaning given in the Copyright, Designs and Patents Act 1988
“CRP Information”	means the Corporate Resolution Planning Information, together, the: <ul style="list-style-type: none"> (a) Exposure Information (Contracts List); (b) Corporate Resolvability Assessment (Structural Review); and (c) Financial Information and Commentary
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“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”	<ul style="list-style-type: none"> (a) the UK GDPR; (b) the DPA 2018 to the extent that it

	relates to processing of personal data and privacy;
	(c) all applicable Law about the processing of personal data and privacy; and
	(d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<p>(a) any error, damage or defect in the manufacturing of a Deliverable; or</p> <p>(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</p> <p>(c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether</p>

	or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
	(d) 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 Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Delay Deduction Period”	the period of one thirty (30) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Authority and/or Ordering Organisation in respect of a Delay in Achieving a Key Milestone as specified in Schedule 15 (<i>Charges and Invoicing</i>);
“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract or any Order;
“Delivery Address”	means any location where the Products are to be provided, delivered or required by the Authority and/or any Ordering Organisation;
“Delivery Address ID”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Delivery Note”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Desktop Test”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Dependent Parent”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or

Undertaking	Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (<i>Implementation Plan</i>);
“DHSC”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Disclosing Party”	has the meaning given in Clause 19.1 (Confidentiality);
“Disclosing Party Group”	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Contract;</p>
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Documentation”	descriptions of the Services, Orders and Performance Indicators, details of the Supplier System (including (i) vendors and versions for

off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority under this Contract;
- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

“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 by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA 2018”

the Data Protection Act 2018;

“Due Diligence Information”

any information supplied to the Supplier by or on behalf of the Authority prior to the Effective

	Date;
“EAL”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Effective Date”	the later of: <ul style="list-style-type: none"> (a) the date on which this Contract is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (Condition Precedent);
“EHIC”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Emergency Maintenance”	ad hoc and unplanned maintenance provided by the Supplier where: <ul style="list-style-type: none"> (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault, <p>provided that in the case of (a) and (b) above, the need for the ad hoc and unplanned maintenance arises as a result of an emergency situation and it would not be appropriate to delay such maintenance to be carried out in accordance with the agreed Maintenance Schedule;</p>
“Employee Liabilities”	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 related to employment 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 employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters 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;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“End Users”

has the meaning given in Annex 1 of Schedule 2 (*Services Description*);

“Estimated Year 1

the estimated Charges payable by the

Charges	Authority during the first Contract Year, as set out in the Financial Model;
“EEA”	European Economic Area
“EU 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 (General Data Protection Regulation) as it has effect in EU law;
“EU”	European Union
“Euro Compliant”	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <ul style="list-style-type: none"> (a) be able to perform all such functions in any number of currencies and/or in euros; (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations; (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro; (d) incorporate protocols for dealing with rounding and currency conversion;

- (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
- (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

“Exemptions”	as defined in Schedule 2 (<i>Services Description</i>);
“Exit Management”	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 25 (<i>Exit Management</i>);
“Exit Plan”	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 25 (<i>Exit Management</i>);
“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	the process described in Paragraph 6 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Exposure Information (Contracts List)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 1 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Extension Period”	a period of 2 years from the end of the Initial Term;
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 18 (<i>Financial Distress</i>);

“Financial Information and Commentary”	means part of the CRP Information requirements set out in accordance with Paragraphs 2 and Annex 3 of Part B of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Financial Distress Remediation Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“Financial Model”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“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 any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s

	supply chain;
“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;
“Forms”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Form Type”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Former Supplier”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Fulfilment”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Functional Requirements”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“General Anti-Abuse Rule”	<p>(a) the legislation in Part 5 of the Finance Act 2013; 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;
“GHIC”	means Global Health Insurance Card;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority and/or Ordering Organisations, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	has the meaning given in Clause 9.7 (Supply of Goods) and Schedule 2 (<i>Services Description</i>);

“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 30 (<i>Deed of Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
“Guarantor”	Xerox Limited, a company registered in England and Wales with company number 00575914 and whose registered office is at Building 4, Uxbridge Business Park, Sanderson Road, Uxbridge, Middlesex UB8 1DH;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“HwHC”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“HwHC Forms”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Impact Assessment”	has the meaning given in Schedule 22 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation and transition services described as such in the Services Description including in particular Paragraph 6 of Schedule 2 (<i>Services Description</i>);

“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being Effective Date;
“Incident”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Incident Resolution”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with 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;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of 4 years from and including the Operational Service Commencement Date;
“Initial Upload Date”	means the occurrence of an event detailed in Schedule 24 (<i>Reports and Records Provisions</i>) Annex 3: (<i>Records To Upload To Virtual Library</i>) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
“Insolvency Event”	with respect to any person, means: <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 a 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, a 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, a LLP or a partnership:
 - (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, 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;

(iii) (being a company or a 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

(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

(g) 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;

“Intellectual Property Rights” or “IPRs”

(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 names, designs, Know-How, trade secrets and other rights in Confidential Information;

(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

(c) all other rights having equivalent or

	similar effect in any country or jurisdiction;
“Intervention Cause”	has the meaning given in Clause 27.1 (Remedial Adviser);
“Intervention Notice”	has the meaning given in Clause 27.1 (Remedial Adviser);
“Intervention Period”	has the meaning given in Clause 27.2(c) (Remedial Adviser);
“Intervention Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Supplier accruing in aggregate 912 or more Service Points (in terms of the number of points allocated) in any period of 3 months; (d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or (e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;
“Invoice Address”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Invoice Address ID”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the

	Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“ISMS”	has the meaning given in Schedule 5 (Security Management);
“IT”	information and communications technology;
“IT Environment”	the Authority System and the Supplier System;
“ITIL”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“ITSM”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Job Number”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing;
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 15 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
“Key Performance Indicator”	the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (Key Personnel);
“Key Roles”	a role described as a Key Role in Schedule 29 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (Key Personnel);

“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;
“Known Errors”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Law”	any law, statute, 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;
“LED”	Law Enforcement Directive (Directive (EU) 2016/680);
“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party

	to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
“Live Test”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maintenance Schedule”	shall have the meaning set out in Clause 9.4 (Maintenance);
“Major Incident”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“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;
“Management Information”	the management information specified in Schedule 3 (<i>Performance Levels</i>), Schedule 15 (<i>Charges and Invoicing</i>) and Schedule 21 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Material KPI Failure”	<ul style="list-style-type: none"> (a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold;
“Material PI Failure”	<ul style="list-style-type: none"> (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or (b) a failure by the Supplier to meet the

	Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
“Matex”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Medex”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Members of the Public”	any British citizen whether based in the UK or abroad;
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 14 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“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]
“month”	a calendar month and “ monthly ” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 28 (<i>Staff Transfer</i>) of Schedule 23 (<i>Dispute Resolution Procedure</i>);

“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Releases”	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;
“NHS Cards and / or Certificates”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“NHS Pensions Payroll Information”	means payslip advice, P60 and a newsletter sent out to all NHS Pensioners on an annual basis;
“NHS Pensioner”	means any member of the public who is claiming an NHS pension;
“NHS Wales”	means the publicly-funded healthcare system in Wales;
“Non Functional Requirements”	meaning specifications that describe the operation capabilities and constraints as given in Schedule 2 (<i>Services Description</i>);
“Non Secure Form”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Non Stock”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Notifiable Default”	shall have the meaning given in Clause 25.1 (Rectification Plan Process);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April

2013 to be incorrect as a result of:

- (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 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; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 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 Effective Date or to a civil penalty for fraud or evasion;

“Online Ordering Portal”	means the online ordering portal established, maintained and provided by the Supplier in accordance with the terms of this Contract;
“Open Book Data”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Authority System and the Sites;
“Operational Change”	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none">(a) will not affect the Charges and will not result in any other costs to the Authority

	and/or Ordering Organisations;
	<ul style="list-style-type: none"> (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Contract;
“Operational Service Commencement Date”	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none"> (a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and (b) where the Implementation Plan states that the Supplier must have Achieved the relevant CPP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant CPP Milestone;
“Operational Services”	the operational services described as such in the Services Description;
“Optional Services”	where applicable, the services described as such in Schedule 2 (<i>Services Description</i>) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (Optional Services);
“Optional Services Implementation Plan”	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;
“Order”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Ordering Organisation(s)”	has the meaning given in Schedule 2 (<i>Services Description</i>);

“Ordering Organisation Code”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Other Supplier”	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Outline Implementation Plan”	the outline plan set out at Annex 1 of Schedule 13 (<i>Implementation Plan</i>);
“Pack”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2(b) (Termination by the Authority) or 31.3(b) (Termination by the Supplier) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Pass Through Costs”	has the meaning set out in Schedule 15 (<i>Charges and Invoicing</i>);
“PEP”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;
“Permitted Maintenance”	has the meaning given in Clause 9.4 (Maintenance);
“Performance Monitoring Report”	has the meaning given in Schedule 3 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Personal Data Breach”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Prescribers”	has the meaning given in Schedule 2 (<i>Services</i>

	<i>Description);</i>
“Prescriber Data”	has the meaning set out in Schedule 2 (<i>Services Description</i>);
“Prescription Forms”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Problem”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Problem Management”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“PPC”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Print on Demand”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“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’, 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 , as updated from time to time;
“Processor”	has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;
“Processor Personnel”	means 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 this Contract;
“Products”	means the products set out in Appendix A of

	Schedule 2 and/or an Ad Hoc Order(s);
“Product Code”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Product Name”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Product Sponsor”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Profanity or Profanities”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Programme Board”	the body described in Paragraph 5 of Schedule 21 (<i>Governance</i>);
“Prohibited Act”	<ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority and/or any Ordering Organisation 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 this Contract; (c) an offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the

Criminal Finances Act 2017); or

- (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;

“Protective Measures” appropriate technical and organisational measures which may include: 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;

“Project Specific IPRs” (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or

(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Public Sector Dependent Supplier” means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;

“Publishable Performance Information” means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;

“Quality Plans” has the meaning given in Clause 6.1 (Quality Plans);

“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);
“Recipient”	has the meaning given in Clause 19.1 (Confidentiality);
“Records”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (Submission of the draft Rectification Plan) or 25.8 (Agreement of the Rectification Plan); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (Agreement of the Rectification Plan); (c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> (i) 30 Working Days of a notification made pursuant to Clause 25.2 (Notification); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the

	initial Material KPI Failure occurred;
	(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
	(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;
“Rectification Plan Process”	the process set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan);
“Registers”	has the meaning given in Schedule 25 (<i>Exit Management</i>);
Registration Document”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Reimbursable Expenses”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Release”	has the meaning given in Annex 1 of Schedule 2 (<i>Services Description</i>);
“Relevant Authority” or “Relevant Authorities”	means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority, Ordering Organisations, Authorised Person or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRS, the Third Party COTS Software and/or the Third Party COTS IPRs;

“Relevant Preceding Services”	has the meaning given in Clause 5.2(b) (Standard of Services);
“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 for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 29.2 (Authority Cause);
“Remedial Adviser”	the person appointed pursuant to Clause 27.2 (Remedial Adviser);
“Remedial Adviser Failure”	has the meaning given in Clause 27.6 (Remedial Adviser);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 28.1(a) (Step-In Rights);
“RPO”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Sandbox”	has the meaning given in Schedule 2 (<i>Service Description</i>)

“Schema”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Second Placed Bidder”	means tendering organisation who ranked second in the Authority’s evaluation consensus in relation to the procurement of this Contract;
“Secure File Transfer”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Secure Form”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Secure Product”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Security Management Plan”	the Supplier's security plan as attached as Annex 2 of <i>Schedule 5 (Security Management)</i> and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 5 (<i>Security Management</i>);
“Secure File Transfer”	has the meaning given in Schedule 2 (<i>Services Description</i>);
“Security Policy Framework”	has the meaning given in Schedule 5 (<i>Security Management</i>);
“Security Tests”	has the meaning given in Schedule 5 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Service Acceptance”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>)
“Service Acceptance Criteria”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>)
“Service Commencement Test”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Service Charges”	means the Charges in Schedule 15 (<i>Charges and Invoicing</i>);
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;

“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>)
“Service Credit Cap”	100% of Supplier Profit in the relevant Service Period;
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 15 (<i>Charges and Invoicing</i>);
“Service Design Package”	has the meaning given in Schedule 2 (<i>Service Description</i>)
“Service Period”	a calendar month, save that: <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the seventh column of the table in Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Services”	any and all of the Goods and/or services to be provided by the Supplier under this Contract, including those set out in Schedule 2 (<i>Services Description</i>) and/or referred to in any Order;
“Service Transfer Date”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Services Description”	the services description set out in Schedule 2 (<i>Services Description</i>);
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);

“SIAM”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>)
“SIAM Governance Framework”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>)
“Single Point of Contact” or “SPOC”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>)
“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
“SME”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Social Value”	the additional social benefits that can be achieved in the delivery of the Contract, set out in the Authority’s Requirements;
“Social Value PI”	The Social Value performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Social Value KPI”	The Social Value key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Software”	Specially Written Software, Supplier Software and Third Party Software;
“Software Supporting Materials”	has the meaning given in Paragraph 2.1(b) of Schedule 32 (<i>Intellectual Property Rights</i>) (Specially Written Software and Project

	Specific IPRs);
“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 Supplier Software or Third Party Software created specifically for the purposes of this Contract.
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and/or Ordering Organisations and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 4 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 28.1 (Step-In Rights);
“Step-In Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event; (a) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (b) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract; (c) the Authority being advised by a

	regulatory body that the exercise by the Authority of its rights under Clause 28 (Step-In Rights) is necessary;
	(d) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
	(e) a need by the Authority to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 28.5(b) (Step-In Rights);
“Step-Out Notice”	has the meaning given in Clause 28.5 (Step-In Rights);
“Step-Out Plan”	has the meaning given in Clause 28.6 (Step-In Rights);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Stock Holding”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Stock Secure”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Stock Non Secure”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Storage and Distribution Plan”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Sub Catalogue”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor”	<p>any third party with whom:</p> <p>(a) the Supplier enters into a Sub-contract; or</p> <p>(b) a third party under (a) above enters into a Sub-contract,</p> <p>or the servants or agents of that third party;</p>
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
“Subsidiary Performance Indicator”	the performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 34.4 (Assignment and Novation);
“Super User”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Supplier Applications”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>);
“Supplier Approved Personnel”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>);
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier</p>

	Software;
“Supplier COTS Background IPRs”	Any embodiments of Supplier Background IPRs that: <ul style="list-style-type: none"> (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
“Supplier COTS Software”	Supplier Software (including open source software) that: <ul style="list-style-type: none"> (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Background IPRs”	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (Authority Cause);
“Supplier Personal Data”	means Personal Data of the Supplier Personnel Processed by the Supplier pursuant to this Agreement;

“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (Representatives);
“Suppliers Service Boundary”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>);
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Supplier Solution”	the Supplier's solution for the Services set out in Schedule 8 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable within 30 days of the Default occurring; (c) as a result of the Supplier's Default, the Authority and/or Ordering Organisation incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause

- 23.6(a) (Financial and other Limits);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 17 (IPRs Indemnity);
 - (ii) Clause 33 (Compliance)
 - (iii) Clause 37.6(b) (Prevention of Fraud and Bribery); and/or
 - (iv) Paragraph 6 of Schedule 18 (*Financial Distress*);
 - (v) Paragraph 3 of Part B to Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (Warranties) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.5(j) (Services);
 - (ii) Clause 21 (Protection of Personal Data);
 - (iii) Clause 20 (Transparency and Freedom of Information);

- (iv) Clause 19 (Confidentiality); and
 - (v) Clause 33 (Compliance); and/or
- in respect of any security requirements set out in Schedule 2 (*Services Description*), Schedule 5 (*Security Management*) or the Baseline Security Requirements; and/or
- in respect of any requirements set out in Schedule 28 (*Staff Transfer*);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 17 (*Benchmarking*);
 - (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
 - (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
 - (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
 - (n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key

Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (Appointment of Key Sub-contractors);

- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 28 (*Staff Transfer*);
- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (r) in relation to Schedule 5 (*Security Management*):
 - (i) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,
 - (ii) the Supplier fails to comply with the incident management process as referenced in Schedule 5;
- (s) a failure by the Supplier to achieve any matters identified as critical by the Authority in respect of the Implementation Plan;
- (t) a failure by the Supplier to satisfy any Test Success Criteria identified as a Key Deliverable in Schedule 14 Annex 4;
- (u) except to the extent attributed to an Authority Cause any failure by the Supplier to Achieve a Milestone prior to the expiry of the Delay Deduction

	Period;
“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"> (a) the name, registered office and company registration number of each entity in the supply chain; (b) the function of each entity in the supply chain; and <p>the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]</p>
“Supply Chain Transparency Report”	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 24 (<i>Reports and Records Provisions</i>);
“Target Performance Level”	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 3 (<i>Performance Levels</i>) or as otherwise incorporated as being a performance level / requirement in Schedule 2 (<i>Services Description</i>);
“Tax Credits”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;
“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 25 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 25 (<i>Exit Management</i>);

“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“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 this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 16 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 14 (<i>Testing Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 14 (<i>Testing Procedures</i>) and “Tested” shall be construed accordingly;
“Test/Admin User”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Test Success Criteria”	has the meaning given in Schedule 14 (<i>Testing Procedures</i>);
“Third Party Auditor”	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 24 (<i>Reports and Records Provisions</i>);
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (Third Party Rights);
“Third Party COTS IPRs”	Third Party IPRs that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are

	not typically negotiated by the supplier save as to price; and
	(b) has a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;
“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;
“Third Party Provisions”	has the meaning given in Clause 41.1 (Third Party Rights);
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Transferring Assets”	has the meaning given in Paragraph 6.2(a) of Schedule 25 (<i>Exit Management</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Supplier	has the meaning given in Schedule 28 (<i>Staff</i>

Employees”	<i>Transfer</i>);
“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 24 (<i>Reports and Records Provisions</i>);
“UK”	the United Kingdom;
“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
“UK Public Sector Business”	means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“Unacceptable KPI Failure”	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);

“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Schedule 24 (<i>Reports and Records Provisions</i>) (Annex 3: <i>Records To Upload To Virtual Library</i>) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“Users”	has the meaning given in Schedule 2 (<i>Service Description</i>);
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 24 (<i>Reports and Records Provisions</i>);
“Workarounds”	has the meaning given in Annex 1 of Schedule 2 (<i>Service Description</i>); and
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2 (SERVICES DESCRIPTION)

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SCHEDULE 2 SERVICES DESCRIPTION

SCHEDULE 2 (SERVICES DESCRIPTION)

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Schedule 2 (*Services Description*)

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SCHEDULE 2 (SERVICES DESCRIPTION)

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PART 1 – DEFINITIONS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Account Manager	means the account manager or otherwise named individual, employed to assume overall responsibility of the Supplier's obligations under this agreement and who is the Supplier's single point of contact for the purposes of this Contract
"Ad Hoc Jobs"	Means a non Catalogue item quoted for and/or ordered via the Online Ordering Portal
"API"	means Application Programming Interface
"Authorised User"	means any person classified by the Authority as a Test/Admin User, Super User and User who are authorised to place Orders under this Framework Contract by and on behalf of the Authority and/or Ordering Organisations;
"Authorised User Profile"	a record of data taken from the Authorised User Registration Document which contains the data stated in Paragraph 5.3.2 of this Schedule 2
"Business Hours"	Supplier's main hours of operations, 0800 – 1700;
"Card"	means a personalised card to a minimum specification of ISO/IEC 15457 and as more particularly set out in accordance with this Contract;
"Carrier"	a personalised paper product which a Card is attached to for delivery;
"Catalogue"	A Catalogue more particularly referred to at Paragraphs 3.1.1. to 3.1.6 of this Schedule 2 which sets out a list of Goods available for purchase via the Online Ordering Portal

SCHEDULE 2 (SERVICES DESCRIPTION)

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“Certificate”	a personalised paper product labelled or referred to as a certificate or exemption;
“Contact Centre/Helpdesk”	means the Supplier’s contact centre and helpdesk established, maintained and provided by the Supplier in accordance with the terms of this Contract;
“Contingency Stock Holding”	means the volume of prescription paper reel stock, WP10SS, FP10SS, FP10DT & NEO2 Forms held by the Supplier at a secure offsite storage facility in accordance with the terms of this Contract
“Covid Pass”	has the meaning set out in Schedule 1 (Definitions);
“Delivery Note”	means the document that accompanies a shipment or consignment and provides details about the Products delivered;
“Delivery Address ID”	a unique numeric code generated by the Supplier assigned to the Delivery Address;
“Desktop Test”	means a test which is conducted in accordance with the requirements detailed in Schedule 2 (Service Description) and Schedule 14 (Testing Procedures);
“DHSC”	Department of Health and Social Care, ministerial department of HM Government responsible for HM Government policy on health and adult social care;
“EAL”	means Evaluation Assurance Level ;
“EHIC”	means European Health Insurance Card;
“Exemption”	includes but is not limited to Matex, Medex, HRT PPC, PPC and Tax Credits, which provide access to Help with Health Costs to an applicant;

SCHEDULE 2 (SERVICES DESCRIPTION)

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“Forms”	means a printed paper document;
“Form Type	means the designation given to each Prescription Form identified by the Product Code and as documented in Appendix B to this Schedule 2;
“Fulfilment”	means to carry out all operations required to ensure that all Products to be delivered via post are enveloped, batched and sorted ready to dispatch;
“Functional Requirements”	means the part of the IT specification to define specific behaviours or functions and intended capabilities, appearance and interactions with users;
“GHIC”	means Global Health Insurance Card;
“Goods”	means all Products, raw materials and Stock Holding and Contingency Stock Holding;
“HRT PPC”	means a PPC used to collect only specific hormone replacement therapy medication;
“HwHC”	Means Help with Health Costs;
“HwHC Forms”	means Forms as set out in the HwHC Online Ordering Portal Catalogue;
“Invoice Address”	means an address to which Invoices will be sent, which should be detailed on an Order in accordance with Paragraph 4.7.1;
“Invoice Address ID”	a unique numeric code generated by the Supplier assigned to the Invoice Address;
“Job Number”	The unique reference number allocated by the Supplier to each individual print run;
“Live Test”	a full end to end test to include picking, packaging and making Products ready for despatch from the Site where the Stock is held to the Delivery Address, with attendance of the Authority to provide

SCHEDULE 2 (SERVICES DESCRIPTION)

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	“live” audit;
“Matex”	means Maternity Exemption;
“Medex”	means Medical Exemption;
“Non Functional Requirements”	means the constraints within which the Functional Requirements must be delivered;
“Non Secure Form”	means a printed Form without security features;
“Non Stock”	means an item which is not available in an Online Ordering Portal Catalogue which is not readily available off the shelf or available as print on demand;
“NHS Cards and / or Certificates”	means paper or card based Exemptions ;
“Online Ordering Portal”	means the online ordering portal established, maintained and provided by the Supplier in accordance with the terms of this Contract;
“Order”	any request from the Authority, an Ordering Organisations, an Authorised User or member of the public for permitted Products to be processed and despatched to a Delivery Address setting out: details of the Products required; quantities required; and any specific instructions for processing and delivery;
“Ordering Organisation”	Organisations who are specified or referred to at Paragraph 2.8 of this Schedule 2;
“Ordering Organisation Code”	a unique alphanumeric Code assigned by the Authority to each Ordering Organisation;
“Pack”	means all packaging and contents for an EHIC, NHS Pensions Payroll Information or Exemption Order to be dispatched;

SCHEDULE 2 (SERVICES DESCRIPTION)

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“PEP”	means Pension Employer Products;
“Prescribers”	a person who is permitted to prescribe a prescription for a patient;
“Prescriber Data”	the details of Prescribers issued to the Supplier for Prescribers in England and Wales;
“Prescription Forms”	means Secure series of Forms that must be used for the prescribing and dispensing of drugs and appliances in the NHS and for the prescribing of controlled drugs only by private Prescribers in the UK and Crown Dependencies
“Print on Demand”	a system or process whereby individual copies are printed to order, typically using digital technology;
“PPC”	means Prescription Pre-Payment Certificate;
“Profanity or Profanities”	any word which the Authority deems could cause offence;
“Product or Products”	means the products set out in Appendix A and/or an Ad Hoc Order(s);
“Product Code”	means the unique numerical or alphanumerical code assigned to a product to aid identification;
“Product Name”	the individual name of the product detailed in the specification;
“Product Sponsor”	the organisation with responsibility for the content and layout of a Product or Products;
“Recipient”	for the purposes of this Schedule only an individual or entity receiving the Product or Products;

SCHEDULE 2 (SERVICES DESCRIPTION)

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Registration Document	a document hosted on the Online Ordering Portal used to add a new Authorised User to the Online Ordering Portal
“RPO”	means recovery point objective which is the point in time you can recover to in the event of a disaster;
“Sandbox”	a testing environment that isolates untested code including changes and outright experimentation from the production environment or repository;
“Schema”	instructions to show which data is to be used to populate each data field in personalised Products;
“Secure File Transfer Protocol (SFTP)”	the process to transfer data files securely as more particularly described in Schedule 2;
“Secure Form”	A printed Form which contains obvious and covert features aimed at preventing fraud and counterfeit activity including but not necessarily limited to the Forms set out at Appendix B to this Schedule 2;
“Secure Product”	Means all Secure Forms and all EHC and Exemptions;
“Service Commencement Test”	means the tests to be applied to ensure that the Supplier is ready to commence Service provision, as detailed in Schedule 14 (Testing Procedures);
“Small Medium Enterprises (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-sized enterprises;
“Stock Holding”	means Goods and /or raw materials excluding Contingency Stock Holding;

SCHEDULE 2 (SERVICES DESCRIPTION)

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“Stock Secure”	Secure Forms which are warehoused/stored by the Supplier and always available for purchase by Ordering Organisations in accordance with this Contract;
“Stock Non Secure”	means Forms (excluding Secure Forms) which are warehoused/stored by the Supplier and always available for purchase by Ordering Organisations in accordance with this Contract;
“Storage and Distribution Plan”	means the plan to be created and implemented by the Supplier in accordance with this Contract which sets out the manner in which the Supplier shall deliver store & distribute the Services or Goods;
“Sub Catalogue”	means a sub-set of Products within a catalogue usually collated by clinical use;
“Super User”	an Authorised User who can only be registered by the Authority who has authority to place Orders via the Online Ordering Portal and who can register users to have access to place Orders via the Online Ordering Portal;
“Tax Credit Certificate”	means a Tax Credit Exemption certificate which allows the recipient to claim for Help with Health Costs, including free prescriptions and dental treatment. issued by the Authority on behalf of HMRC.
“Test/Admin User”	an Authorised User who can access the system in any user capacity to check functionality and access rights. Orders placed by a Test/Admin User will not be processed, fulfilled or invoiced.
“Users”	an Authorised User with access to place Orders via the Online Ordering Portal with the exception of Super User and Test/Admin User;

SCHEDULE 2 (SERVICES DESCRIPTION)

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2. OVERVIEW

- 2.1 The NHS Business Services Authority (NHSBSA), defined in this Contract as the “Authority” is a Special Health Authority and an Arm’s Length Body of the Department of Health. It provides a range of critical central services to NHS organisations, NHS contractors, patients and the public. Further information can be found at <https://www.nhsbsa.nhs.uk> .
- 2.2 The Supplier shall support the Authority’s purpose and vision through the term of this Contract.
- 2.3 [Not Used]
- 2.4 The Authority’s vision is to be the Delivery Partner of Choice for the NHS.
- 2.5 The Authority has a legislative mandate to produce a number of non-electronic forms associated with prescriptions and a Department of Health and Social Care (DHSC) direction to produce NHS Exemptions in digital form, paper Certificates and Cards and European Health Insurance Cards (EHIC) and Global Health Insurance Cards (GHIC).
- 2.6 The quality of the Goods provided are of great importance as the Authority scans a number of Secure Forms such as Prescription Forms for NHS England and processes payments to pharmacists calculated from scanned fulfilled Prescription Forms. A prescription is completed by the Prescriber (typically a General Practitioner (GP)) and is provided to the prescription dispenser (typically a pharmacist). After fulfilment, Prescription Forms are sent to the Authority for processing to calculate the payment due to the prescription dispenser. The Prescription Form is scanned by the Authority using a fully automated system utilising intelligent character recognition (ICR) software. This information is then used by the Authority to calculate the monthly payment due to the pharmacist and the prescribing costs to be recharged to the relevant prescribing budget. Scanning accuracy is affected by issues such as paper dust, paper light fastness and printed product quality. Prescription Forms are scanned at high speed by the Authority which works to strict service level agreements (SLAs) for this service. Any disruption to the Authority’s scanning process causes costly operational problems and a risk of SLA failure
- 2.7 The Authority’s Requirement’s include but are not limited to the printing, print management, storage and distribution of NHS Forms, Exemptions, Cards and EHIC, GHIC, and NHS Pensions Payroll Information services. The Authority currently has one agreement in place for the provision of such services. The Supplier must maintain business continuity beyond the expiry of current agreement from 1st July 2024.
- 2.8 The Supplier’s Online Ordering Portal shall be made available to Ordering Organisations who shall be entitled to place Orders under the Online Ordering Portal via an Authorised User. This Contract establishes a framework arrangement and all Orders placed by Authorised Users must be subject to the Call-off Terms set out at Schedule 33. The Authority will manage and monitor the performance of the Supplier throughout the term. An indicative list of

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Ordering Organisations is out at 2.8 a) to g) below. This list is not exhaustive and will be subject to change during the term of this Contract.

- a) the NHS Business Services Authority (NHSBSA) and its successor bodies;
- b) NHS organisations in England and Wales. NHS Scotland and Health & Social Care Northern Ireland and any Crown Dependency which may join this Contract during its term.
- c) Department of Health and Social Care bodies and NHS bodies in existence at the time of this tender and those created under any NHS restructure; private sector organisations wishing to purchase permitted NHS printed products and wishing to use associated services (e.g private provider organisations);
- d) public sector bodies wishing to purchase permitted NHS printed products and wishing to use associated services;
- e) voluntary and third sector bodies and charities wishing to purchase permitted NHS printed products and wishing to use associated services; and
- f) Members of the Public wishing to receive individual HwHC products.

2.9 The Authority will monitor the performance of the Supplier throughout the term of this Contract utilising the contract rights and remedies available to ensure the service levels as detailed in Schedule 3 Performance Levels are met. The Buyer has a requirement to publish quarterly data in relation to the top 3 KPI's in addition to one Social Value KPI in line with government reporting standards under the heading of Project Santiago. The Supplier will not unreasonably withhold consent to the KPI's selected and the data publication.

2.10 For the 12 months between January and December 2021 a number of Ordering Organisations placed approximately 21,000 orders (equating to 47,000.00 Order lines) per year for Stock Secure Forms and Stock Non Secure Forms via an online ordering portal (some of which were personalised) using the Authority's previous agreements for the Services.

An Ordering Organisation may authorise numerous Authorised Users to place Orders on its behalf in relation to one or more of the Products available for purchase using the Online Ordering Portal. An Ordering Organisation may have one or more delivery addresses and/or invoicing addresses. An Ordering Organisation's Authorised Users, delivery addresses and invoicing addresses may be subject to change during the Term of this Contract. An Order may include one or several line items. The frequency and content of the Orders will vary between different Ordering Organisations.

2.11 In addition to the Products set out at Appendix A to this Schedule 2, Ordering Organisations also place Ad-Hoc Orders for Non-Stock, one off print jobs referred to as Ad Hoc Jobs via the Online Ordering Portal.

2.12 Members of the Public, NHS Ordering Organisations and the Authority may also order Help with Health Costs (HwHC) Forms in accordance with this

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Contract.

- 2.13 The Authority may (although is not obliged to) order Exemptions such as NHS Cards and/or Certificates, Tax Credit Certificates, in addition to European Health Insurance Cards (EHIC) and Global Health Insurance Cards (GHIC) in accordance with this Contract. Data to produce these Products is issued to the Supplier from the Authority for fulfilment and delivery. In such cases Exemptions are dispatched by the Supplier to addresses within the UK and the EHIC and GHIC are primarily dispatched by the Supplier to addresses within the UK, with a small percentage being issued to addresses in EU/EEA states or Switzerland. There maybe further changes which may arise in the future associated with Brexit which may impact EHIC & GHIC in their current form and/or volume, any resulting changes to the printed EHIC & GHIC may, at the Authority's discretion, form part of this Contract.
- 2.14 NHS Pensions Payroll Information is issued to the Supplier from the Authority for dispatch by the Supplier to addresses worldwide.
- 2.15 Product Sponsors shall be entitled to introduce new Products and amend existing Products to the Catalogues available on the Online Ordering Portal.
- 2.16 As part of the Services the Supplier shall work with the Authority and exiting supplier to transfer the residual Stock Holding comprising Stock Secure Forms, Stock Non Secure Forms and base paper stock (pre-printed and blank) in addition to base EHIC and GHIC and holograms. It is anticipated that the Supplier will purchase the Stock Holding from the exiting supplier under a separate commercial arrangement.
- 2.17 The Supplier shall ensure that products which are scanned (including, but not restricted to Prescription Forms and FP17 series) will be subject to testing following product changes and shall ensure final approval of amended artwork by the Authority and Product Sponsors. The quantity and types of sample Products are detailed paragraphParagraph 4.12 of this Schedule 2 and are required from the Supplier free of charge for such testing. These forms must be produced using the equipment which will be used in live production.
- 2.18 Exemptions such as NHS Cards and/or Certificates in addition to Tax Credit Certificates shall be personalised and dispatched by the Supplier to UK addresses. Exemptions and EHIC and GHIC should be dispatched using Royal Mail Mailmark 2nd class post or equivalent to optimise postal costs. There is a drive to digitise a number of the current application processes along with the resultant exemption produced which may ultimately reduce the volume of traditionally printed NHS Exemptions.

3.0 SCOPE



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[REDACTED]	[REDACTED]
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114

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- I [REDACTED]
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[REDACTED]

1. [REDACTED]

1. **_____**

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[REDACTED]

[illegible]

1. **Identify the subject and the predicate of the sentence.**
The subject is "The committee" and the predicate is "has decided".

1. **Identify the main components of the system.**

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[illegible]

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the 1990s, the number of people in the United States who are 65 years of age or older has increased by 50 percent, and the number of people 75 years of age or older has increased by 100 percent. The number of people 85 years of age or older has increased by 200 percent. The number of people 90 years of age or older has increased by 400 percent. The number of people 95 years of age or older has increased by 800 percent. The number of people 100 years of age or older has increased by 1,600 percent. The number of people 105 years of age or older has increased by 3,200 percent. The number of people 110 years of age or older has increased by 6,400 percent. The number of people 115 years of age or older has increased by 12,800 percent. The number of people 120 years of age or older has increased by 25,600 percent. The number of people 125 years of age or older has increased by 51,200 percent. The number of people 130 years of age or older has increased by 102,400 percent. The number of people 135 years of age or older has increased by 204,800 percent. The number of people 140 years of age or older has increased by 409,600 percent. The number of people 145 years of age or older has increased by 819,200 percent. The number of people 150 years of age or older has increased by 1,638,400 percent. The number of people 155 years of age or older has increased by 3,276,800 percent. The number of people 160 years of age or older has increased by 6,553,600 percent. The number of people 165 years of age or older has increased by 13,107,200 percent. The number of people 170 years of age or older has increased by 26,214,400 percent. The number of people 175 years of age or older has increased by 52,428,800 percent. The number of people 180 years of age or older has increased by 104,857,600 percent. The number of people 185 years of age or older has increased by 209,715,200 percent. The number of people 190 years of age or older has increased by 419,430,400 percent. The number of people 195 years of age or older has increased by 838,860,800 percent. The number of people 200 years of age or older has increased by 1,677,721,600 percent. The number of people 205 years of age or older has increased by 3,355,443,200 percent. The number of people 210 years of age or older has increased by 6,710,886,400 percent. The number of people 215 years of age or older has increased by 13,421,772,800 percent. The number of people 220 years of age or older has increased by 26,843,545,600 percent. The number of people 225 years of age or older has increased by 53,687,091,200 percent. The number of people 230 years of age or older has increased by 107,374,182,400 percent. The number of people 235 years of age or older has increased by 214,748,364,800 percent. The number of people 240 years of age or older has increased by 429,496,729,600 percent. The number of people 245 years of age or older has increased by 858,993,459,200 percent. The number of people 250 years of age or older has increased by 1,717,986,918,400 percent. The number of people 255 years of age or older has increased by 3,435,973,836,800 percent. The number of people 260 years of age or older has increased by 6,871,947,673,600 percent. The number of people 265 years of age or older has increased by 13,743,895,347,200 percent. The number of people 270 years of age or older has increased by 27,487,790,694,400 percent. The number of people 275 years of age or older has increased by 54,975,581,388,800 percent. The number of people 280 years of age or older has increased by 109,951,162,777,600 percent. The number of people 285 years of age or older has increased by 219,902,325,555,200 percent. The number of people 290 years of age or older has increased by 439,804,651,110,400 percent. The number of people 295 years of age or older has increased by 879,609,302,220,800 percent. The number of people 300 years of age or older has increased by 1,759,218,604,441,600 percent. The number of people 305 years of age or older has increased by 3,518,437,208,883,200 percent. The number of people 310 years of age or older has increased by 7,036,874,417,766,400 percent. The number of people 315 years of age or older has increased by 14,073,748,835,532,800 percent. The number of people 320 years of age or older has increased by 28,147,497,671,065,600 percent. The number of people 325 years of age or older has increased by 56,294,995,342,131,200 percent. The number of people 330 years of age or older has increased by 112,589,990,684,262,400 percent. The number of people 335 years of age or older has increased by 225,179,981,368,524,800 percent. The number of people 340 years of age or older has increased by 450,359,962,737,049,600 percent. The number of people 345 years of age or older has increased by 900,719,925,474,099,200 percent. The number of people 350 years of age or older has increased by 1,801,439,850,948,198,400 percent. The number of people 355 years of age or older has increased by 3,602,879,701,896,396,800 percent. The number of people 360 years of age or older has increased by 7,205,759,403,792,793,600 percent. The number of people 365 years of age or older has increased by 14,411,518,807,585,587,200 percent. The number of people 370 years of age or older has increased by 28,823,037,615,171,174,400 percent. The number of people 375 years of age or older has increased by 57,646,075,230,342,348,800 percent. The number of people 380 years of age or older has increased by 115,292,150,460,684,697,600 percent. The number of people 385 years of age or older has increased by 230,584,300,921,369,395,200 percent. The number of people 390 years of age or older has increased by 461,168,601,842,738,790,400 percent. The number of people 395 years of age or older has increased by 922,337,203,685,477,580,800 percent. The number of people 400 years of age or older has increased by 1,844,674,407,370,955,161,600 percent. The number of people 405 years of age or older has increased by 3,689,348,814,741,910,323,200 percent. The number of people 410 years of age or older has increased by 7,378,697,629,483,820,646,400 percent. The number of people 415 years of age or older has increased by 14,757,395,258,967,641,292,800 percent. The number of people 420 years of age or older has increased by 29,514,790,517,935,282,585,600 percent. The number of people 425 years of age or older has increased by 59,029,581,035,870,565,171,200 percent. The number of people 430 years of age or older has increased by 118,059,162,071,741,130,342,400 percent. The number of people 435 years of age or older has increased by 236,118,324,143,482,260,684,800 percent. The number of people 440 years of age or older has increased by 472,236,648,286,964,521,369,600 percent. The number of people 445 years of age or older has increased by 944,473,296,573,929,042,739,200 percent. The number of people 450 years of age or older has increased by 1,888,946,593,147,858,085,478,400 percent. The number of people 455 years of age or older has increased by 3,777,893,186,295,716,170,956,800 percent. The number of people 460 years of age or older has increased by 7,555,786,372,591,432,341,913,600 percent. The number of people 465 years of age or older has increased by 15,111,572,745,182,864,683,827,200 percent. The number of people 470 years of age or older has increased by 30,223,145,490,365,729,367,654,400 percent. The number of people 475 years of age or older has increased by 60,446,290,980,731,458,735,308,800 percent. The number of people 480 years of age or older has increased by 120,892,581,961,462,917,470,617,600 percent. The number of people 485 years of age or older has increased by 241,785,163,922,925,834,941,235,200 percent. The number of people 490 years of age or older has increased by 483,570,327,845,851,669,882,470,400 percent. The number of people 495 years of age or older has increased by 967,140,655,691,703,339,764,940,800 percent. The number of people 500 years of age or older has increased by 1,934,281,311,383,406,679,529,881,600 percent. The number of people 505 years of age or older has increased by 3,868,562,622,766,813,359,059,763,200 percent. The number of people 510 years of age or older has increased by 7,737,125,245,533,626,718,119,526,400 percent. The number of people 515 years of age or older has increased by 15,474,250,491,067,253,436,239,052,800 percent. The number of people 520 years of age or older has increased by 30,948,500,982,134,506,872,478,105,600 percent. The number of people 525 years of age or older has increased by 61,897,001,964,269,013,744,956,211,200 percent. The number of people 530 years of age or older has increased by 123,794,003,928,538,027,489,912,422,400 percent. The number of people 535 years of age or older has increased by 247,588,007,857,076,054,979,824,844,800 percent. The number of people 540 years of age or older has increased by 495,176,015,714,152,109,959,649,689,600 percent. The number of people 545 years of age or older has increased by 990,352,031,428,304,219,919,299,379,200 percent. The number of people 550 years of age or older has increased by 1,980,704,062,856,608,439,838,598,758,400 percent. The number of people 555 years of age or older has increased by 3,961,408,125,713,216,879,677,197,516,800 percent. The number of people 560 years of age or older has increased by 7,922,816,251,426,433,759,354,395,033,600 percent. The number of people 565 years of age or older has increased by 15,845,632,502,852,867,518,708,790,067,200 percent. The number of people 570

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- | Category | Percentage |
|-------------------|------------|
| Very satisfied | 10% |
| Satisfied | 35% |
| Dissatisfied | 45% |
| Very dissatisfied | 10% |

- **RESEARCH** *Journal of Management Education* 36(10):1139-1154

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[REDACTED]

[REDACTED]

1. **Identify the subject and the verb.**
 The subject is "The committee" and the verb is "has agreed".
 The subject is a noun phrase, and the verb is a main verb in the present perfect tense.

[REDACTED]

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- 
- | Response | Percentage |
|---|------------|
| Yes, the U.S. should take action against the Russian invasion of Ukraine | 85% |
| No, the U.S. should not take action against the Russian invasion of Ukraine | 15% |

- [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

1. **Identify the subject and the verb in the sentence.**
 The subject is "The committee" and the verb is "has agreed".
 The subject is "The committee" and the verb is "has agreed".

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<https://www.gov.uk/guidance/timber-procurement-policy-tpp-prove->

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[REDACTED]

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1. **Identify the subject and the main idea of the text.**
 2. **Summarize the text in your own words.**
 3. **Identify the author's purpose and tone.**
 4. **Identify the main supporting details.**
 5. **Identify the author's bias or point of view.**
 6. **Identify the author's use of rhetorical devices.**
 7. **Identify the author's use of evidence.**
 8. **Identify the author's use of logic.**
 9. **Identify the author's use of emotion.**
 10. **Identify the author's use of credibility.**

1. **Identify the subject and the predicate of the sentence.**

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
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■ [REDACTED]

■ [REDACTED]

1. **Identify the subject and the main idea of the text.**
 2. **Summarize the text in your own words.**
 3. **Identify the author's purpose and tone.**
 4. **Identify the main supporting details and evidence.**
 5. **Identify the author's bias or point of view.**
 6. **Identify the author's use of rhetorical devices.**
 7. **Identify the author's use of figurative language.**
 8. **Identify the author's use of sensory details.**
 9. **Identify the author's use of figurative language.**
 10. **Identify the author's use of sensory details.**

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Annex 1

Service Integration And Management (SIAM)

1 DEFINITIONS

In this Schedule 2 Part 5, Annex 1, the following definitions shall apply:

“Access Management”	is as defined under ITIL.
“Authority Applications”	those applications listed in Annex 2 to this Schedule 2, together with all associated COTS (commercial off-the-shelf software) and Data, and which list shall be updated from time to time by the Authority and notified to the Supplier.
“Authority SIAM Reports”	reports produced by the SIAM based on Supplier Data and Authority Data about the performance of the Technical Services and Hosting Services.
“Authority's Service Desk”	the Authority's service desk, which includes the “Service Desk” function defined under ITIL; it is the single point of contact for End Users and provides an interface for service operation processes and activities; its primary aim is to restore normal service (Incidents) as quickly as possible; it may be provided by the Authority or outsourced by the Authority.
“Capacity Management”	is as defined under ITIL.
“Capacity”	is as defined under ITIL.
“Change Management”	is as defined under ITIL.
“Continual Service Improvement”	is as defined under ITIL.
“Continual Service Improvement Programme”	the Authority's programme for Continual Service Improvement
“End Users”	is as defined in Schedule 3 including citizens where applicable.
“Incident Resolution”	is as defined under ITIL.
“Incident”	is as defined under ITIL.
“ITIL”	The most current version of the Information

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	Technology Infrastructure Library as published by Axelos Limited, a company incorporated and registered in England and Wales with company number 08489114 whose registered office is at 17 Rochester Row, London, SW1P 1QT as may be amended from time to time; as at July 2017, the glossary containing ITIL definitions is available (subject to acceptance of terms) via https://www.axelos.com/glossaries-of-terms .
“ITSM”	stands for IT service management, being the entirety of activities, directed by policies, organised and structured in processes and supporting procedures that are performed by an organisation to plan, design, deliver, operate and control information technology (IT) services offered to customers; it is thus concerned with the implementation of IT services that meet customers' needs, and it is performed by an IT service provider through an appropriate mix of people, process and information technology.
“Known Errors”	is as defined under ITIL.
“Major Incident”	is as defined under ITIL.
“Other Suppliers”	Any Supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Problem”	is as defined under ITIL.
“Problem Management”	is as defined under ITIL.
“Release”	is as defined under ITIL.
“Service Acceptance Criteria”	is as defined under ITIL.
“Service Acceptance”	is as defined under ITIL as “Acceptance”.
“Service Design Package”	is as defined under ITIL.
“SIAM”	an Authority-provided function accountable for the end to end delivery of services and the business value the Authority receives in relation to the Authority's Services; the function is accountable for end to end service governance (including standards and performance monitoring), management, integration, assurance and co- ordination.

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“SIAM Governance Framework”	within a SIAM function, a framework that allows the Authority to execute and maintain authority over the function; it includes corporate governance requirements, controls to be retained by the Authority, governance structural elements, segregation of duties, and risk, performance, contract and dispute management. It forms part of the SIAM Operations Manual.
“Single Point of Contact” or “SPOC”	Authority Contract Manager
“Supplier Applications”	any Software applications provided by the Supplier (for its own use, the use of the Authority or the use of the Other Suppliers) to deliver the Services.
“Supplier Approved Personnel”	those Supplier Personnel responsible for delivering the Services to the Authority or the Other Suppliers and/or those Supplier Personnel that are responsible for requesting and/or approving Changes or other matters relevant to the performance of the Contract.
“Suppliers Service Boundary”	Means any time during an incident or when fulfilling a Service Request where activities to fix or fulfil are not within the scope of the Services.
“Workarounds”	is as defined under ITIL.

2 Service Integration And Management (SIAM) Requirements

The Authority operates a Service Integration and Management (SIAM) function for the management and coordination of multiple service providers in a complex, multi-supplier environment. It is designed to help the Authority improve the efficiency, effectiveness, and quality of the IT services delivered, while also reducing costs and increasing agility.

To support the Authority the Supplier shall adhere to the requirements as set out in this Schedule 2 section 5 Annex 1.

Operational Governance

1. The Supplier must adhere to the Authority's standards for data exchange, working with the Authority to refine these standards
2. The Supplier must provide and maintain IT Service Management (ITSM) data as mandated by the Authority.
3. The Supplier must provide and maintain contact details, authority matrix and escalation matrix for functional and hierarchical escalations, approved change authorisers for the

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Services to be included in the SDP and kept up to date at all times and made available to the Authority.

4. The Supplier must work with the Authority and other Suppliers to identify and progress opportunities for innovation and cost reduction in support of the Services.

Hardware, Software & Licences

5. The Supplier must provide technology refreshes and software upgrades (including Patch Management) as agreed by the Authority, to ensure that at all times all hardware and software used to deliver the Services is within current supported manufacturer levels
6. The Supplier must ensure that at all times it and its sub-contractors are appropriately licenced to provide the Services and are fully compliant with all licence agreements.

Design, Build & Test

7. The Supplier shall collaborate with the Authority and the Other Suppliers to implement industry standard interfaces to, and controls for, data exchange between the Supplier's systems, tools, authority's tools
8. The Supplier shall ensure that Supplier Approved Personnel responsible for delivering the Services to the Authority are appropriately trained in ITSM best practice
9. The Supplier shall design and, when agreed by the Authority, implement a maintenance schedule
10. The Supplier shall in agreement with the authority design the provision to the Authority of Management Information data in relation to the Services to support the Authority in the production of the Authority SIAM Reports

Migration Requirements

11. The Supplier will work with the Authority and the Other Suppliers as necessary to achieve Service Acceptance in accordance with the Detailed Implementation Plan

Interface Requirements

12. The Supplier shall ensure that the integration between the Supplier Applications and Authority Applications (including between the Supplier's monitoring and management suite(s) and the Authority's tools) is preserved during and after any new Releases or upgrades.

Incident Management

13. The Supplier shall notify the Authority immediately on becoming aware of a Major Incident and shall state the impact to the Authority. The Supplier shall communicate this via a call to the Authority's designated Single Point Of Contact (SPOC)
14. The Supplier shall provide early notification, at the earliest opportunity, to the Authority of any potential breach of Performance Indicators.
15. The Supplier must record the start of an Incident at the point at which the Supplier is contacted by a person, or on receipt of a notification from a monitoring tool, a system or an application.
16. The Supplier must record the end time of an Incident when the Supplier has informed the Authority that the Incident has been resolved.

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17. The Supplier must when calculating Supplier performances against Service Levels include all time during which responsibility for the resolution of the Incident remained within the Supplier's Service Boundary.
18. The Supplier must inform the Authority and all other suppliers involved in incident resolution when their resolution tasks are completed to ensure restoration of normal service is achieved

Problem Management

19. As soon as is reasonably practical the Supplier must provide information on Workarounds, Known Errors and Problems related to the Services for use by the Authority, Supplier or Other Suppliers in relation to Problem Management

Change Management

20. The Supplier shall perform an evaluation of both intended and unintended effects of a proposed Change or cross-functional Change if it affects the Authority's Services and shall provide such information to the Authority in accordance with the Change Management Process.

Service Desk

21. As soon as reasonably practicable, the Supplier shall inform the Authority's Service Desk of any Incident and its impact on any of the Authority's Services.

Availability Management

22. The Supplier shall draw up and maintain a Maintenance Schedule and shall execute that Maintenance Schedule in accordance with Change Management Process
23. The Supplier shall provide the Authority with a detailed impact assessment for any new or amended SIAM Availability requirements that the Supplier proposes for the Services. The Supplier shall do this under the Change Management Process

Capacity Management

24. The Supplier shall operate and maintain a Capacity Management plan for the Services to ensure the availability of services at all times

Continual Service Improvement

25. The Supplier shall collaborate with the Authority and the Other Suppliers in the delivery of the Continual Service Improvement Programme for the Services, and shall contribute to the Continual Service Improvement Programme

Release & Deployment

26. The Supplier shall provide the Authority with an annual Release schedule for the Services, in collaboration with the Authority and the Other Suppliers
27. The details of the Release shall be provided in advance to the Authority in accordance with the Change Management Process

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Transition Planning & Support

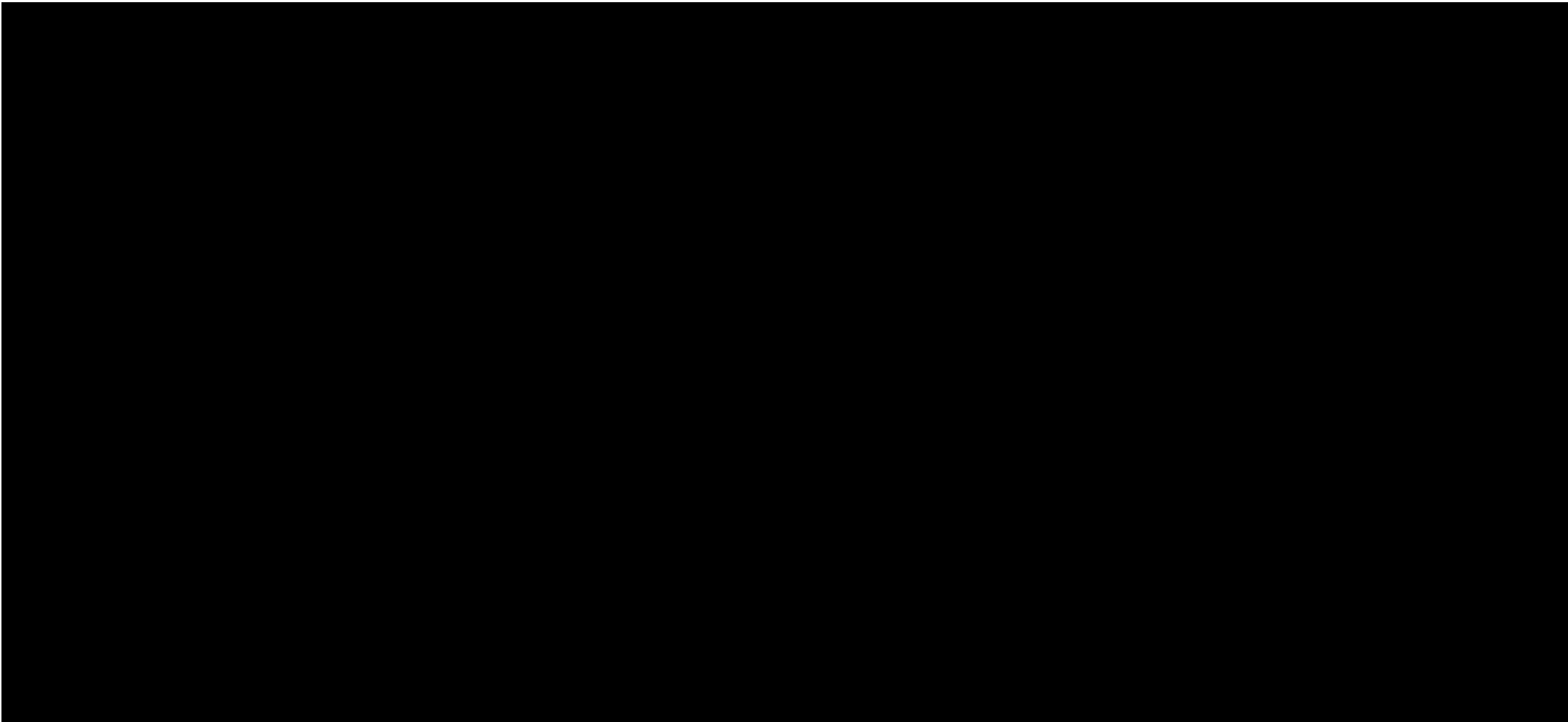
28. The Supplier shall complete Service Design Packages for new or changed Services and shall provide them to the Authority in accordance with the Change Management Process.

IT Service Continuity Management

29. The Supplier shall ensure that its ITSCM plan(s) for the in scope services meet the Authority's legal, regulatory and Information Governance security requirements
30. The Supplier shall develop and maintain an up-to-date ITSCM Plan for the Services they provide that is aligned and integrated with the Authority's ITSCM Plan, and provide a copy of this ITSCM Plan to the Authority for distribution to other Suppliers as required

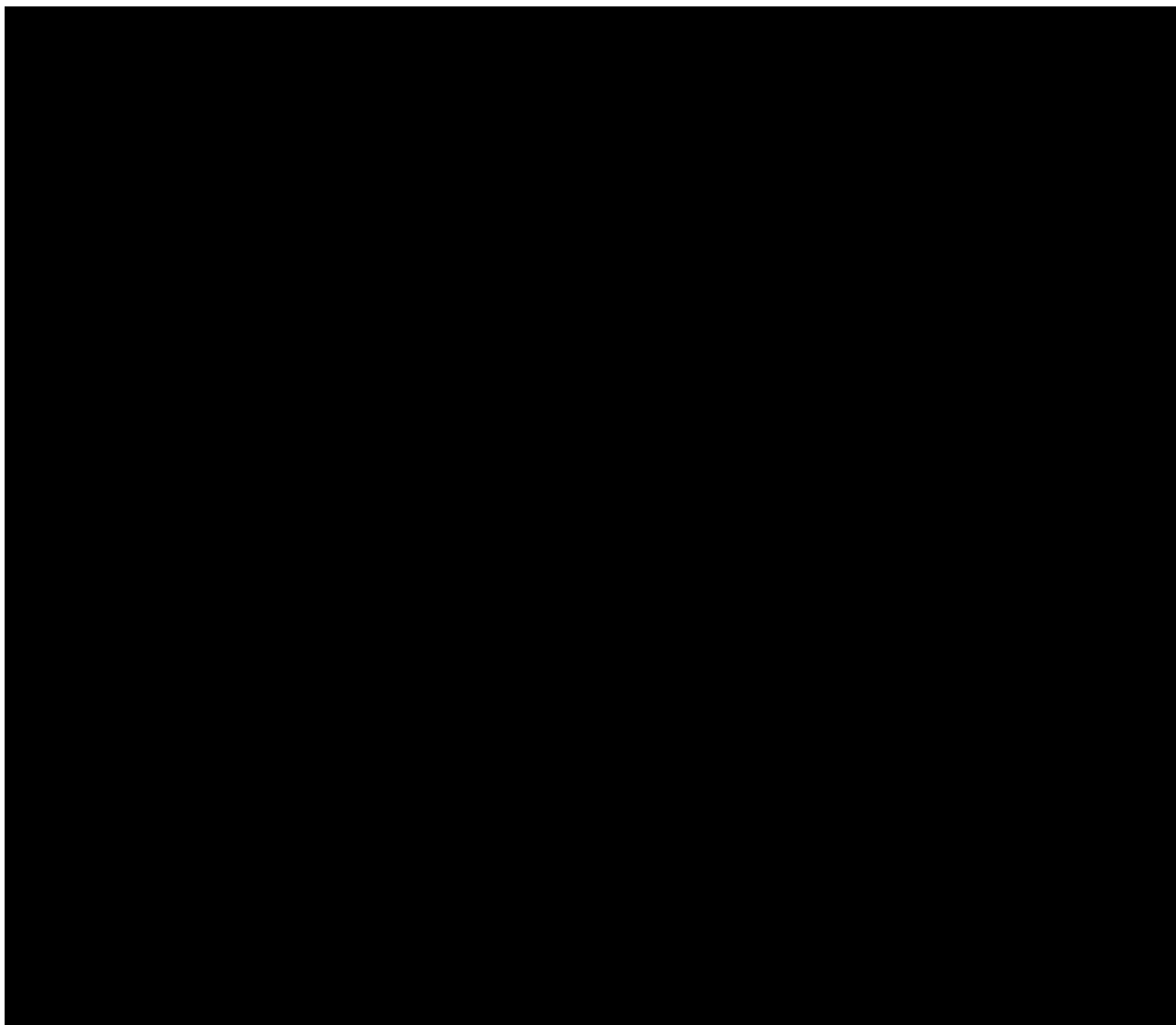
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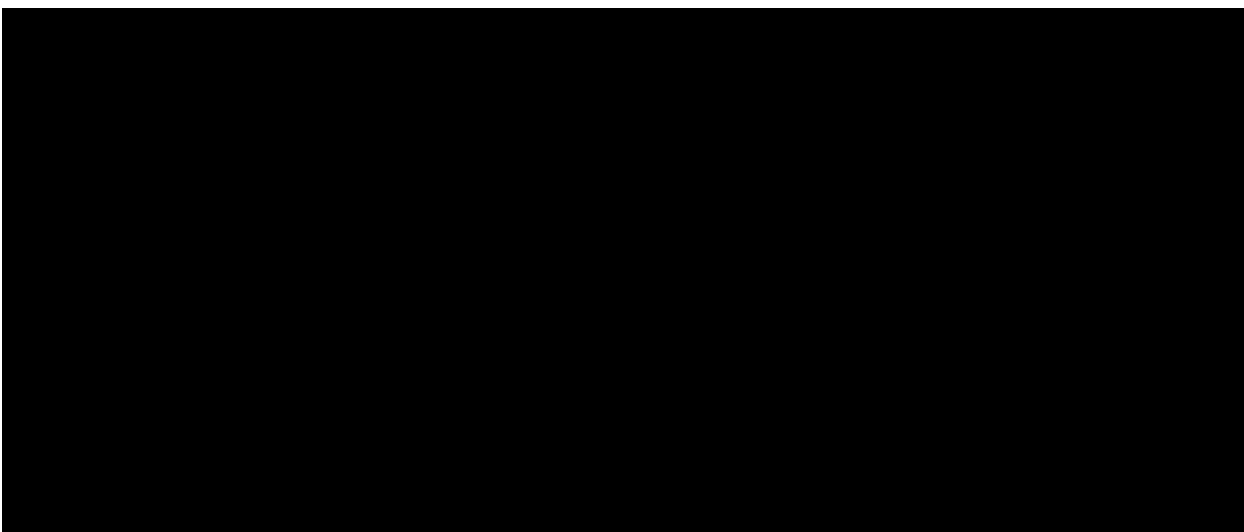
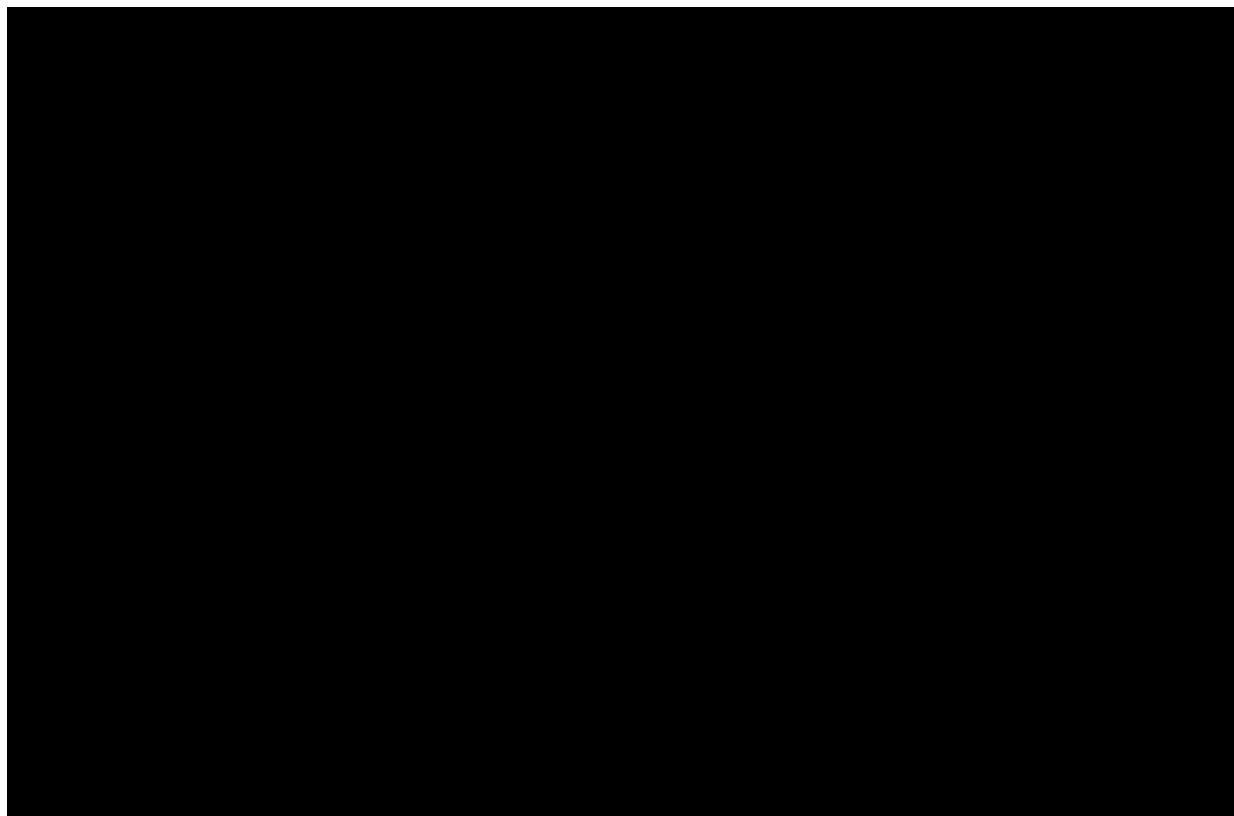
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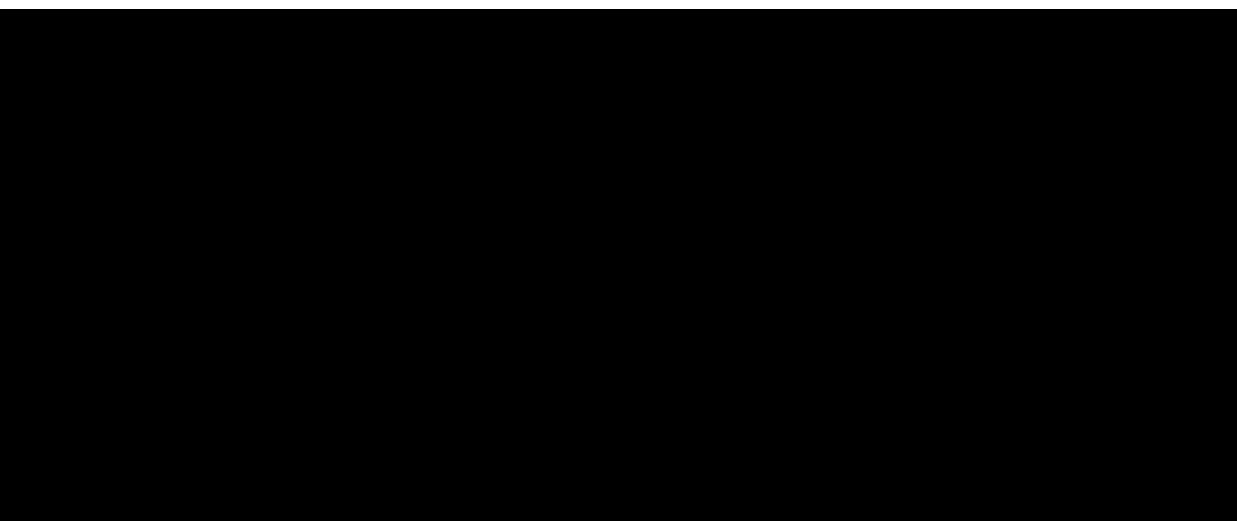
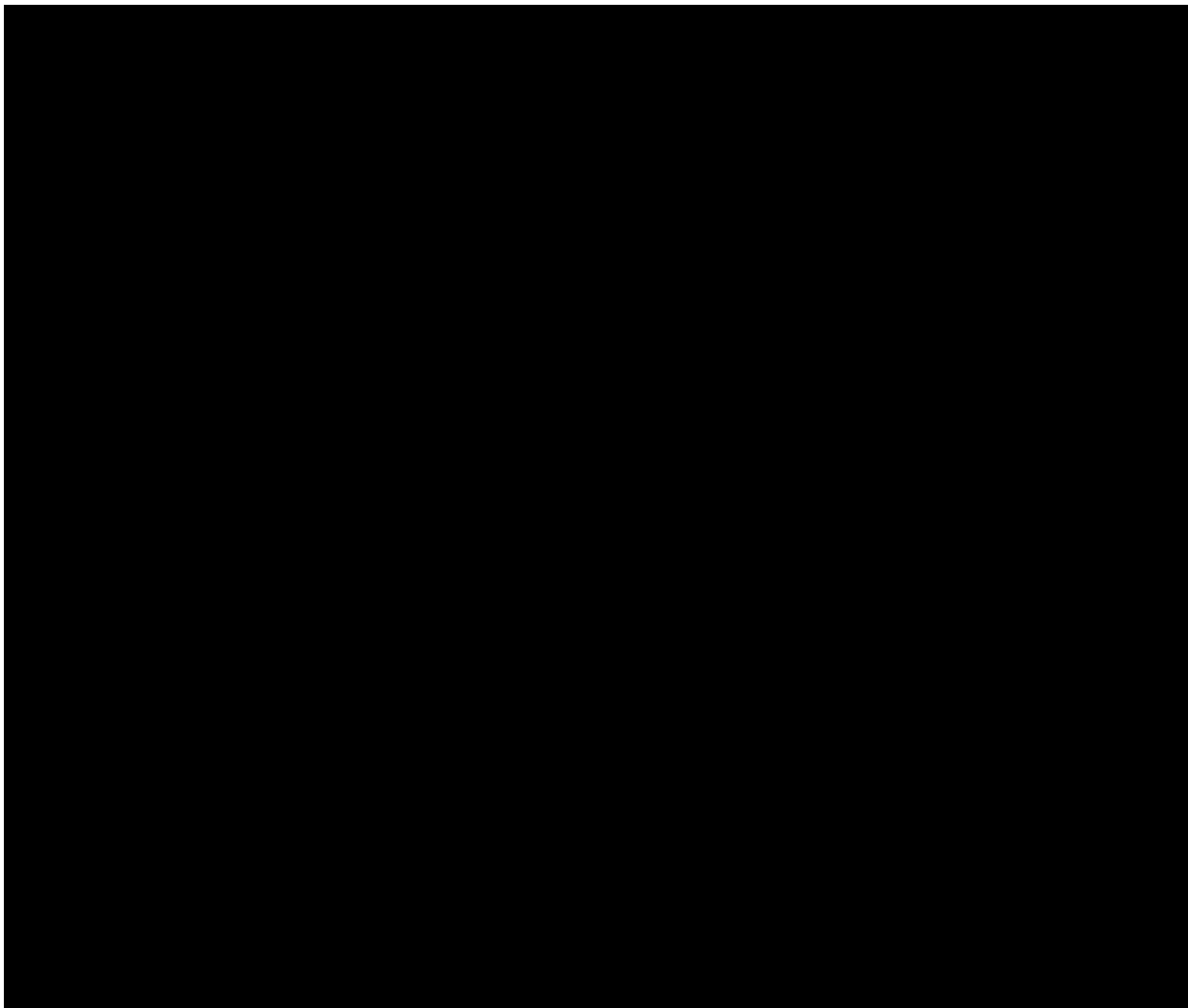
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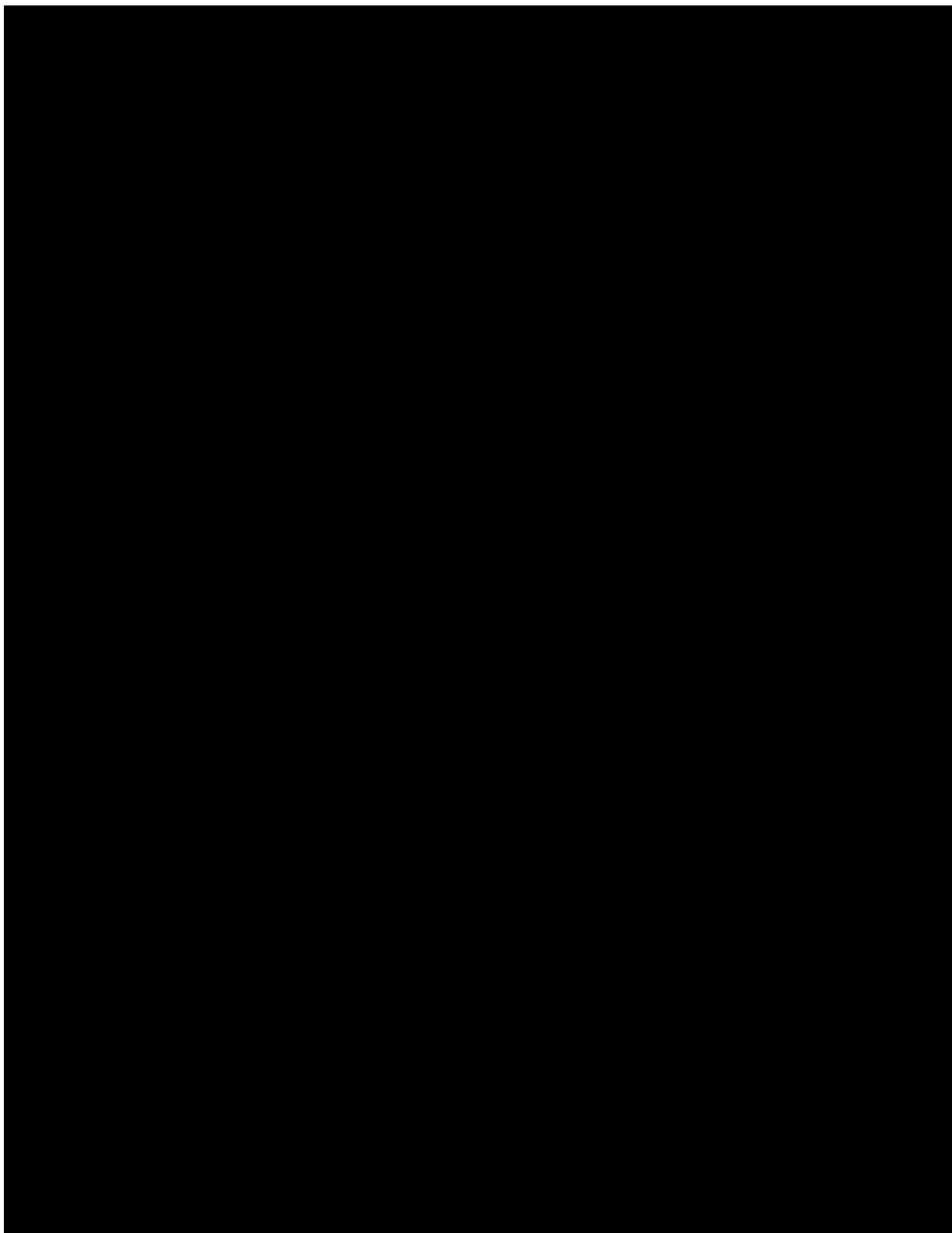
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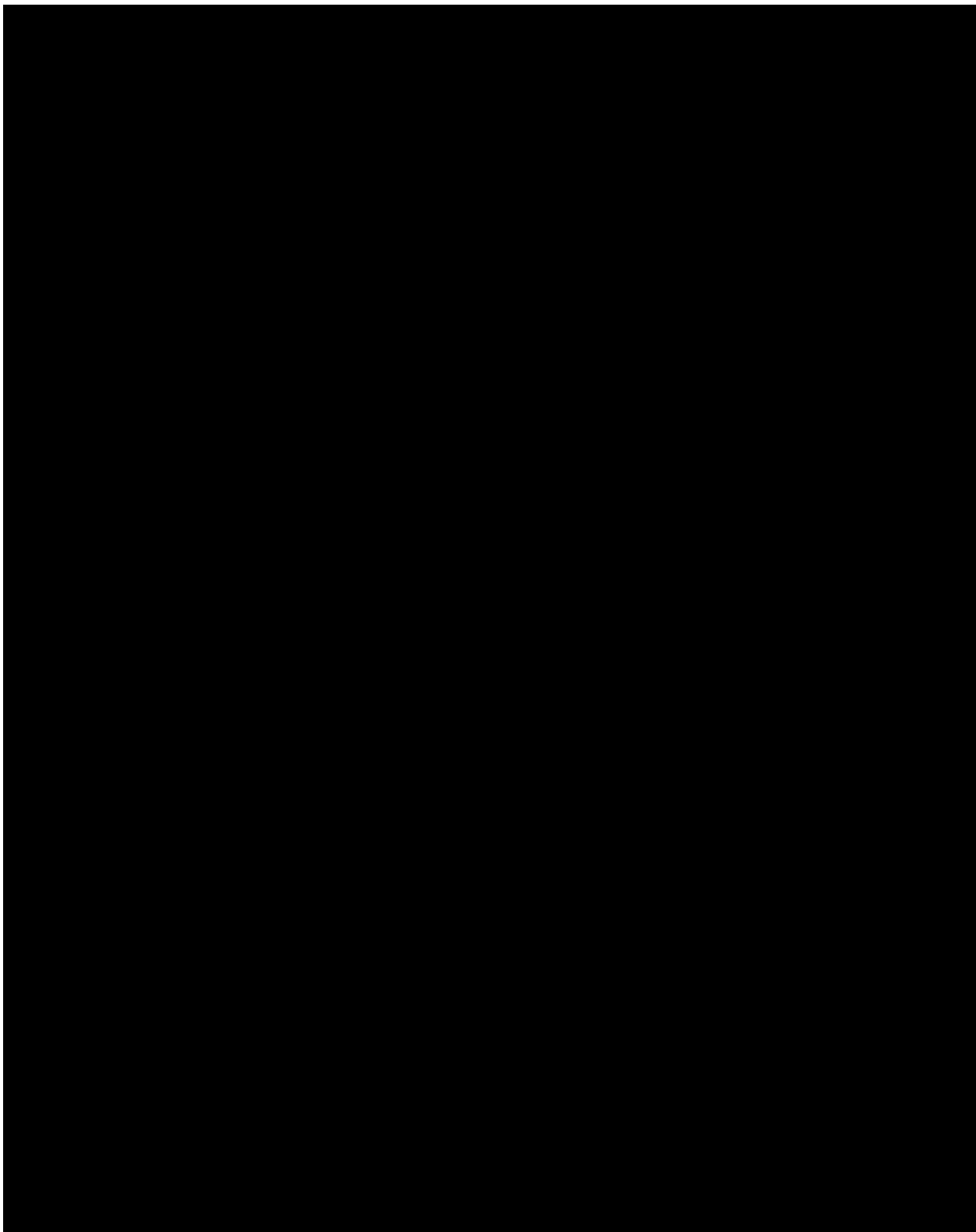
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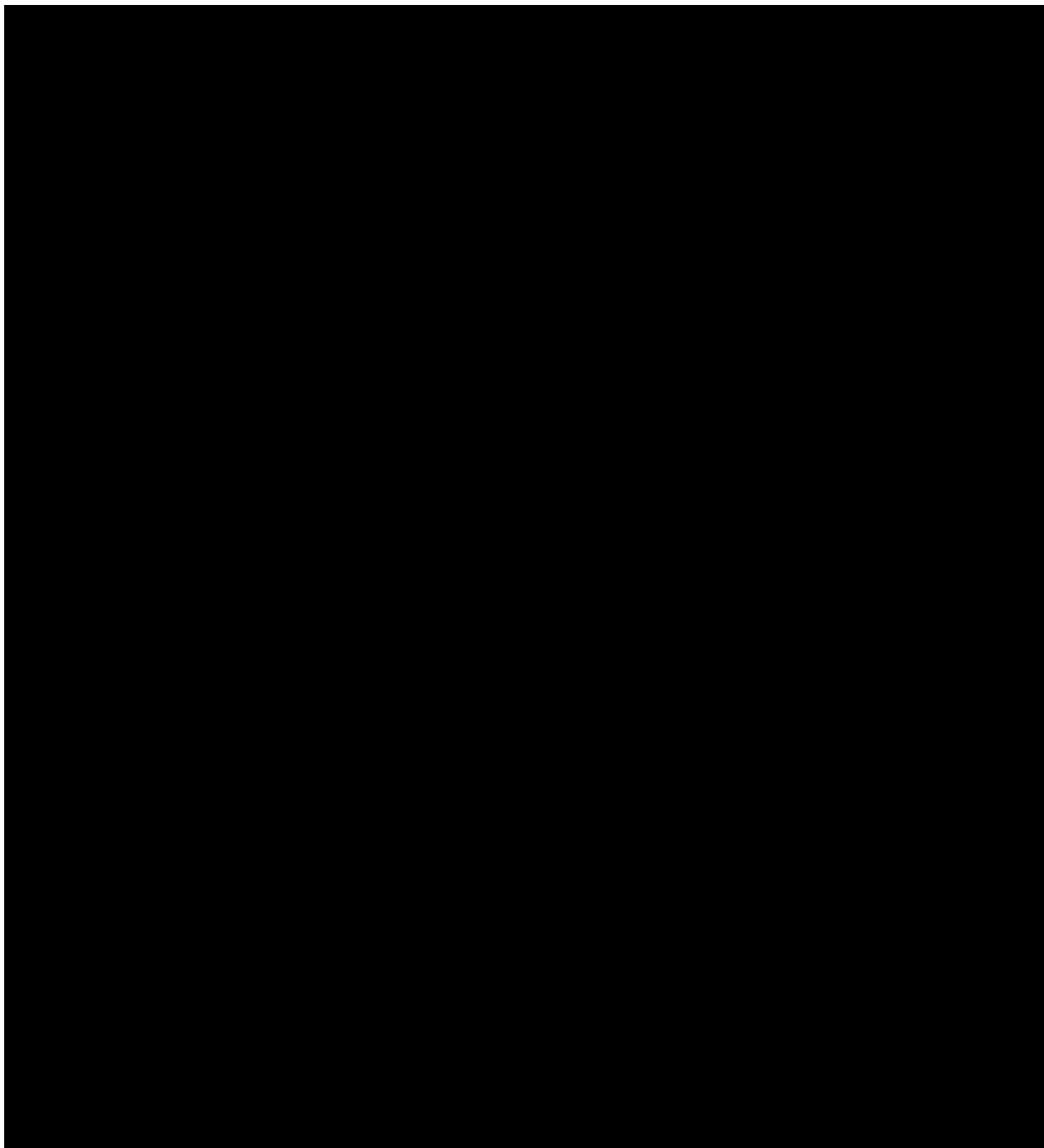
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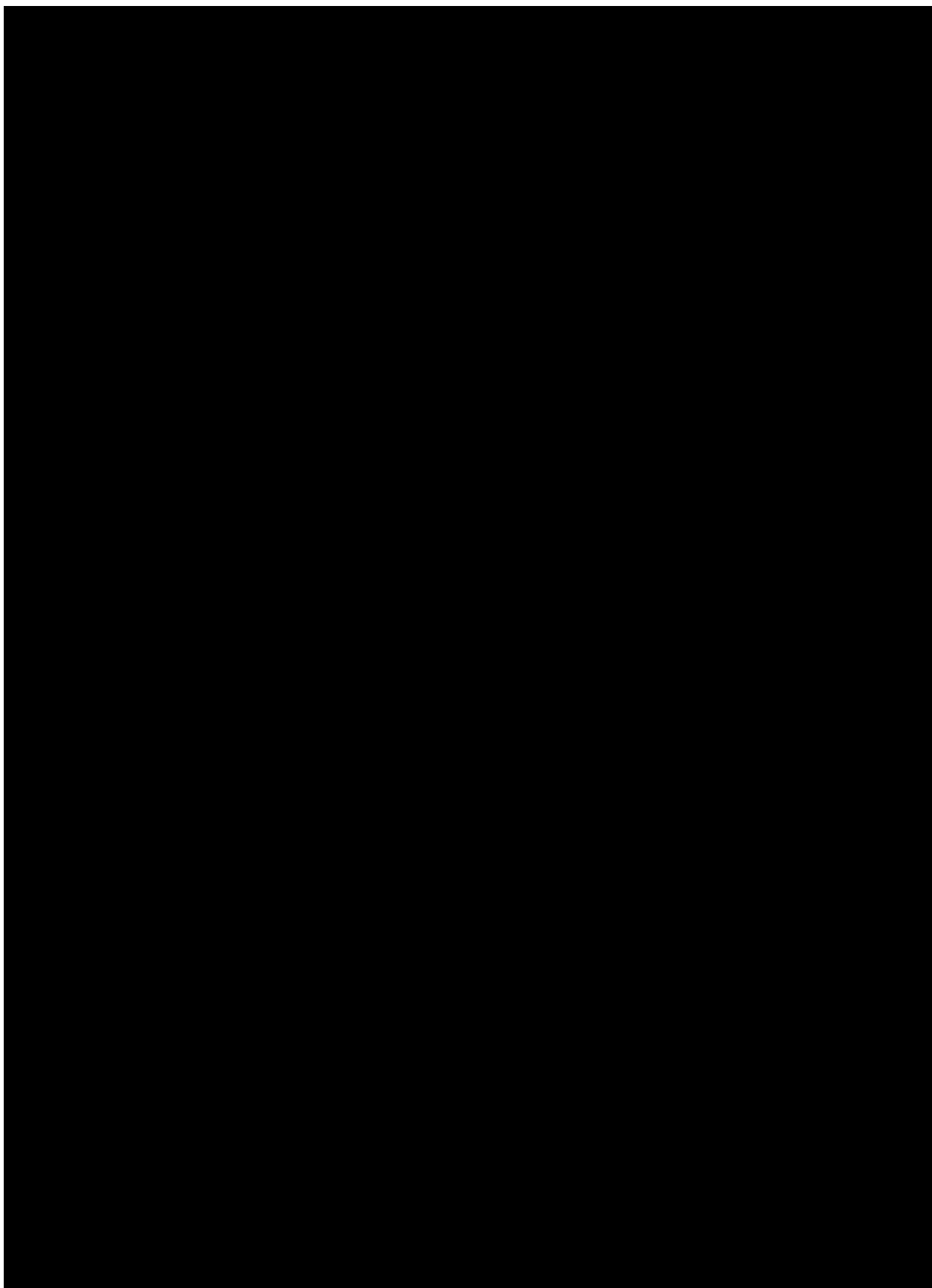
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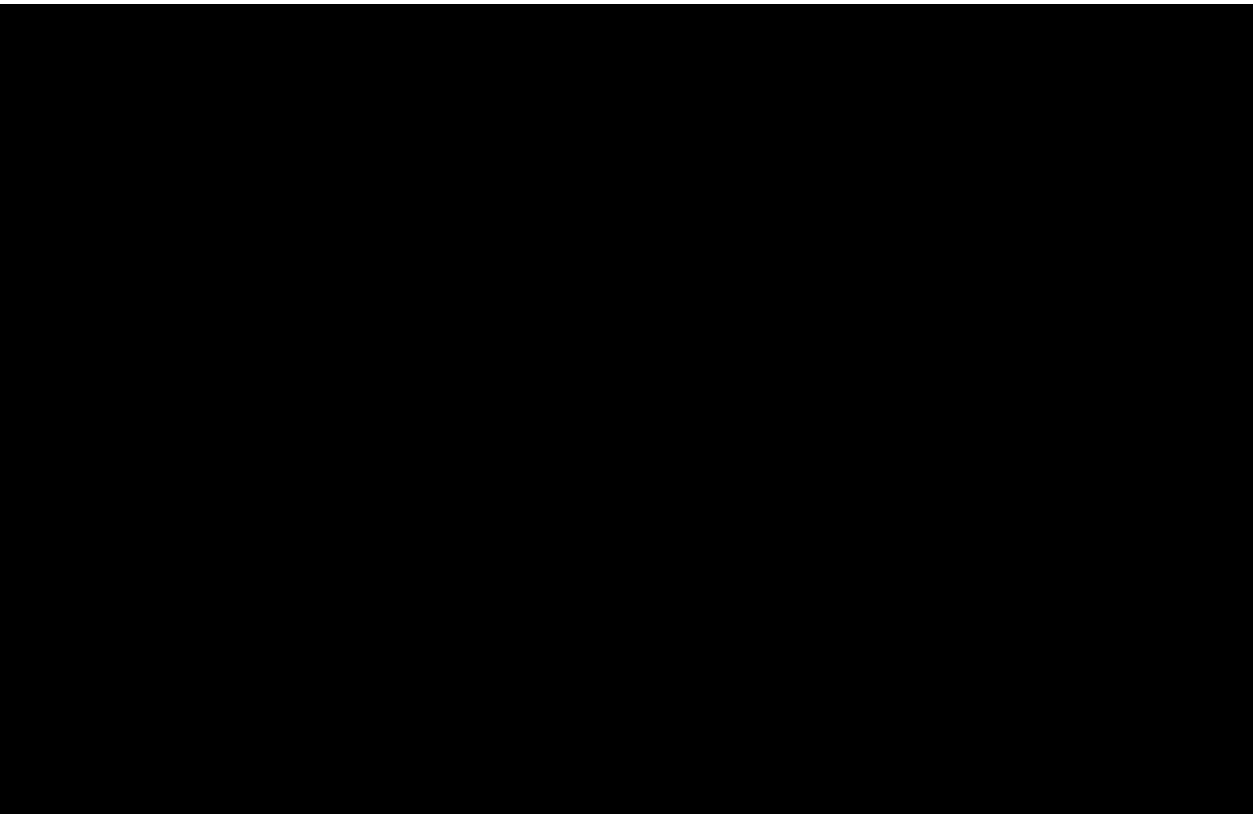
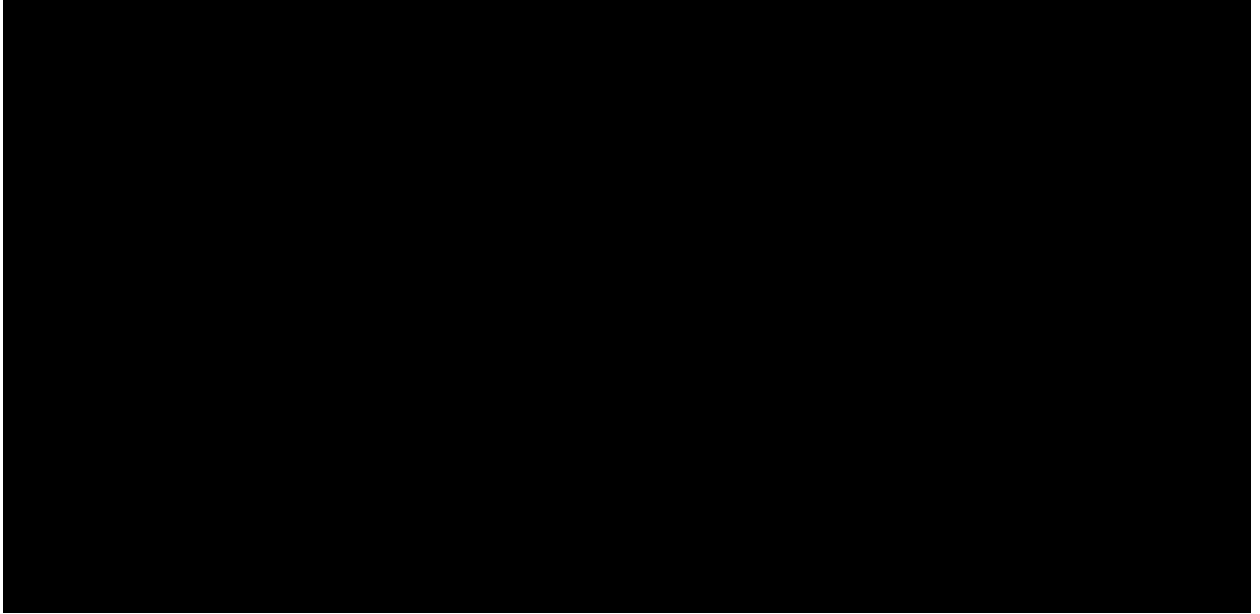
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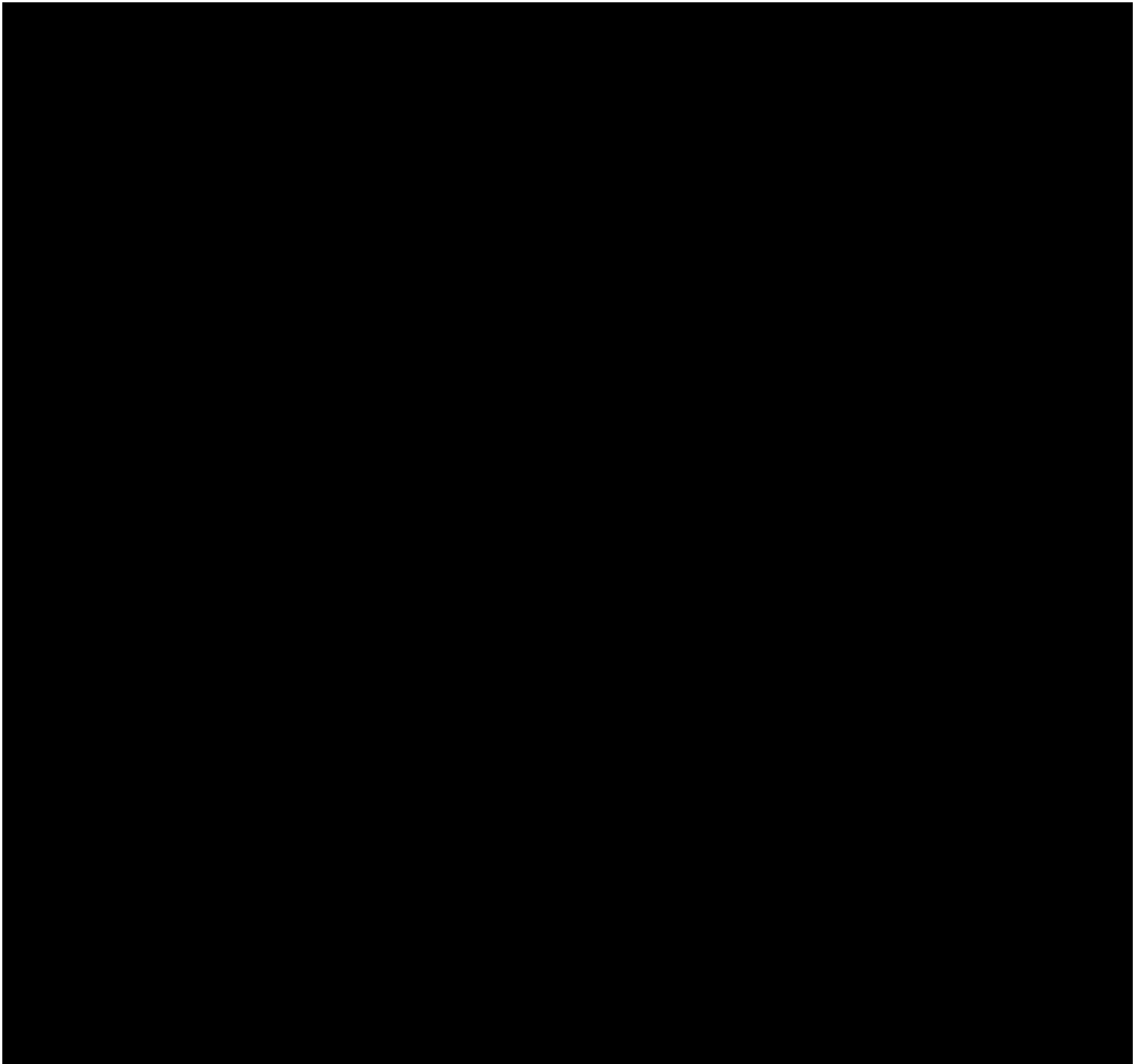
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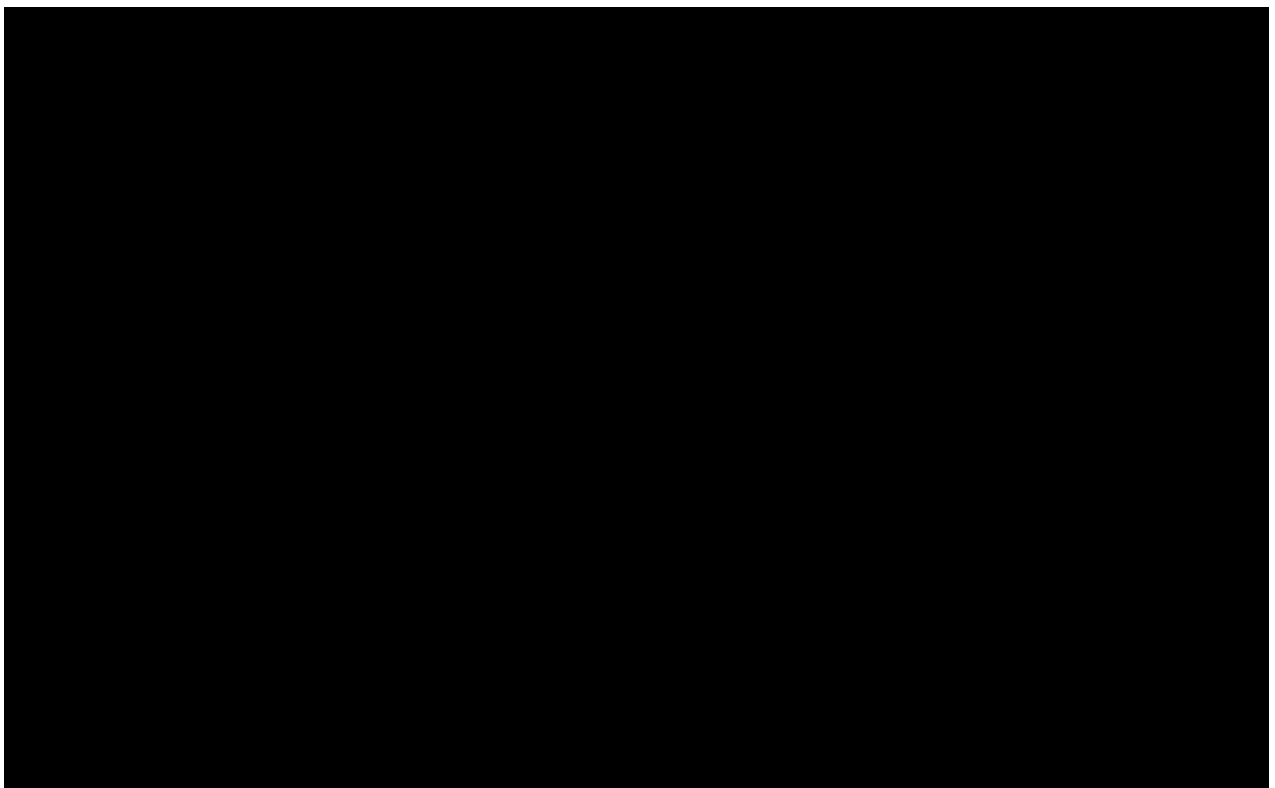
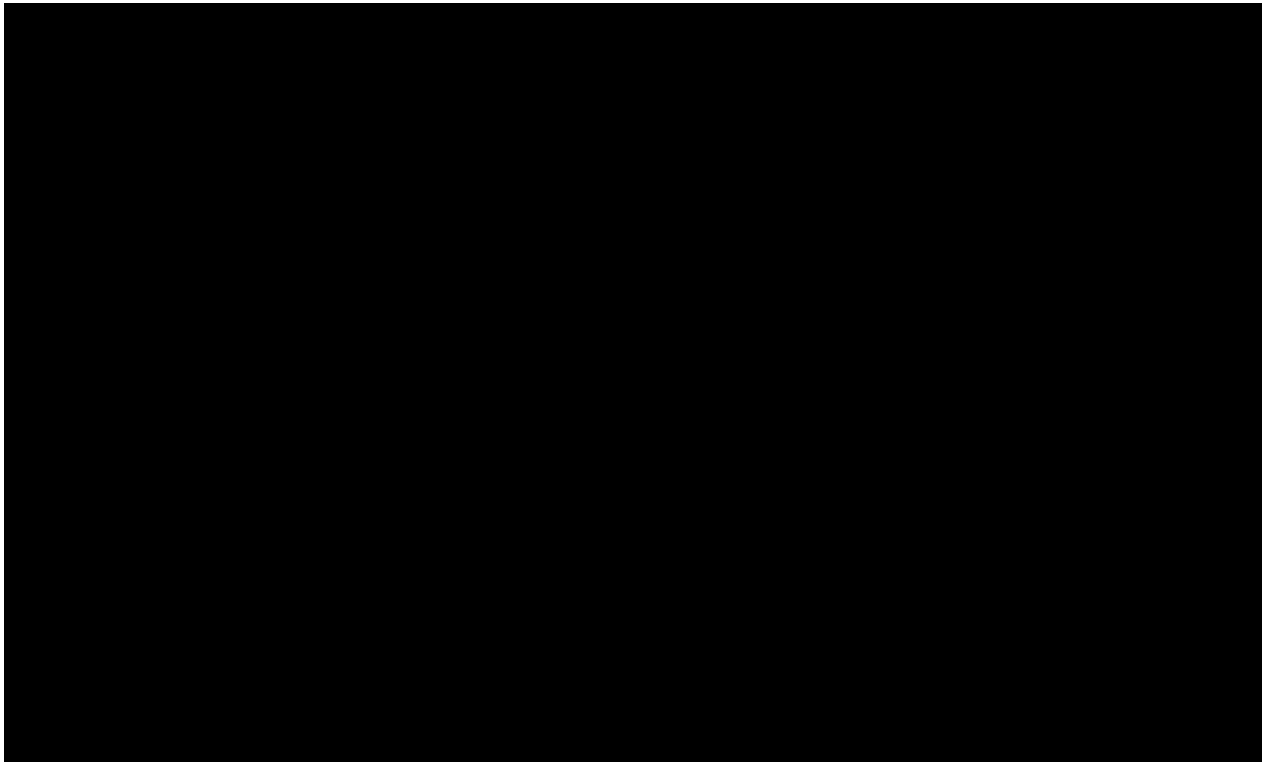
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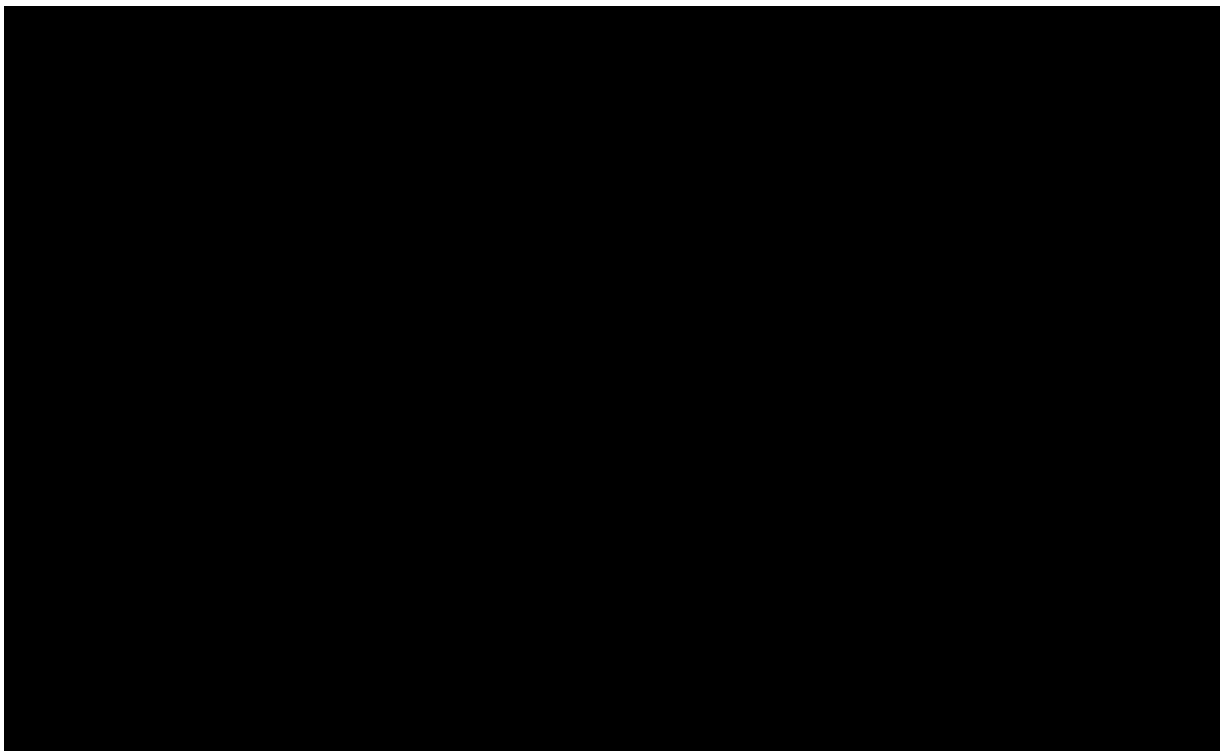
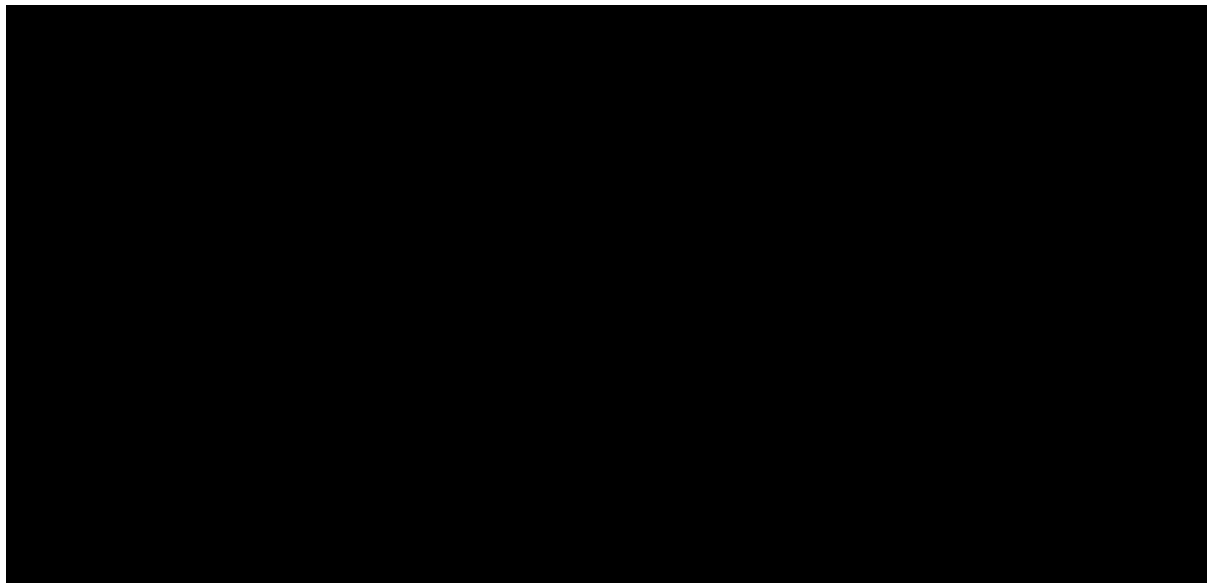
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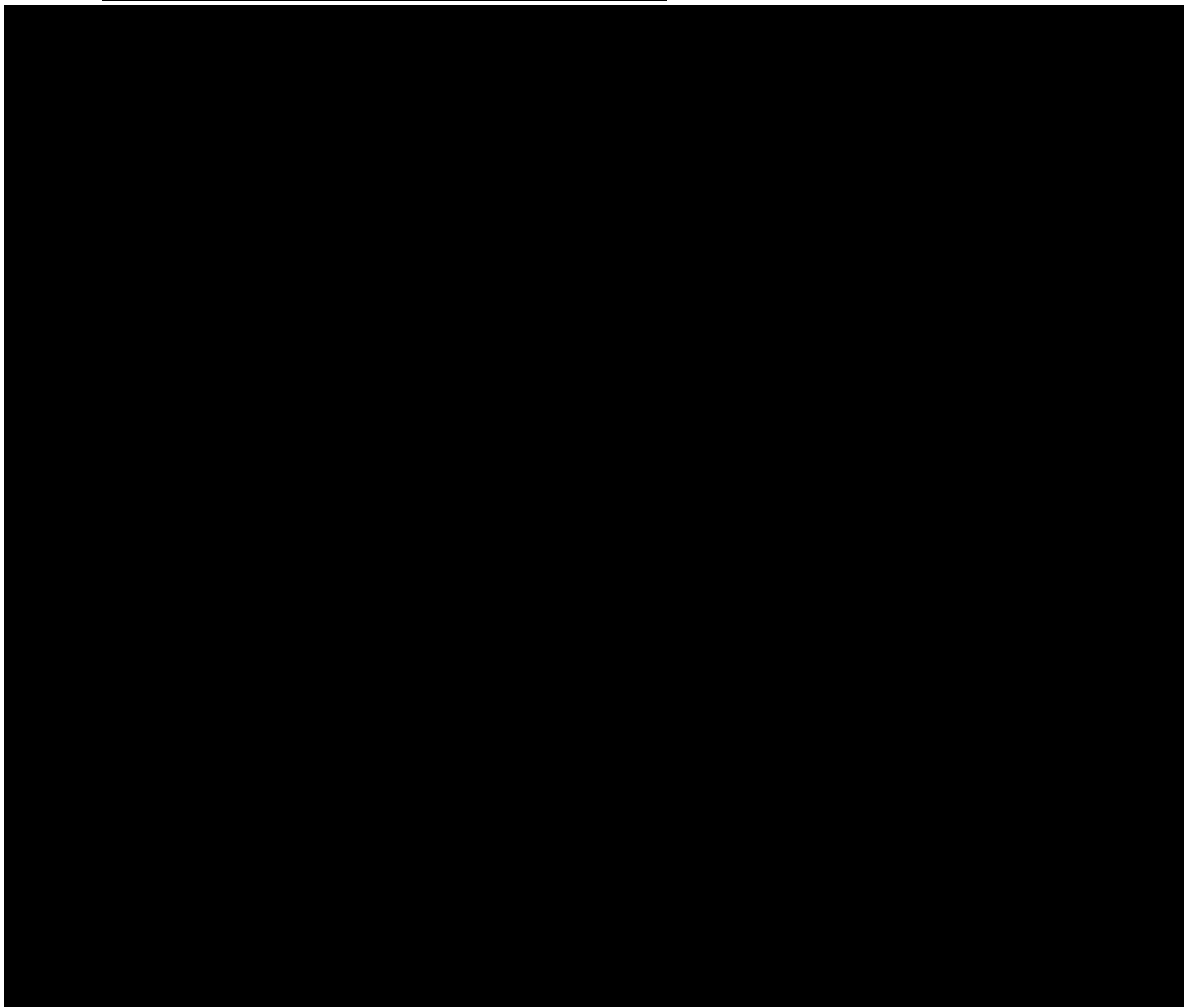
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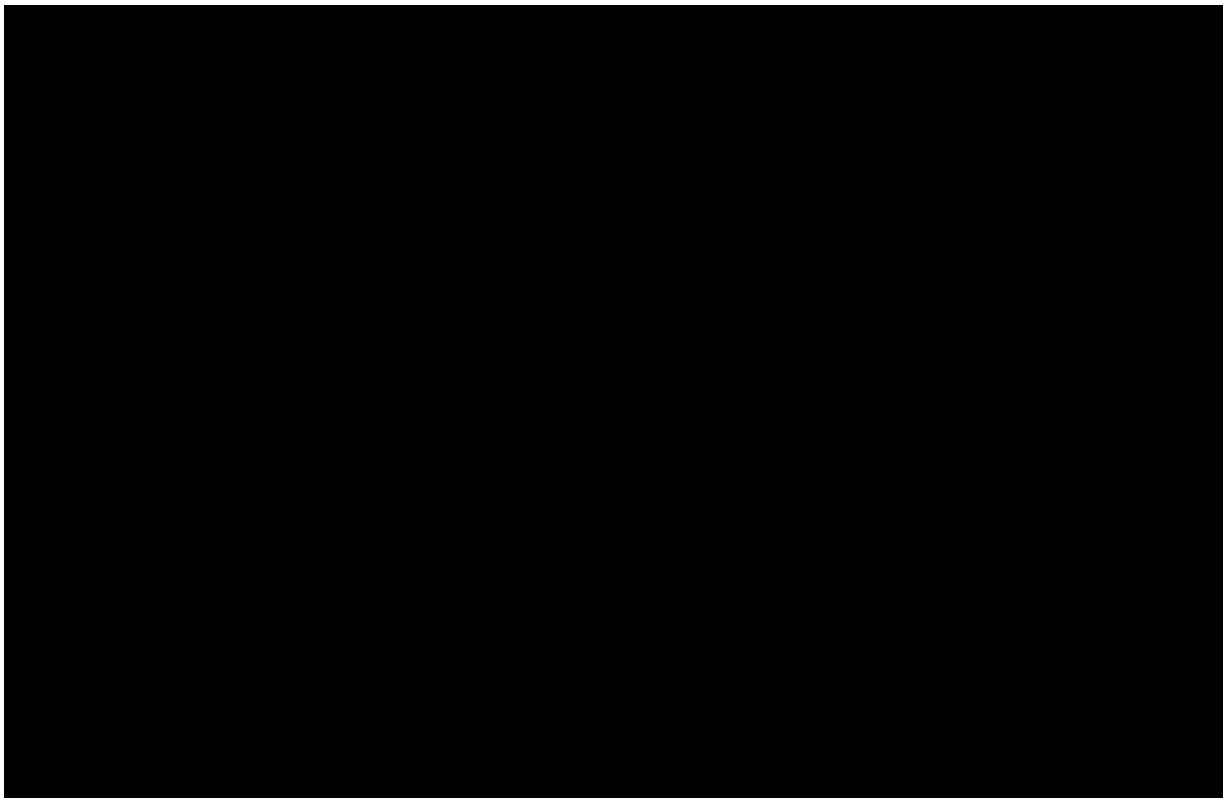
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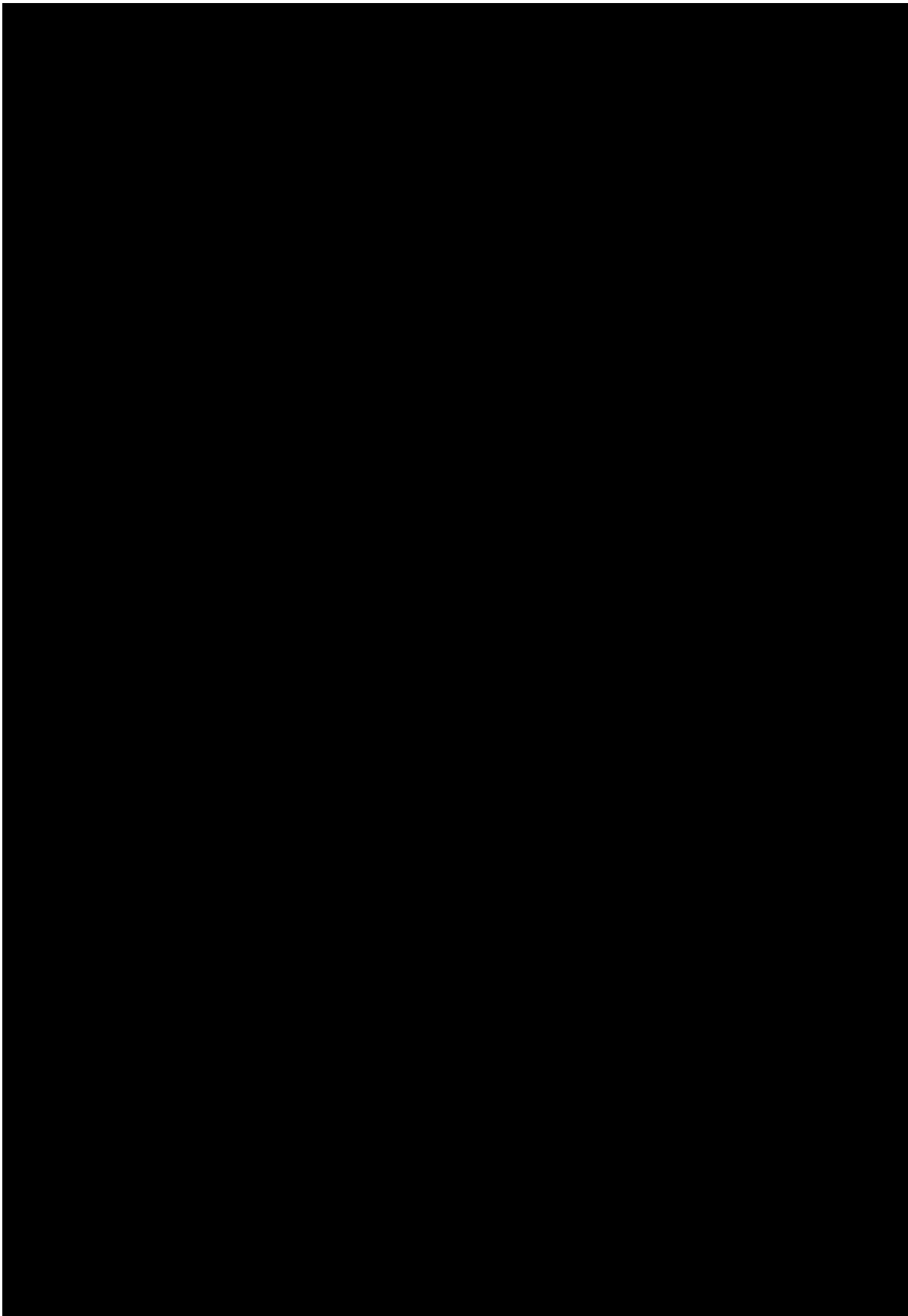
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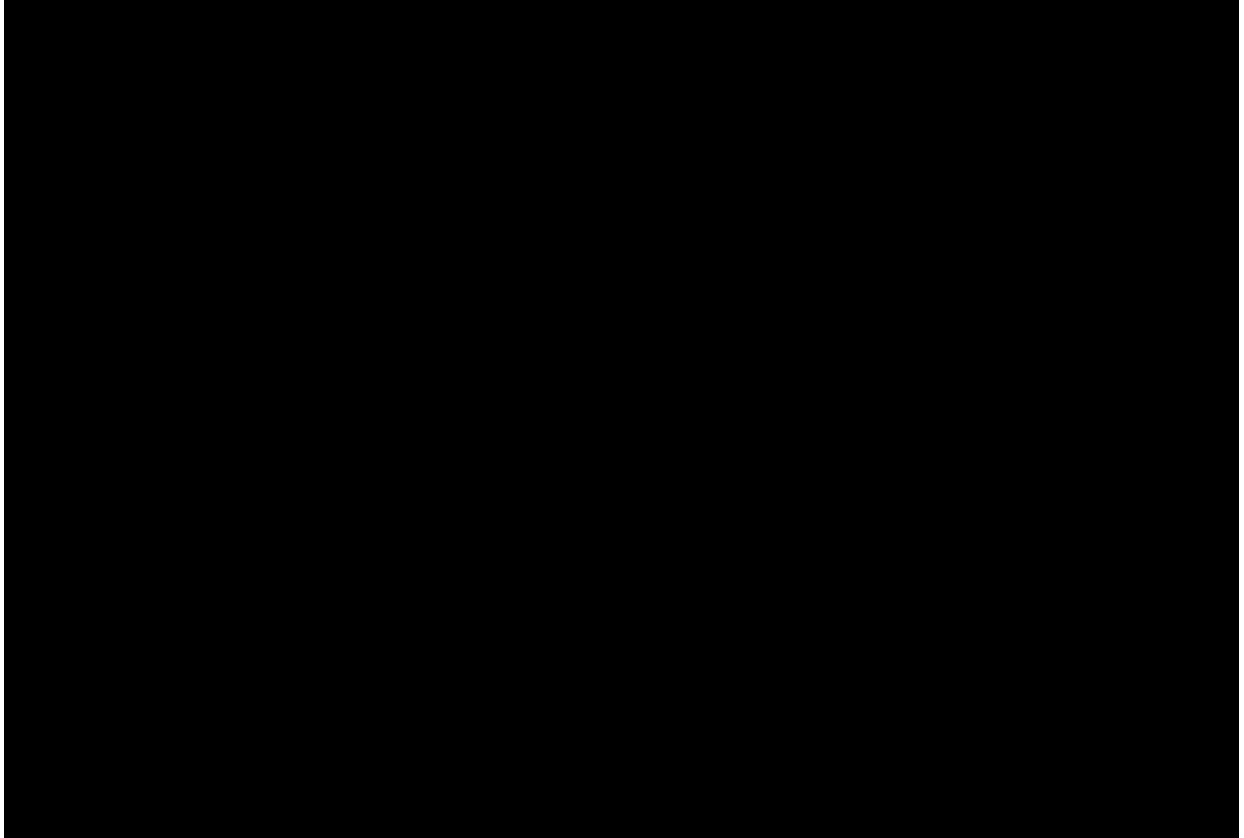
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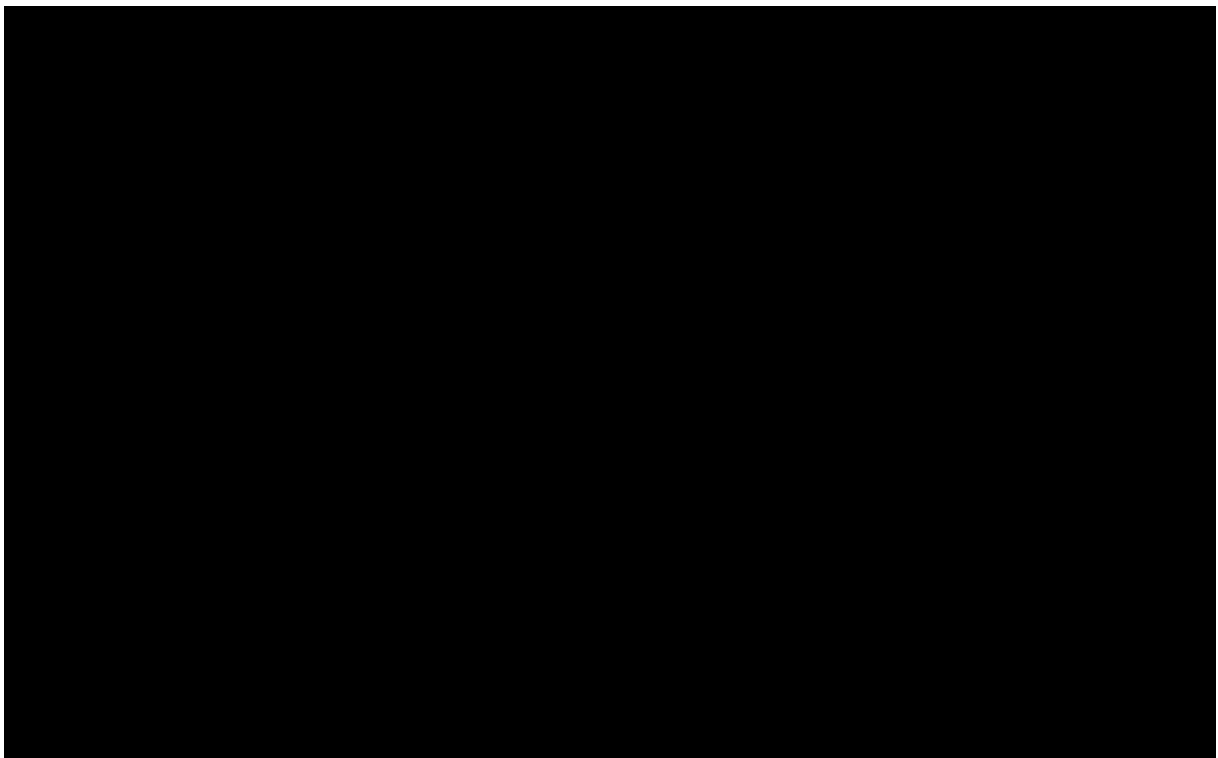
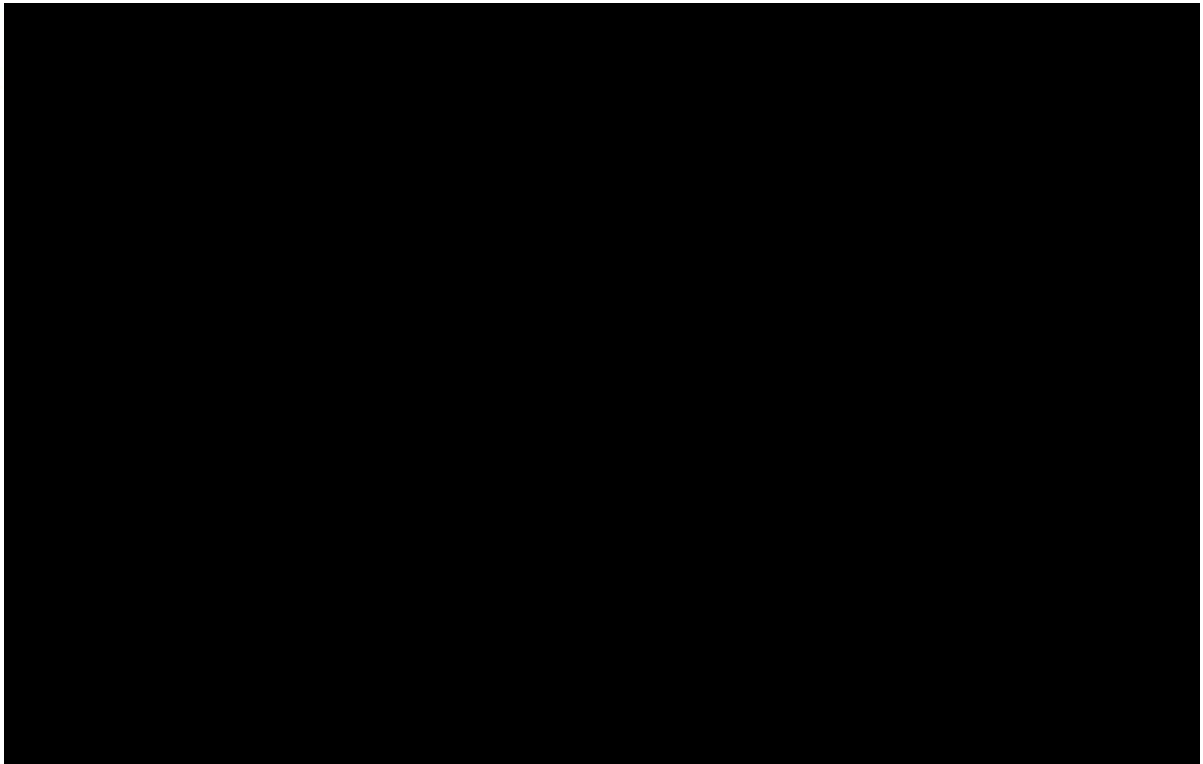
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The first step in the process of identifying the best person for the job is to determine what the organization needs. This involves understanding the current state of the organization, its goals, and the challenges it faces. Once the organization's needs are clear, the next step is to identify potential candidates. This can be done through various methods, such as internal promotions, external recruitment, or referrals from employees. The third step is to evaluate the candidates against the organization's needs. This typically involves conducting interviews, reviewing resumes, and checking references. The final step is to select the best candidate for the job. This decision should be based on a combination of factors, including the candidate's qualifications, experience, and ability to fit into the organization's culture.

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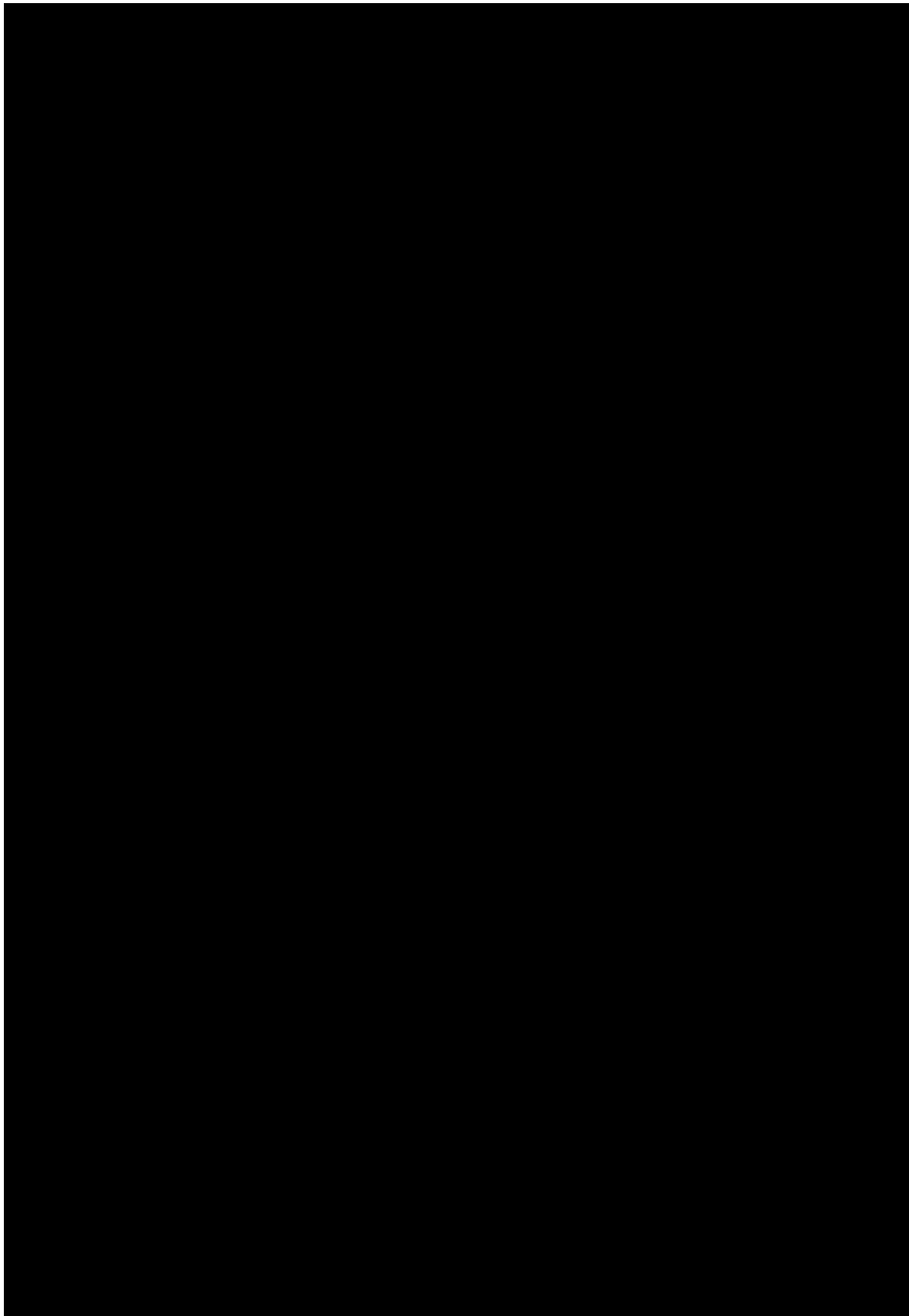
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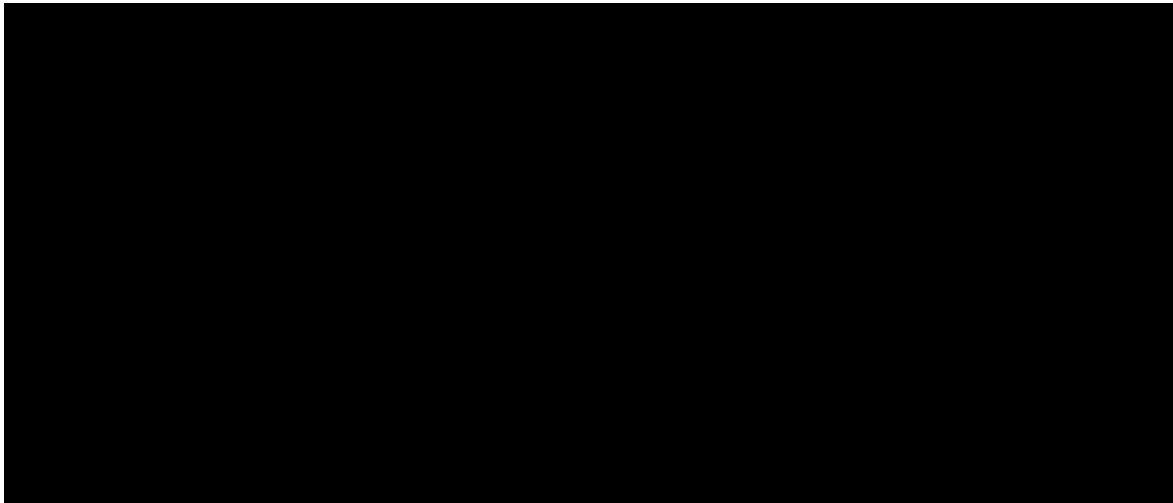
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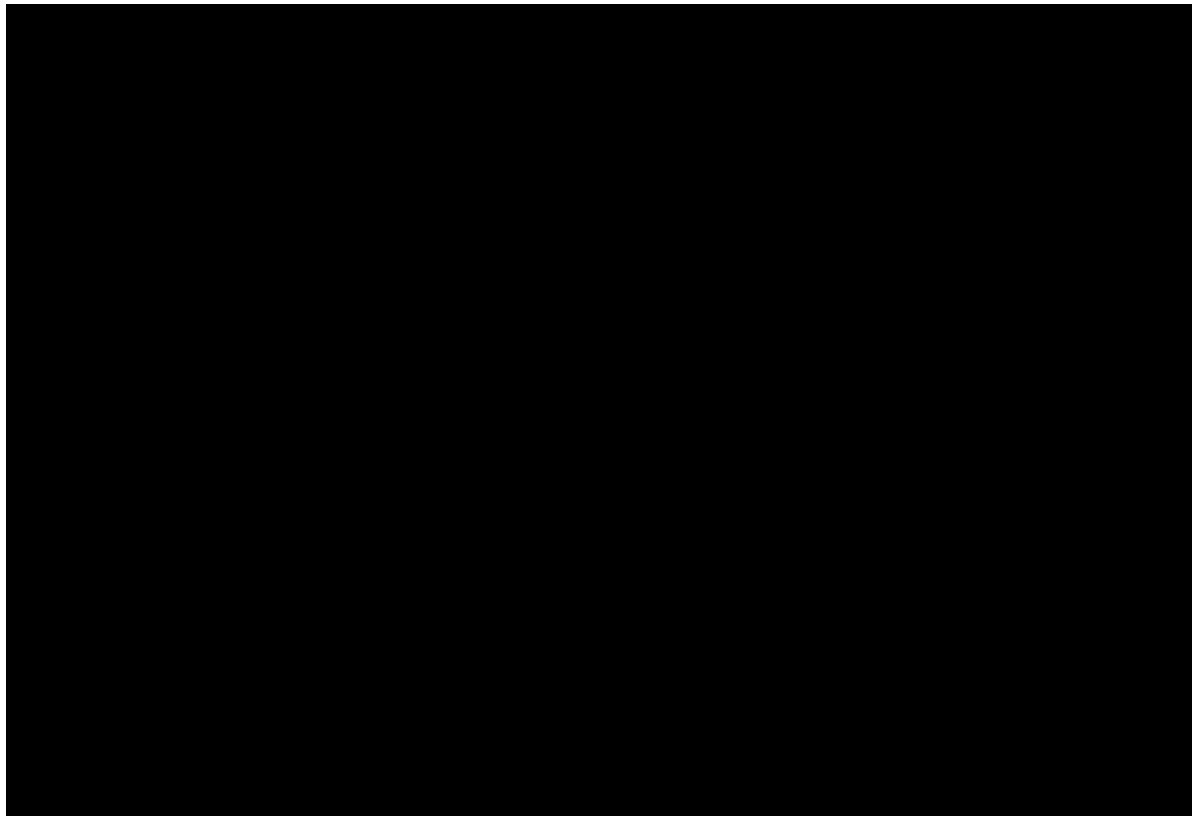
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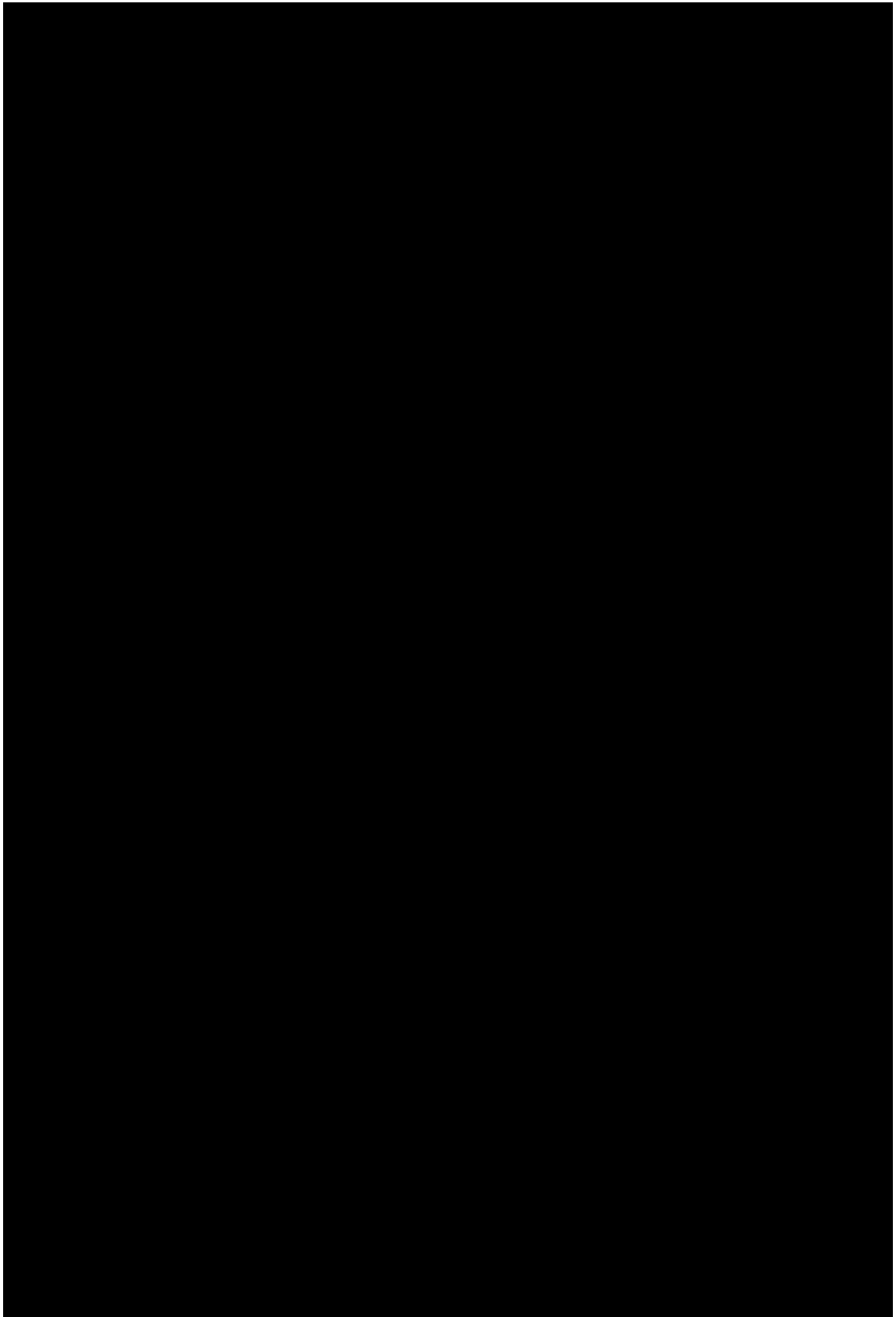
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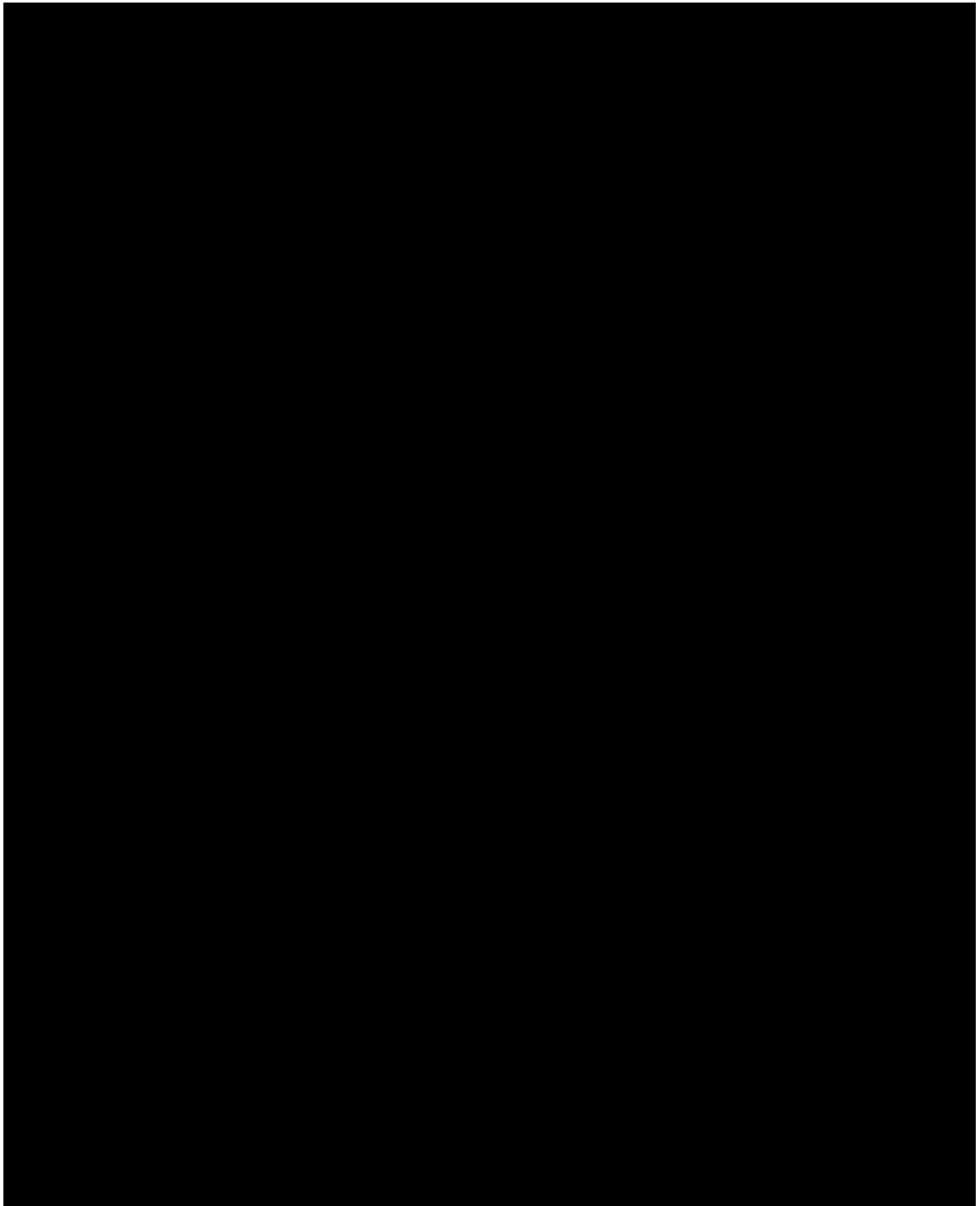
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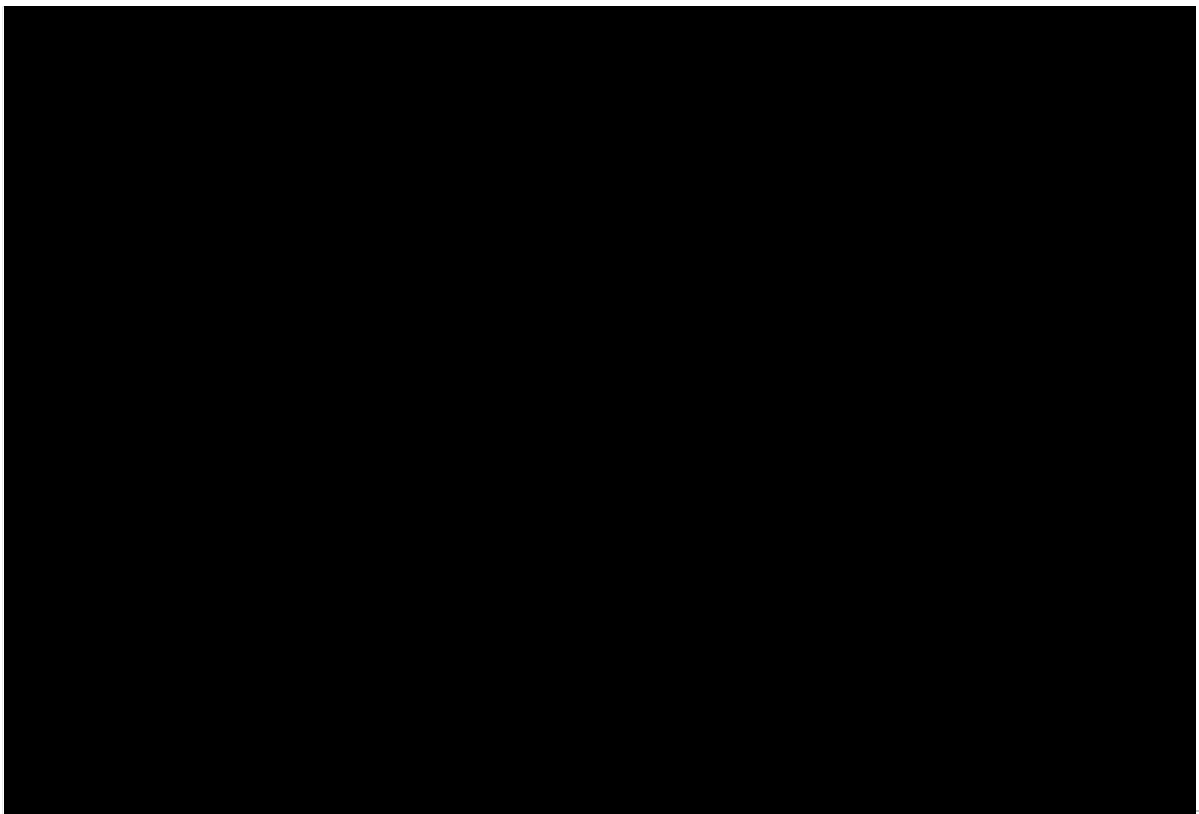
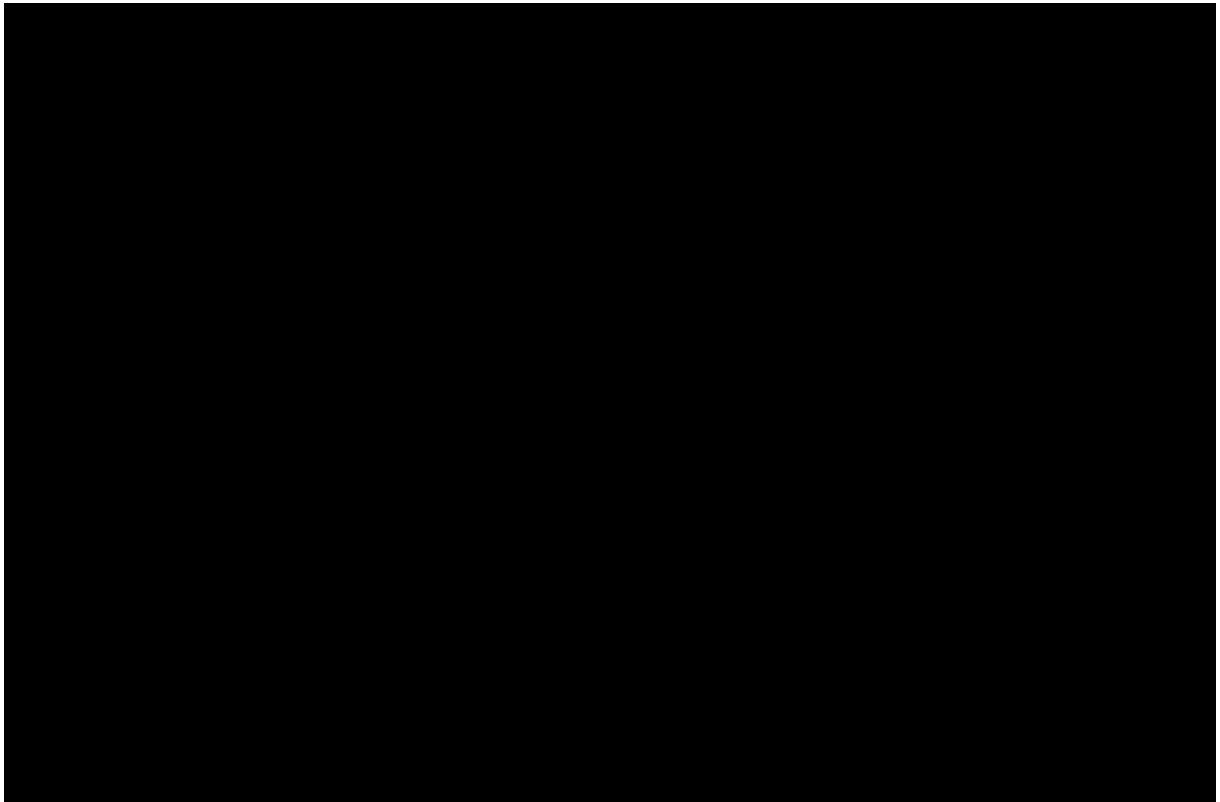
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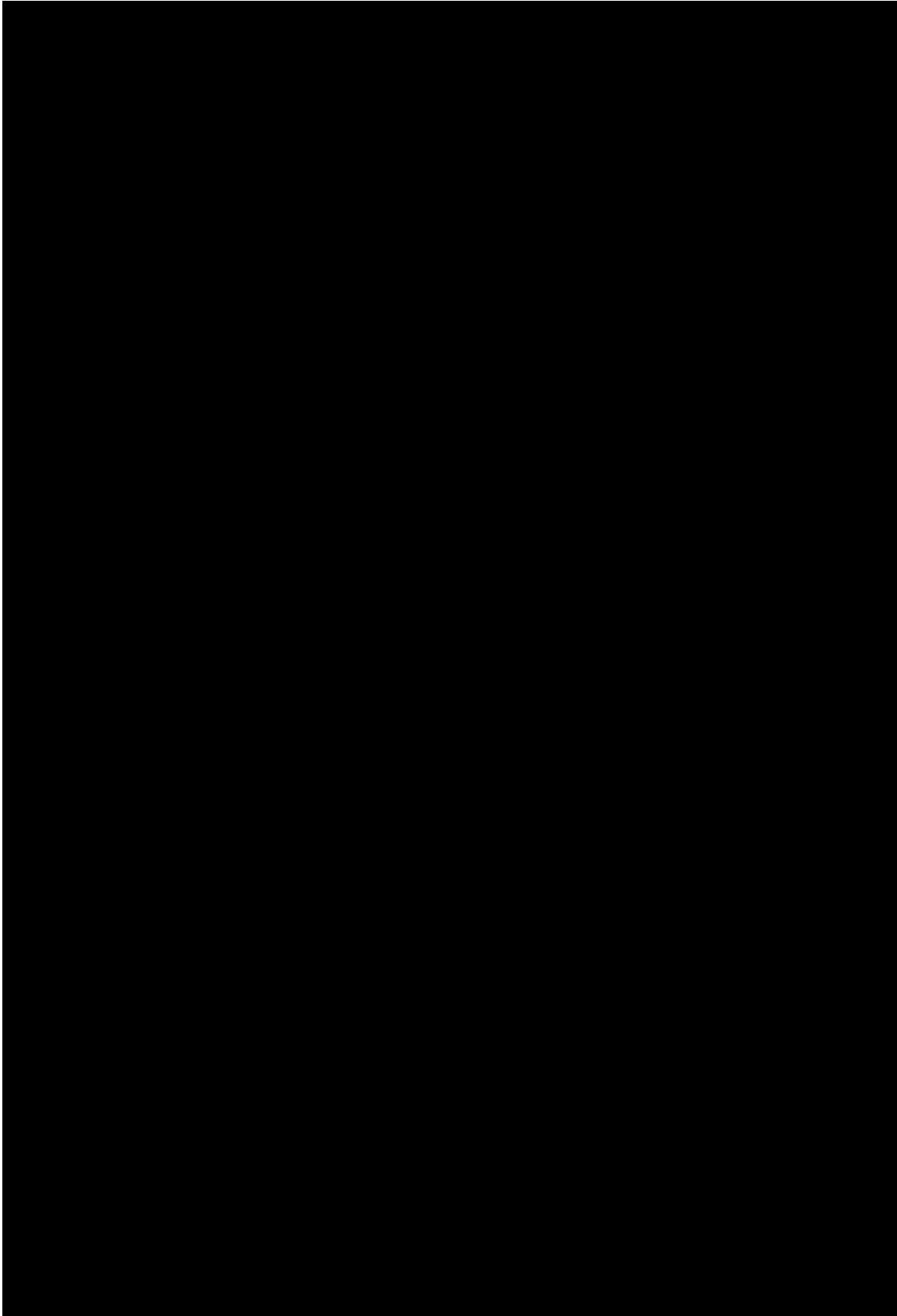
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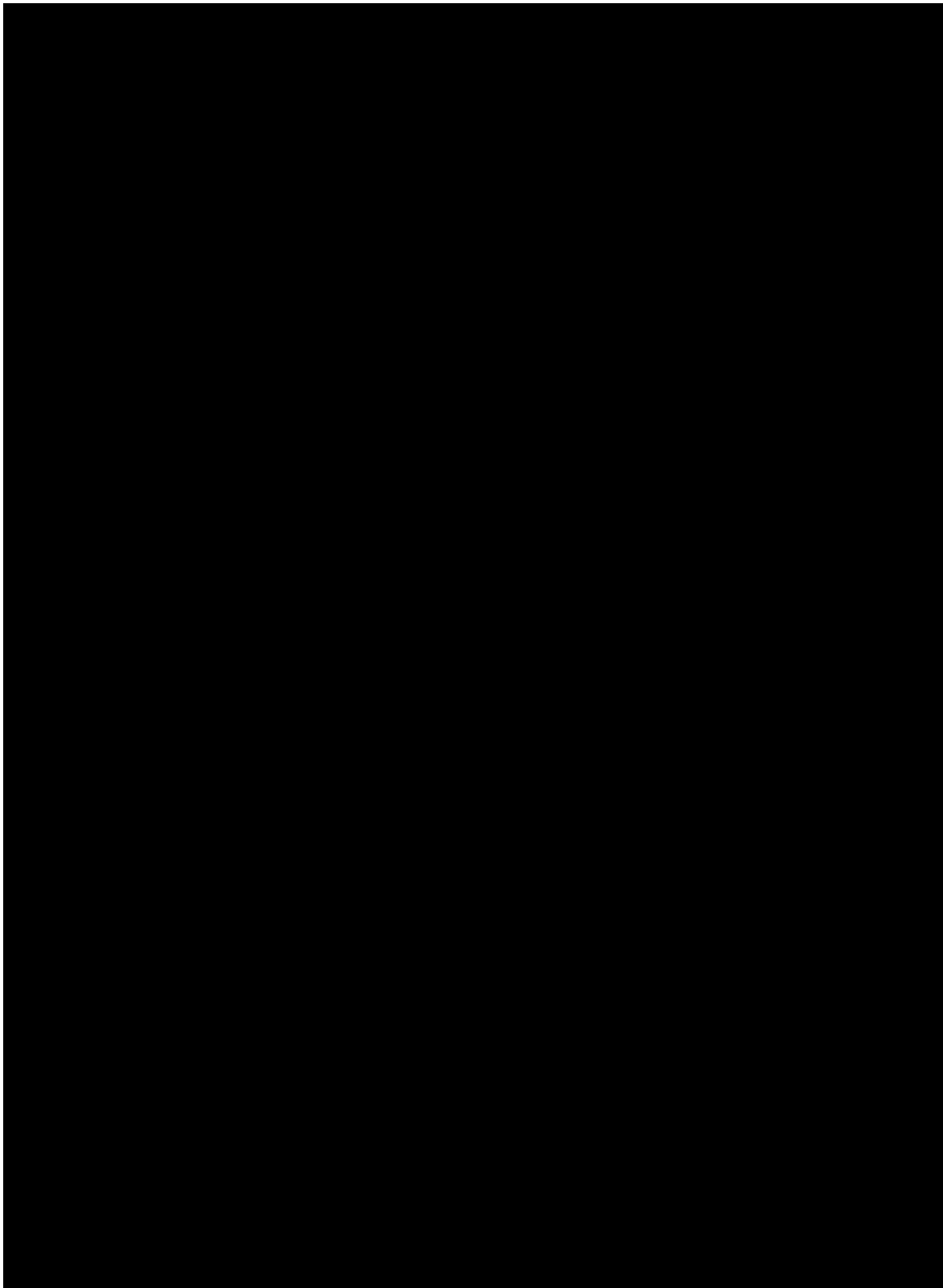
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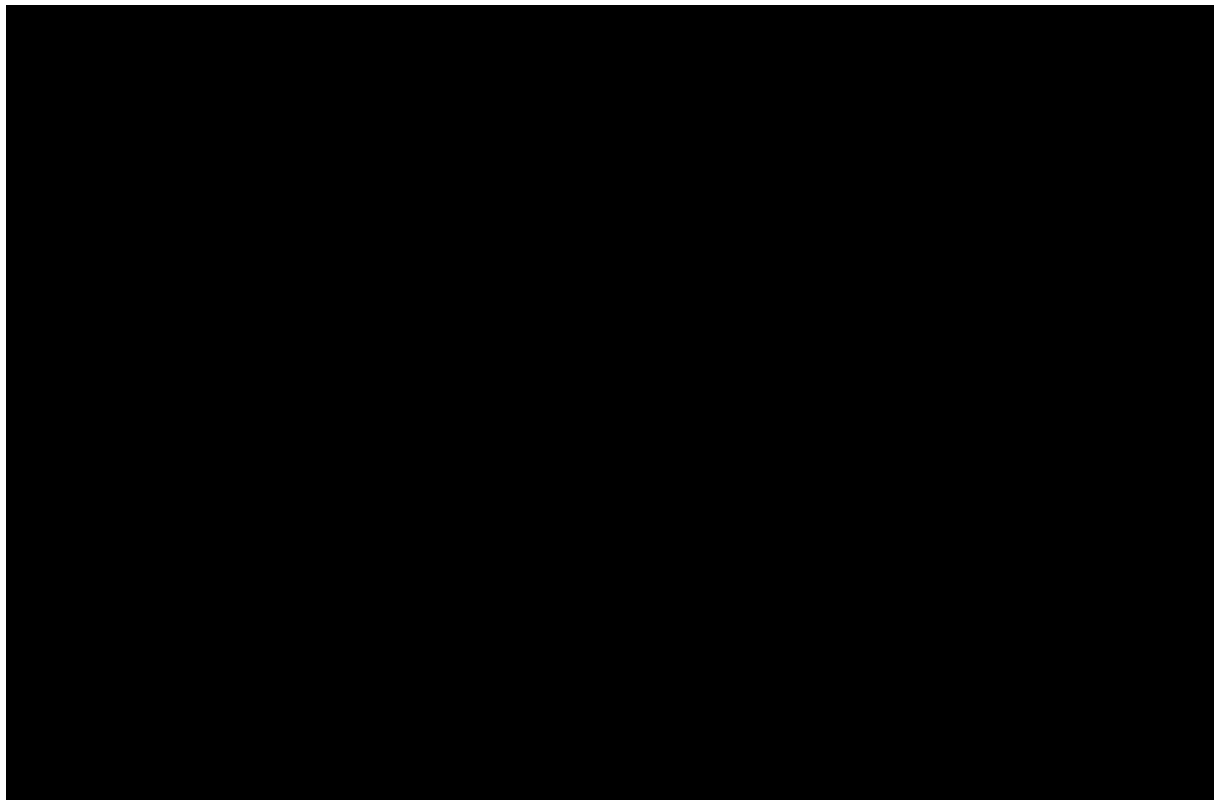
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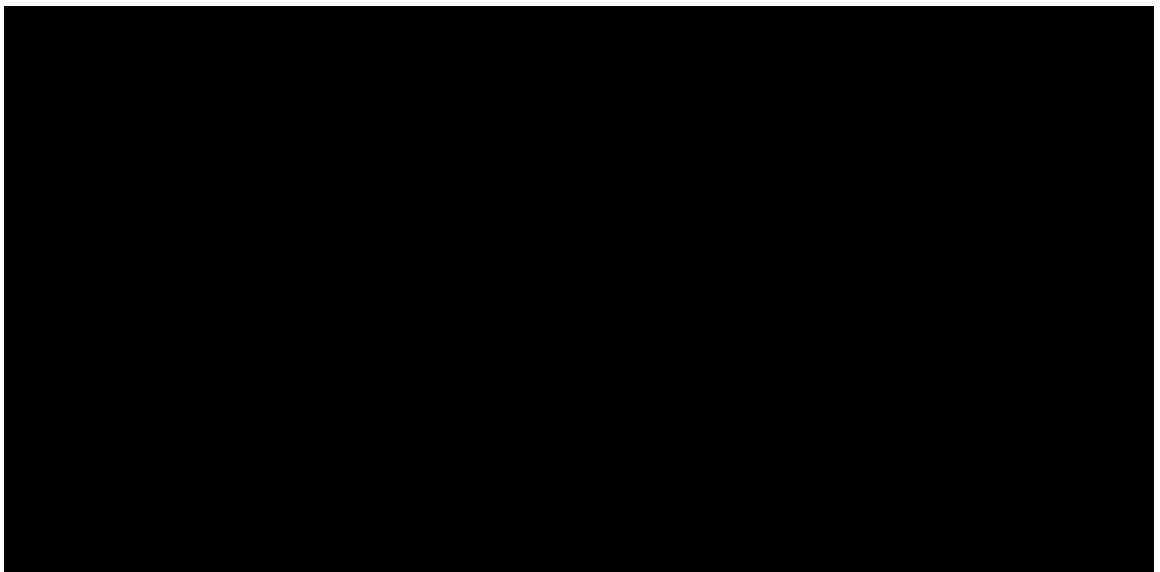
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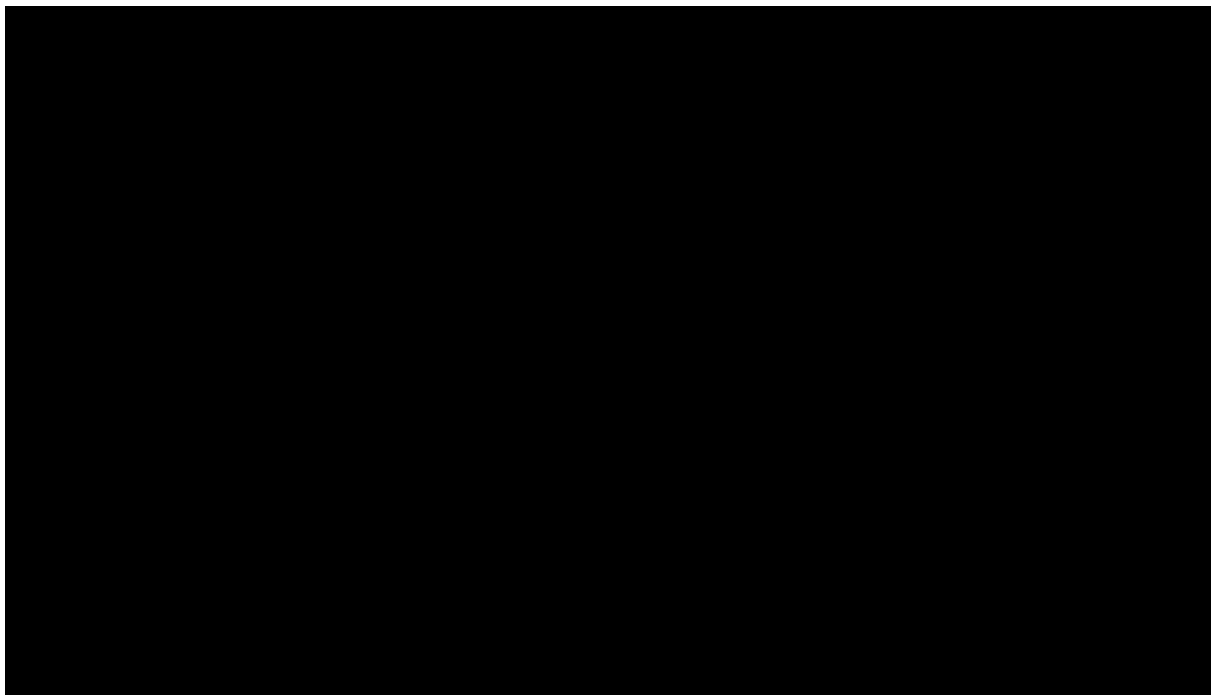
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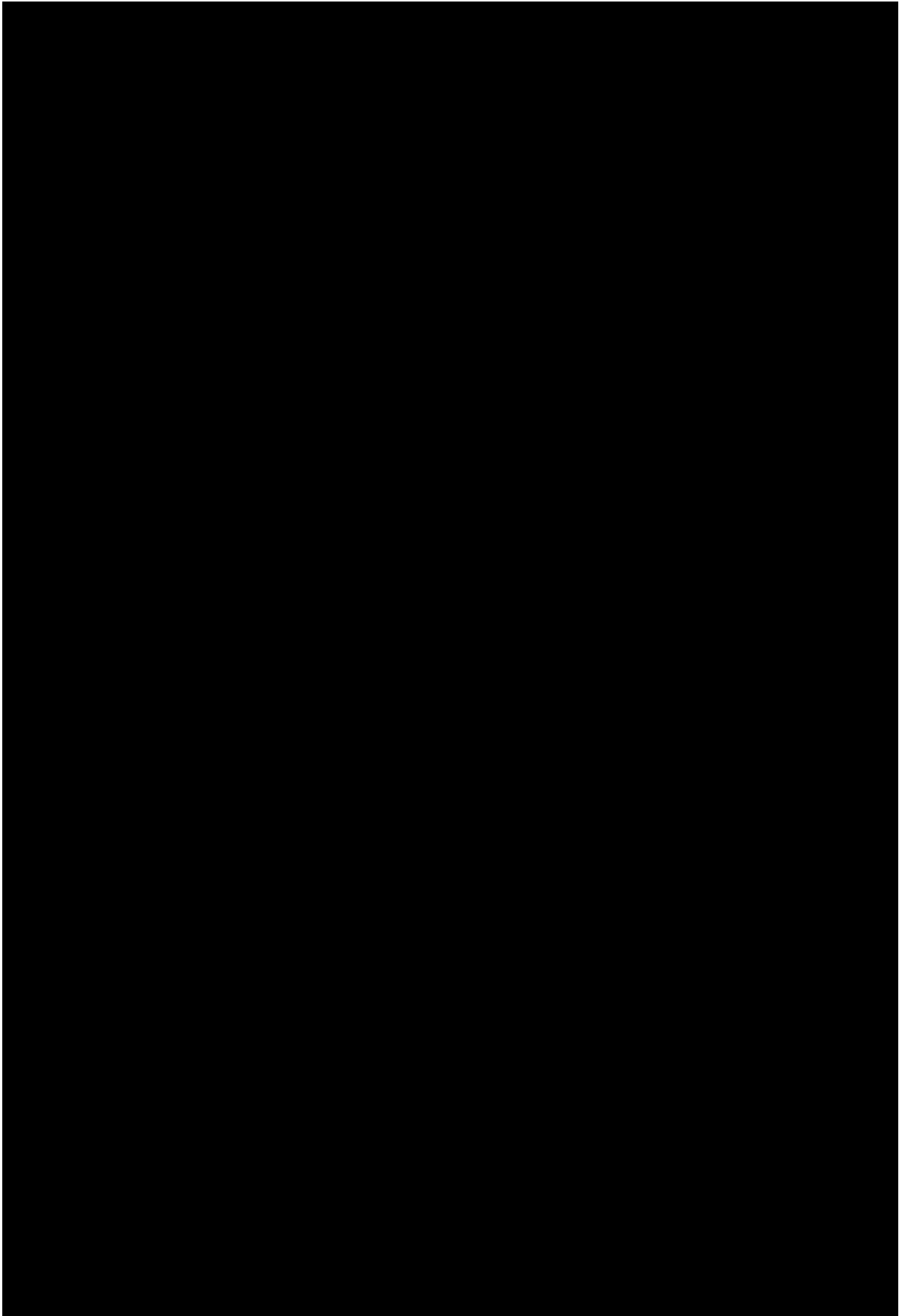
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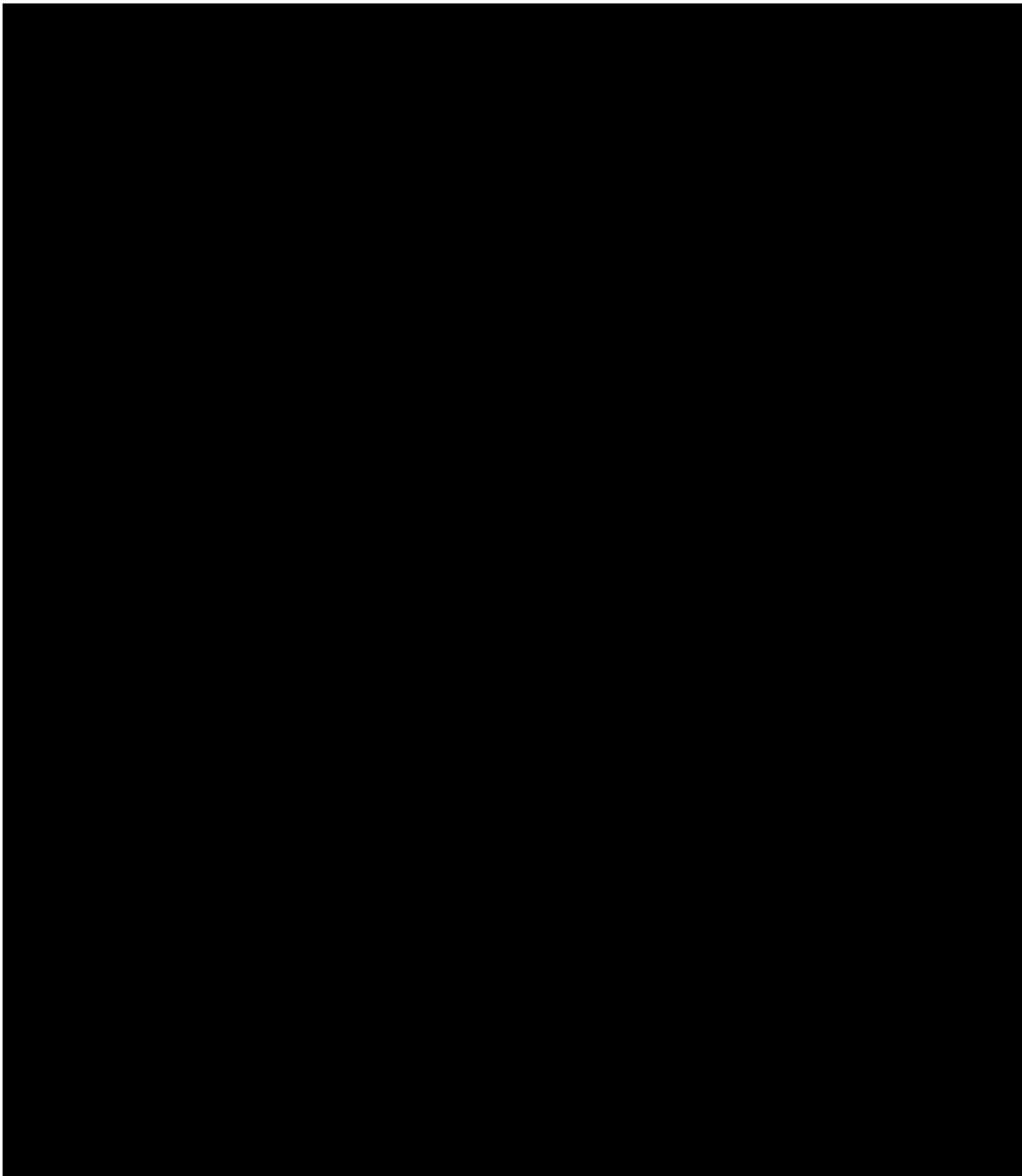
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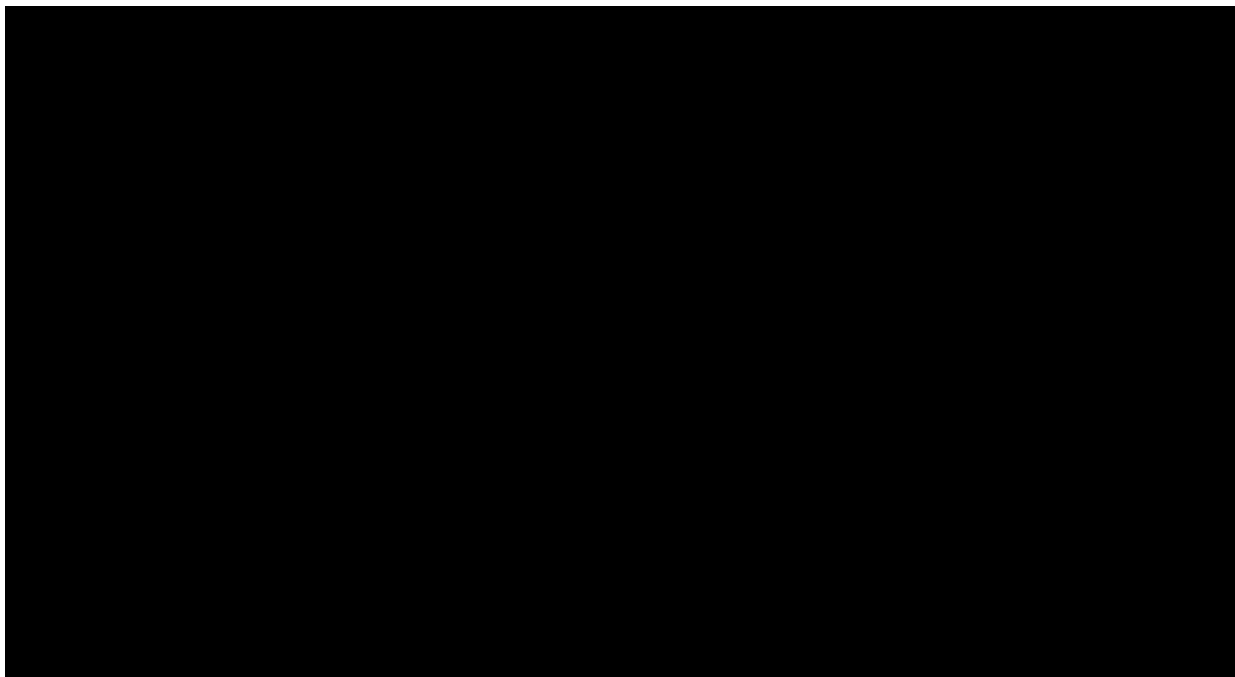
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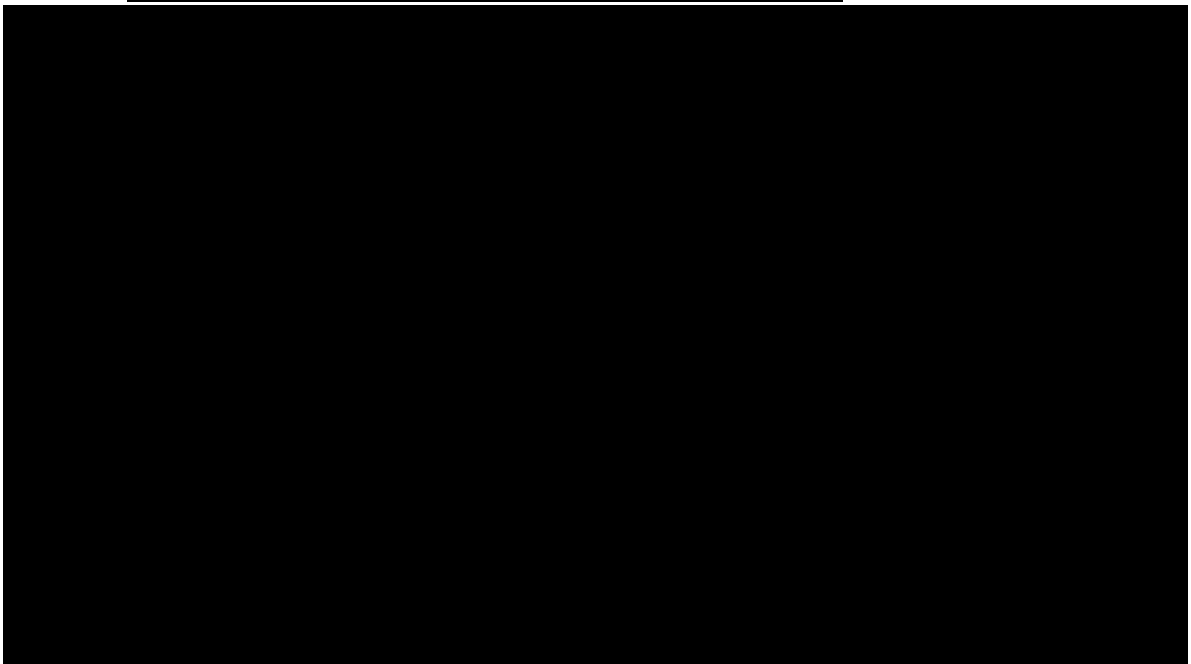
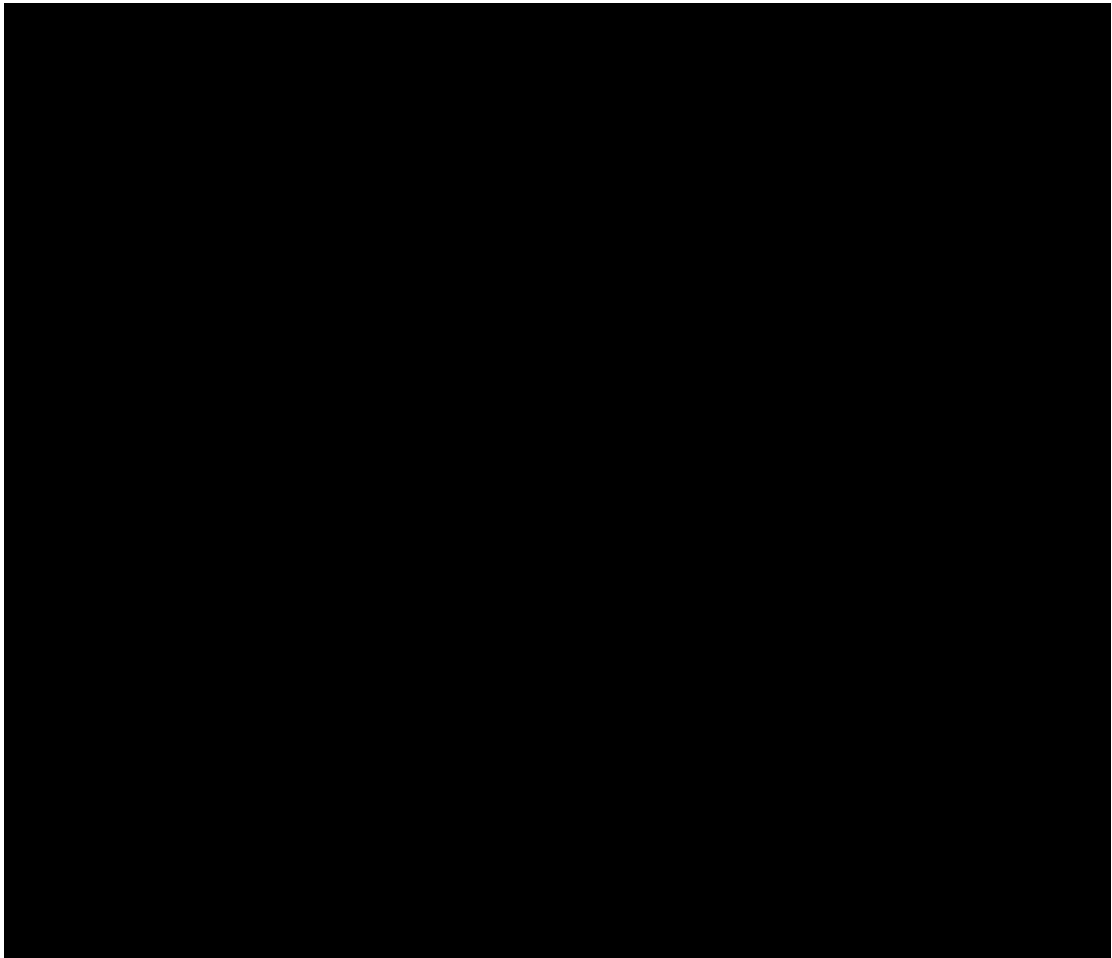
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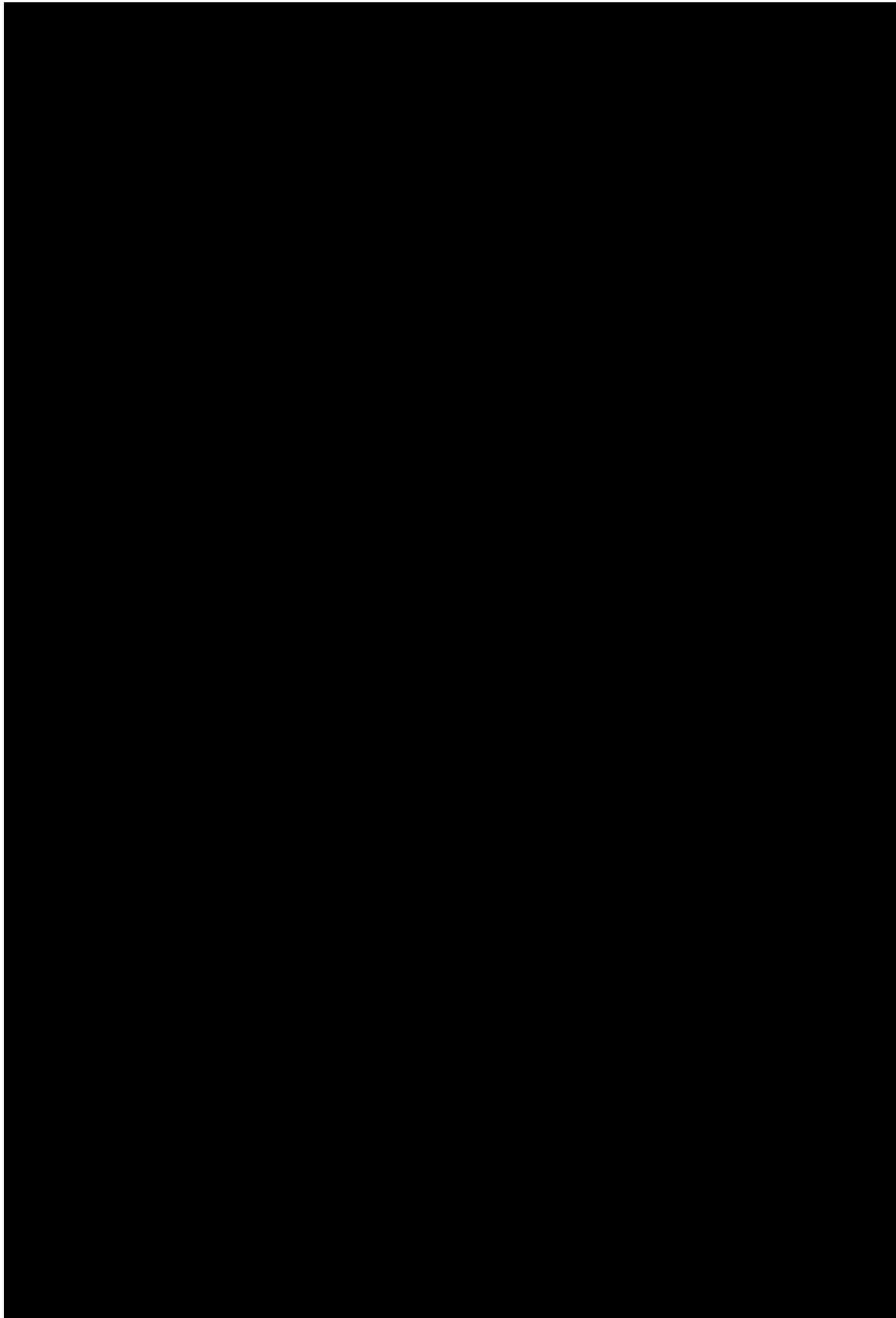
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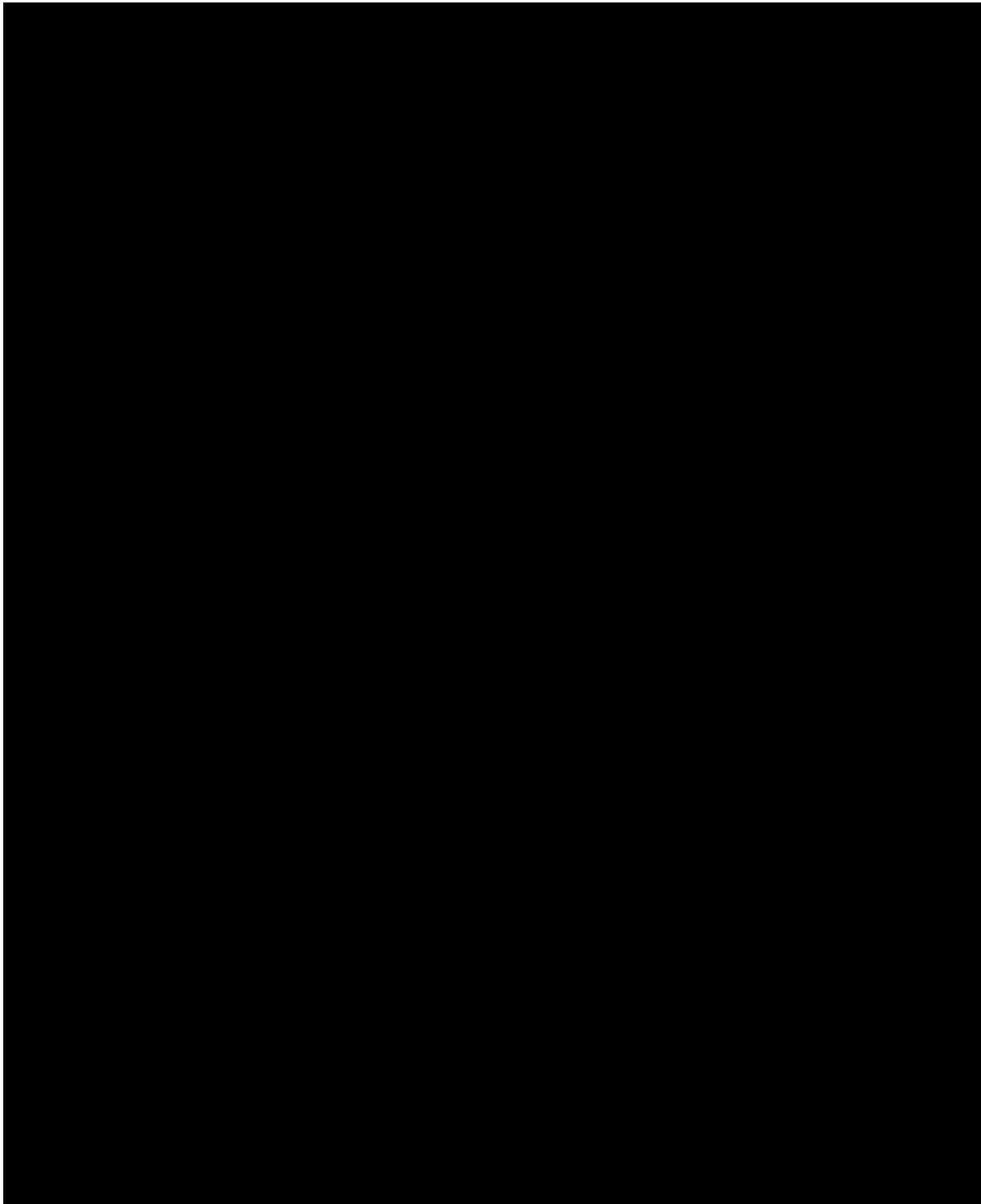
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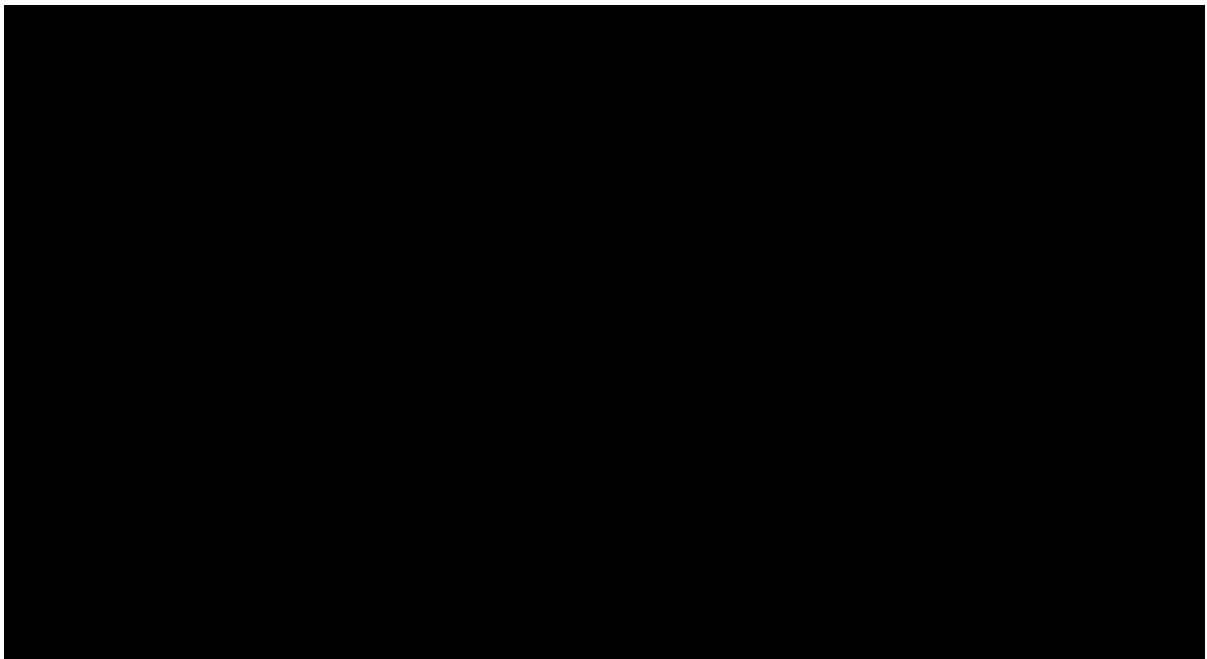
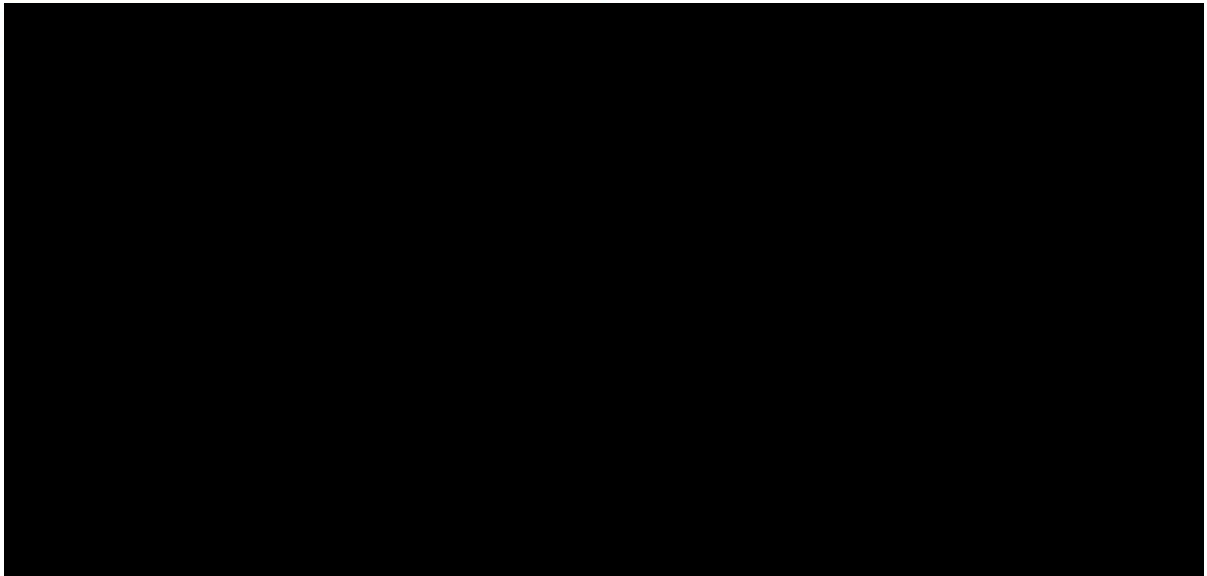
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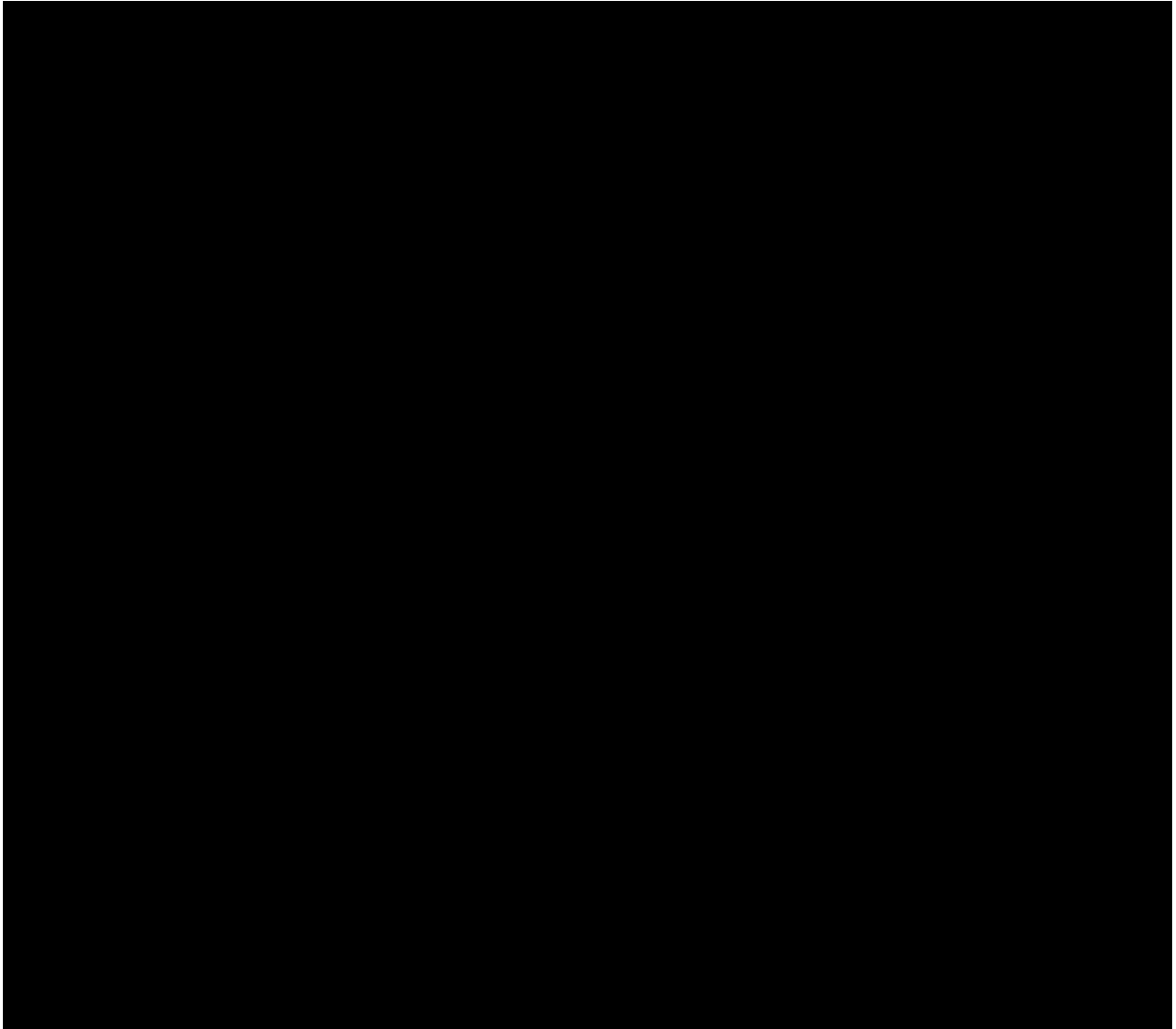
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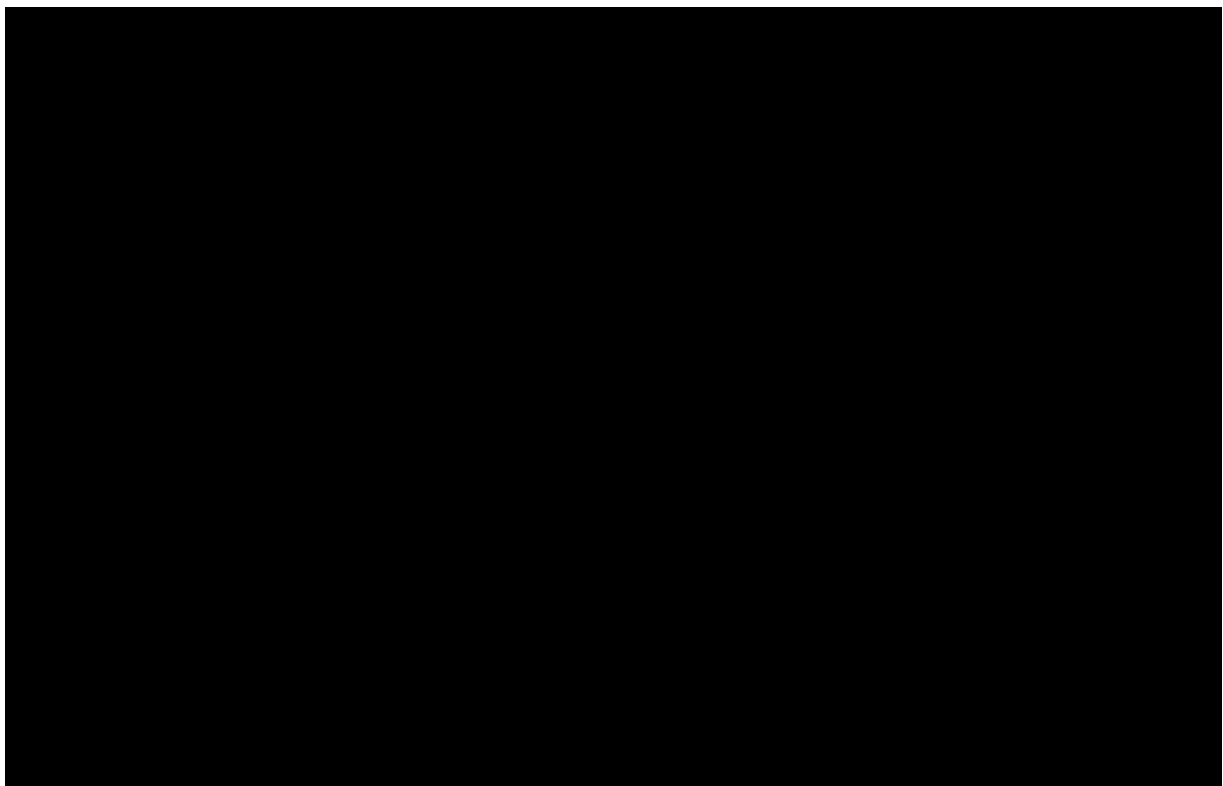
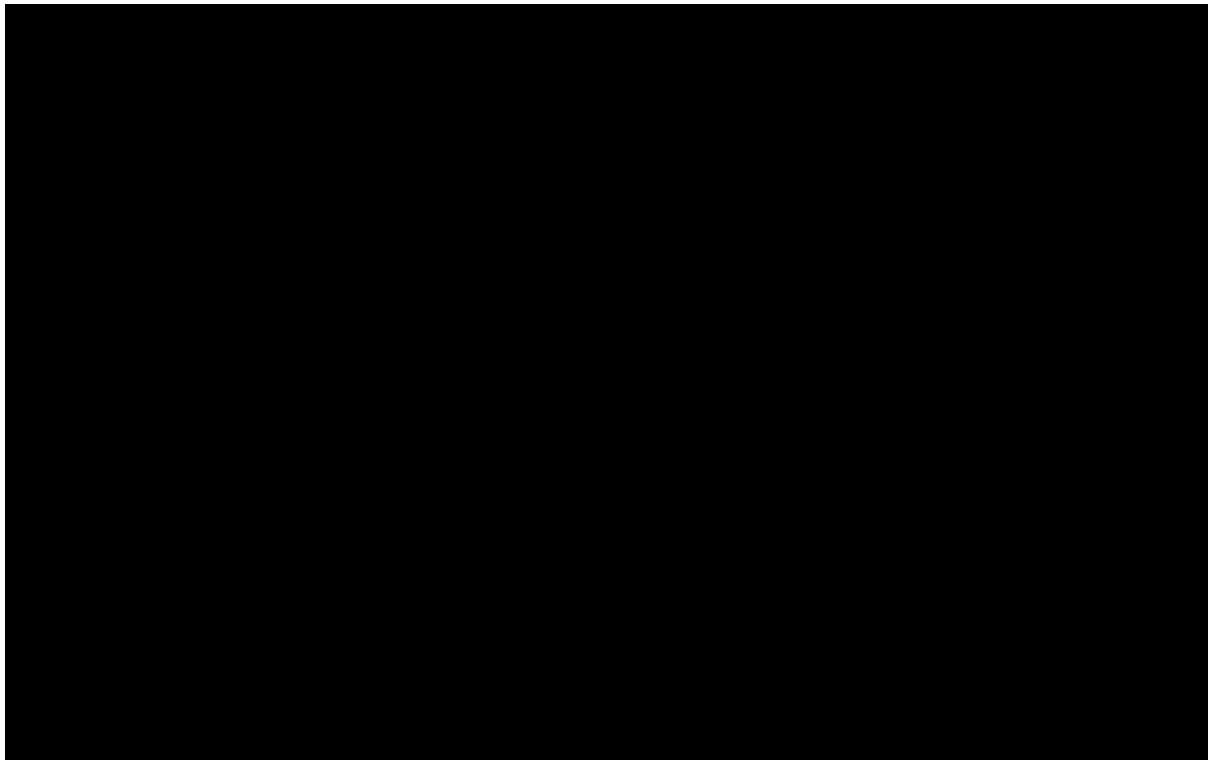
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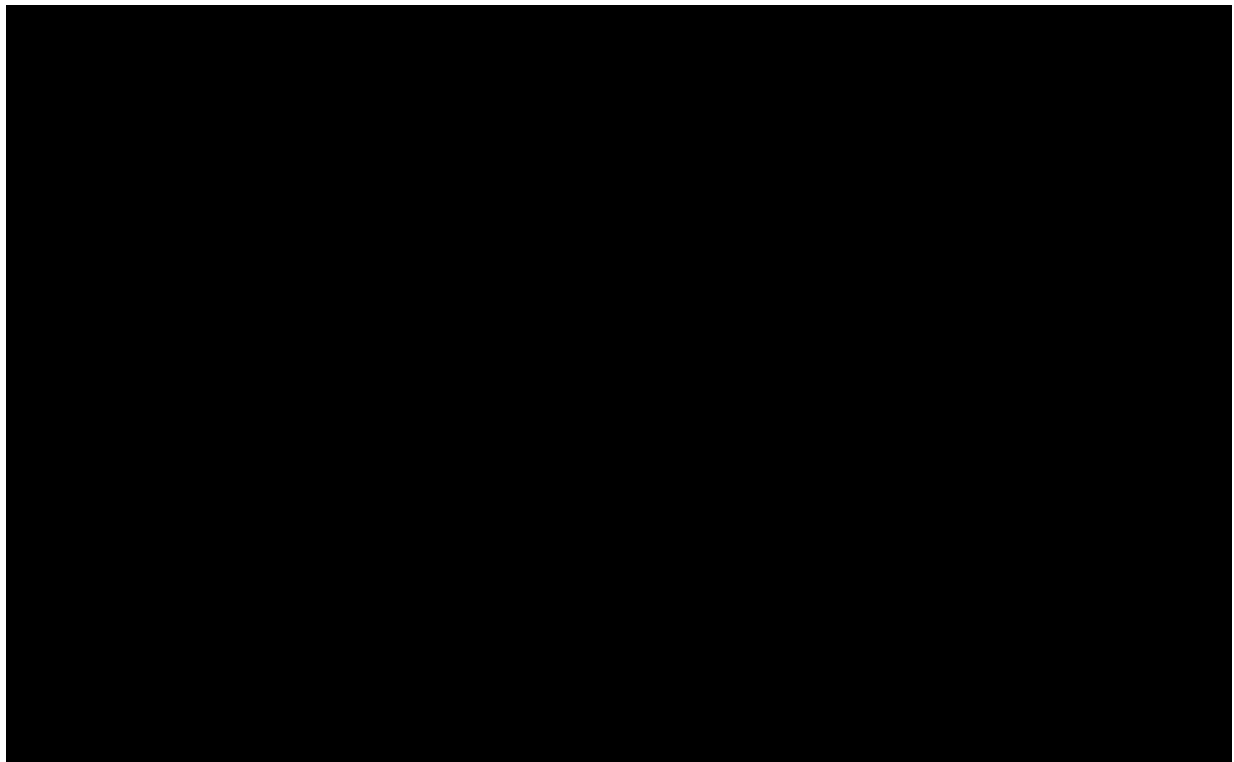
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SCHEDULE 2 (SERVICES DESCRIPTION)

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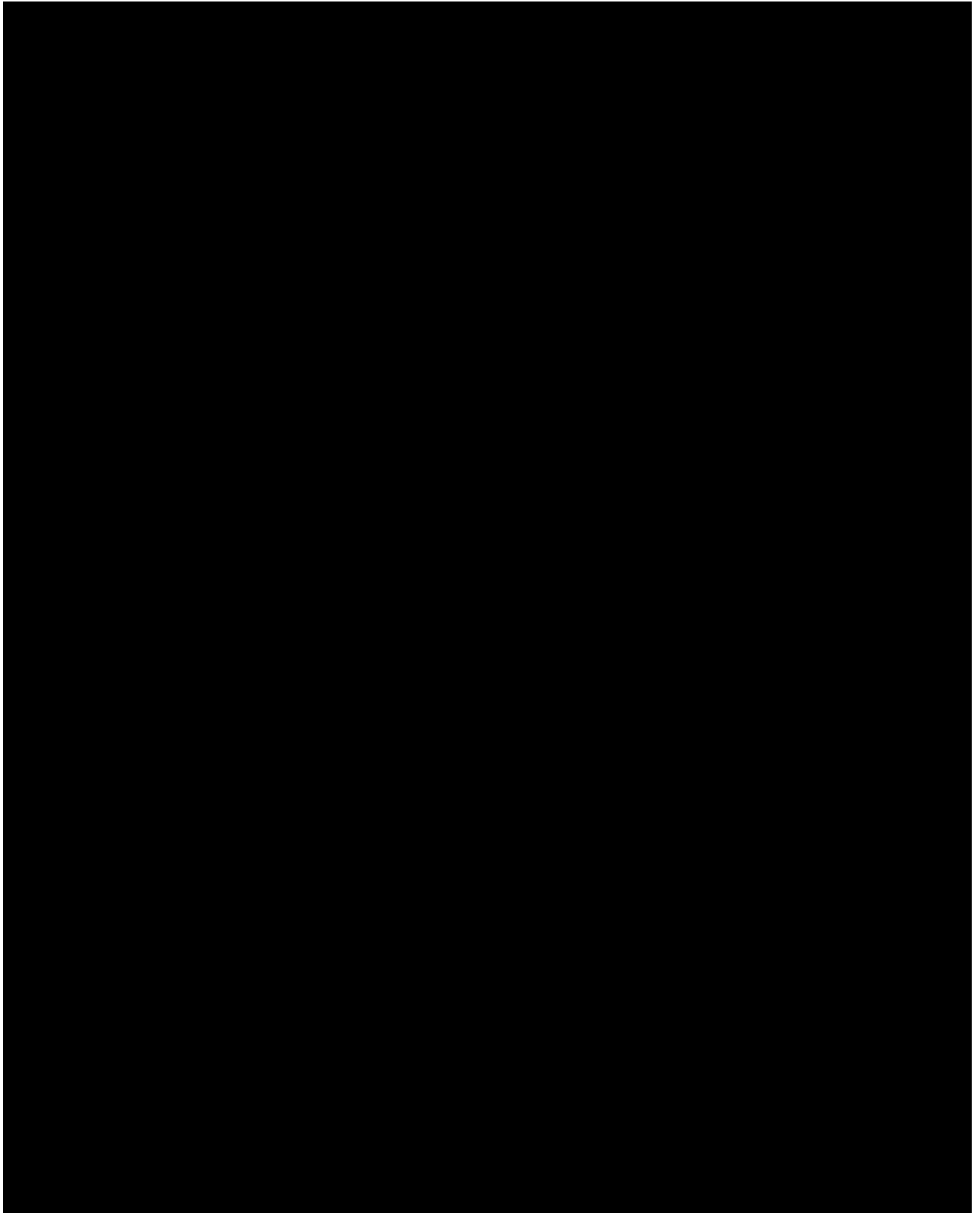
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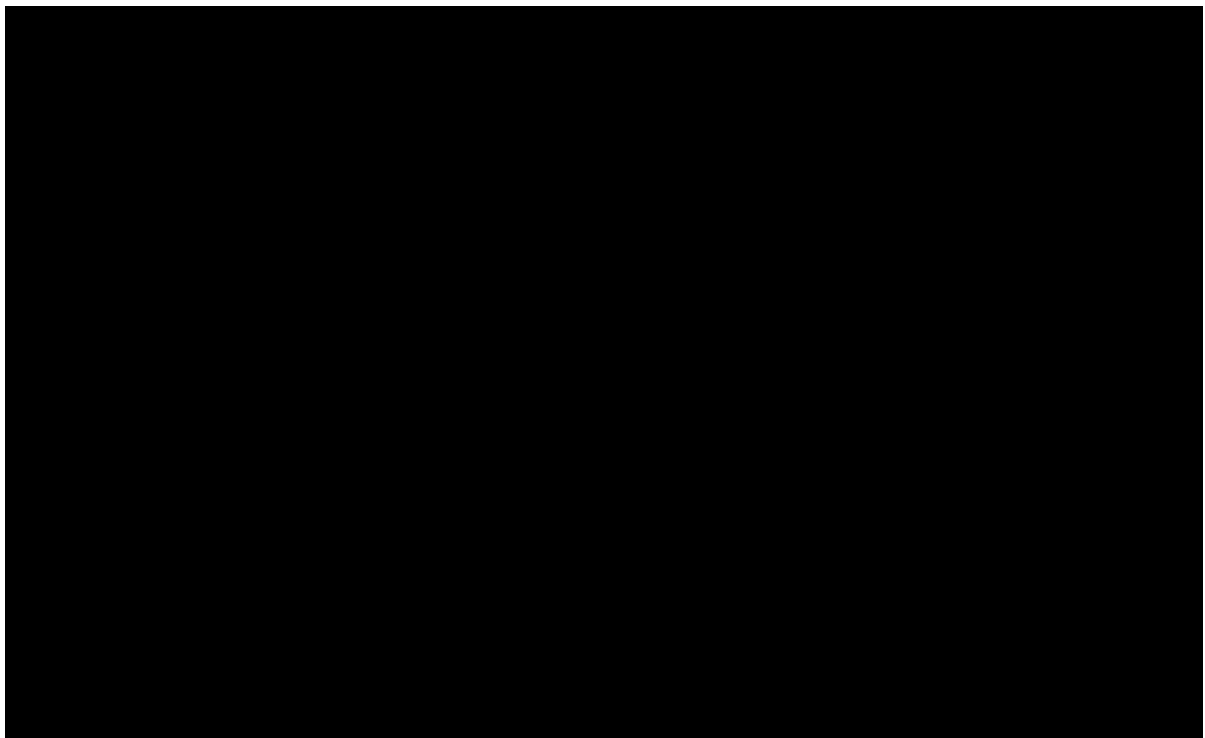
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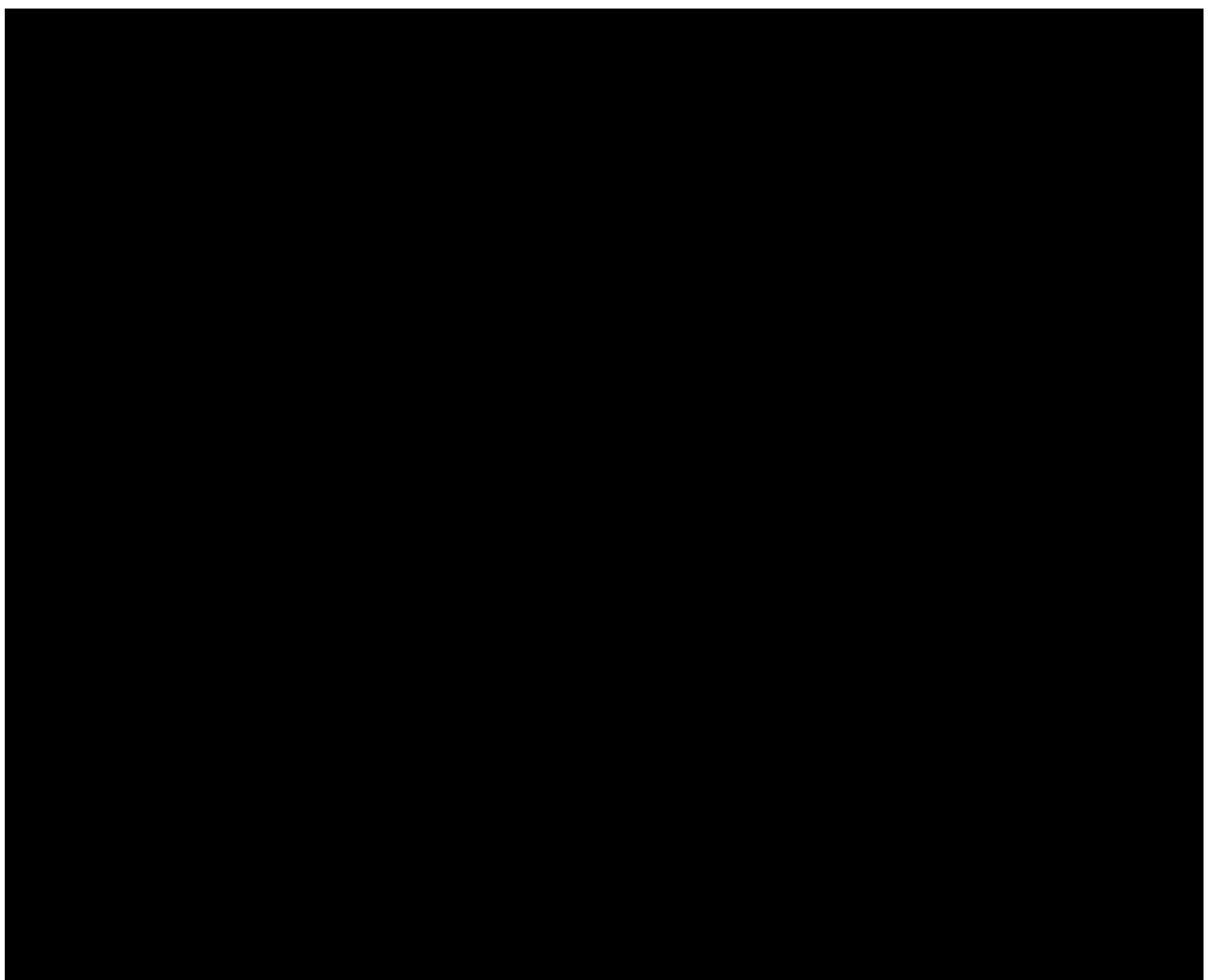
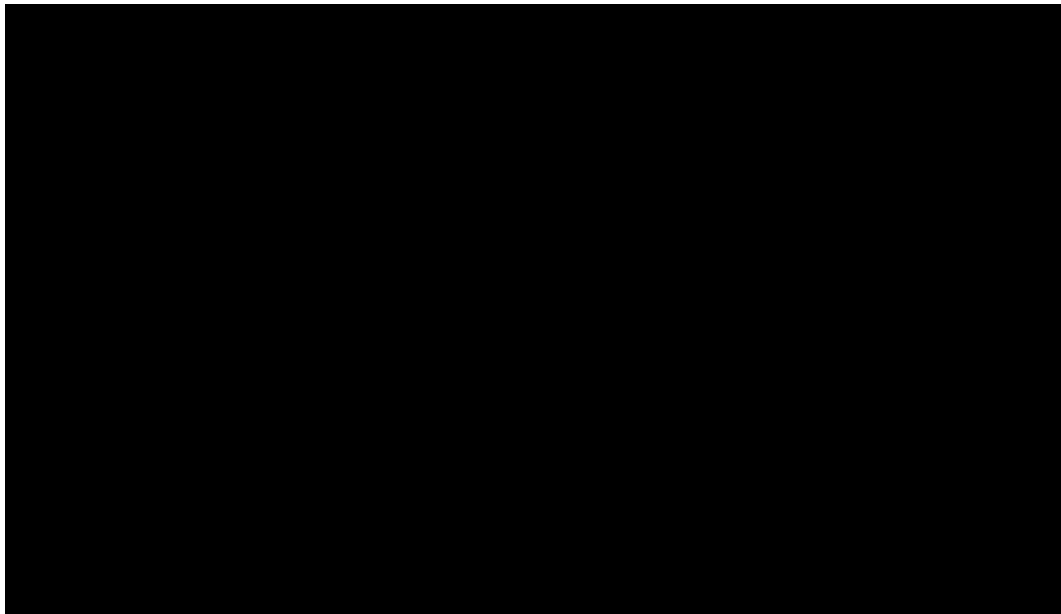
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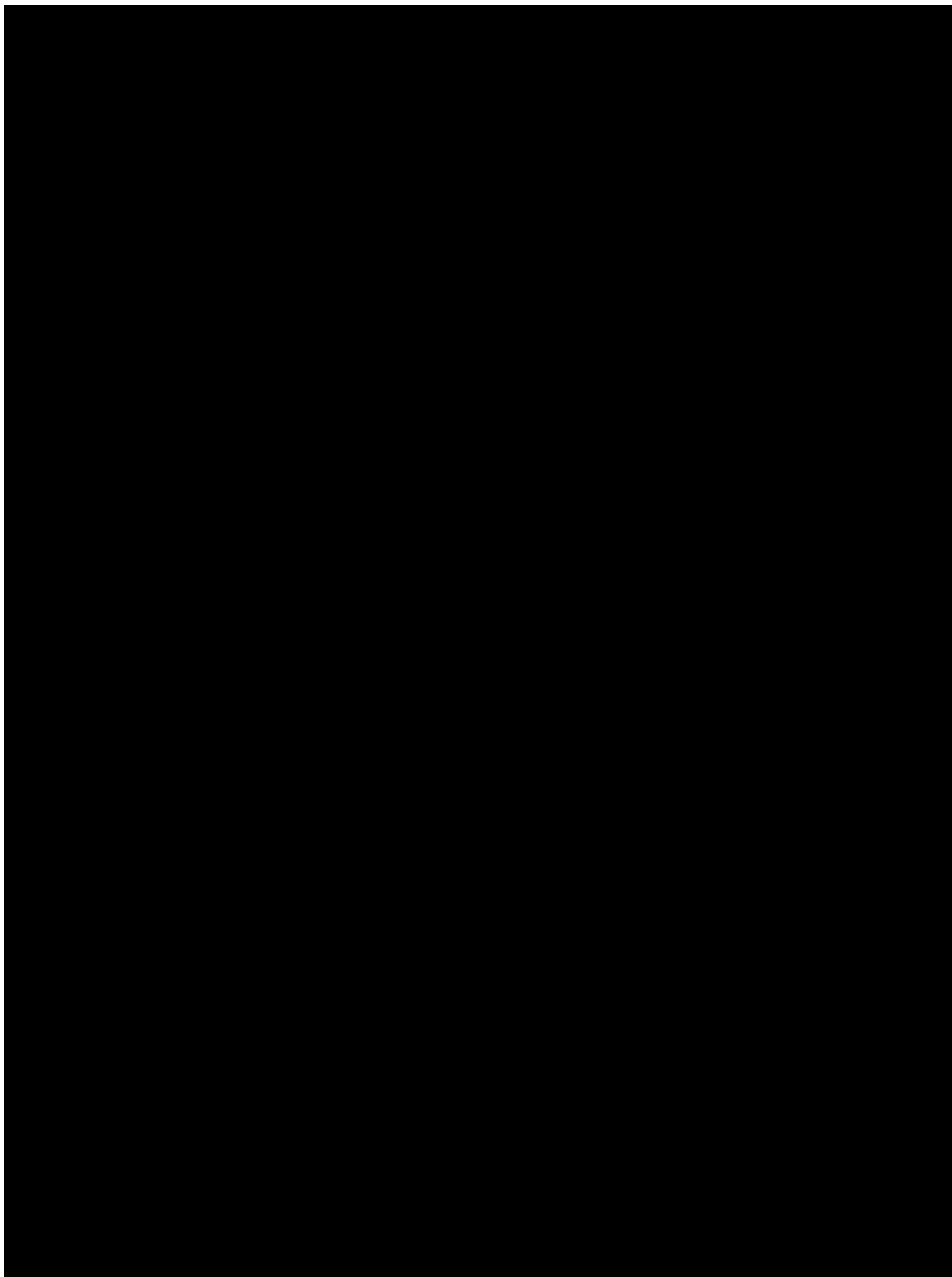
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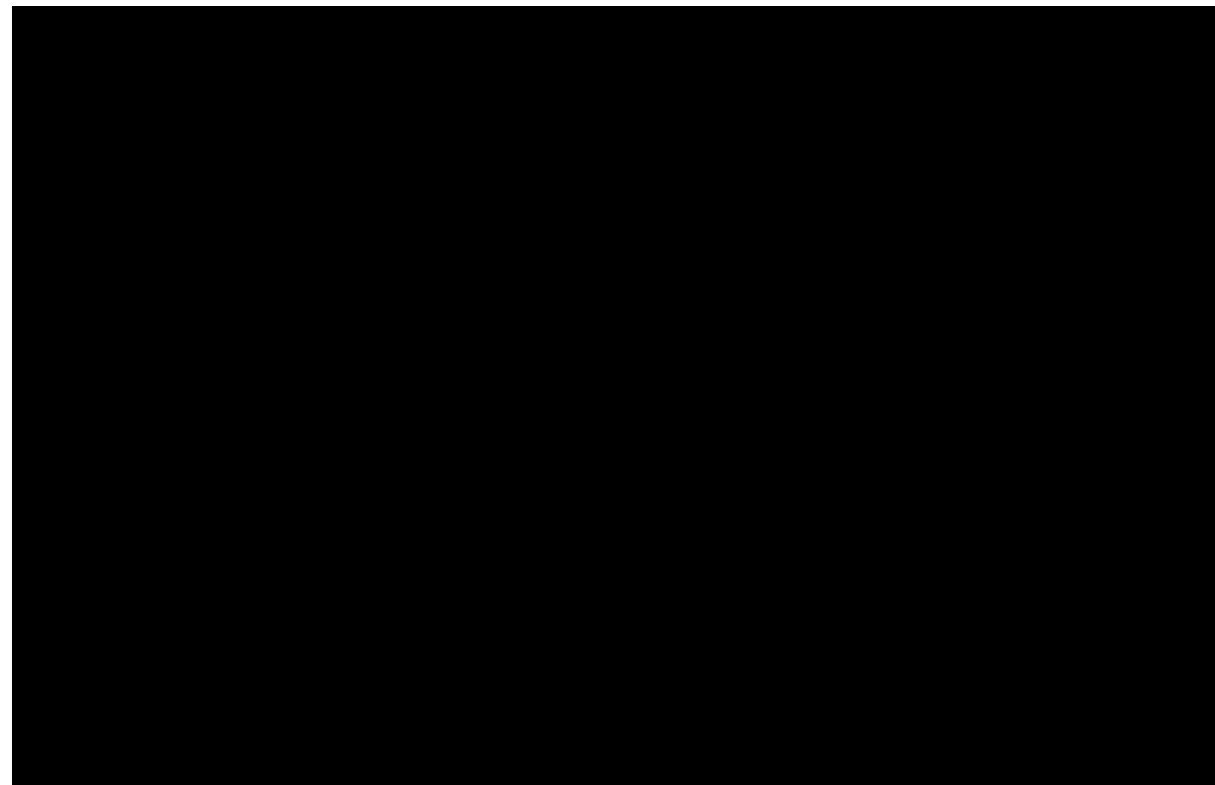
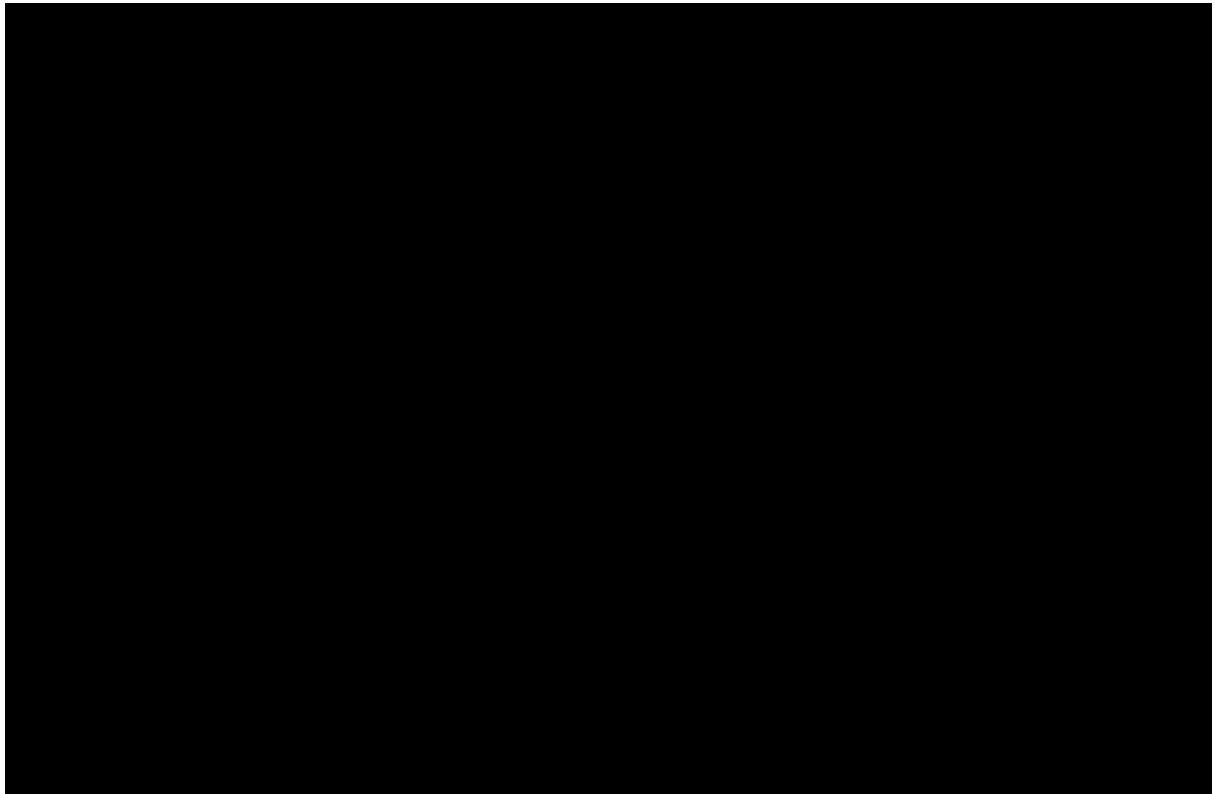
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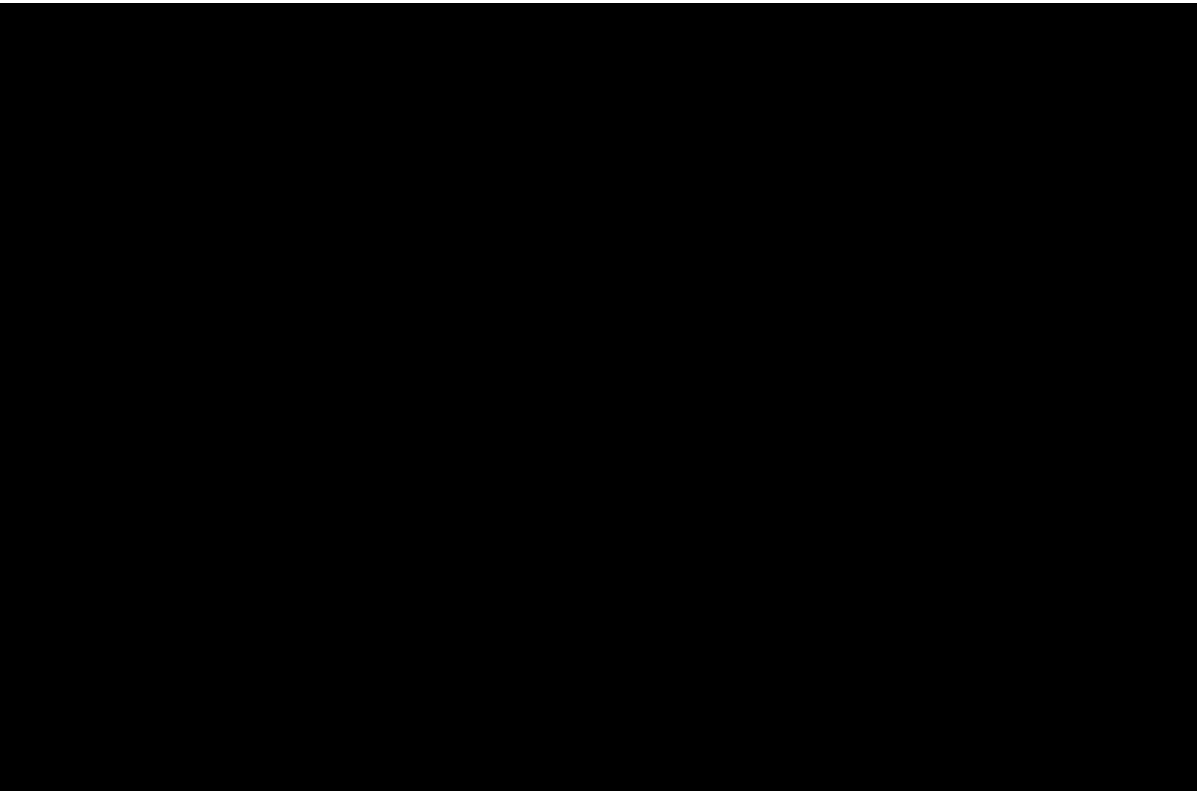
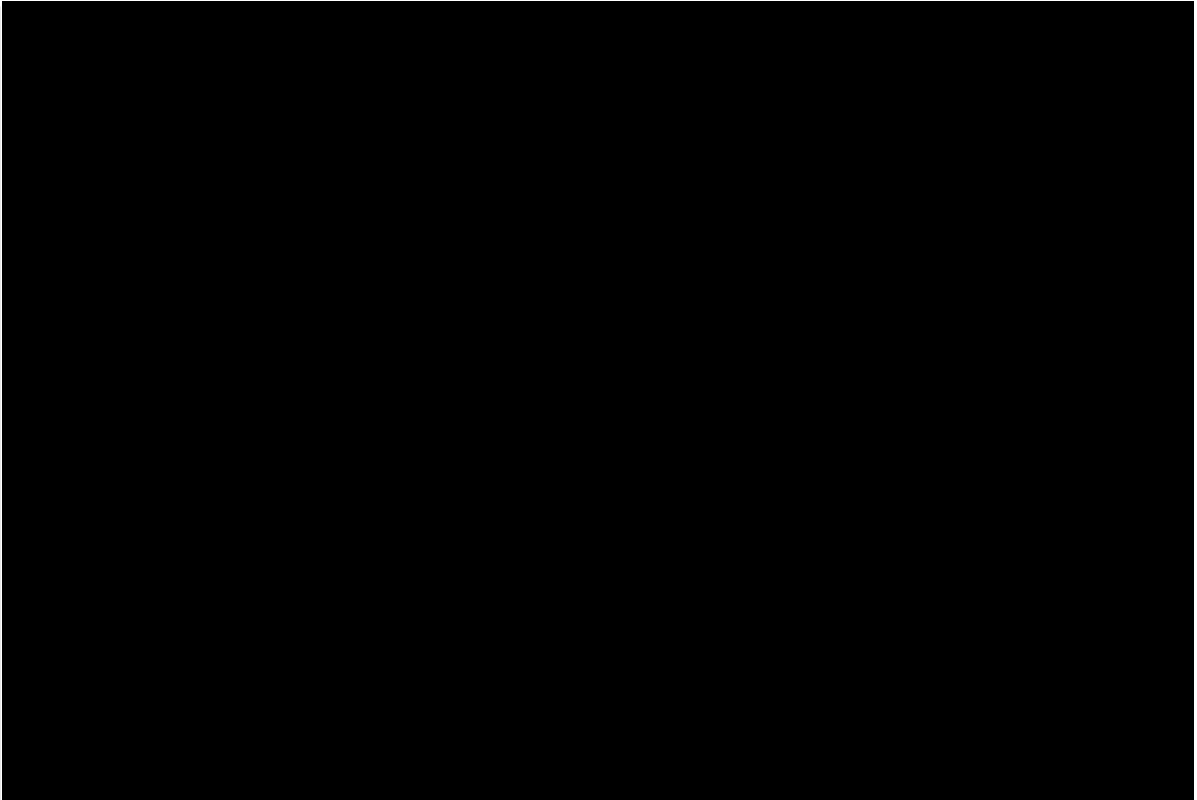
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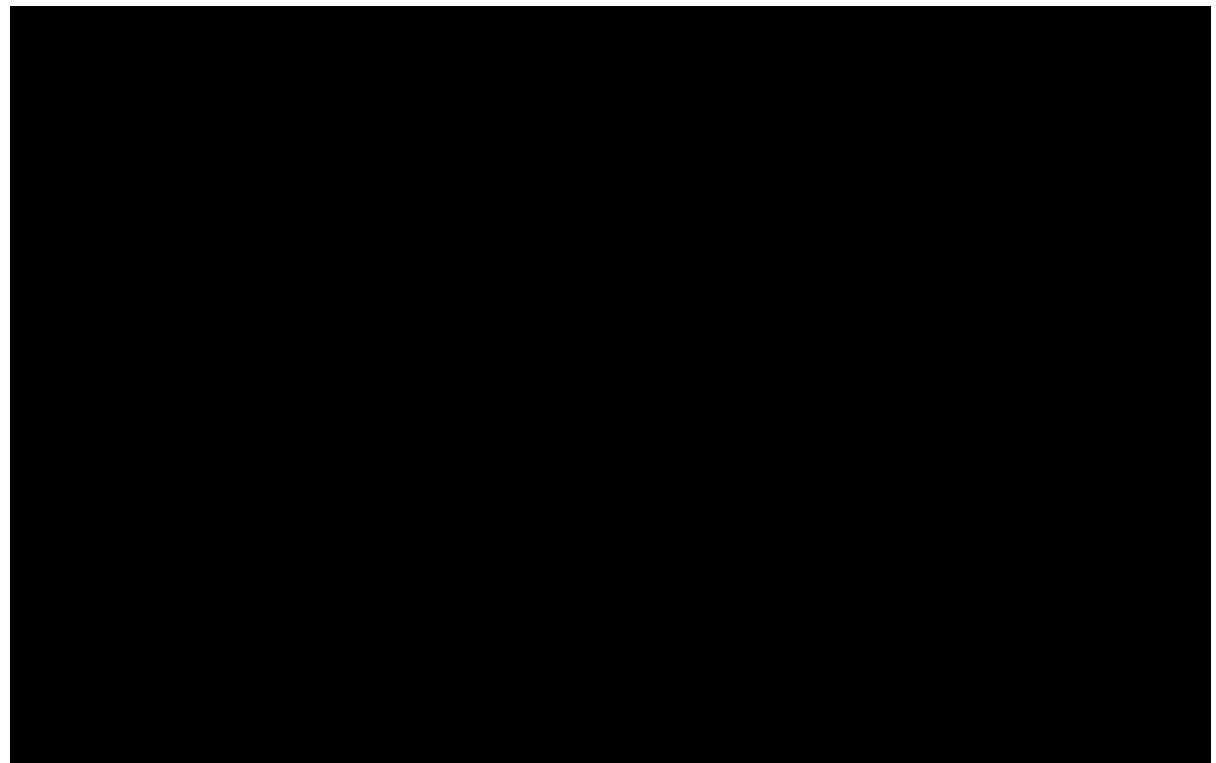
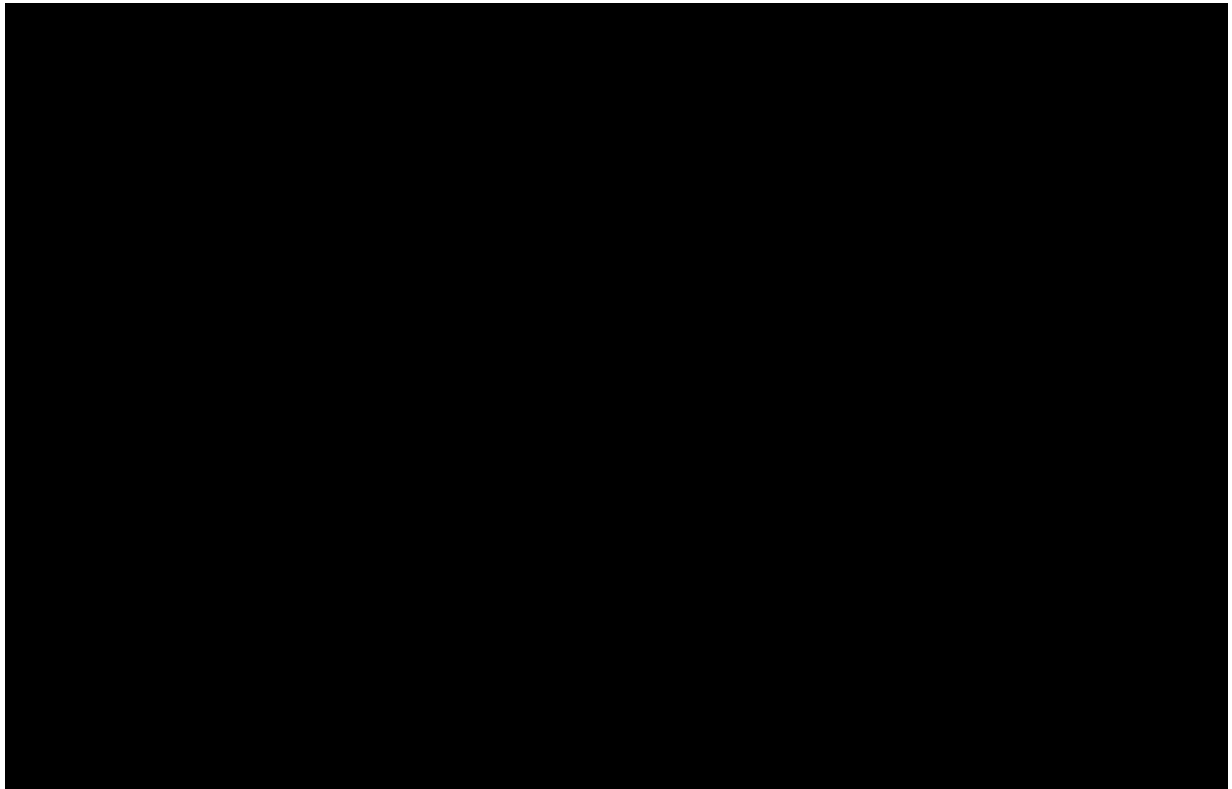
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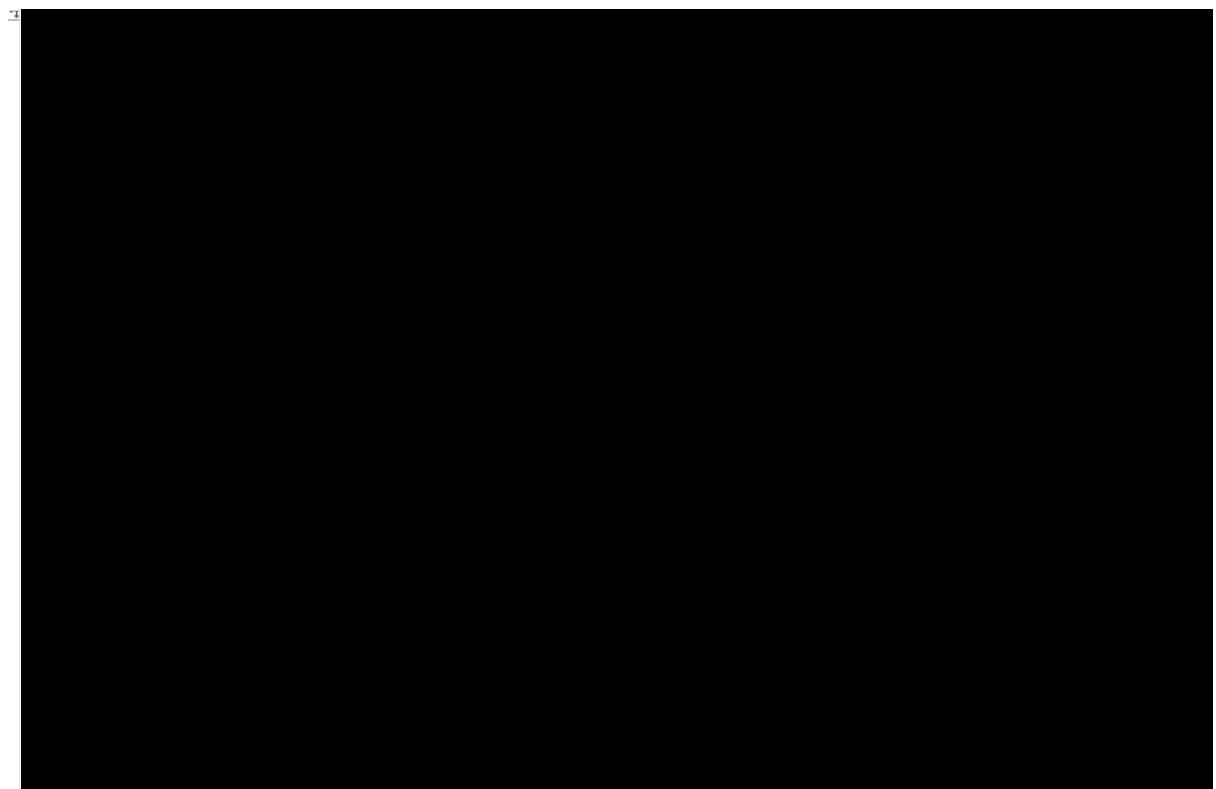
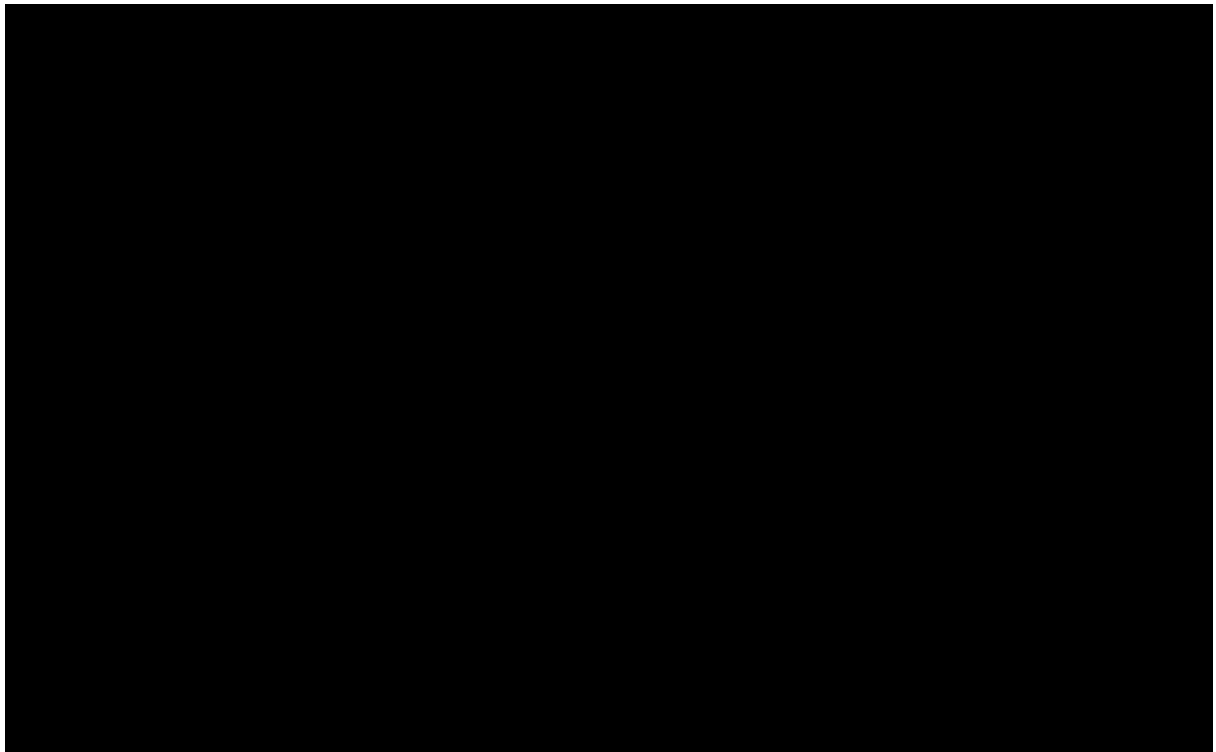
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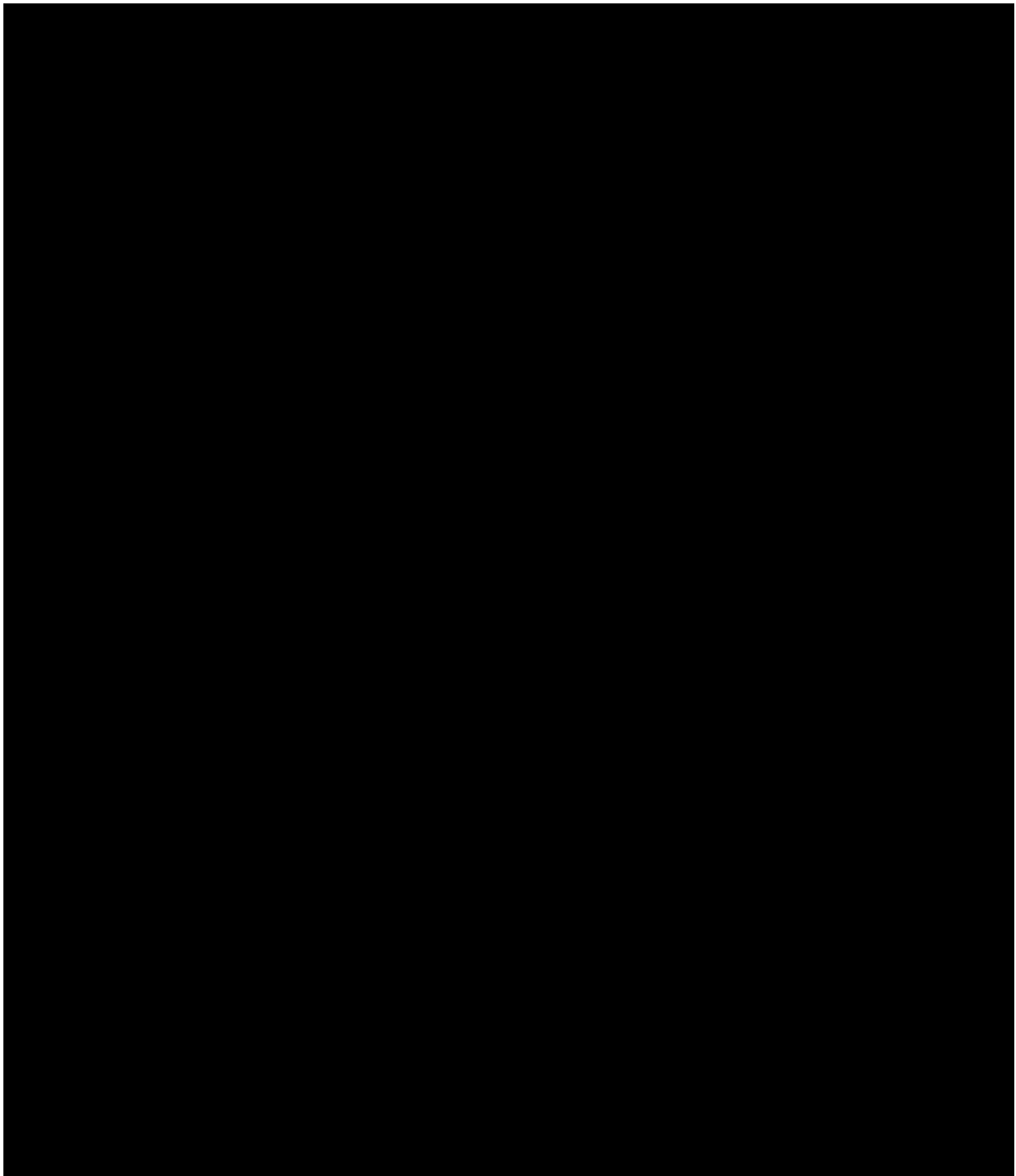
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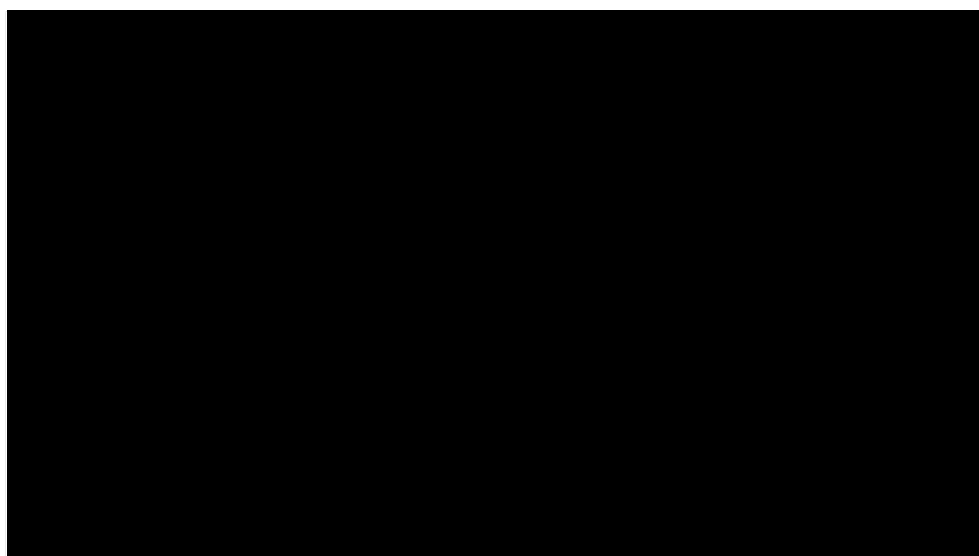
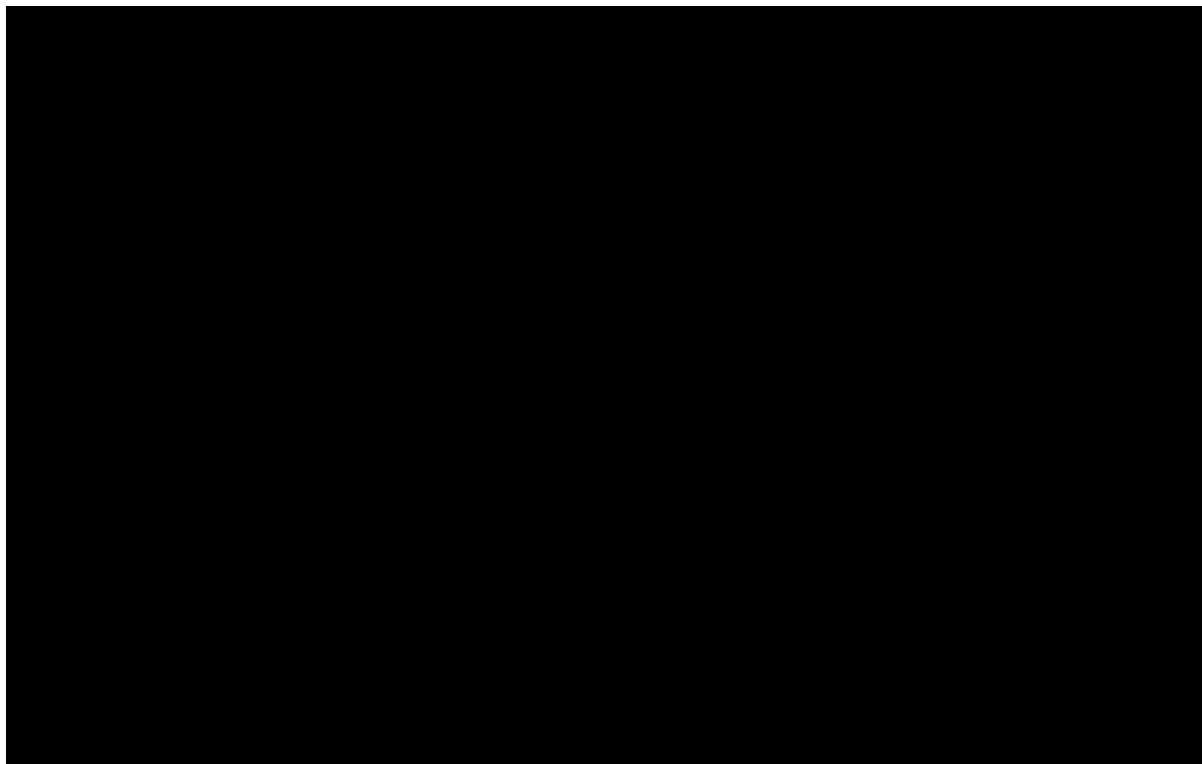
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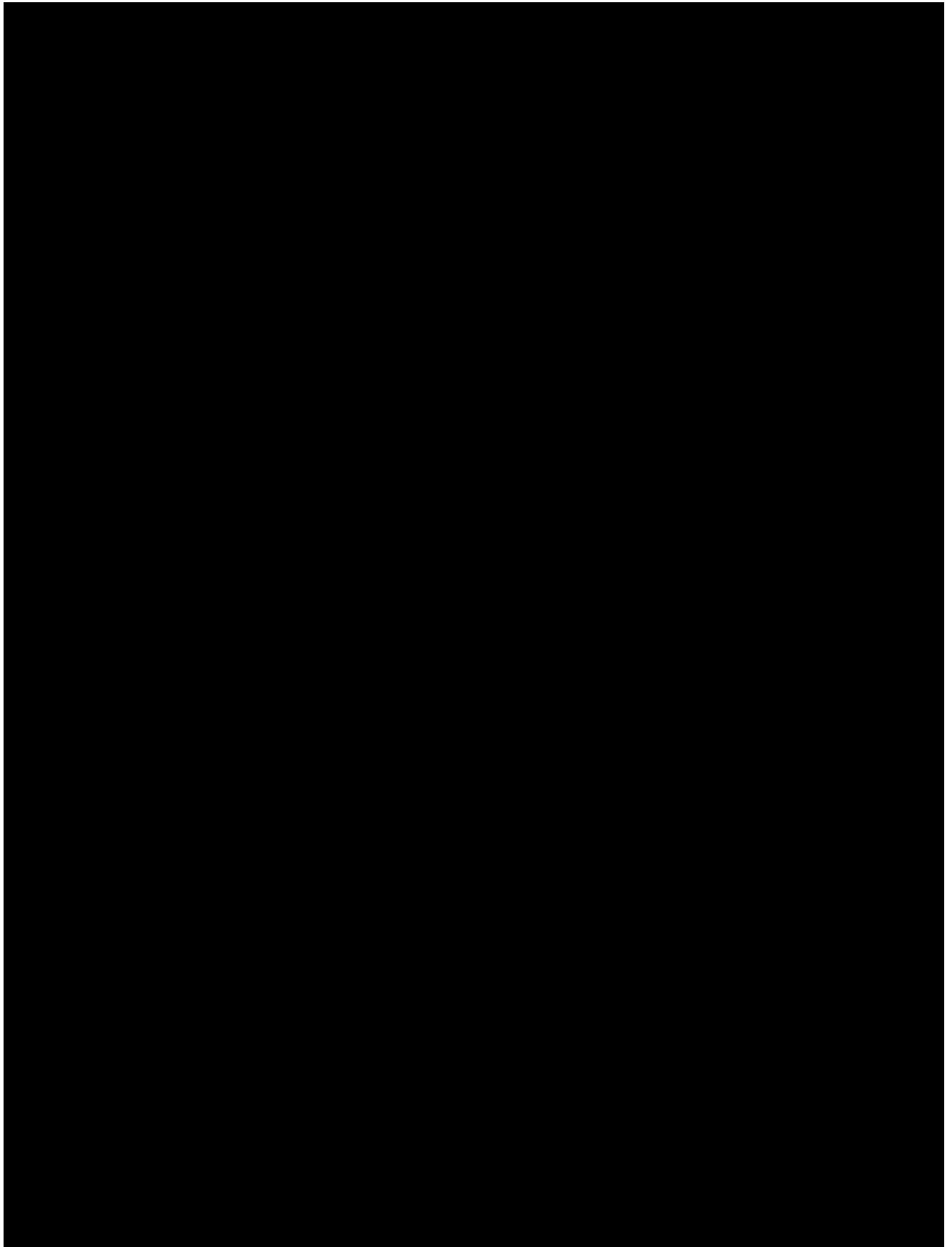
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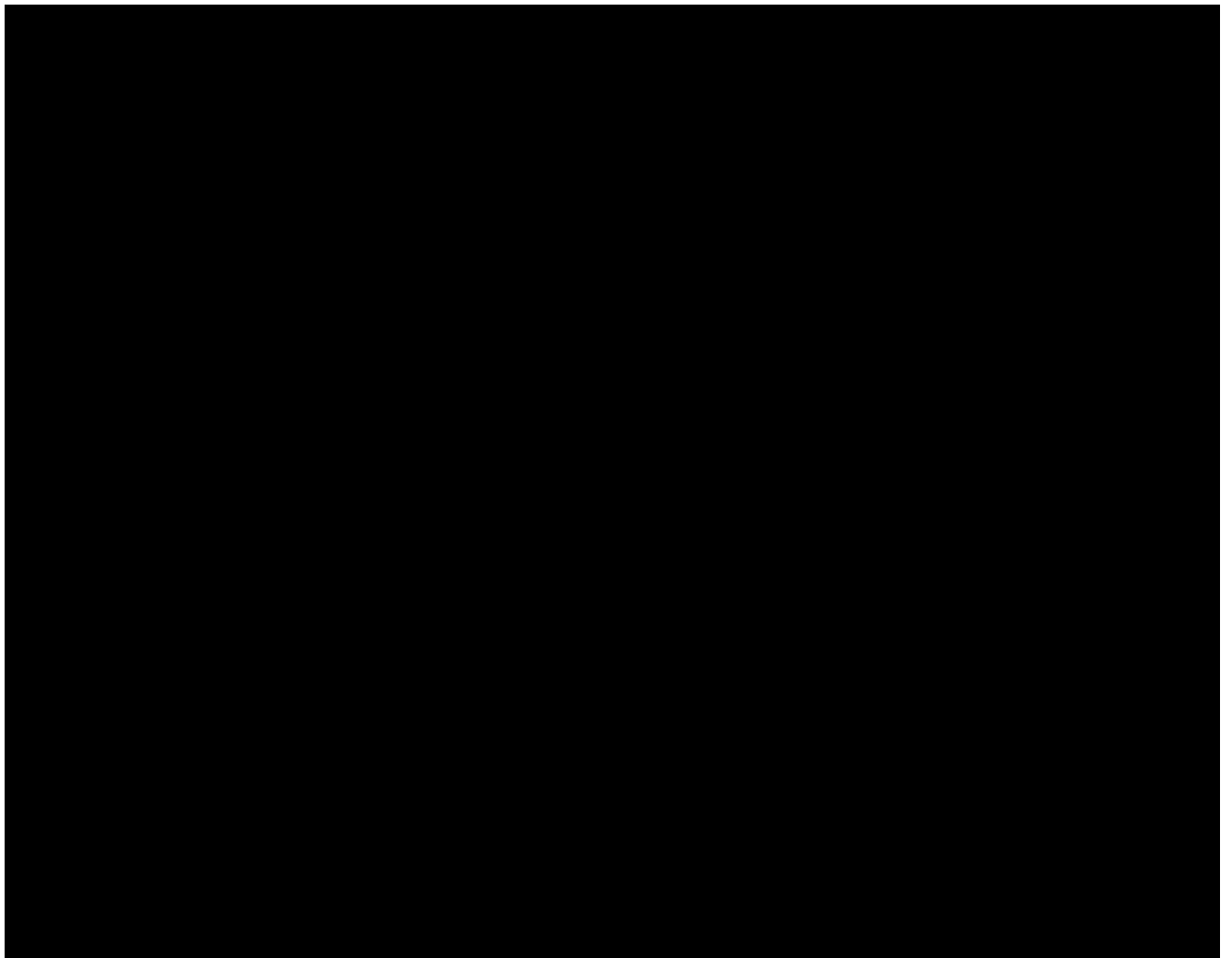
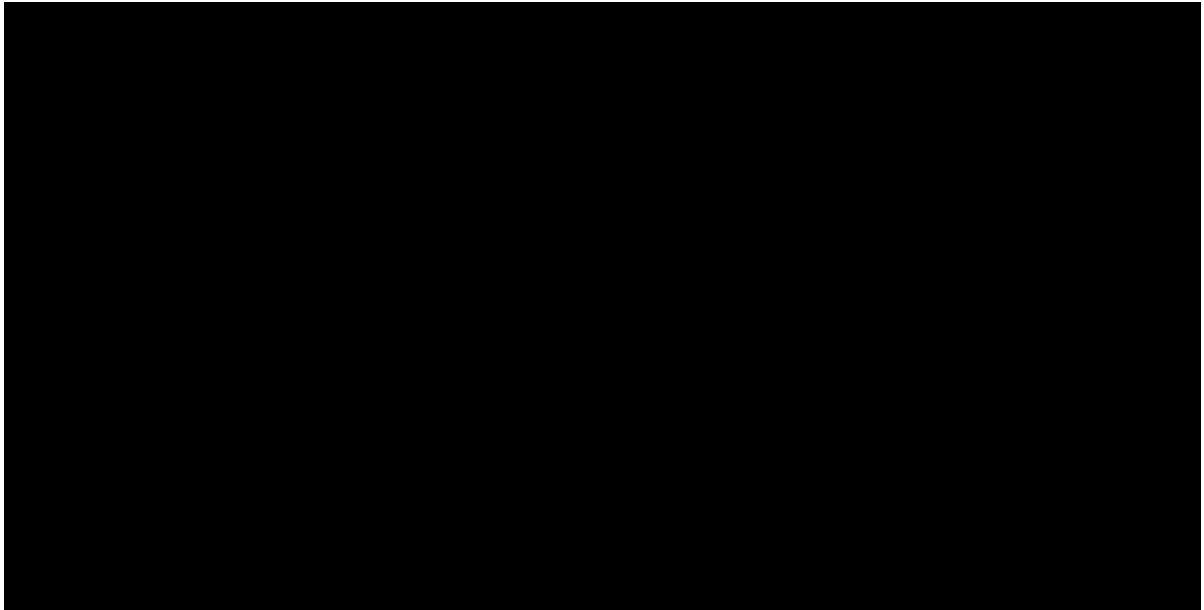
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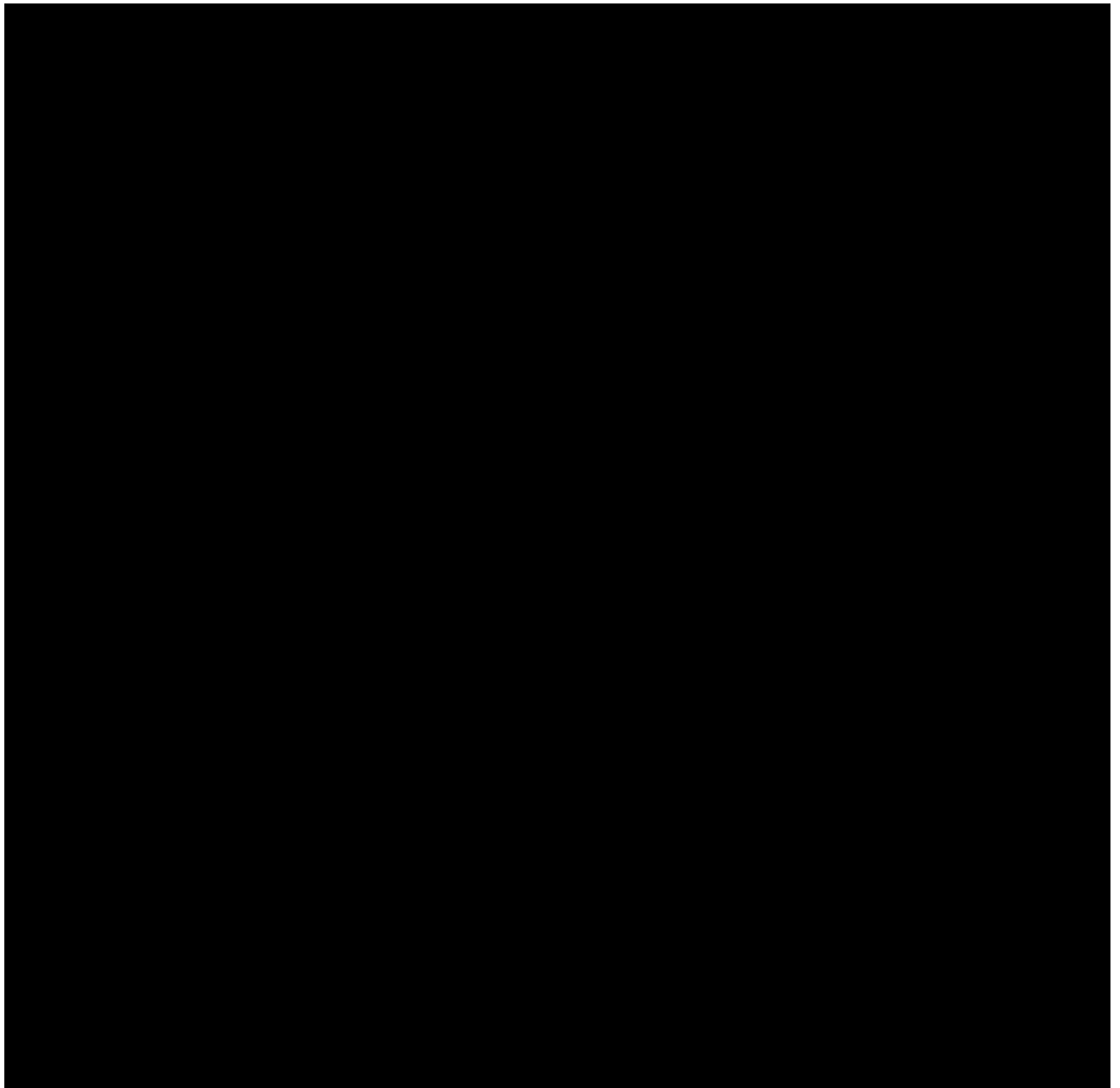
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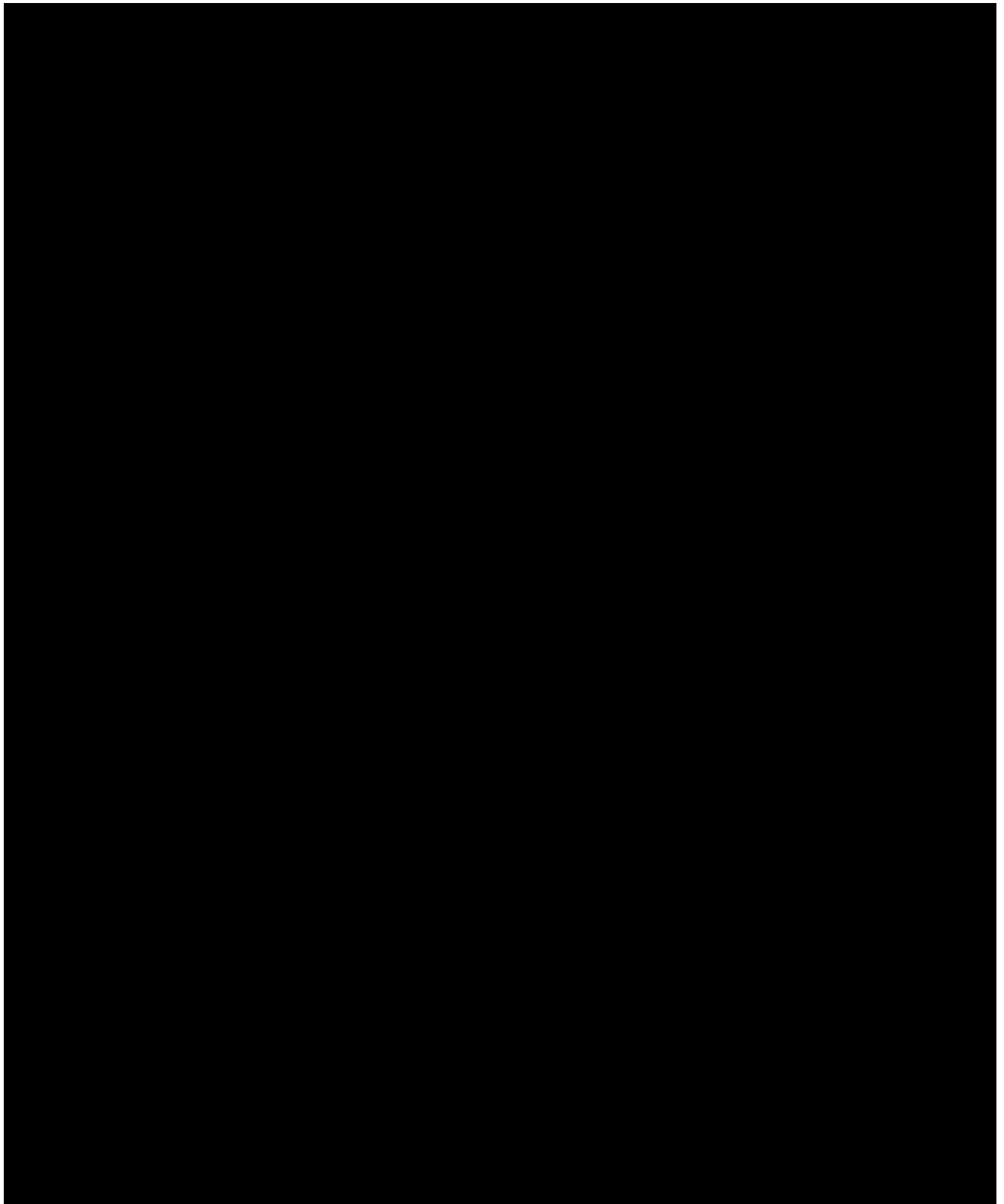
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1. *Journal of the American Medical Association*, 2000; 283: 2689-2695.

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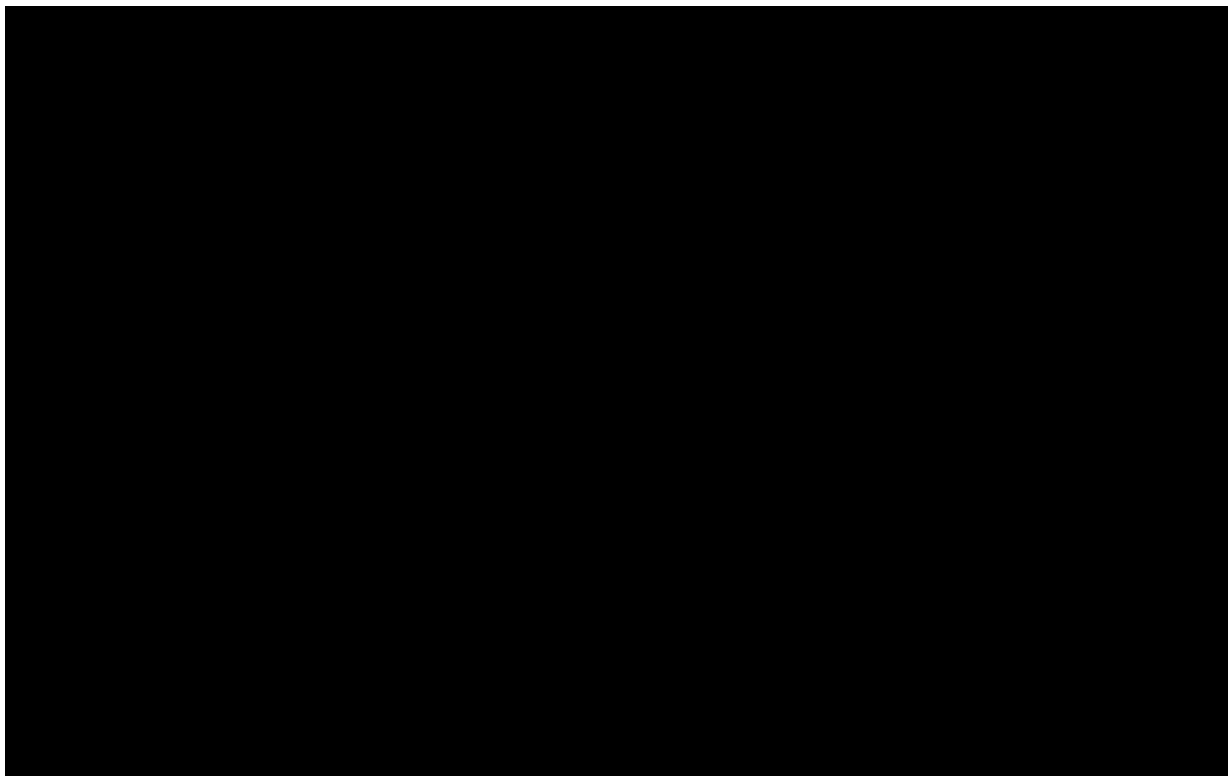
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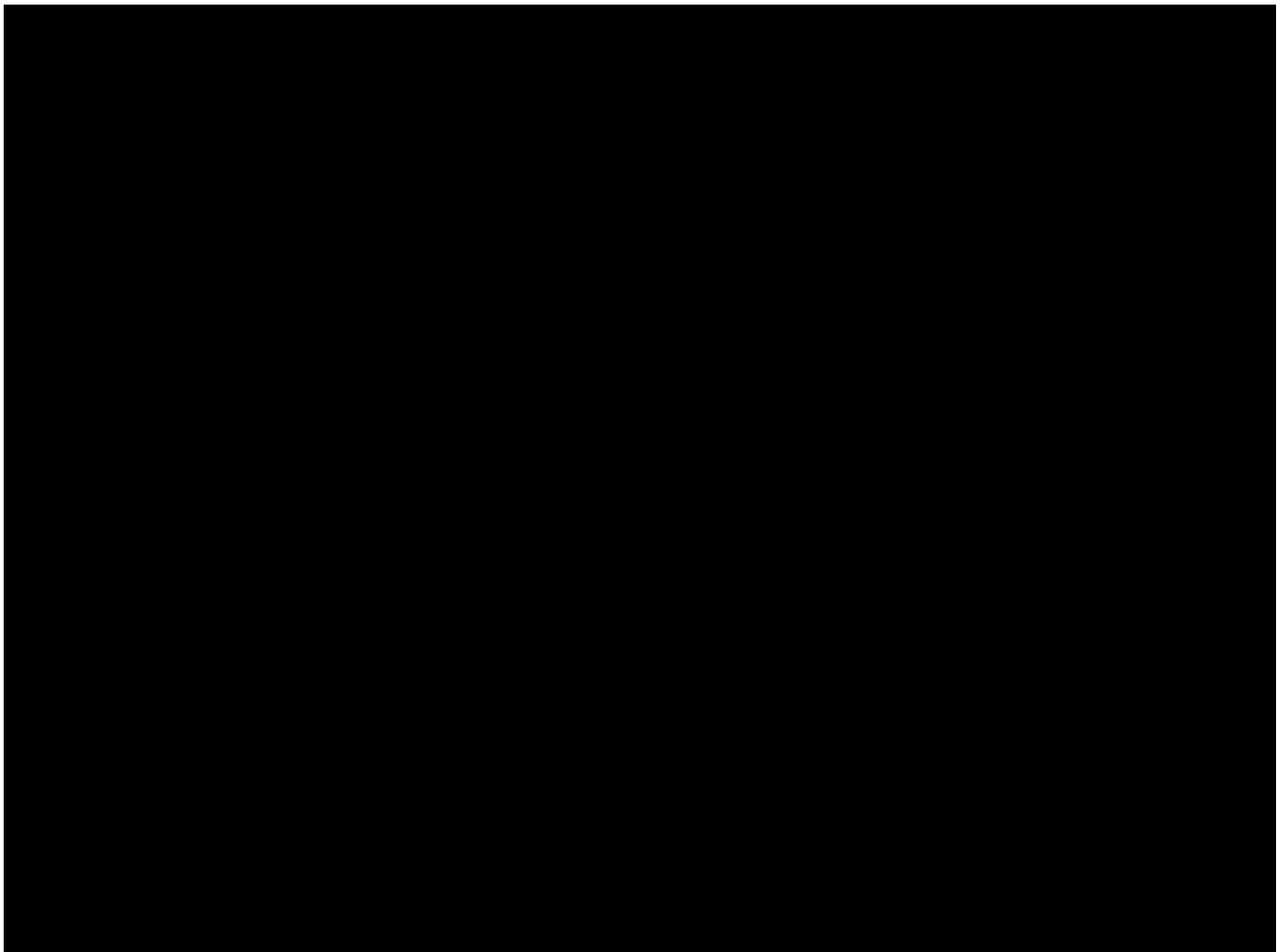
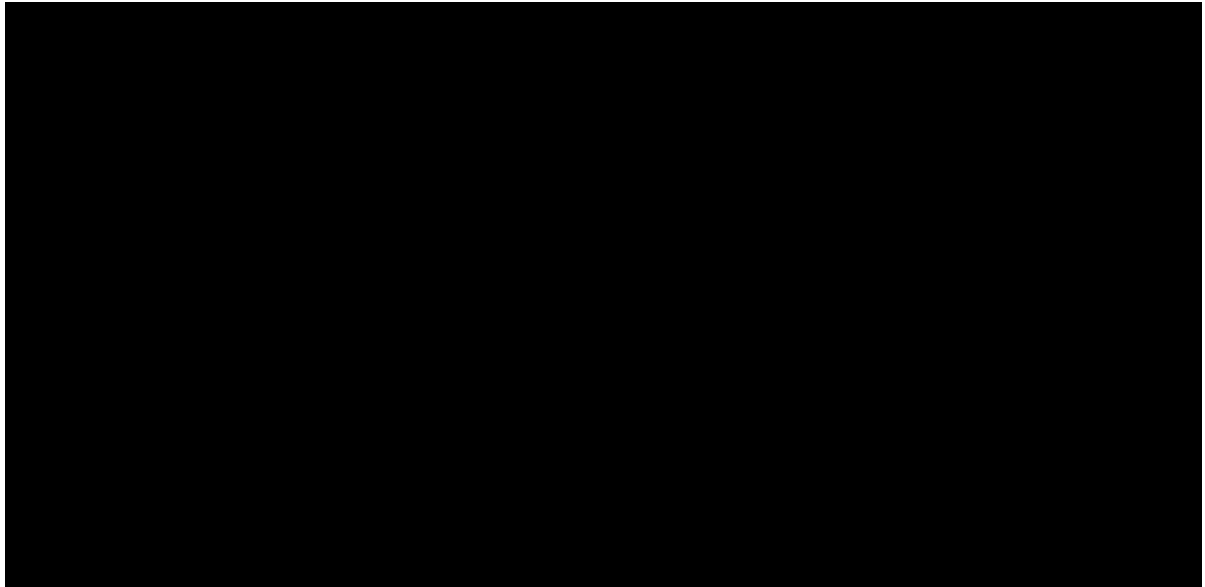
SCHEDULE 2 (SERVICES DESCRIPTION)

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The diagram consists of a series of black bars of varying lengths and positions, arranged in a hierarchical structure. The bars are organized into several levels, with some bars branching out from others. The top level has a single bar. The second level has two bars, one of which is indented. The third level has three bars, with the first two indented and the third at the start. The fourth level has four bars, with the first three indented and the fourth at the start. The fifth level has five bars, with the first four indented and the fifth at the start. The sixth level has six bars, with the first five indented and the sixth at the start. The seventh level has seven bars, with the first six indented and the seventh at the start. The eighth level has eight bars, with the first seven indented and the eighth at the start. The ninth level has nine bars, with the first eight indented and the ninth at the start. The tenth level has ten bars, with the first nine indented and the tenth at the start. The eleventh level has eleven bars, with the first ten indented and the eleventh at the start. The twelfth level has twelve bars, with the first eleven indented and the twelfth at the start. The thirteenth level has thirteen bars, with the first twelve indented and the thirteenth at the start. The fourteenth level has fourteen bars, with the first thirteen indented and the fourteenth at the start. The fifteenth level has fifteen bars, with the first fourteen indented and the fifteenth at the start. The sixteenth level has sixteen bars, with the first fifteen indented and the sixteenth at the start. The seventeenth level has seventeen bars, with the first sixteen indented and the seventeenth at the start. The eighteenth level has eighteen bars, with the first seventeen indented and the eighteenth at the start. The nineteenth level has nineteen bars, with the first eighteen indented and the nineteenth at the start. The twentieth level has twenty bars, with the first nineteen indented and the twentieth at the start. The twenty-first level has twenty-one bars, with the first twenty indented and the twenty-first at the start. The twenty-second level has twenty-two bars, with the first twenty-one indented and the twenty-second at the start. The twenty-third level has twenty-three bars, with the first twenty-two indented and the twenty-third at the start. The twenty-fourth level has twenty-four bars, with the first twenty-three indented and the twenty-fourth at the start. The twenty-fifth level has twenty-five bars, with the first twenty-four indented and the twenty-fifth at the start. The twenty-sixth level has twenty-six bars, with the first twenty-five indented and the twenty-sixth at the start. The twenty-seventh level has twenty-seven bars, with the first twenty-six indented and the twenty-seventh at the start. The twenty-eighth level has twenty-eight bars, with the first twenty-seven indented and the twenty-eighth at the start. The twenty-ninth level has twenty-nine bars, with the first twenty-eight indented and the twenty-ninth at the start. The thirtieth level has thirty bars, with the first twenty-nine indented and the thirtieth at the start. The thirty-first level has thirty-one bars, with the first thirty indented and the thirty-first at the start. The thirty-second level has thirty-two bars, with the first thirty-one indented and the thirty-second at the start. The thirty-third level has thirty-three bars, with the first thirty-two indented and the thirty-third at the start. The thirty-fourth level has thirty-four bars, with the first thirty-three indented and the thirty-fourth at the start. The thirty-fifth level has thirty-five bars, with the first thirty-four indented and the thirty-fifth at the start. The thirty-sixth level has thirty-six bars, with the first thirty-five indented and the thirty-sixth at the start. The thirty-seventh level has thirty-seven bars, with the first thirty-six indented and the thirty-seventh at the start. The thirty-eighth level has thirty-eight bars, with the first thirty-seven indented and the thirty-eighth at the start. The thirty-ninth level has thirty-nine bars, with the first thirty-eight indented and the thirty-ninth at the start. The fortieth level has forty bars, with the first thirty-nine indented and the fortieth at the start. The forty-first level has forty-one bars, with the first forty indented and the forty-first at the start. The forty-second level has forty-two bars, with the first forty-one indented and the forty-second at the start. The forty-third level has forty-three bars, with the first forty-two indented and the forty-third at the start. The forty-fourth level has forty-four bars, with the first forty-three indented and the forty-fourth at the start. The forty-fifth level has forty-five bars, with the first forty-four indented and the forty-fifth at the start. The forty-sixth level has forty-six bars, with the first forty-five indented and the forty-sixth at the start. The forty-seventh level has forty-seven bars, with the first forty-six indented and the forty-seventh at the start. The forty-eighth level has forty-eight bars, with the first forty-seven indented and the forty-eighth at the start. The forty-ninth level has forty-nine bars, with the first forty-eight indented and the forty-ninth at the start. The fiftieth level has fifty bars, with the first forty-nine indented and the fiftieth at the start. The fifty-first level has fifty-one bars, with the first fifty indented and the fifty-first at the start. The fifty-second level has fifty-two bars, with the first fifty-one indented and the fifty-second at the start. The fifty-third level has fifty-three bars, with the first fifty-two indented and the fifty-third at the start. The fifty-fourth level has fifty-four bars, with the first fifty-three indented and the fifty-fourth at the start. The fifty-fifth level has fifty-five bars, with the first fifty-four indented and the fifty-fifth at the start. The fifty-sixth level has fifty-six bars, with the first fifty-five indented and the fifty-sixth at the start. The fifty-seventh level has fifty-seven bars, with the first fifty-six indented and the fifty-seventh at the start. The fifty-eighth level has fifty-eight bars, with the first fifty-seven indented and the fifty-eighth at the start. The fifty-ninth level has fifty-nine bars, with the first fifty-eight indented and the fifty-ninth at the start. The sixtieth level has sixty bars, with the first fifty-nine indented and the sixtieth at the start. The sixty-first level has sixty-one bars, with the first sixty indented and the sixty-first at the start. The sixty-second level has sixty-two bars, with the first sixty-one indented and the sixty-second at the start. The sixty-third level has sixty-three bars, with the first sixty-two indented and the sixty-third at the start. The sixty-fourth level has sixty-four bars, with the first sixty-three indented and the sixty-fourth at the start. The sixty-fifth level has sixty-five bars, with the first sixty-four indented and the sixty-fifth at the start. The sixty-sixth level has sixty-six bars, with the first sixty-five indented and the sixty-sixth at the start. The sixty-seventh level has sixty-seven bars, with the first sixty-six indented and the sixty-seventh at the start. The sixty-eighth level has sixty-eight bars, with the first sixty-seven indented and the sixty-eighth at the start. The sixty-ninth level has sixty-nine bars, with the first sixty-eight indented and the sixty-ninth at the start. The seventieth level has seventy bars, with the first sixty-nine indented and the seventieth at the start. The seventy-first level has seventy-one bars, with the first seventy indented and the seventy-first at the start. The seventy-second level has seventy-two bars, with the first seventy-one indented and the seventy-second at the start. The seventy-third level has seventy-three bars, with the first seventy-two indented and the seventy-third at the start. The seventy-fourth level has seventy-four bars, with the first seventy-three indented and the seventy-fourth at the start. The seventy-fifth level has seventy-five bars, with the first seventy-four indented and the seventy-fifth at the start. 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The ninety-second level has ninety-two bars, with the first ninety-one indented and the ninety-second at the start. The ninety-third level has ninety-three bars, with the first ninety-two indented and the ninety-third at the start. The ninety-fourth level has ninety-four bars, with the first ninety-three indented and the ninety-fourth at the start. The ninety-fifth level has ninety-five bars, with the first ninety-four indented and the ninety-fifth at the start. The ninety-sixth level has ninety-six bars, with the first ninety-five indented and the ninety-sixth at the start. The ninety-seventh level has ninety-seven bars, with the first ninety-six indented and the ninety-seventh at the start. The ninety-eighth level has ninety-eight bars, with the first ninety-seven indented and the ninety-eighth at the start. The ninety-ninth level has ninety-nine bars, with the first ninety-eight indented and the ninety-ninth at the start. The hundredth level has one hundred bars, with the first ninety-nine indented and the hundredth at the start.

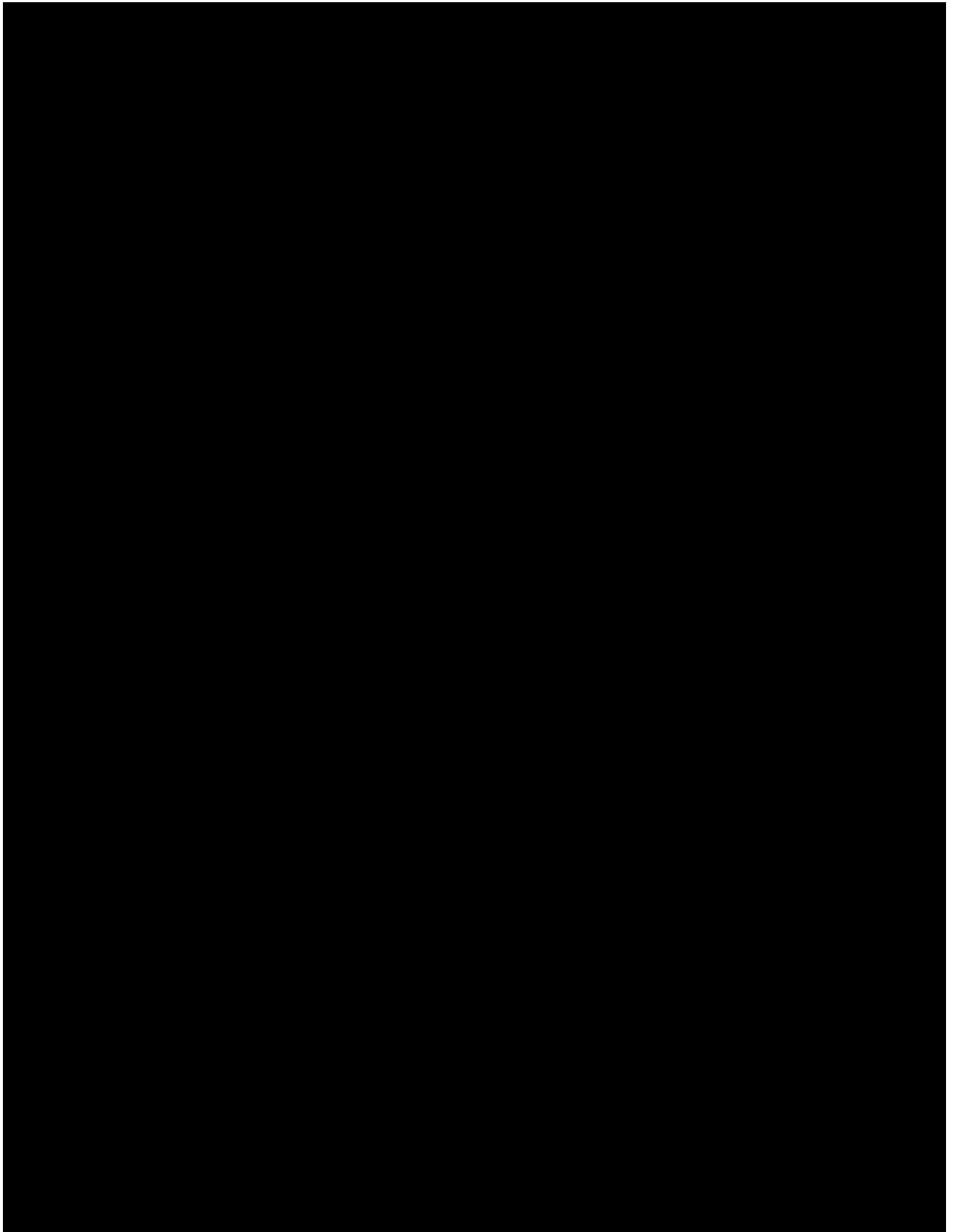
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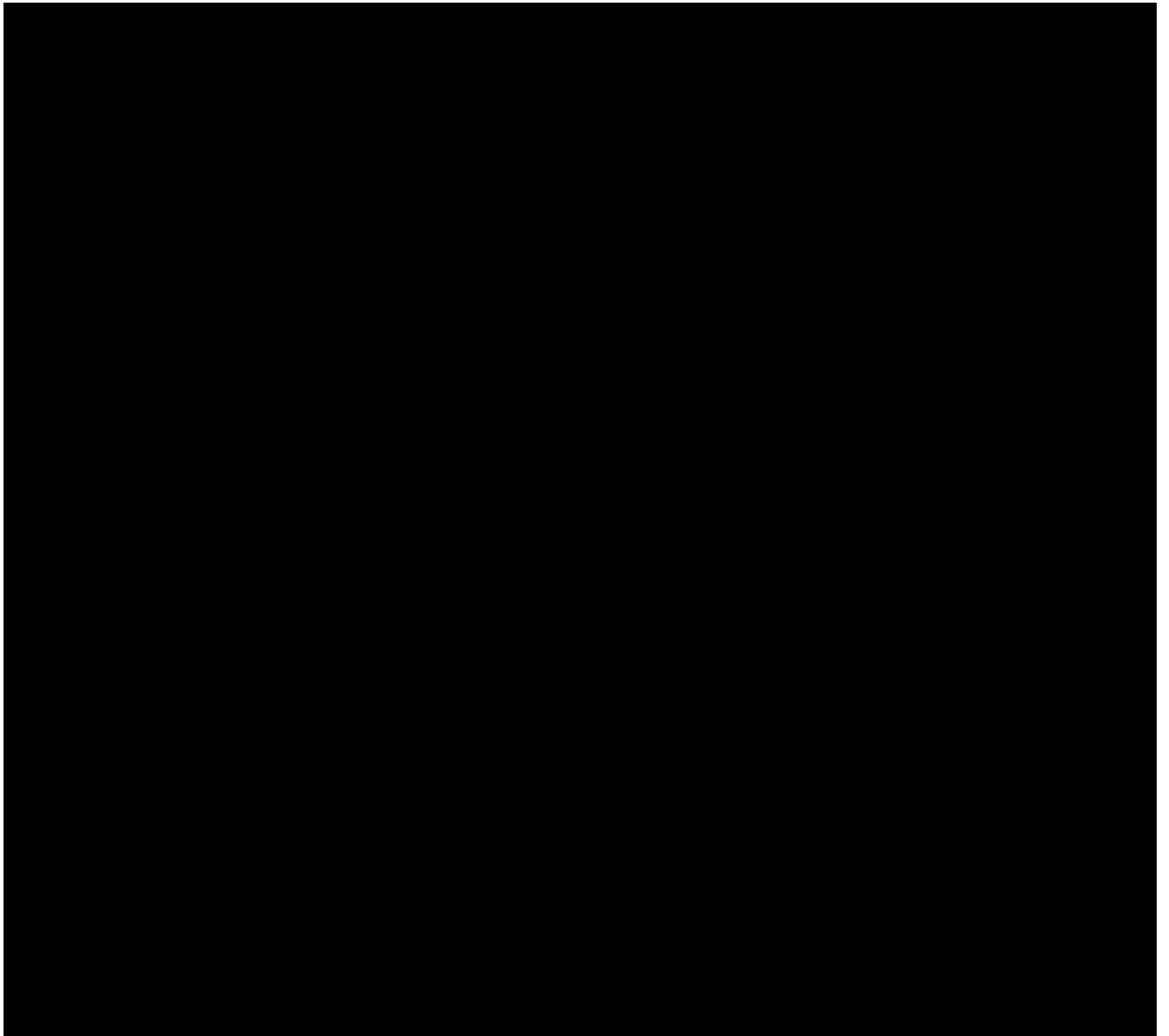
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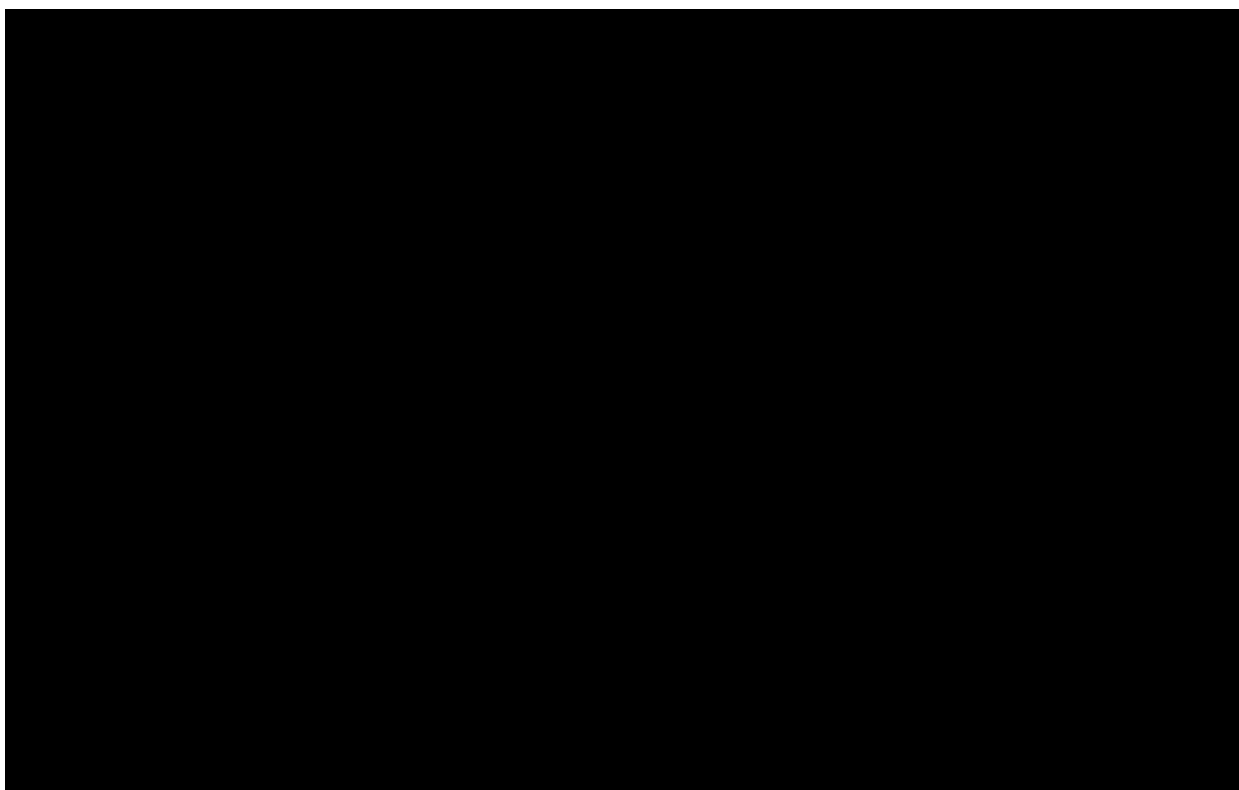
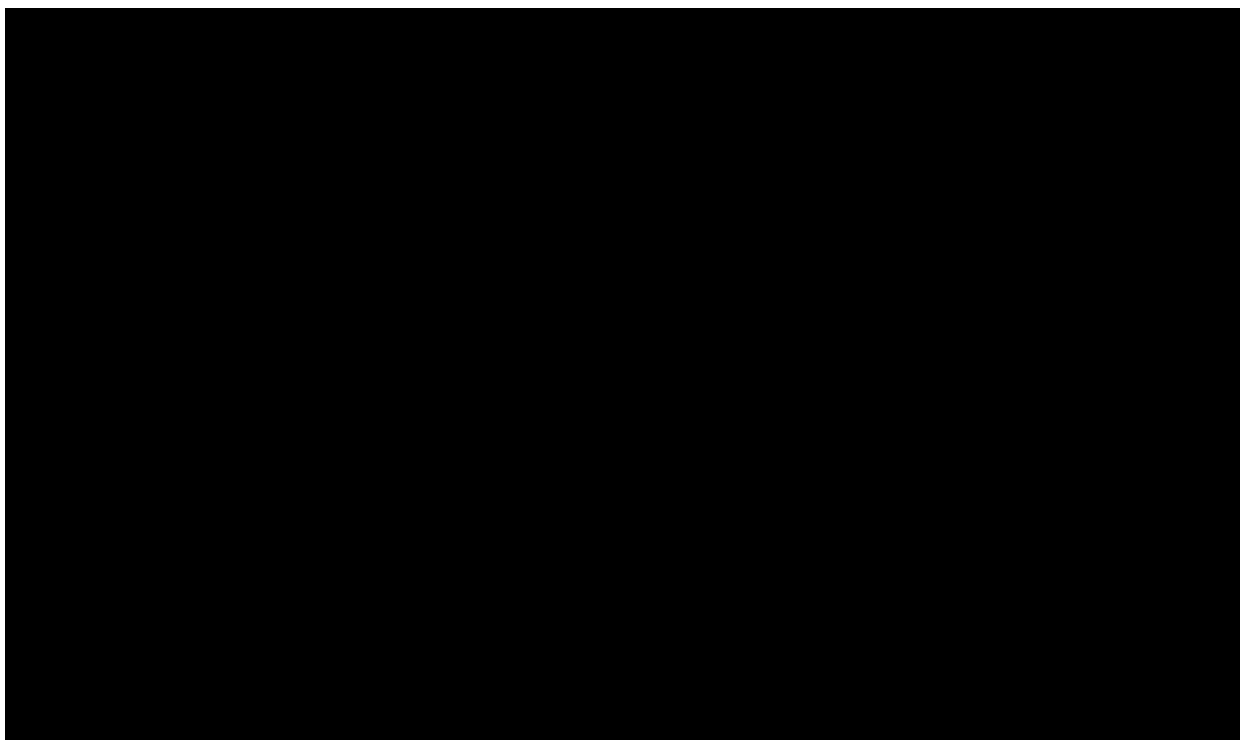
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Age Group	Percentage of Respondents
18-29	80%
30-49	75%
50-64	70%
65+	50%

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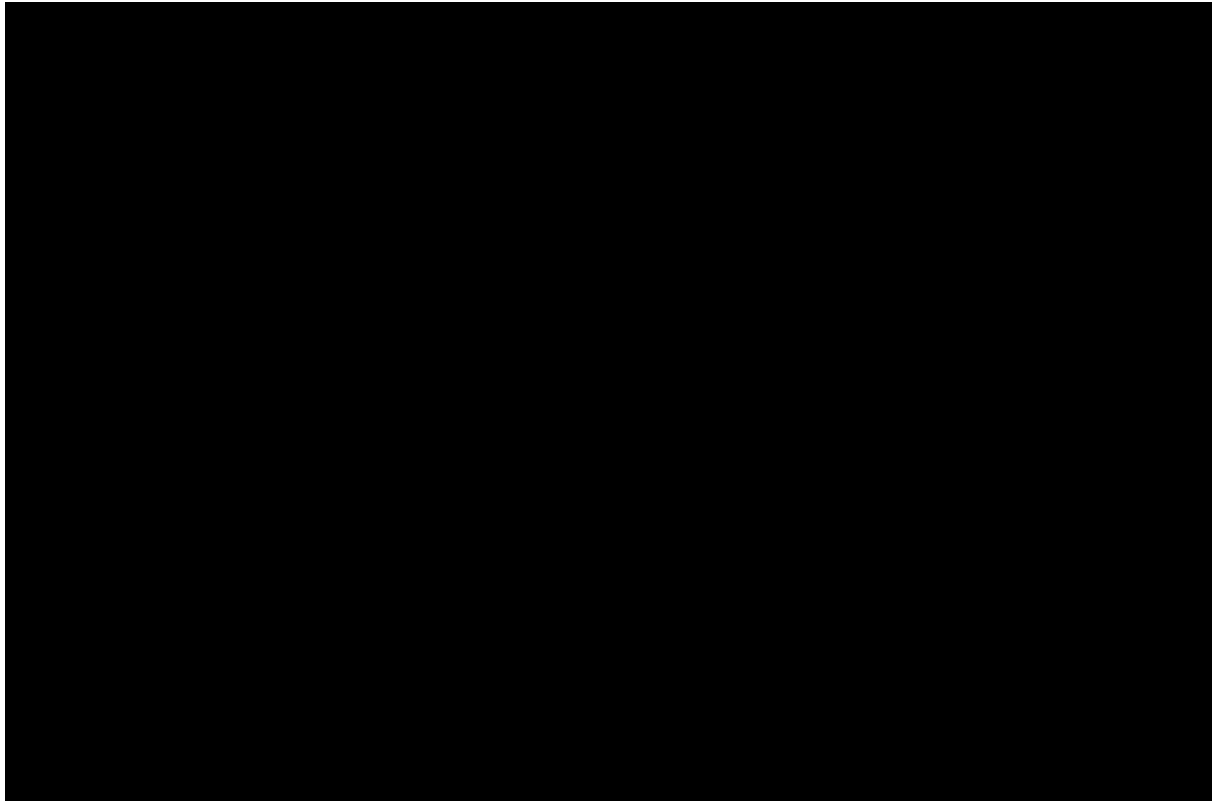
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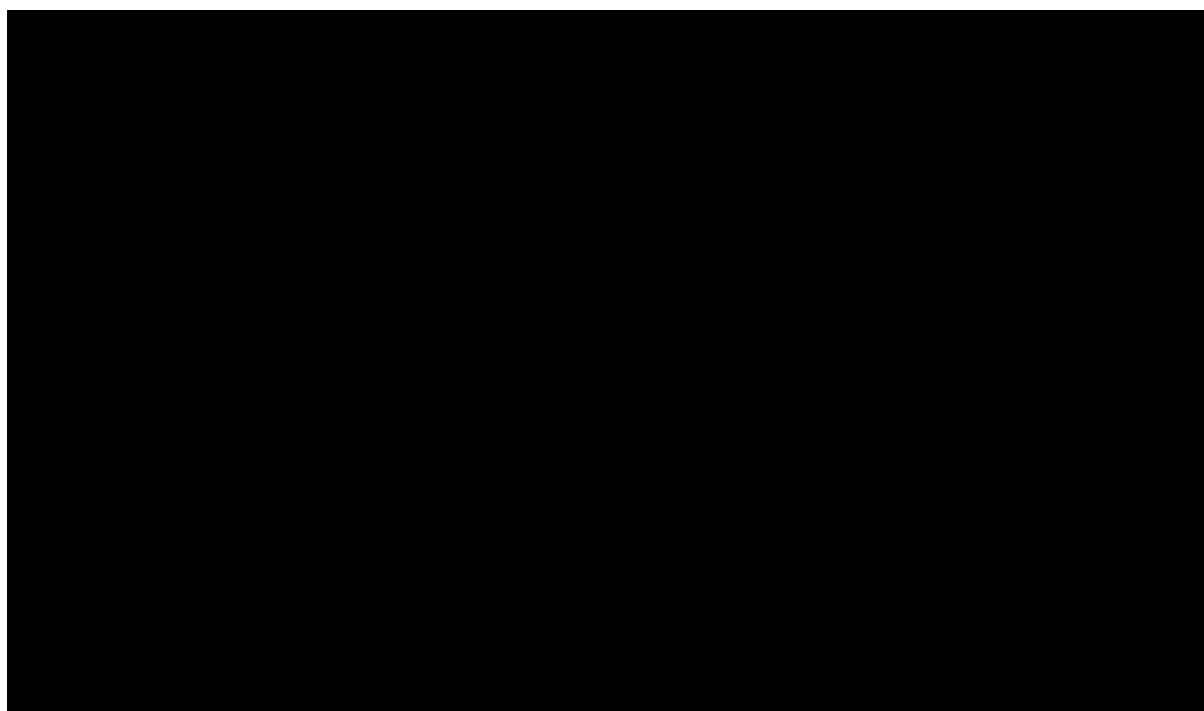
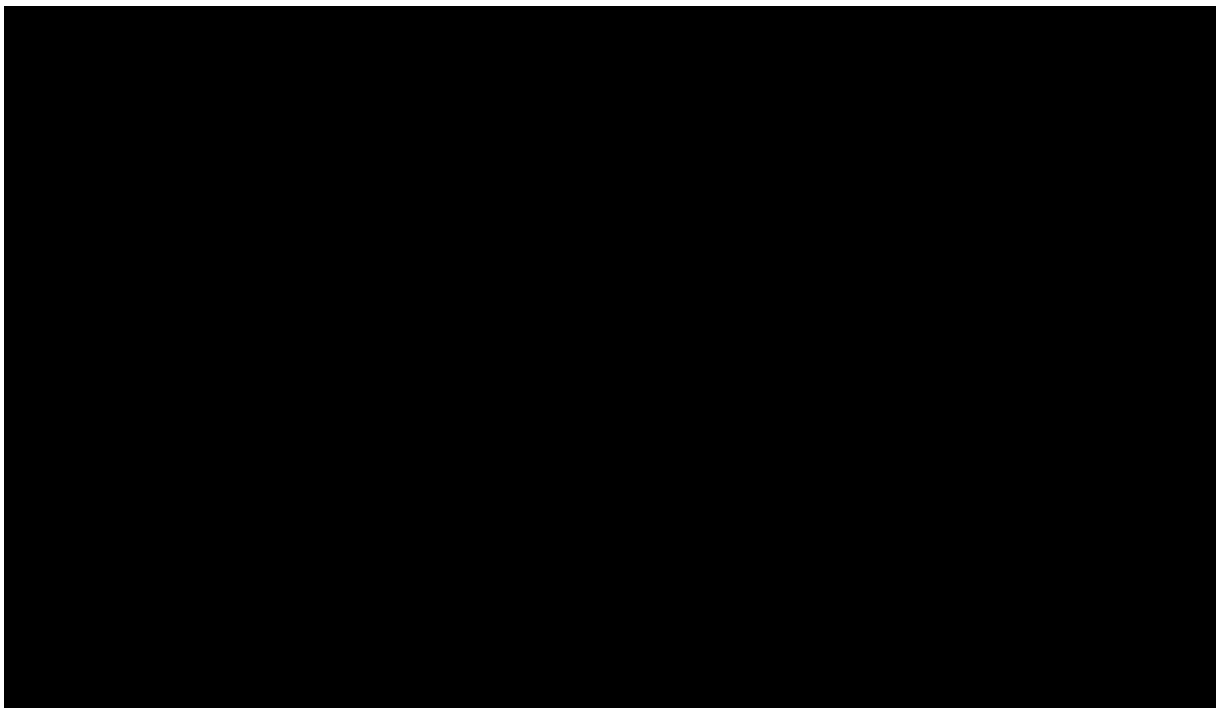
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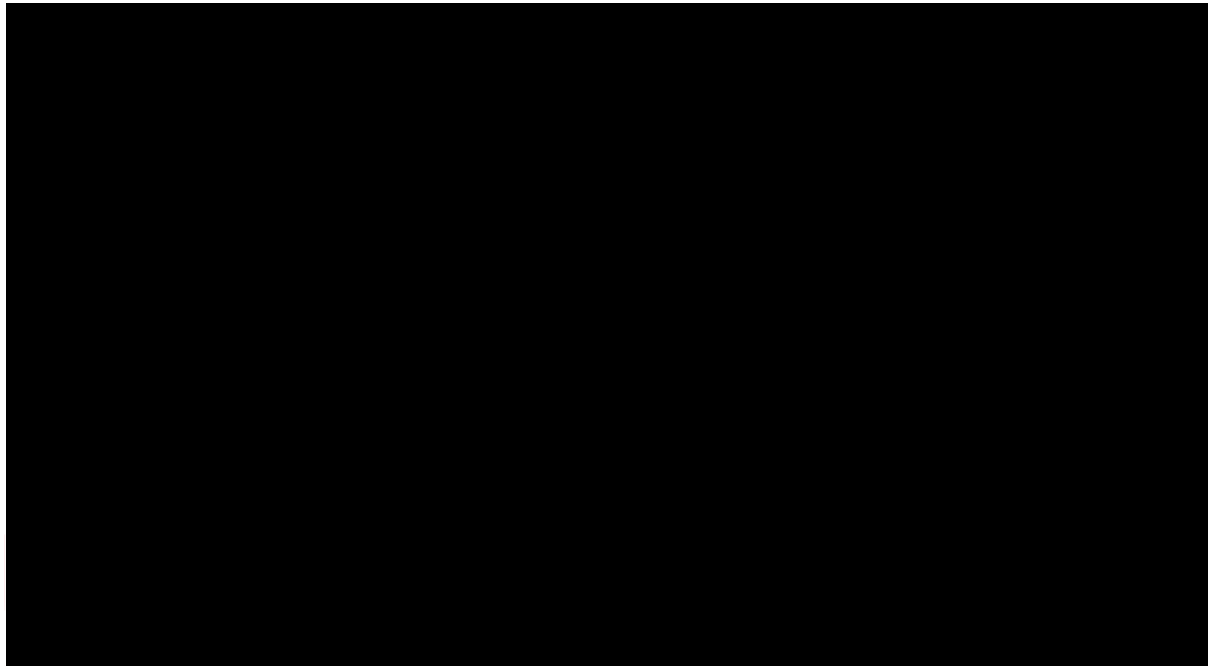
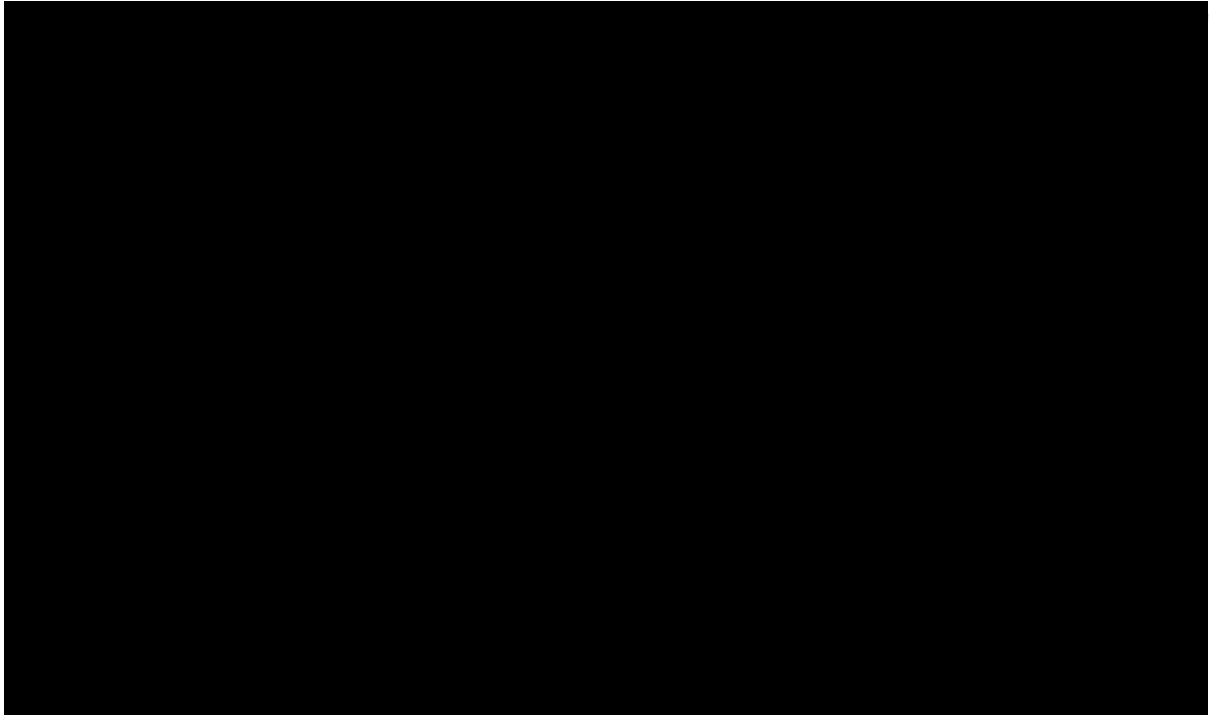
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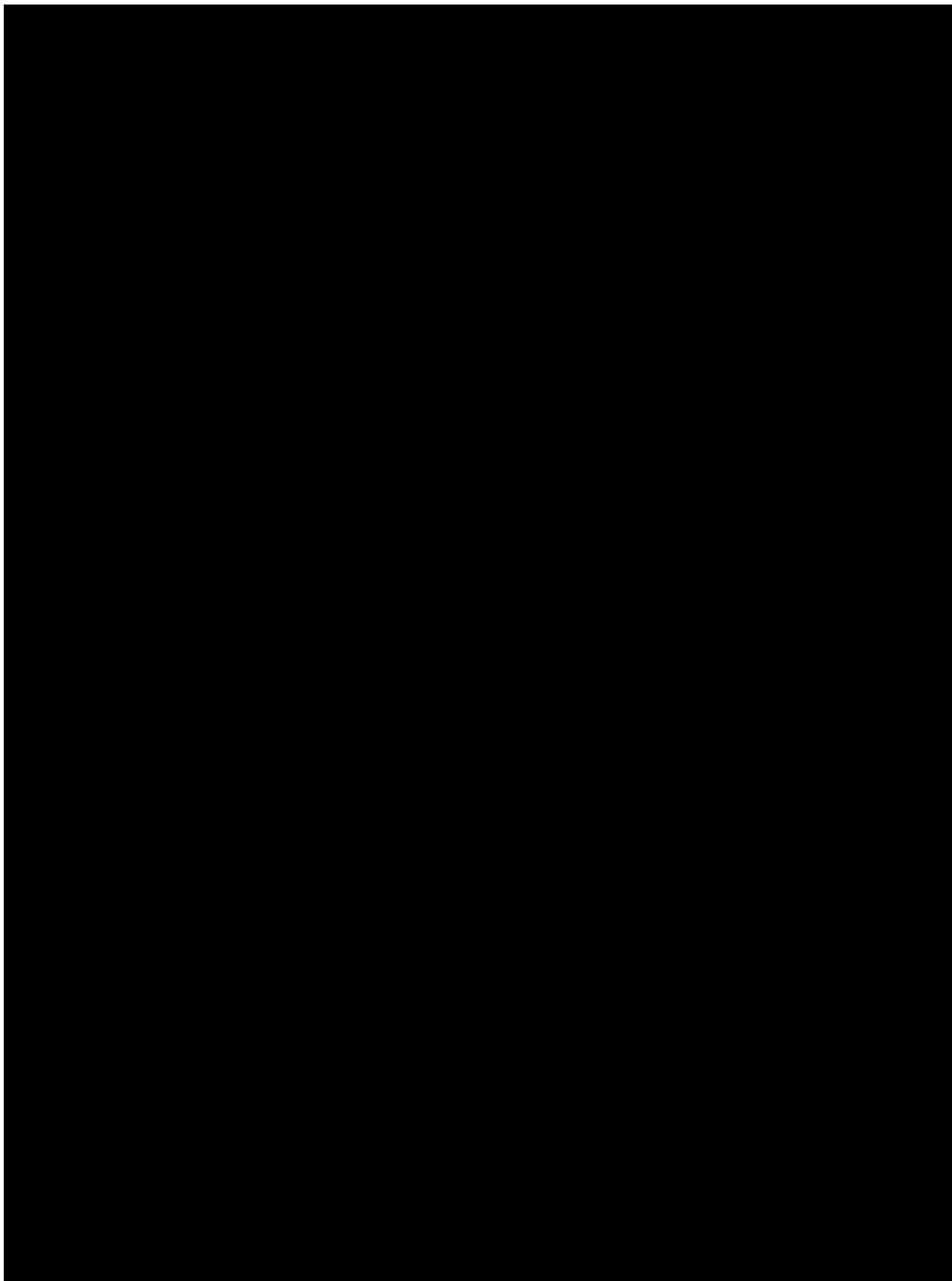
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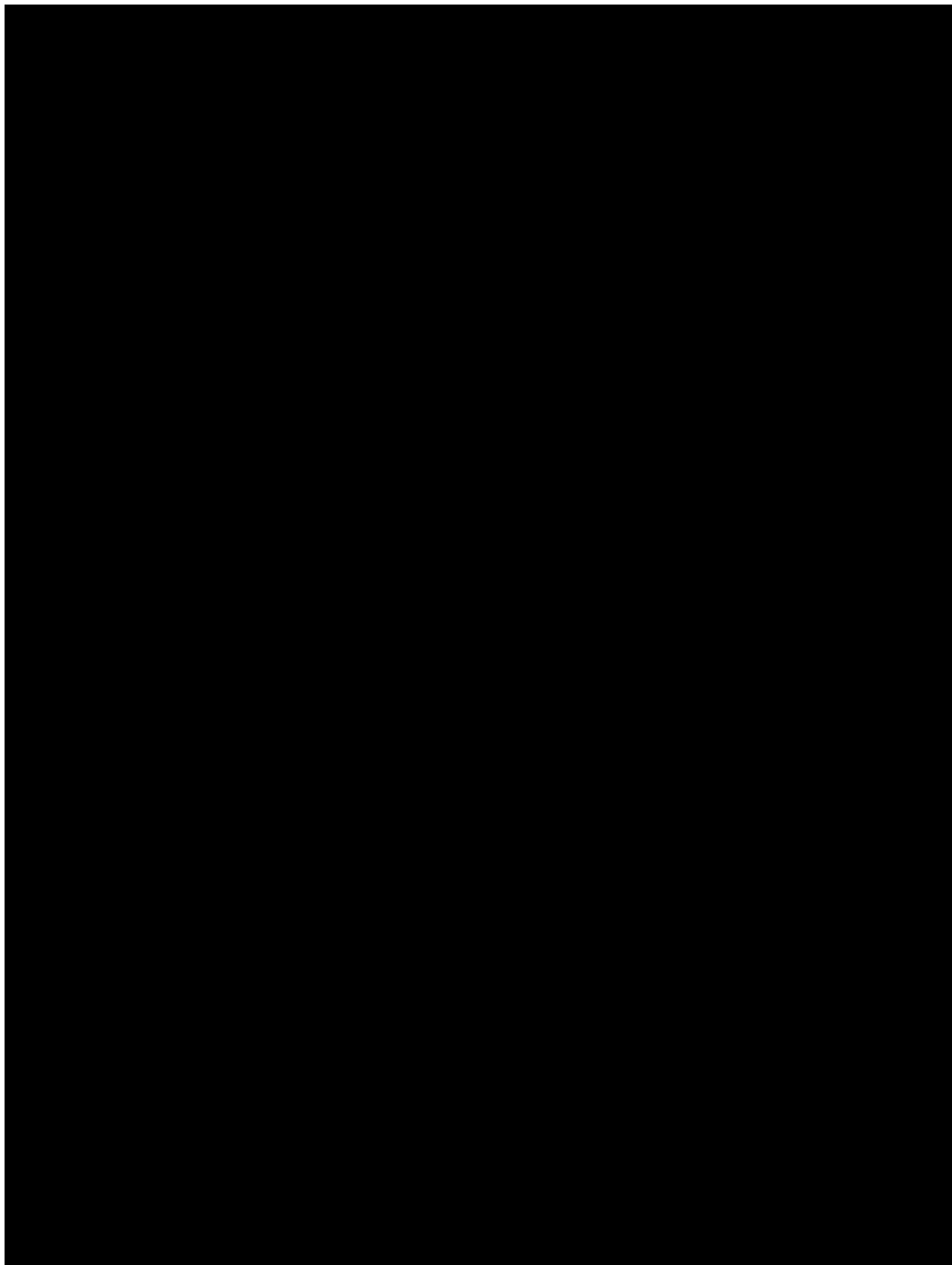
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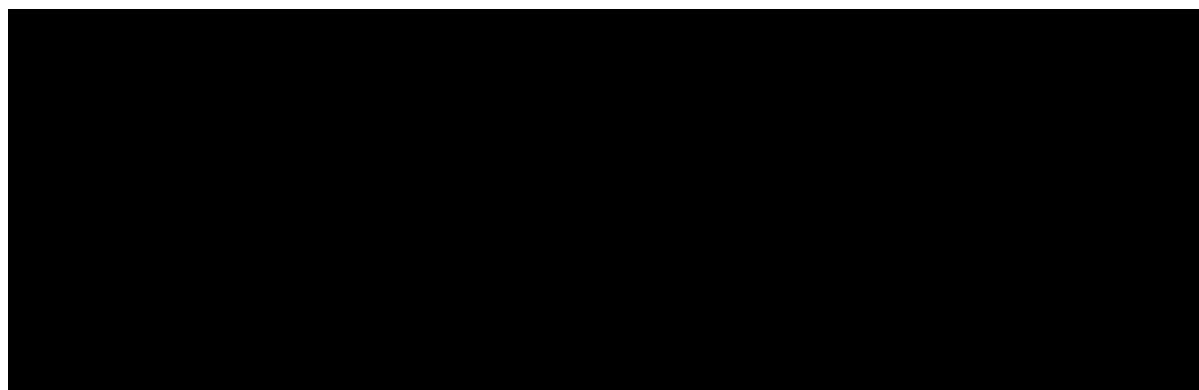
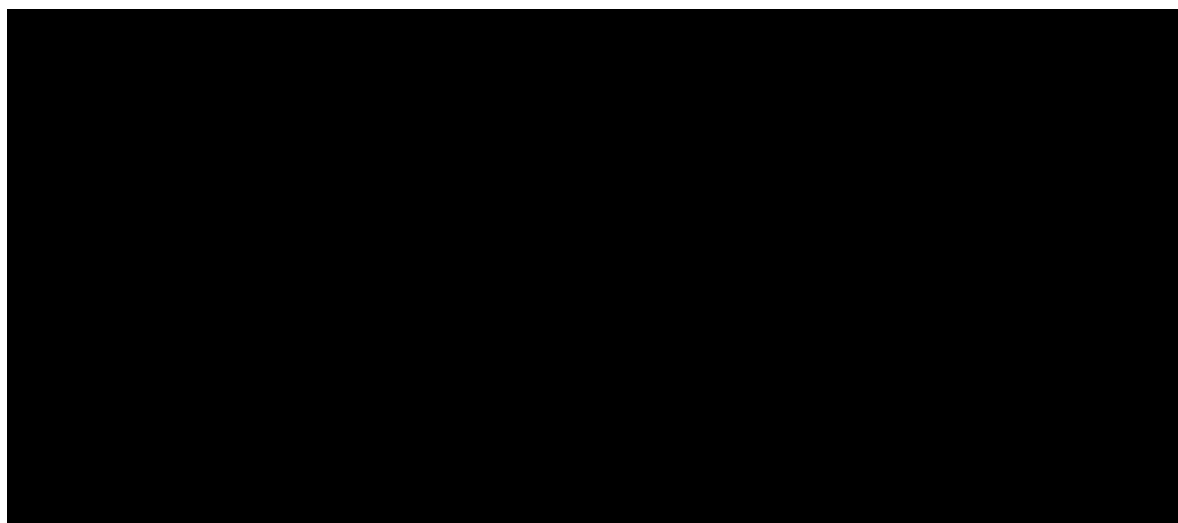
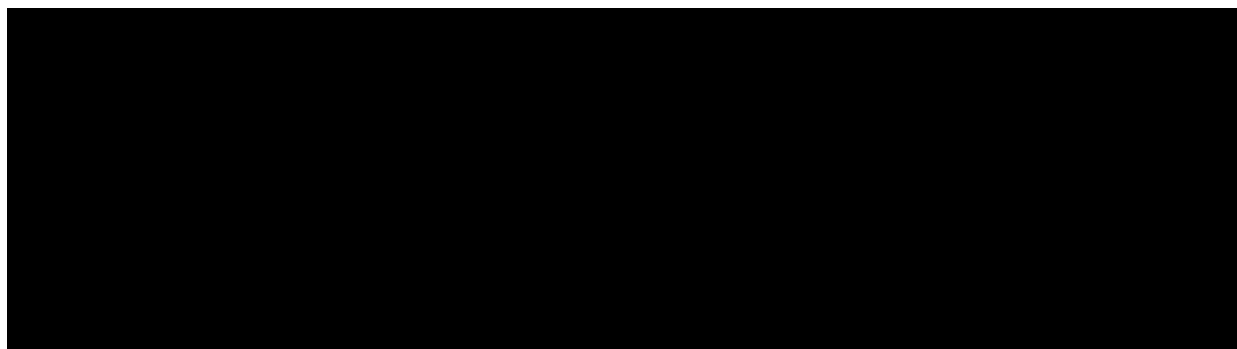
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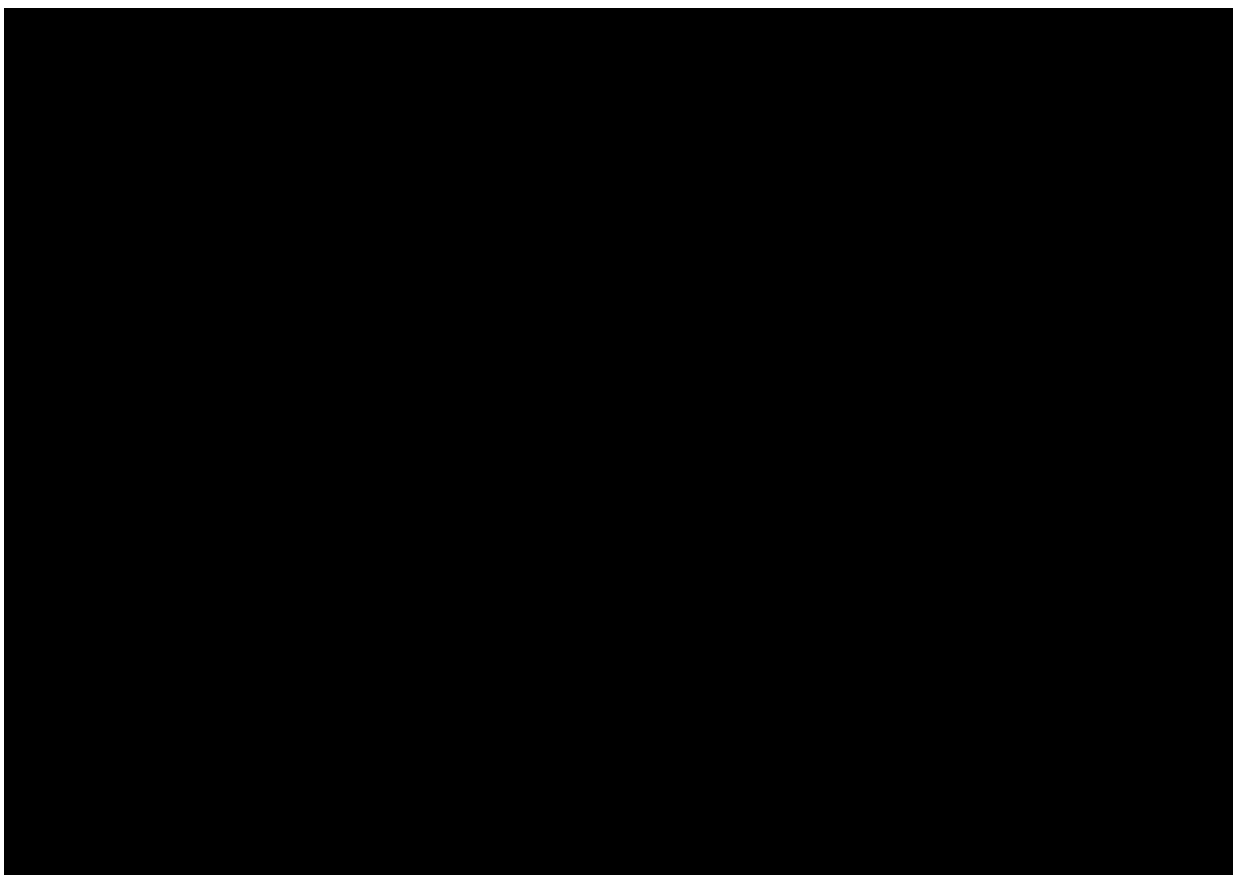
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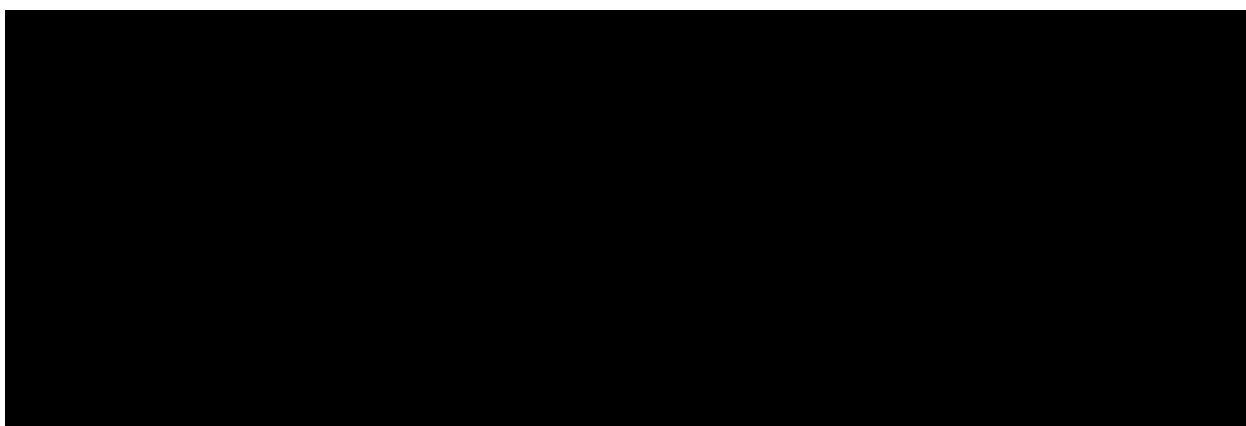
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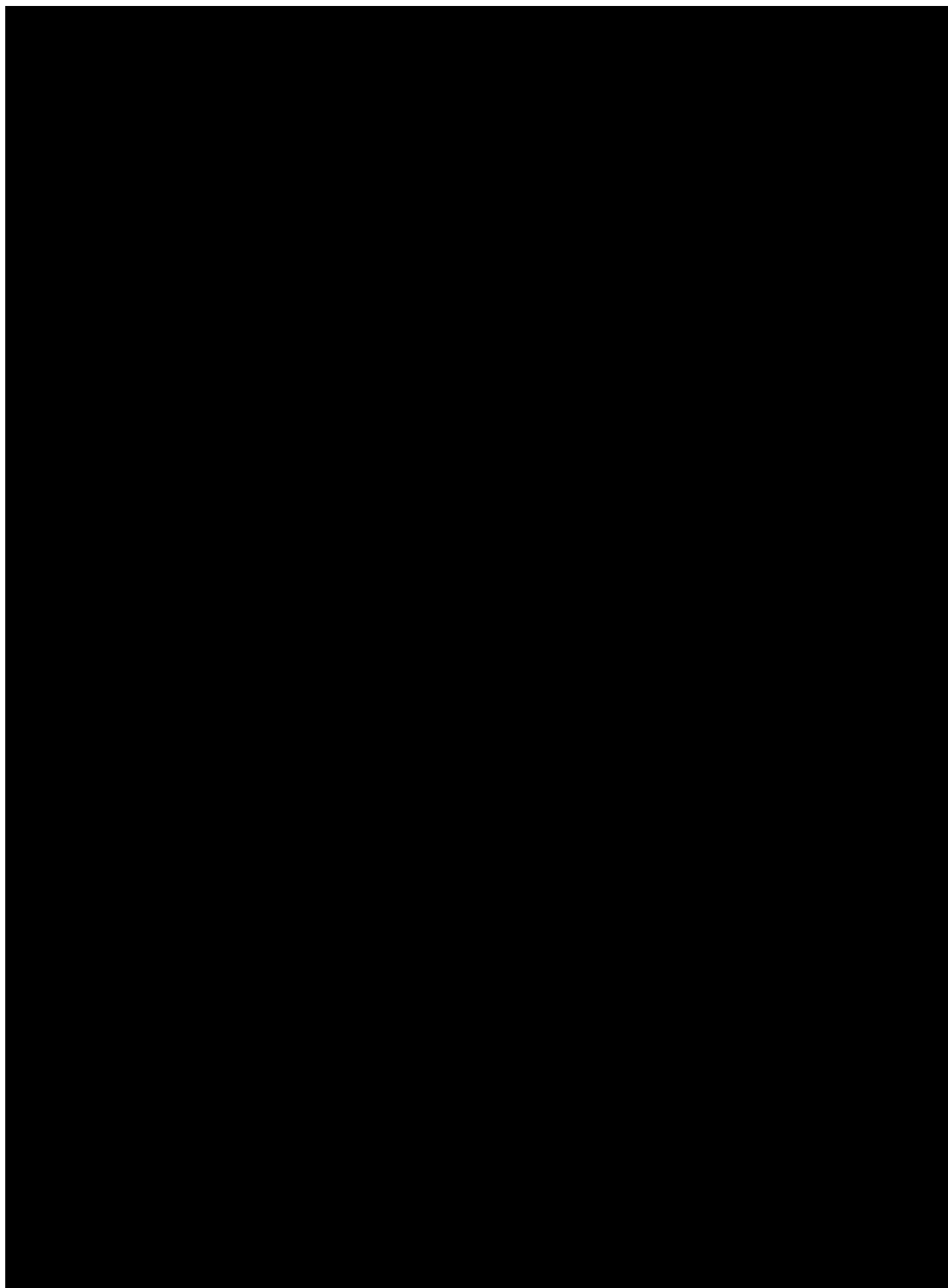
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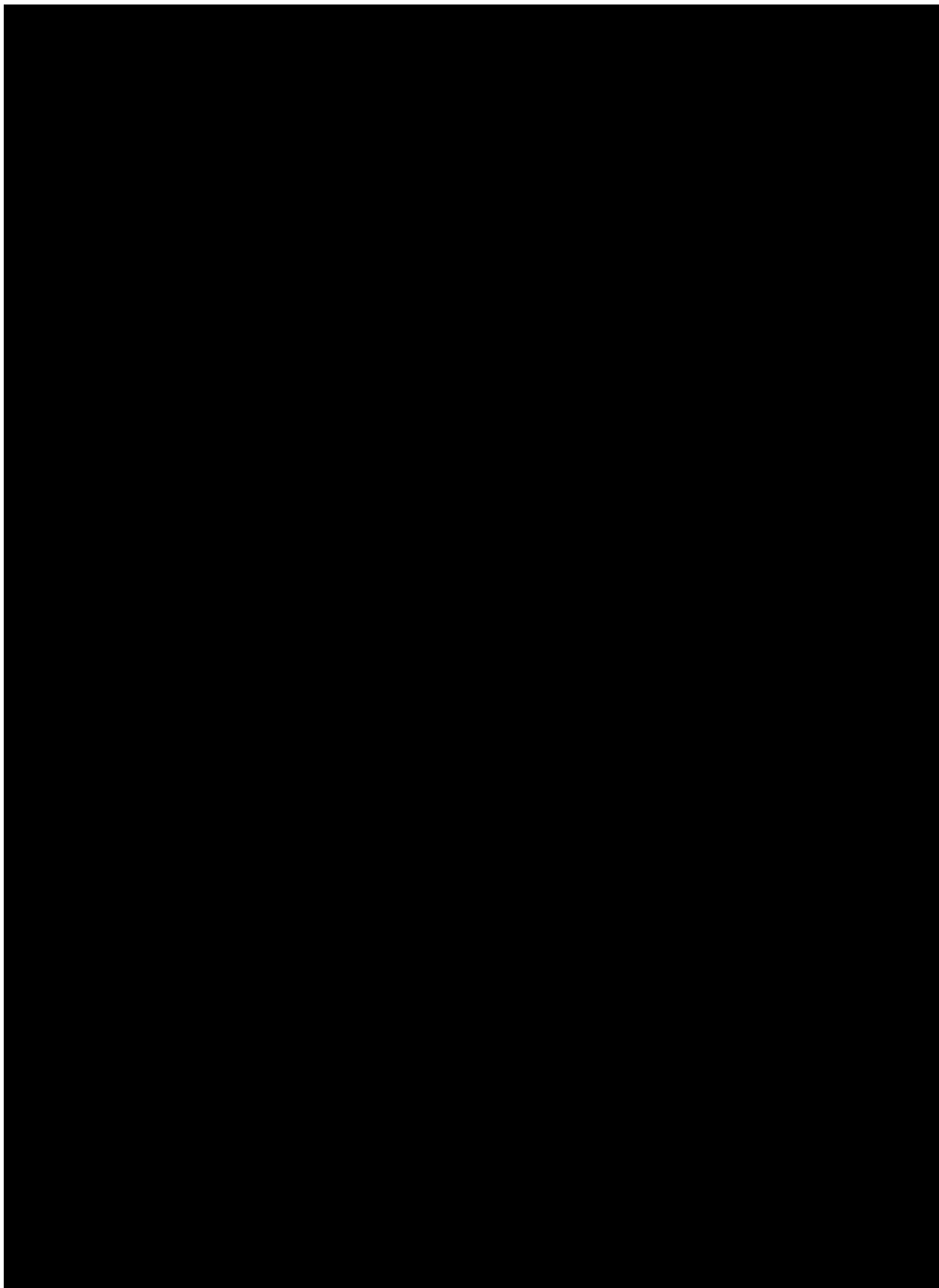
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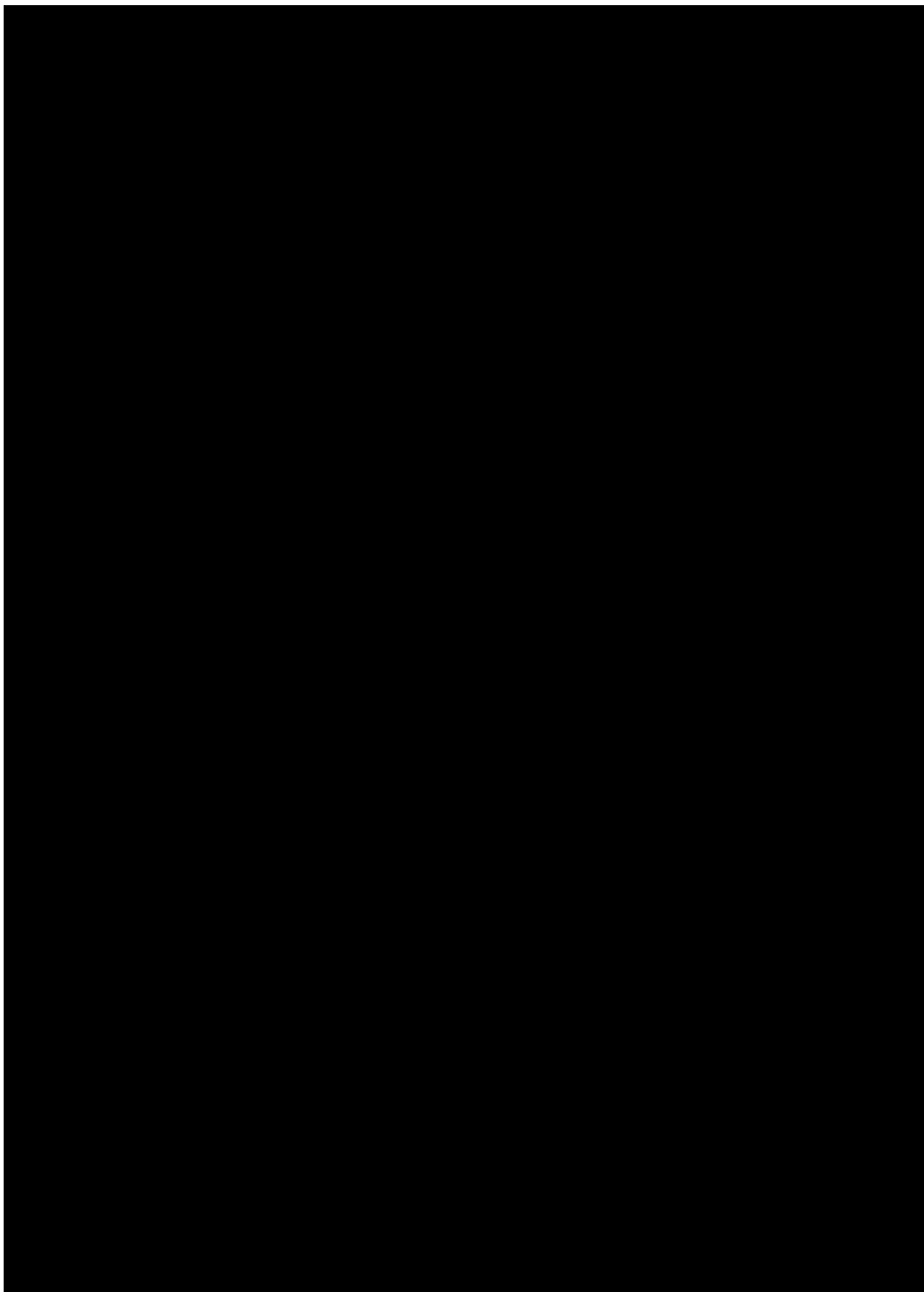
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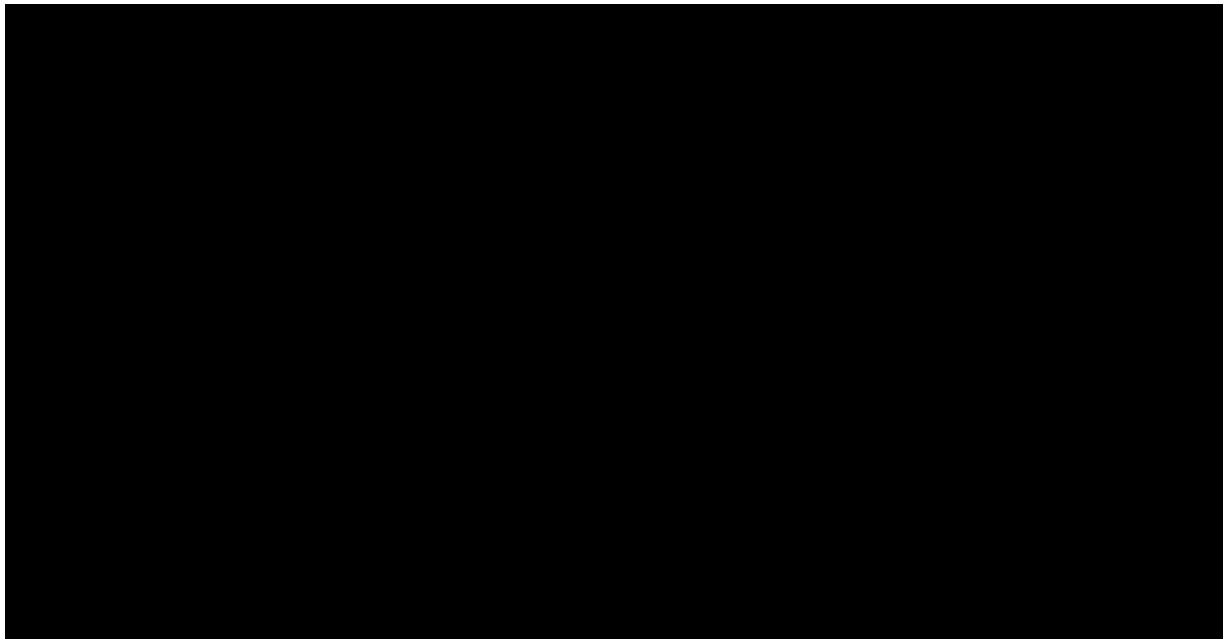
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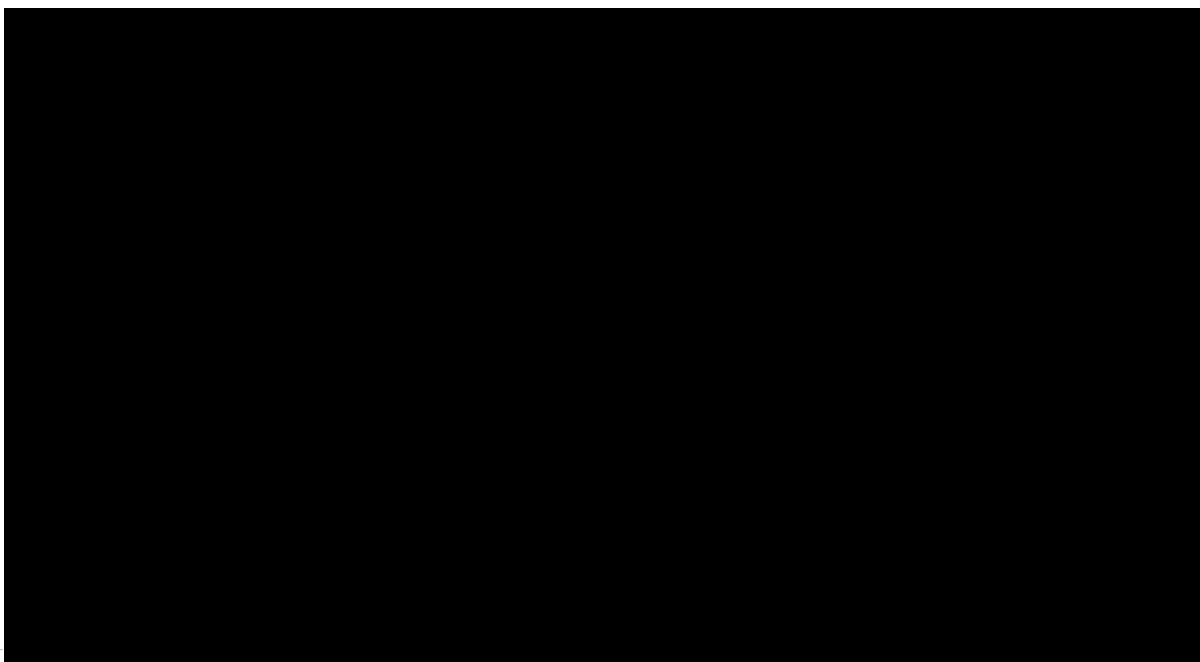
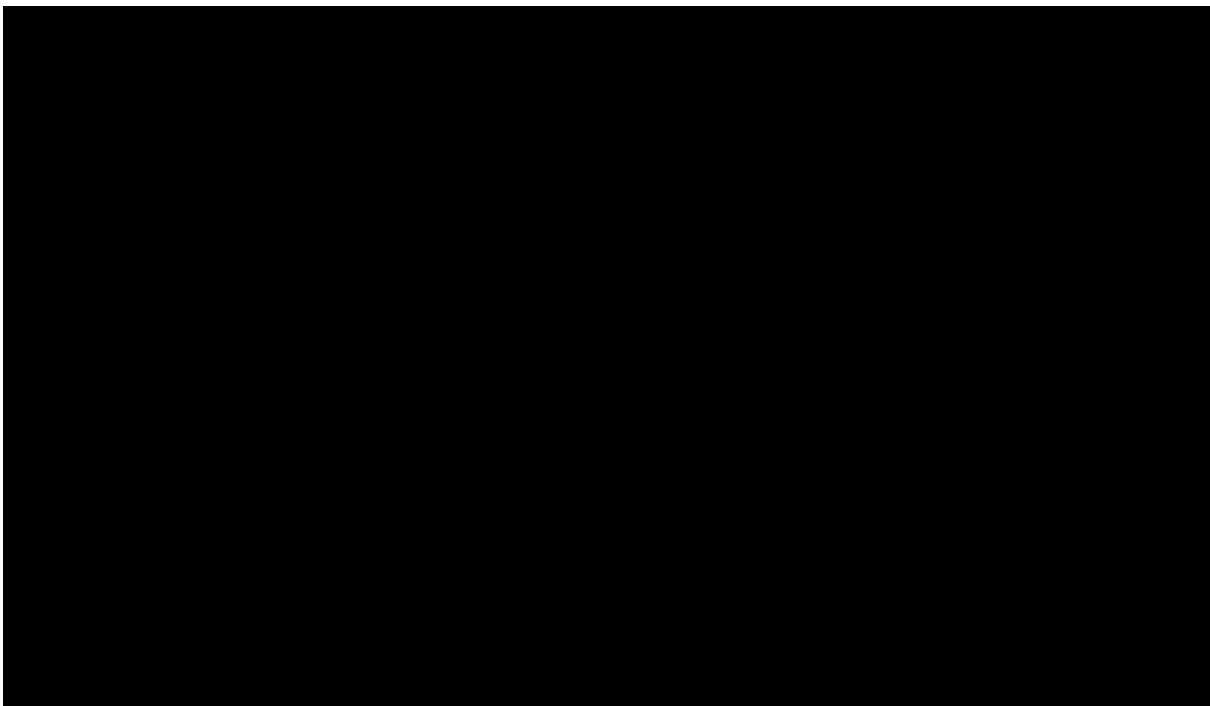
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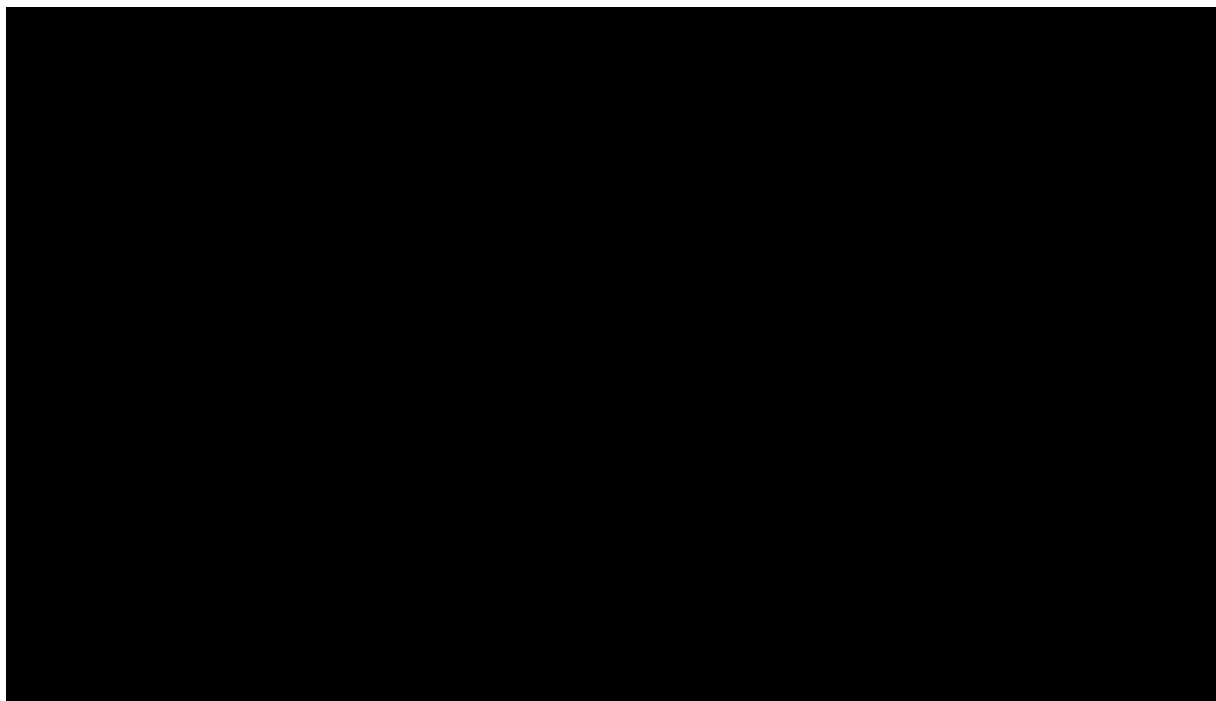
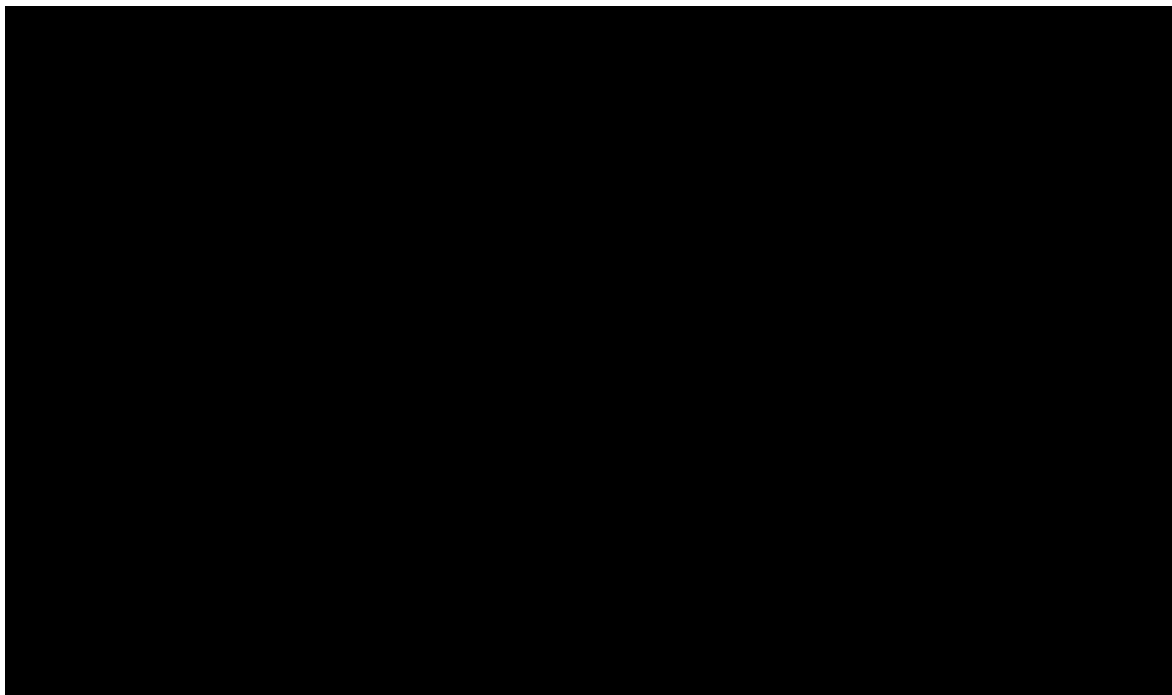
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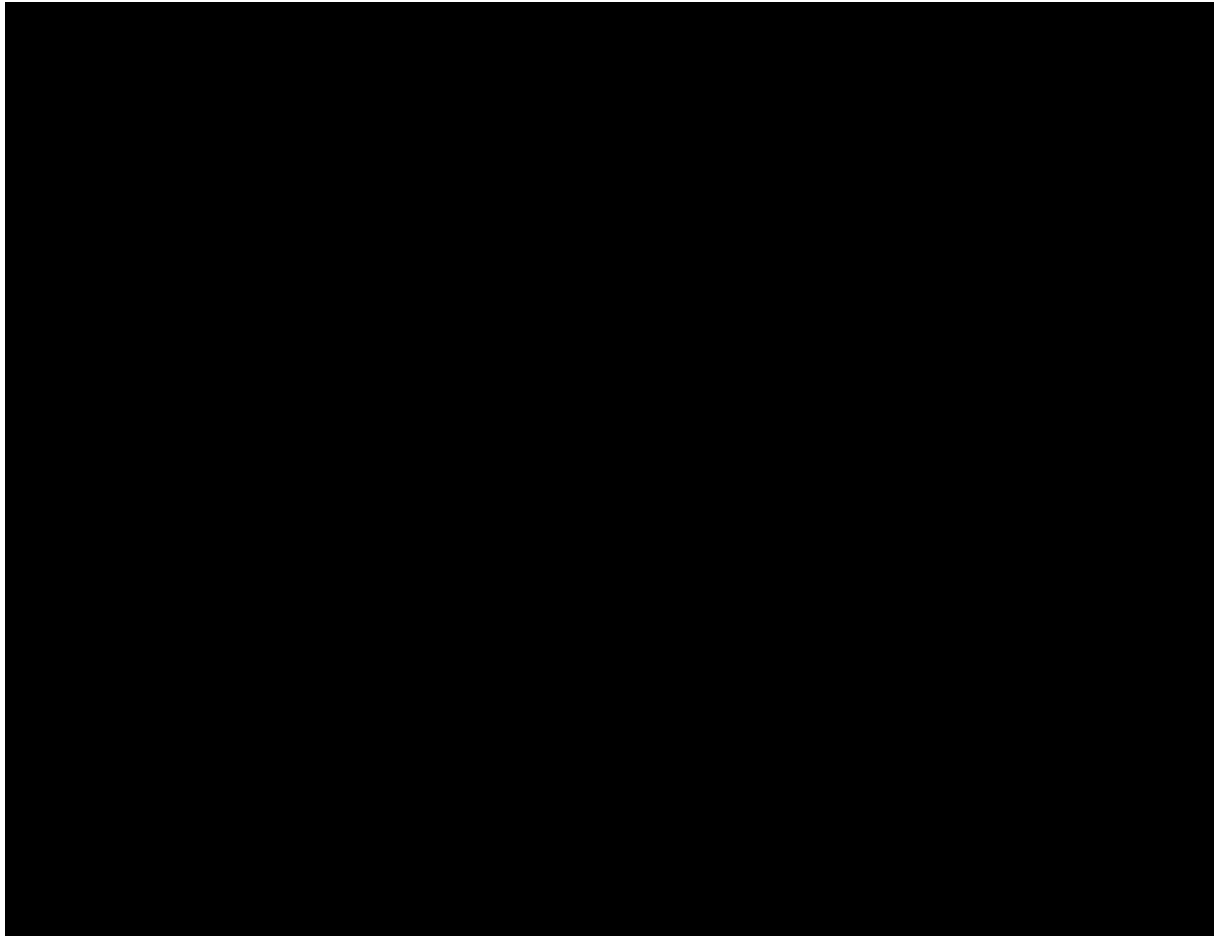
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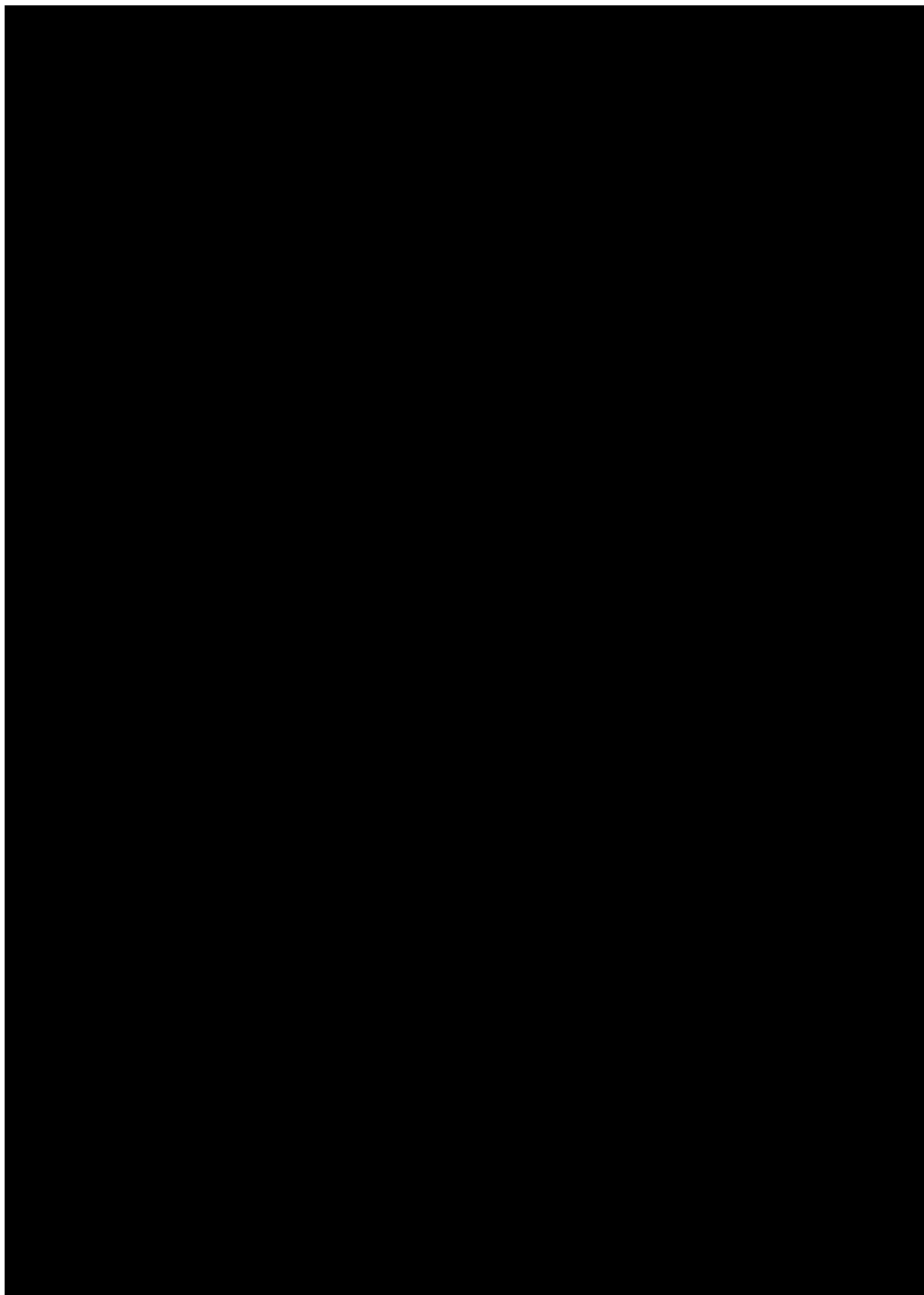
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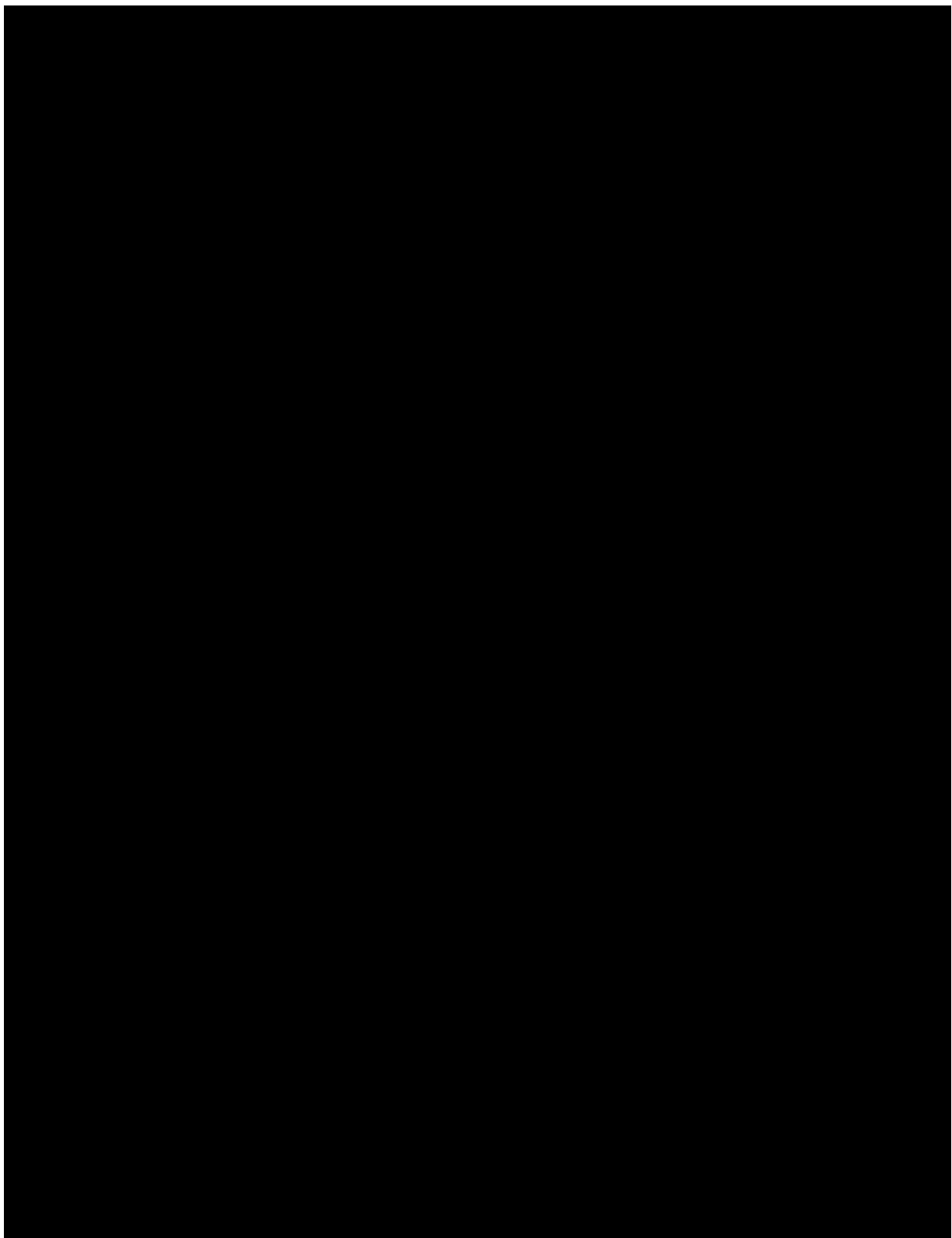
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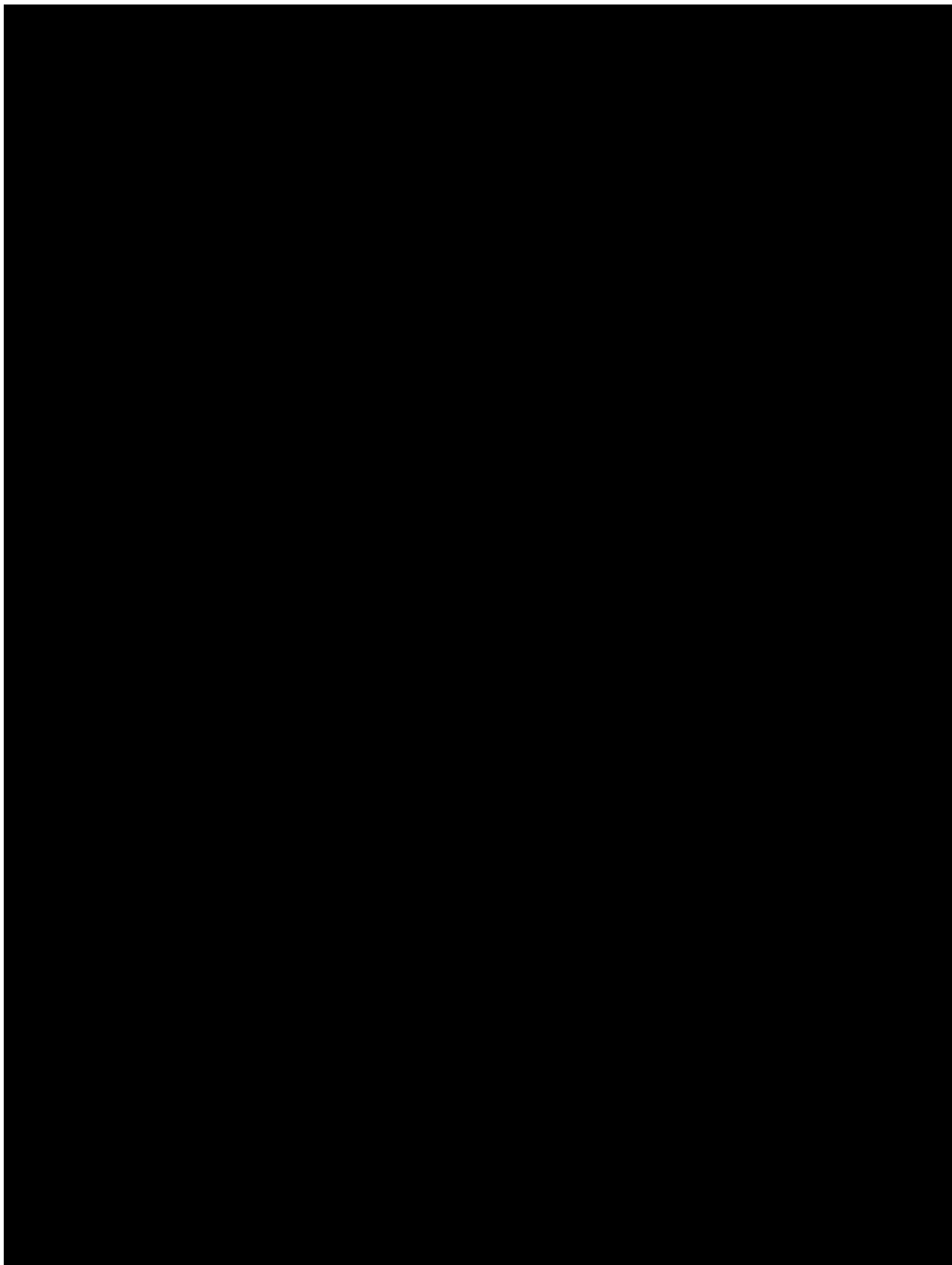
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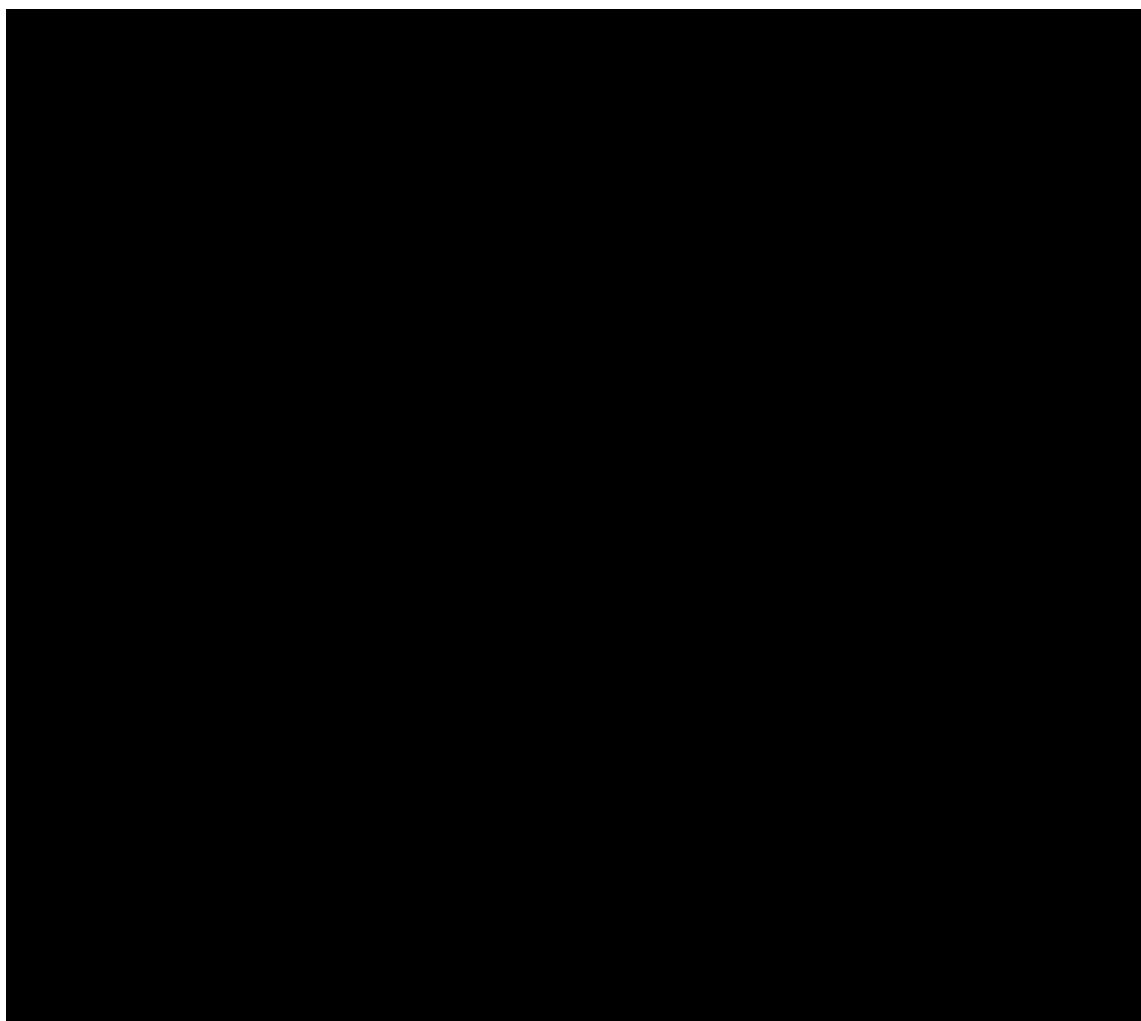
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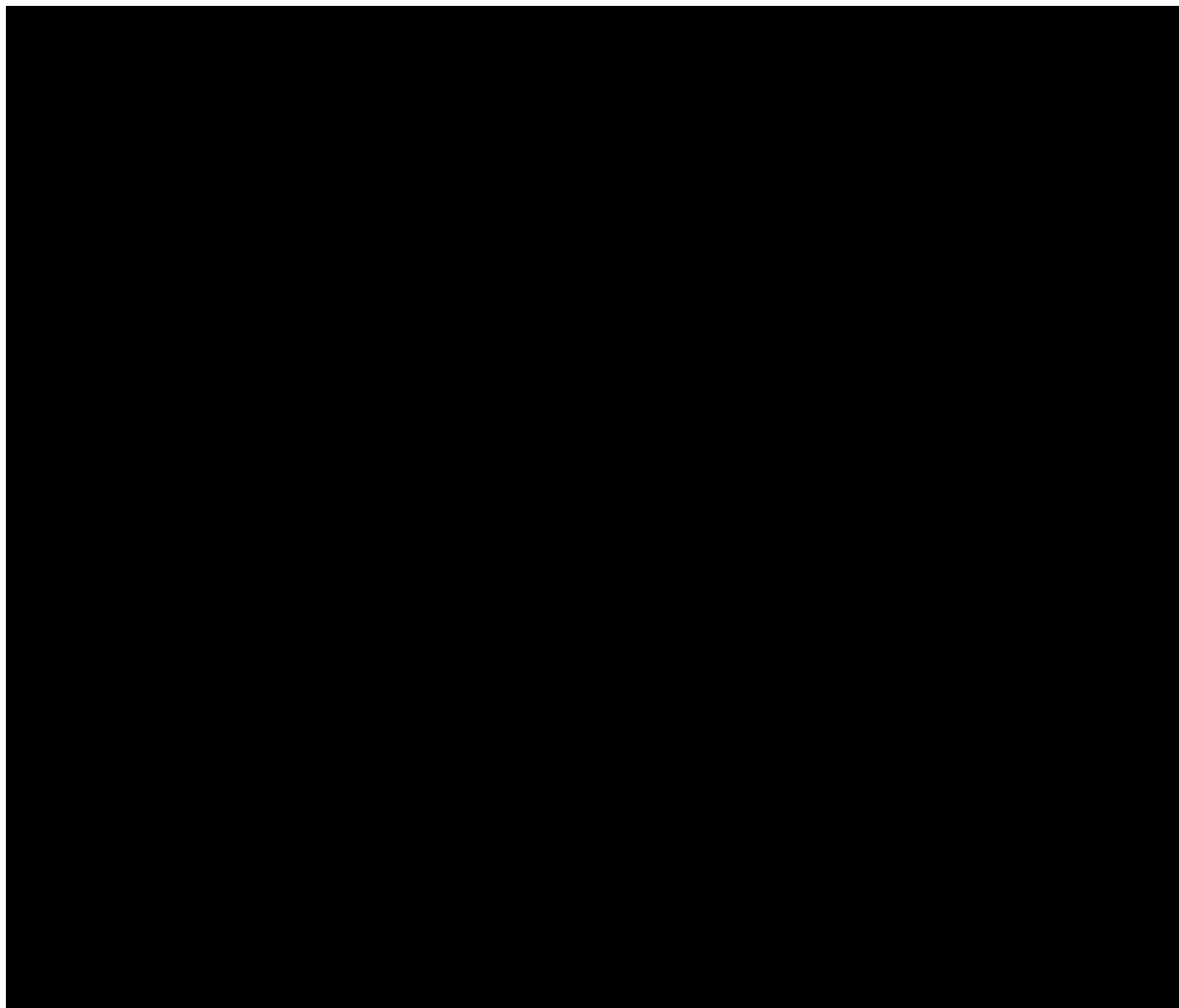
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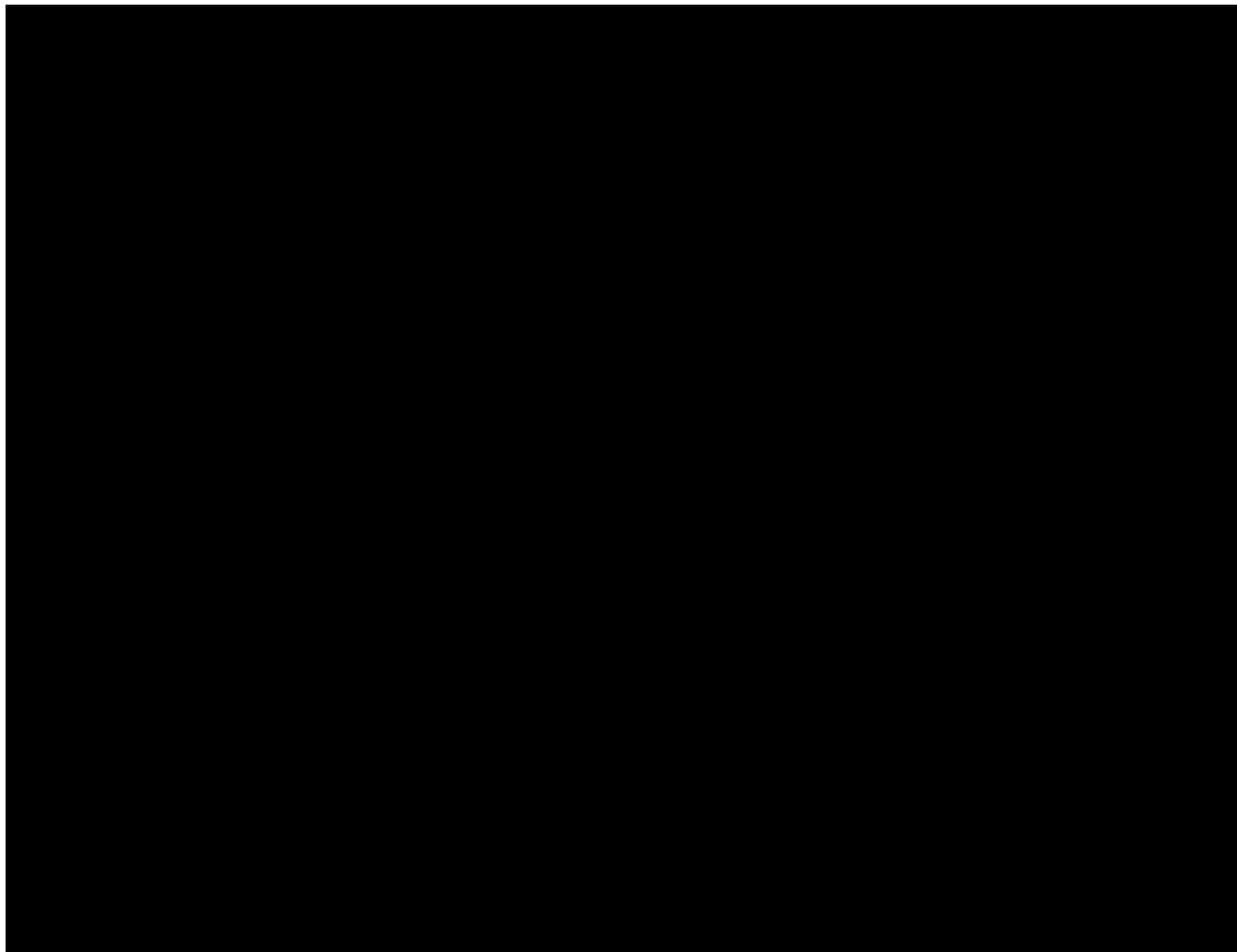
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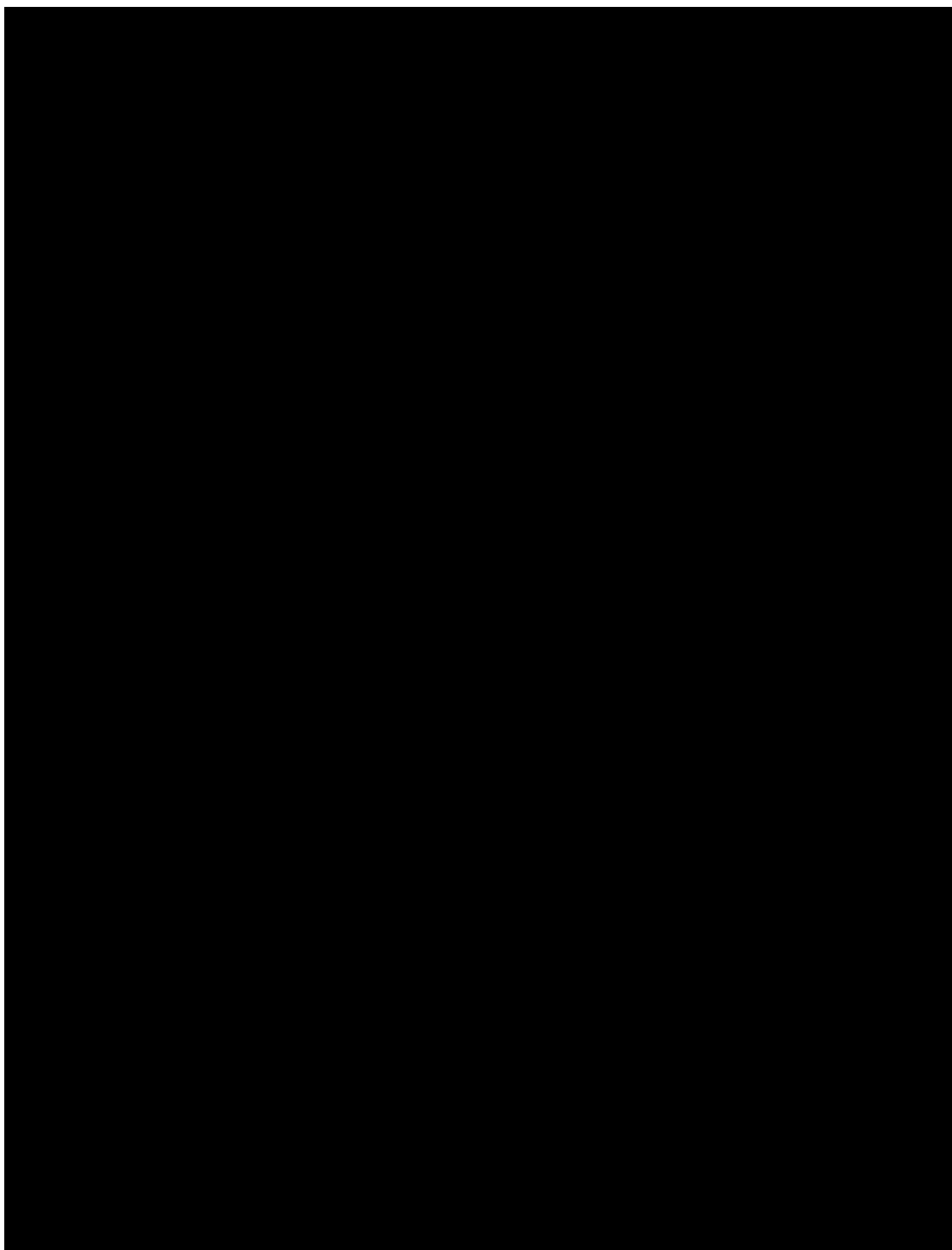
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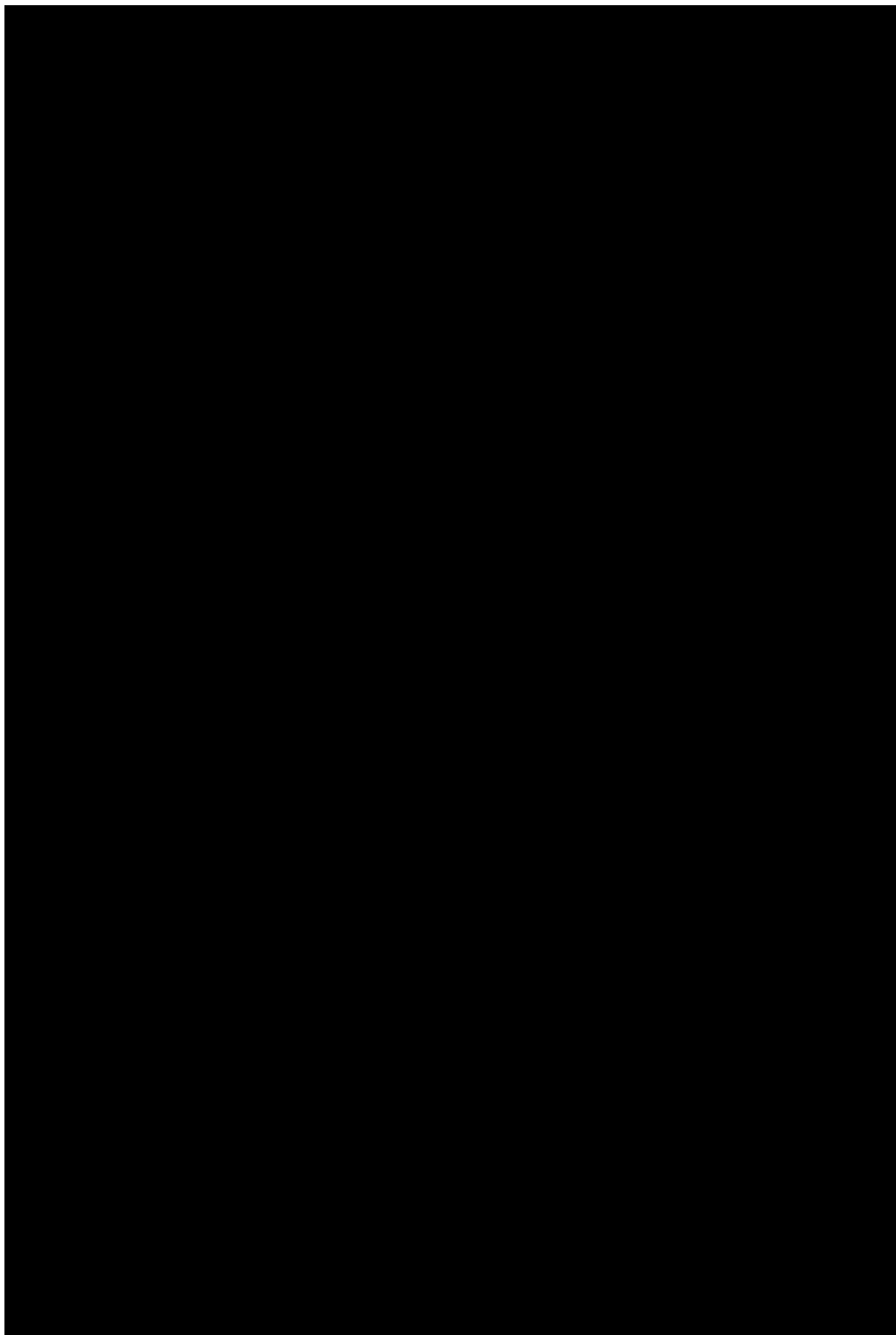
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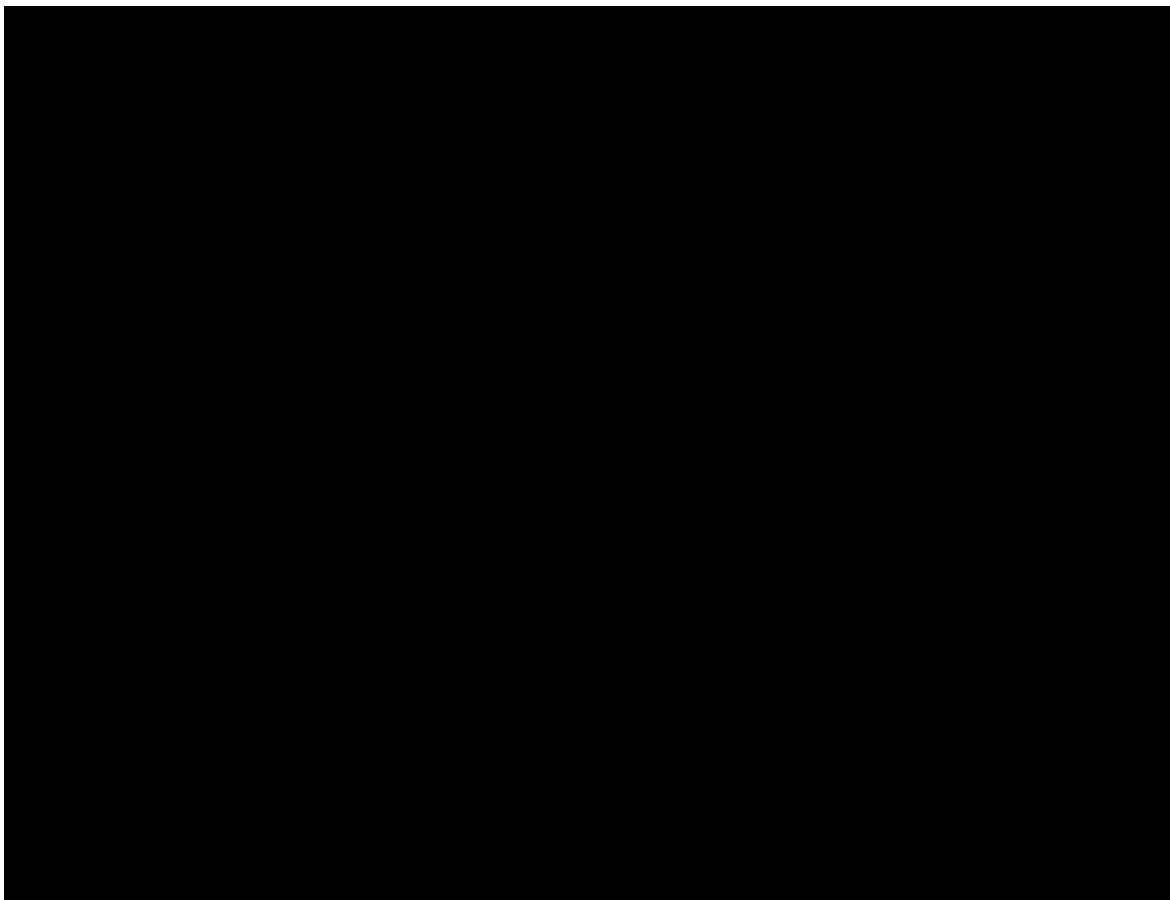
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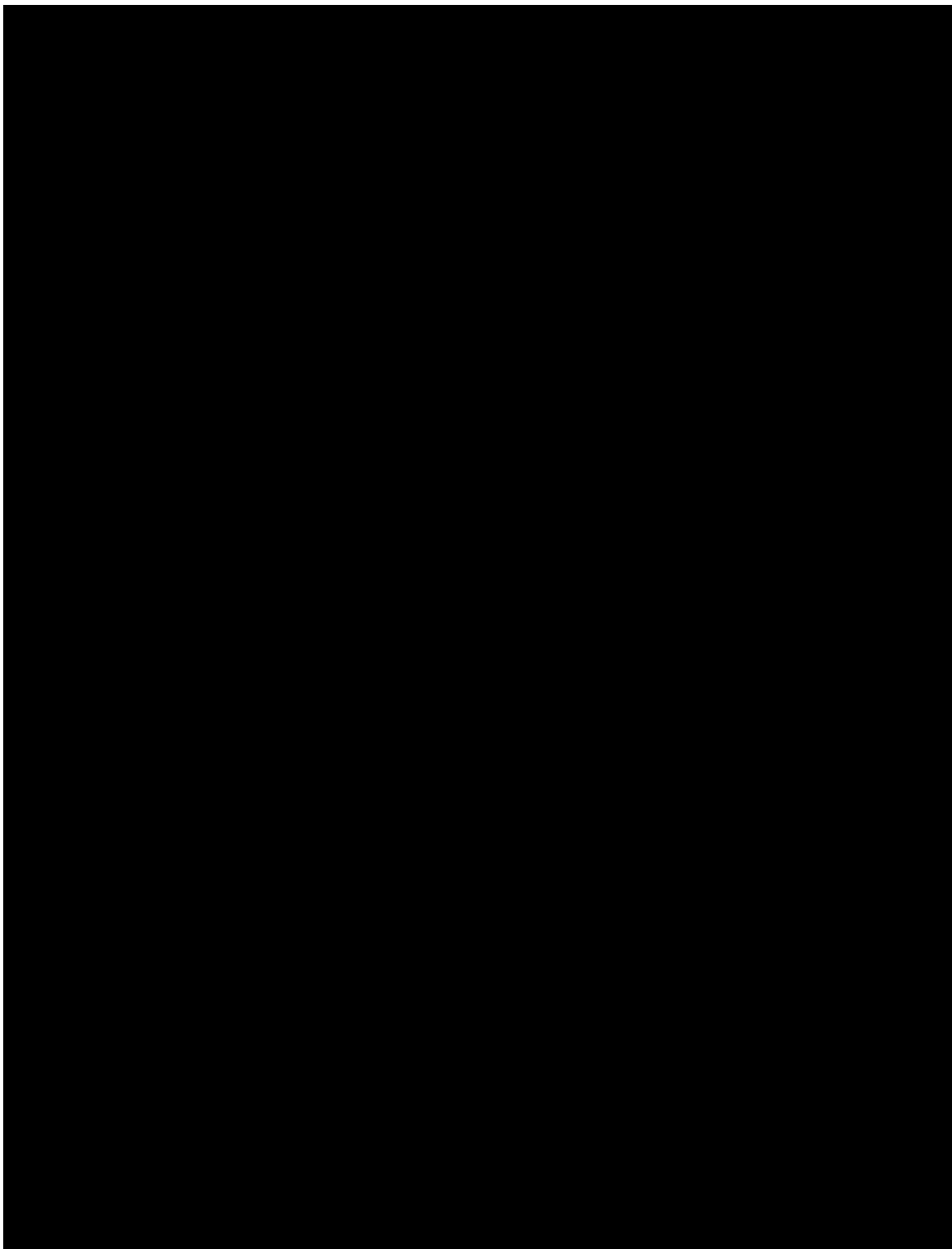
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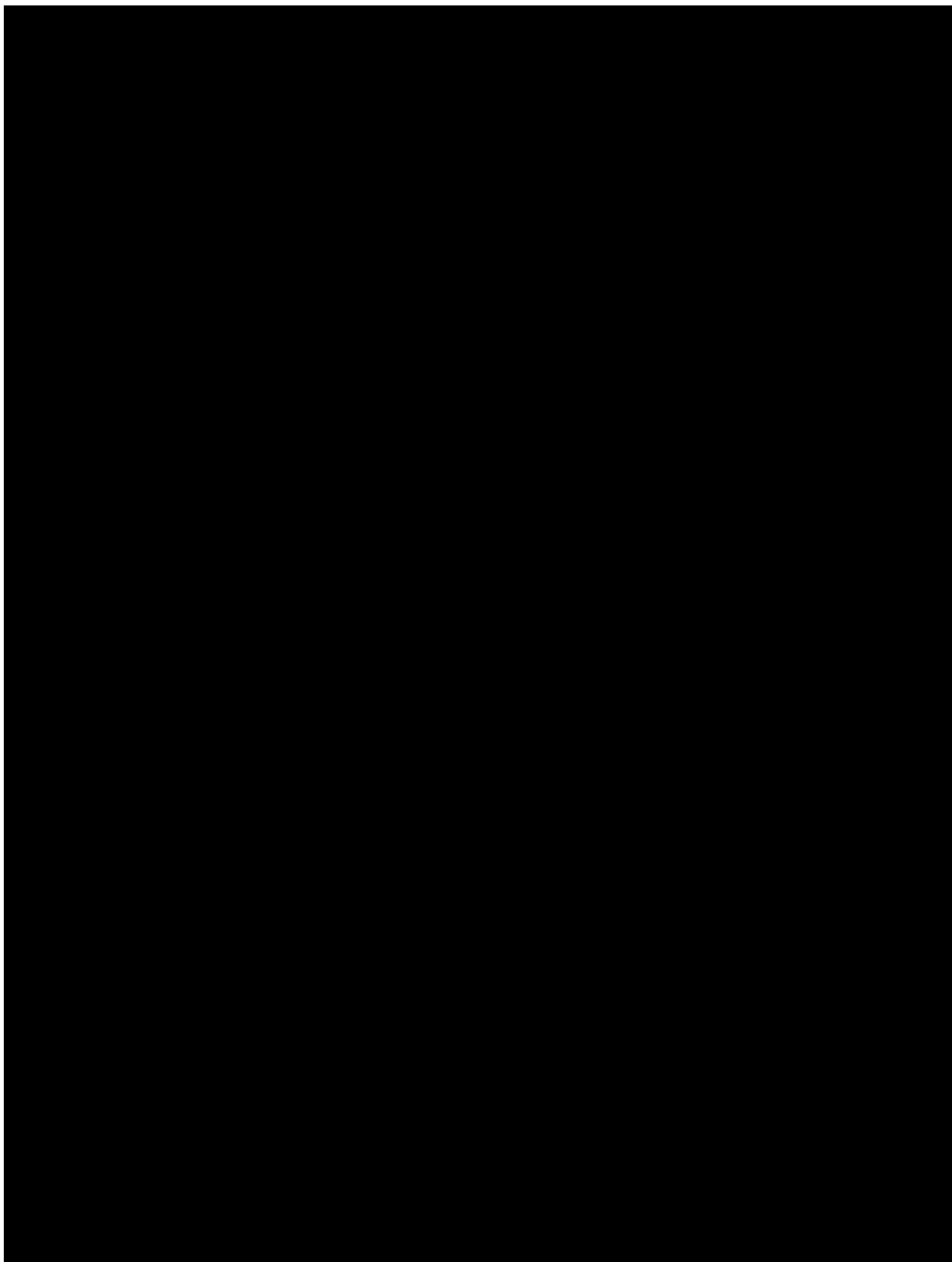
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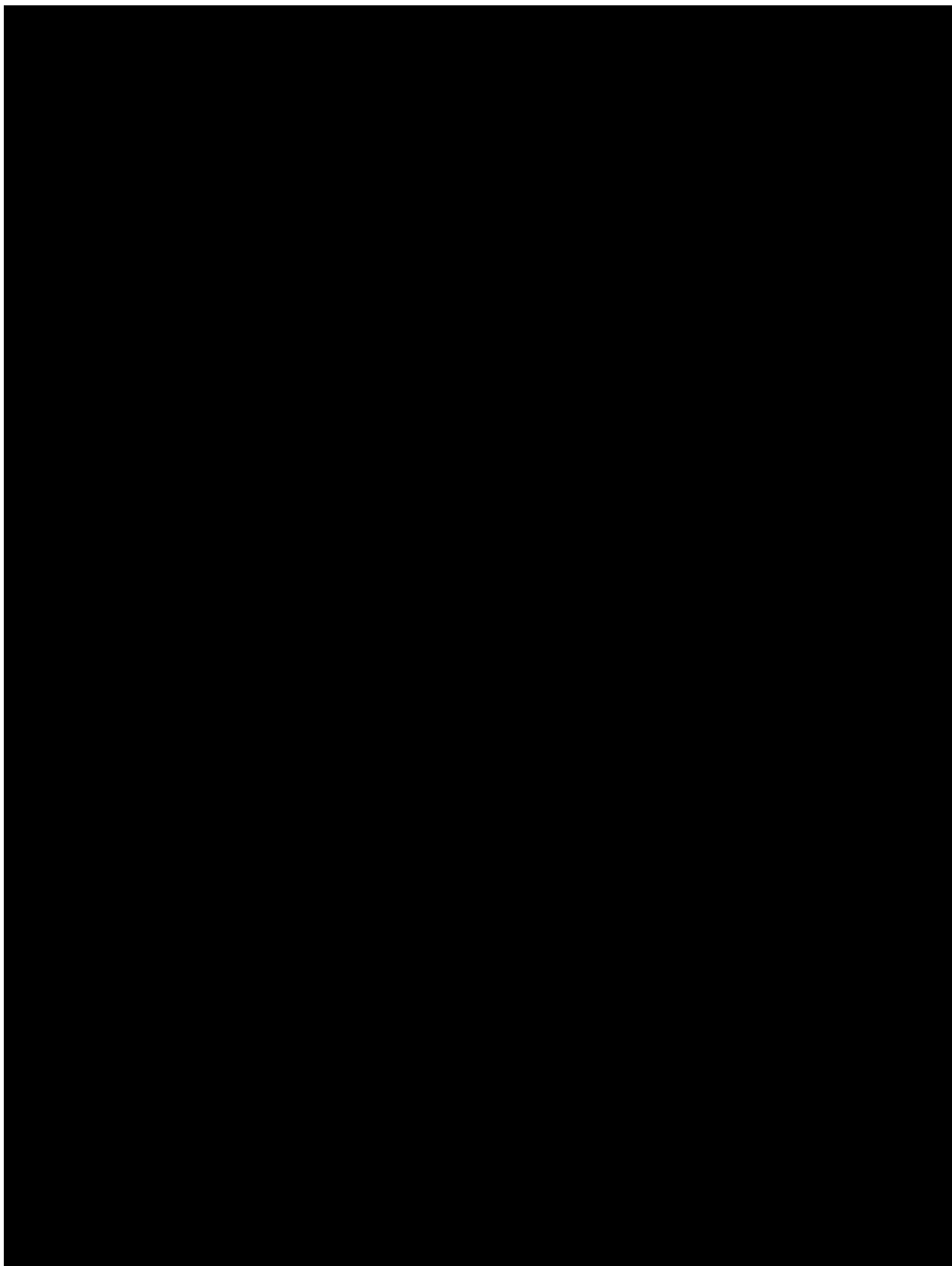
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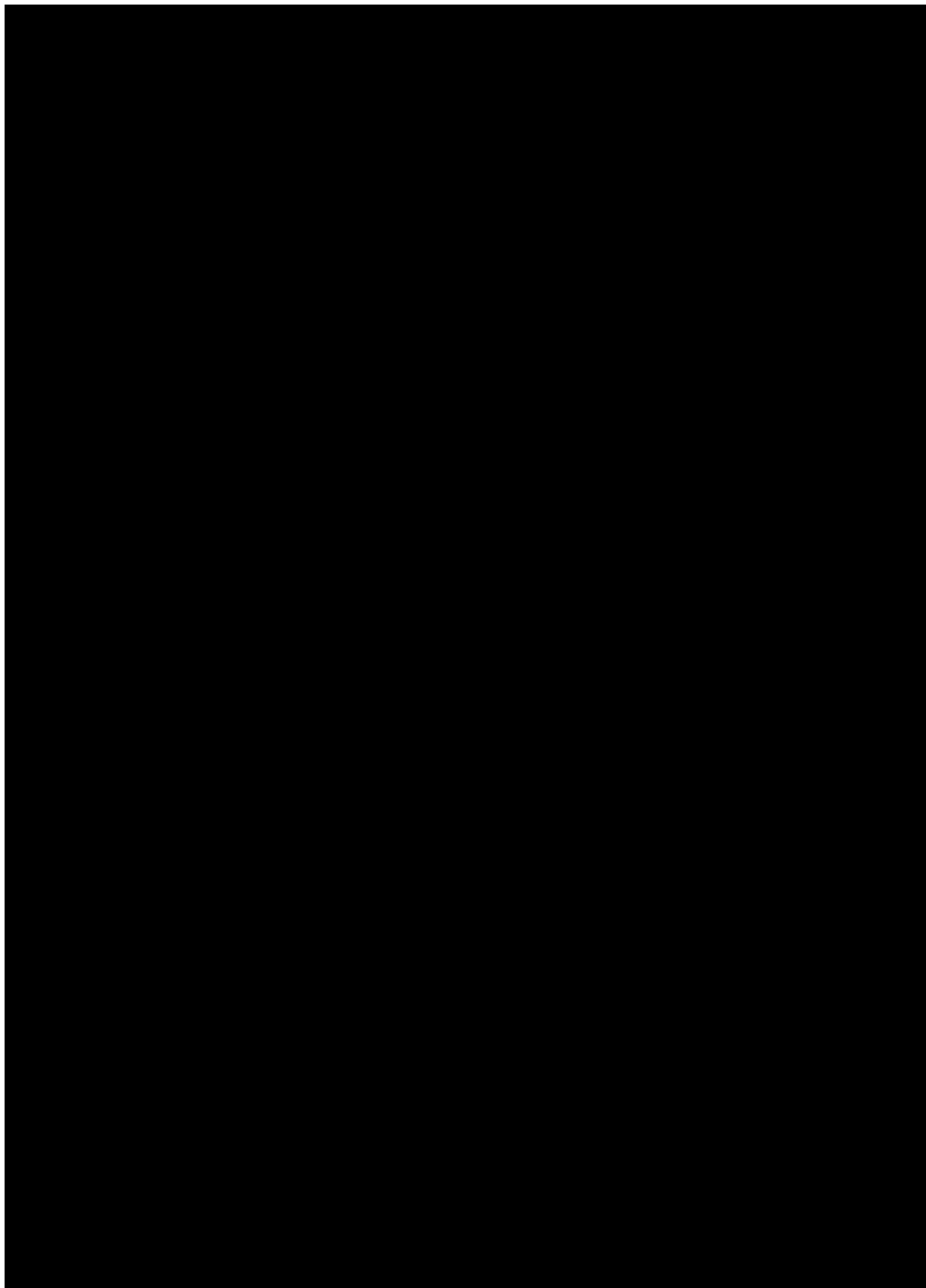
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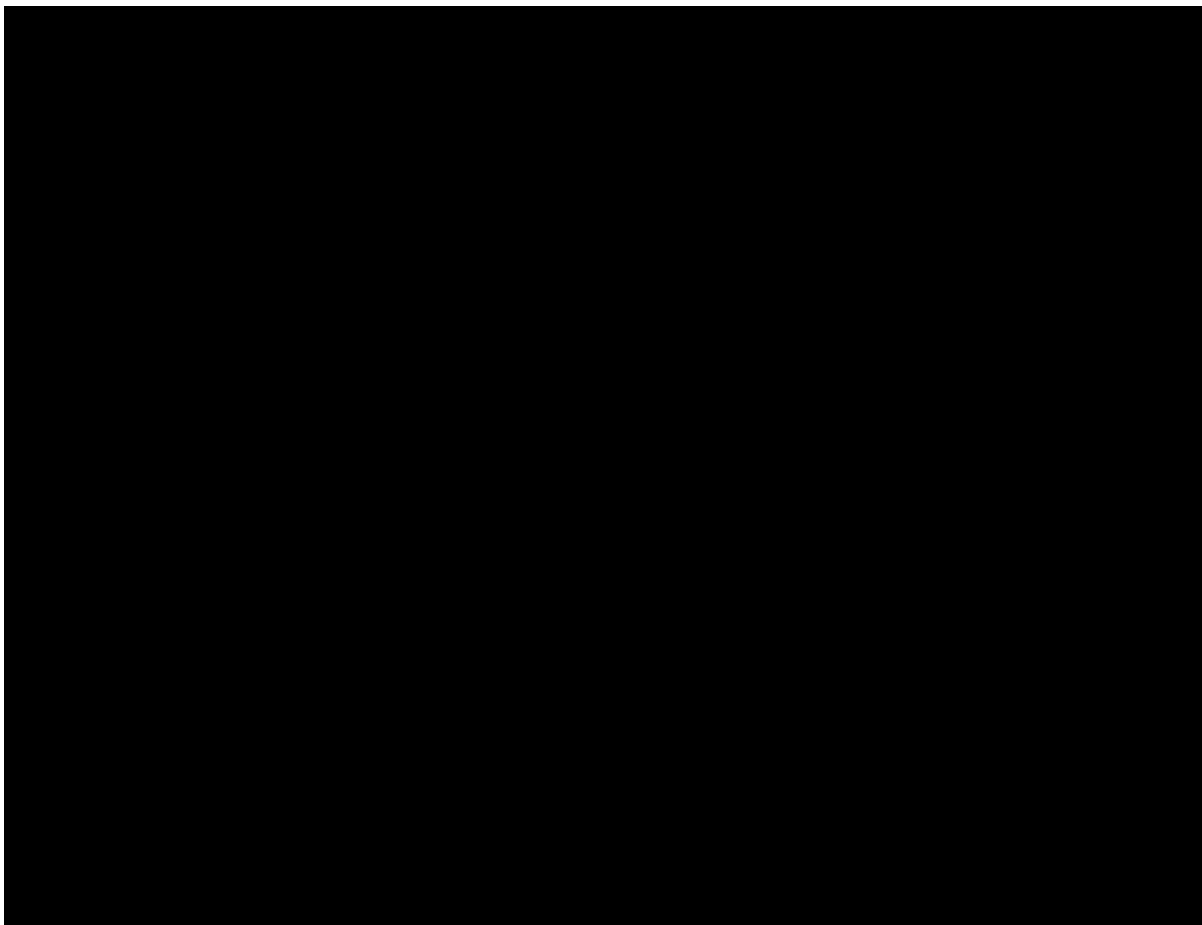
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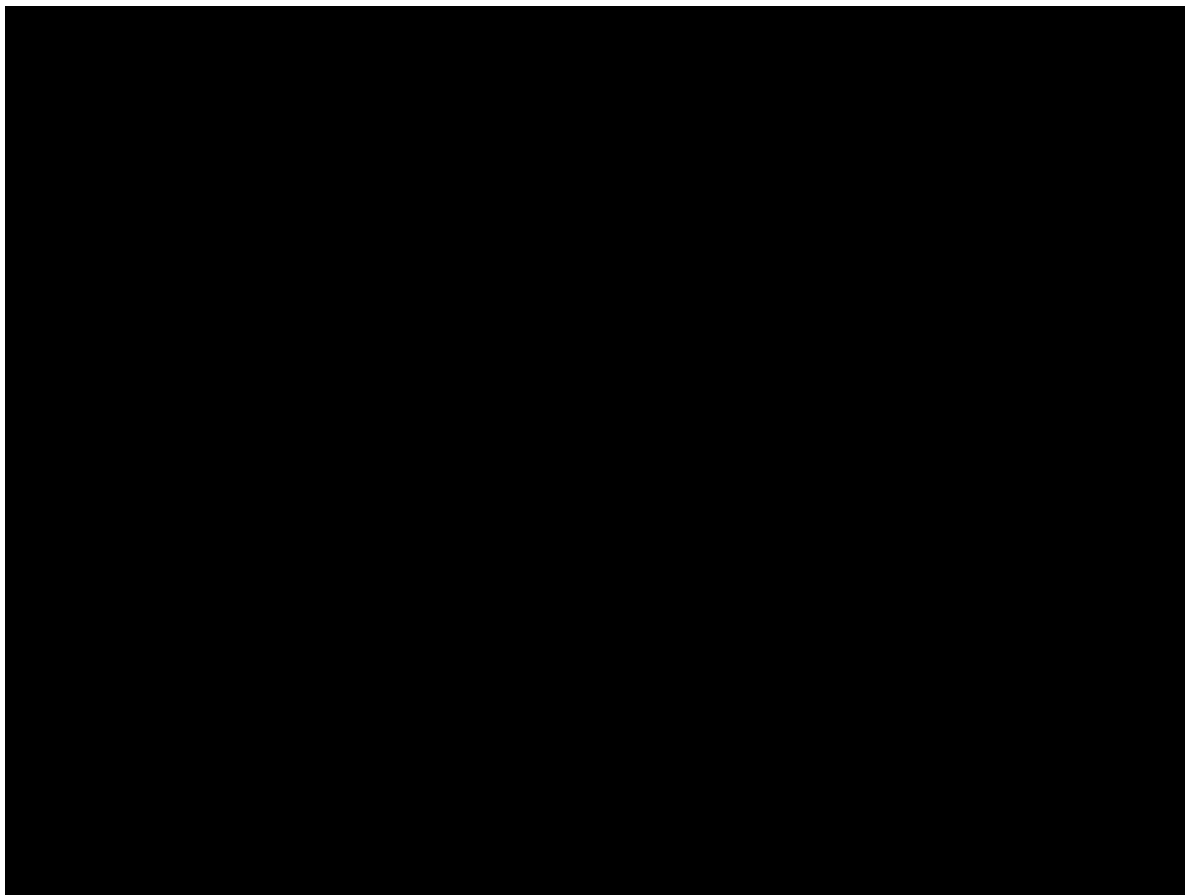
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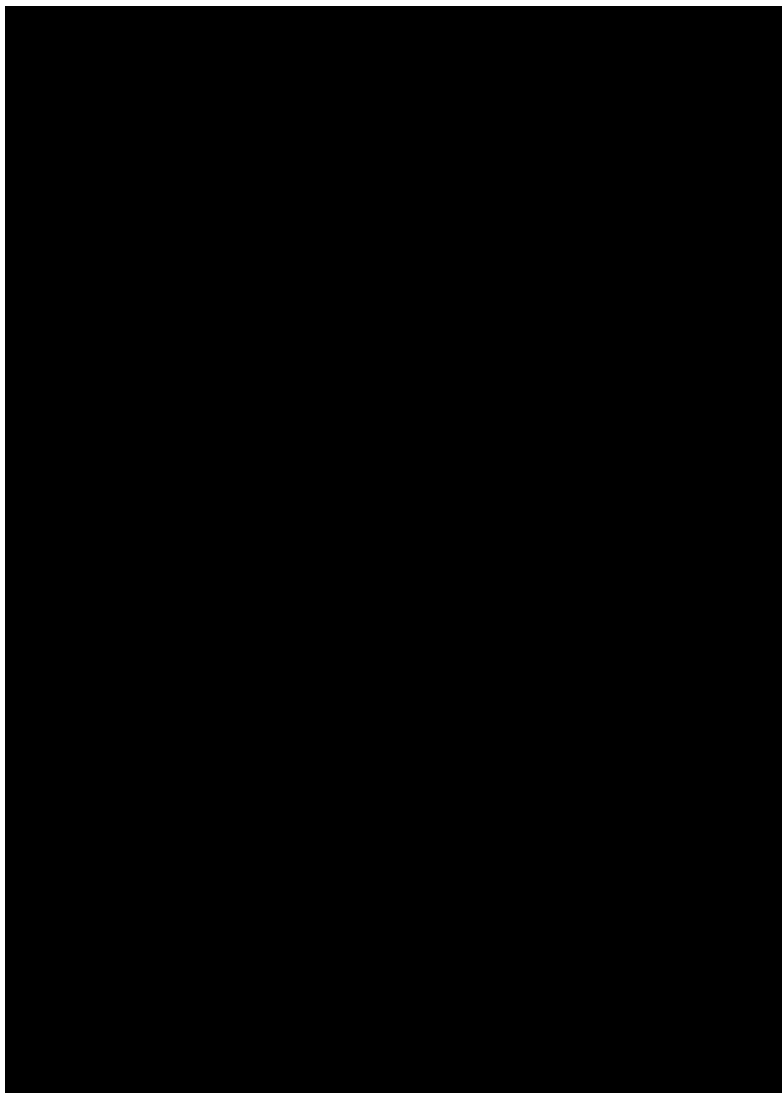
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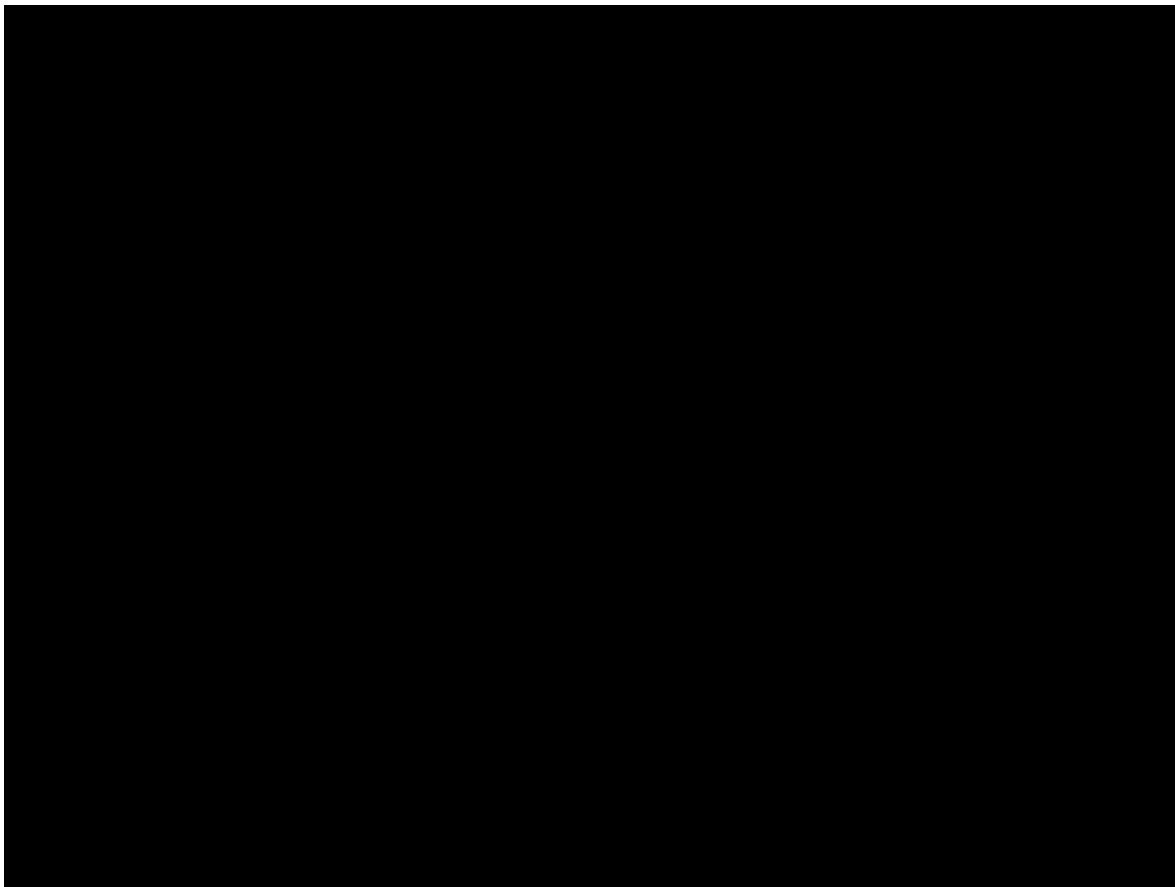
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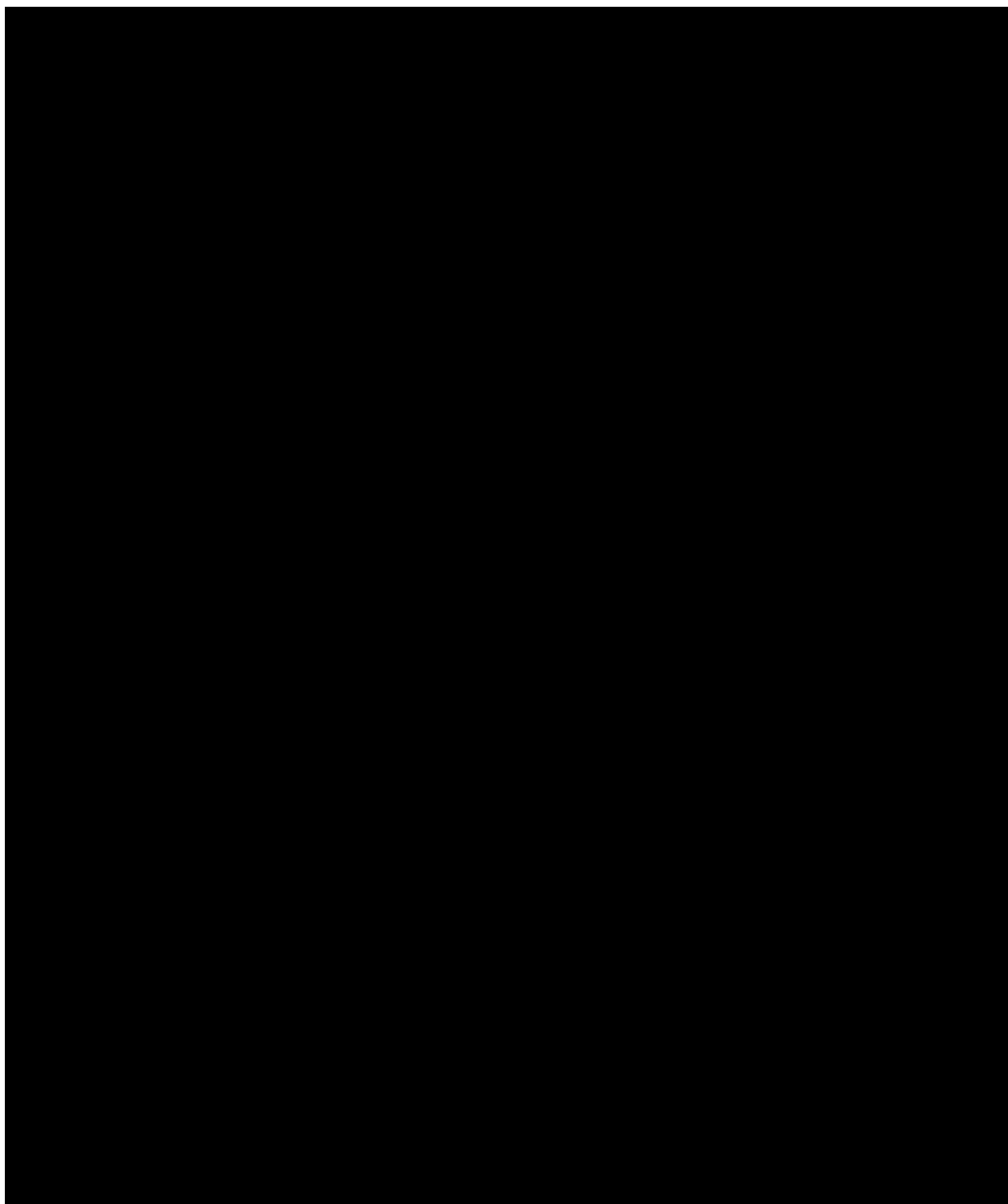
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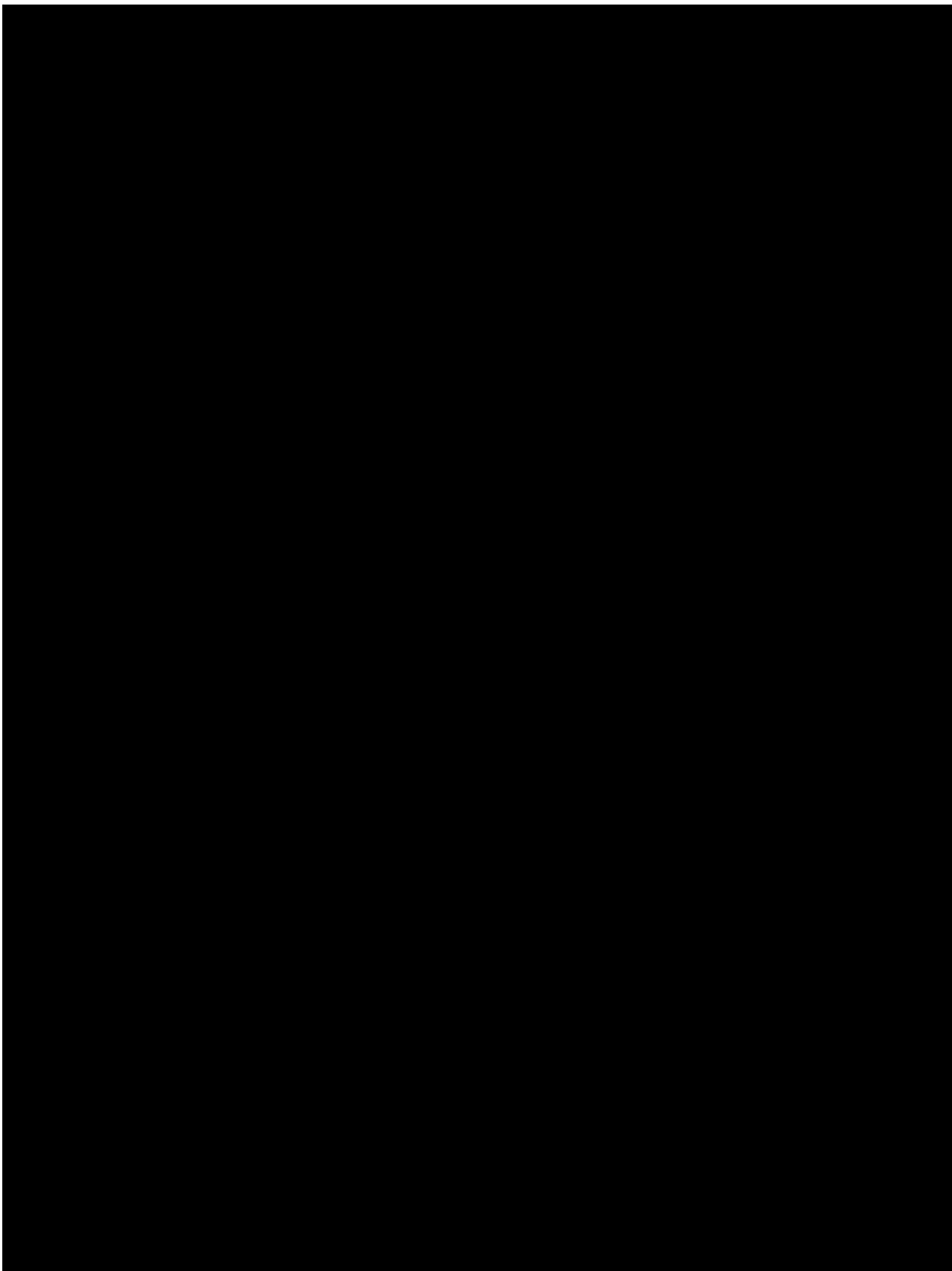
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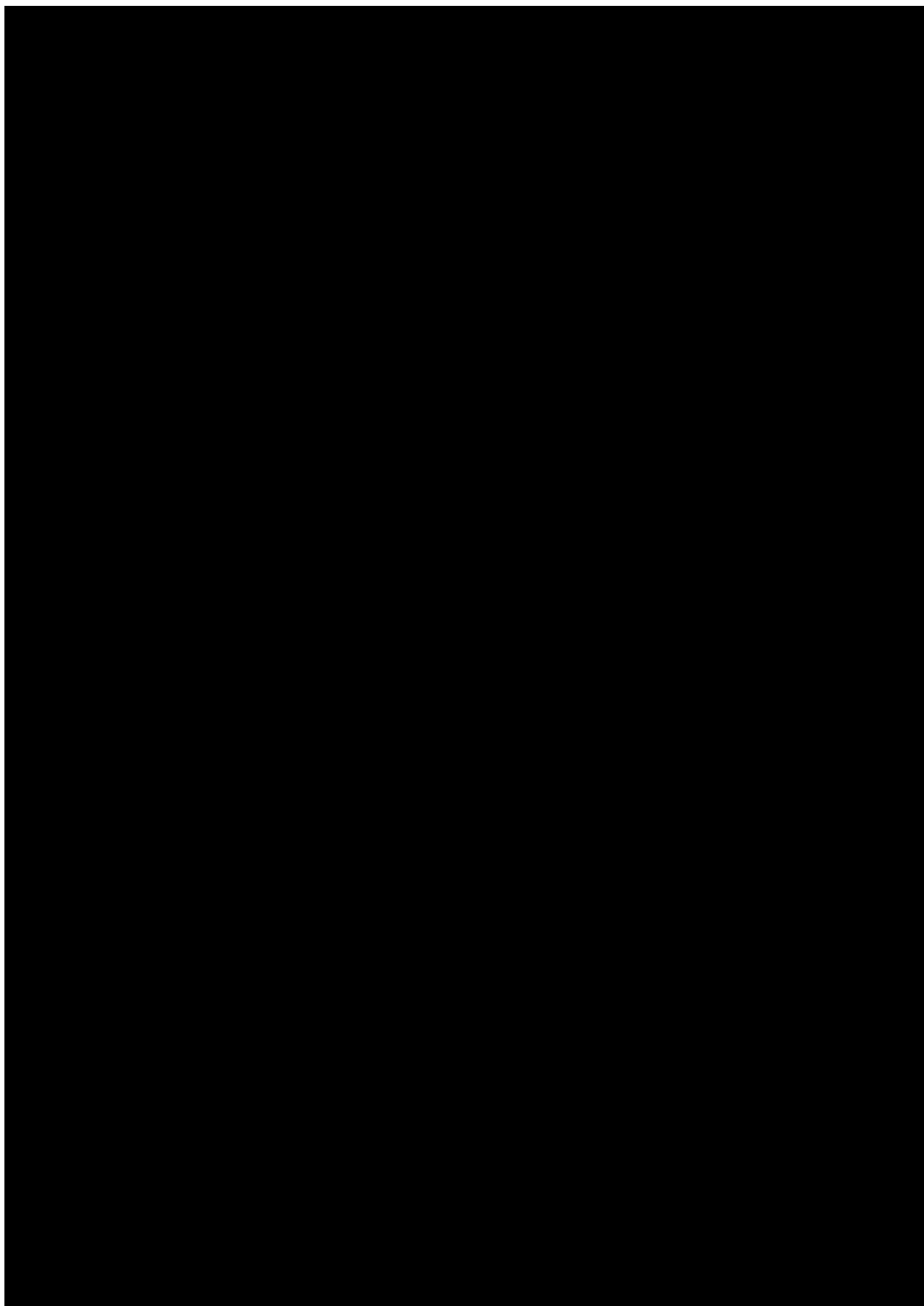
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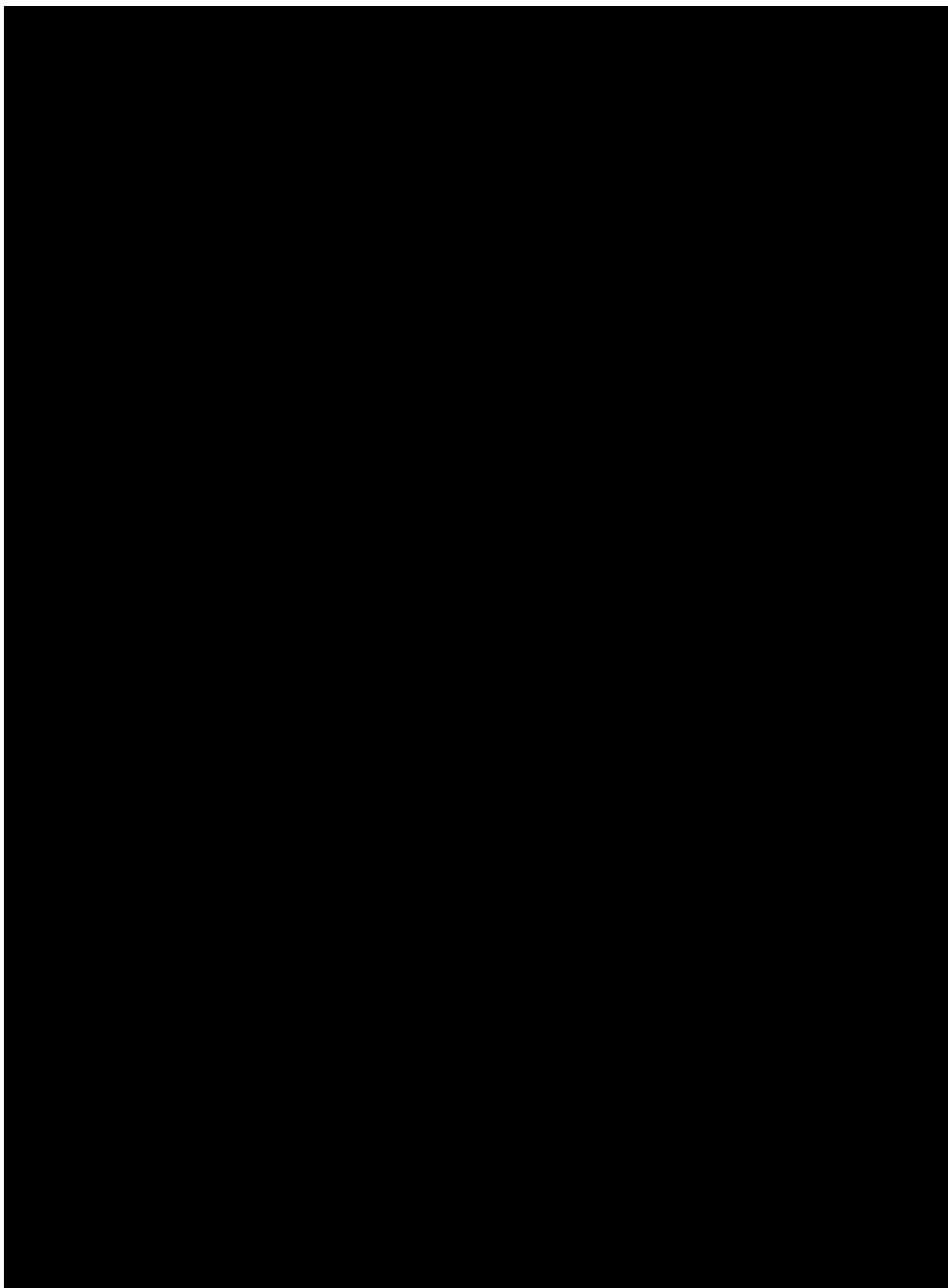
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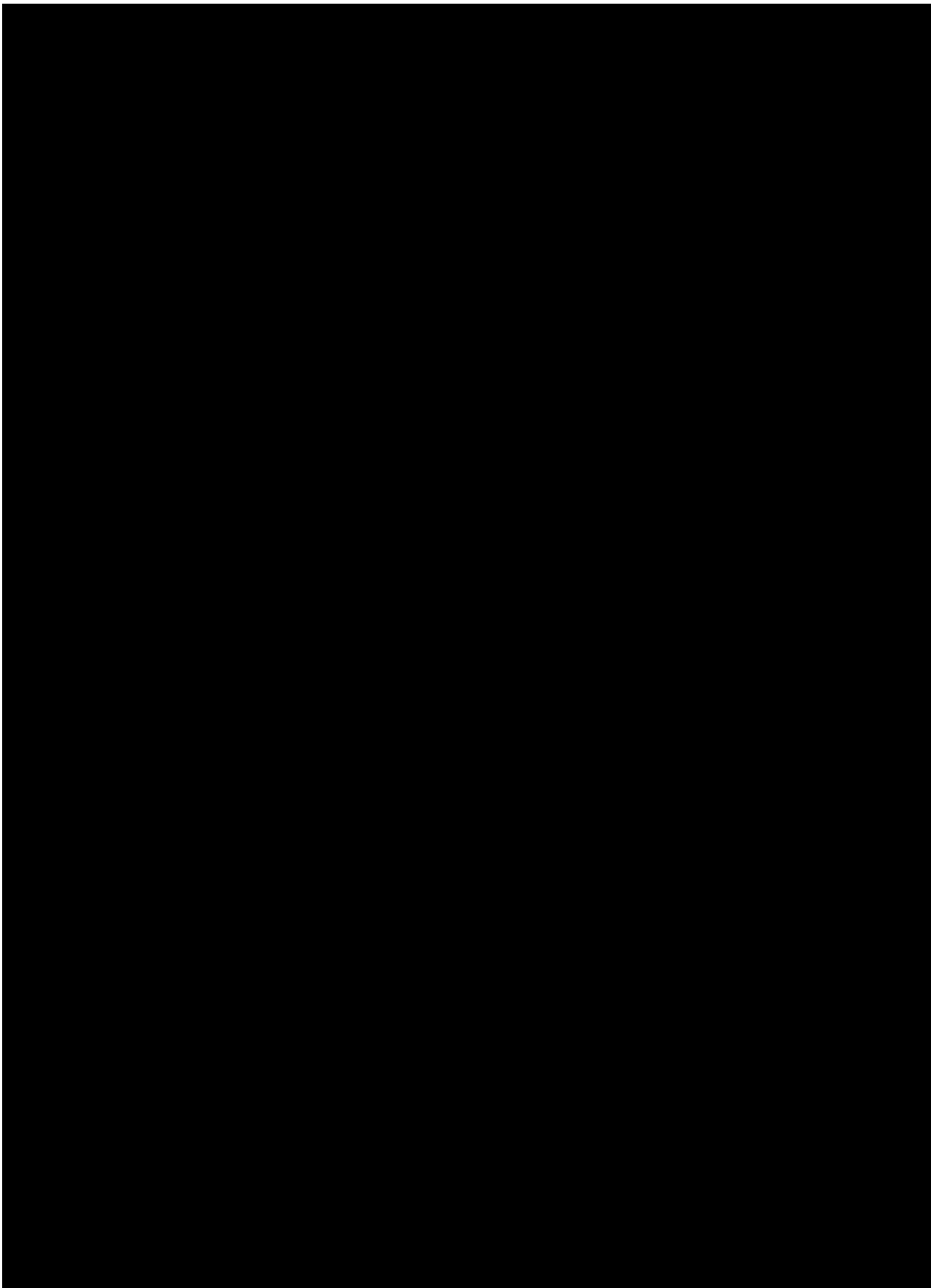
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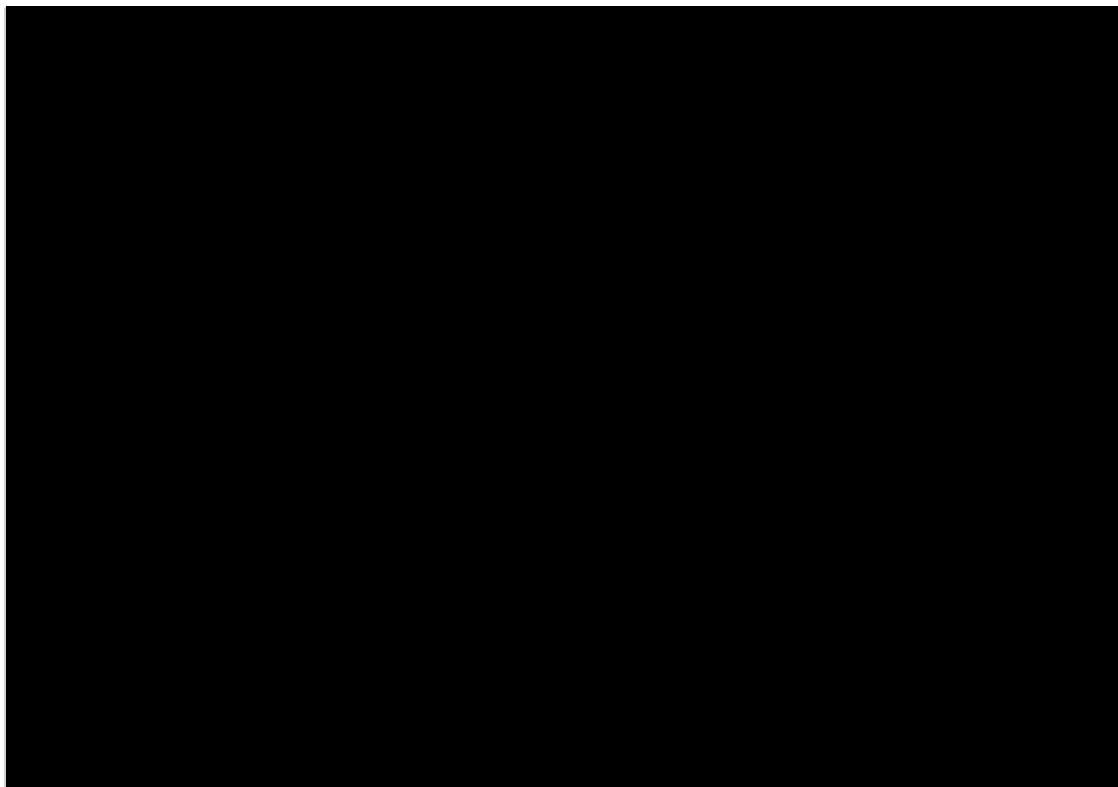
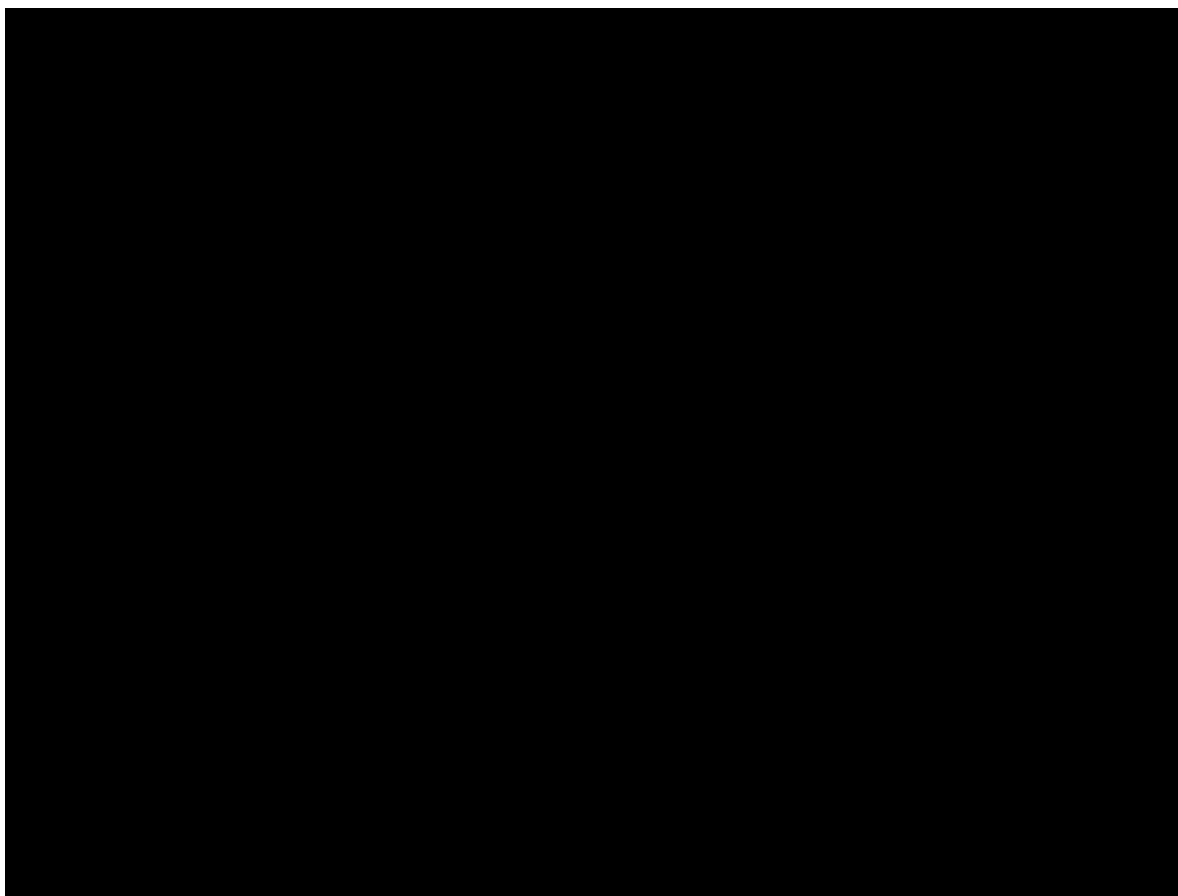
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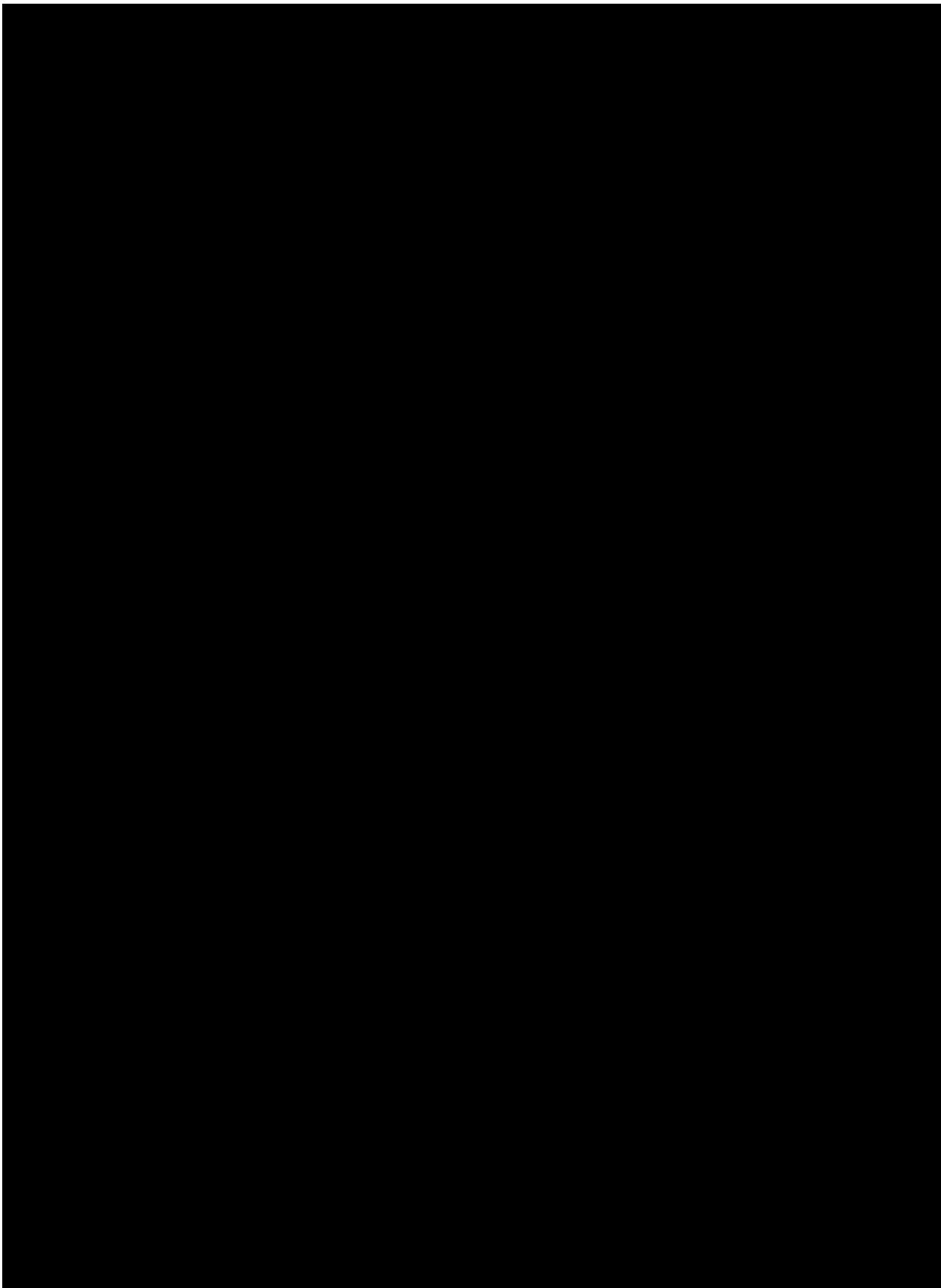
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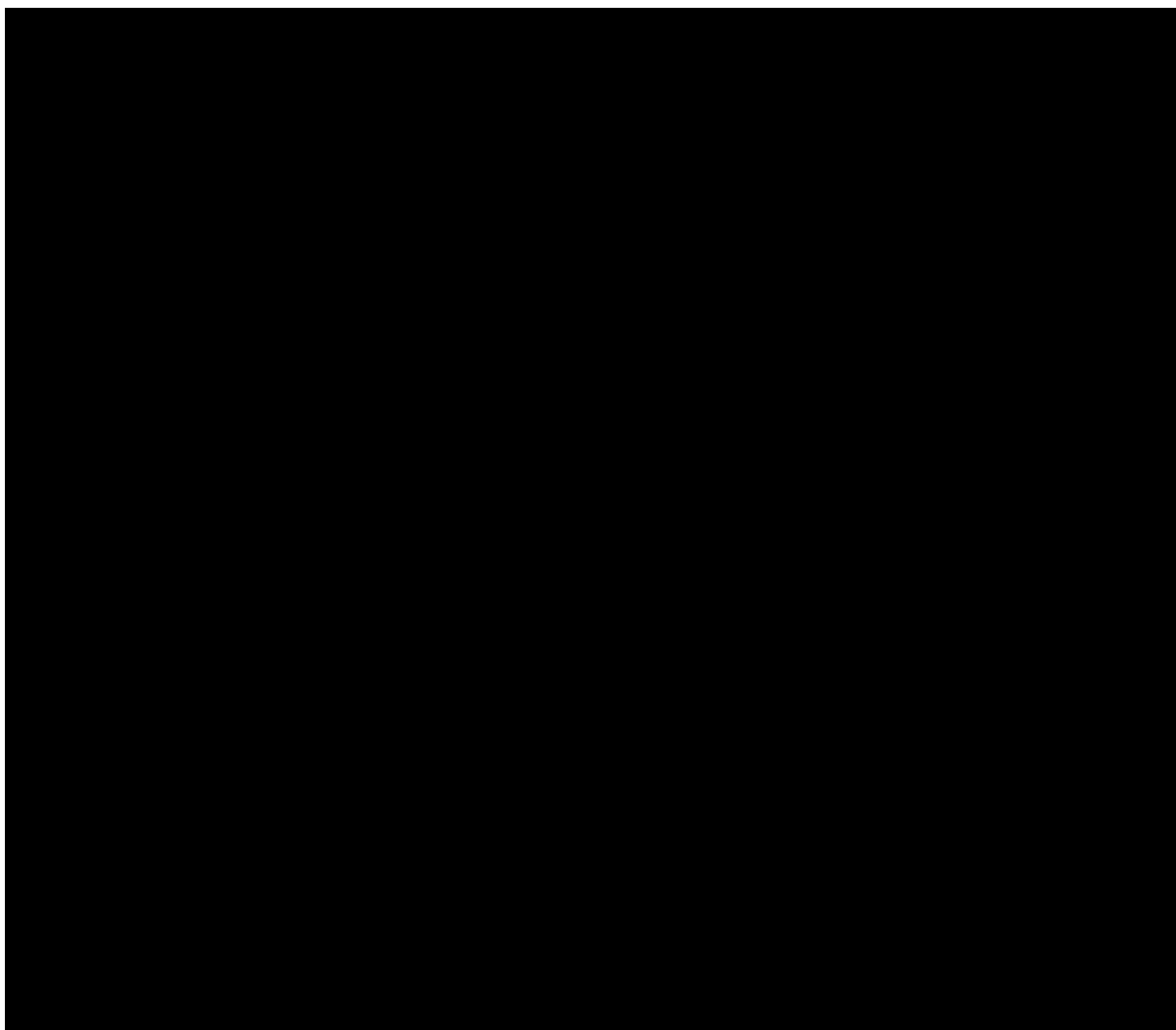
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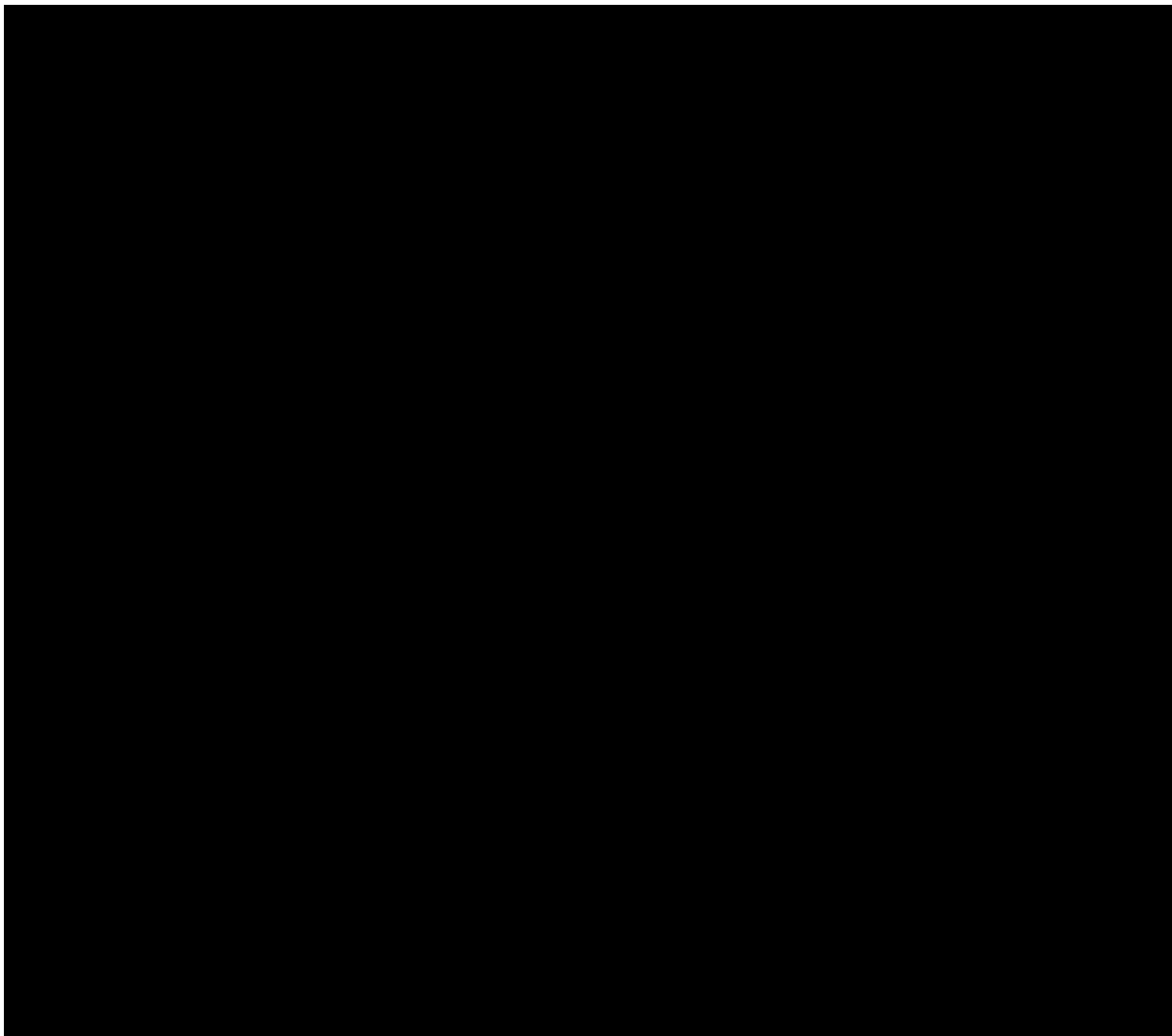
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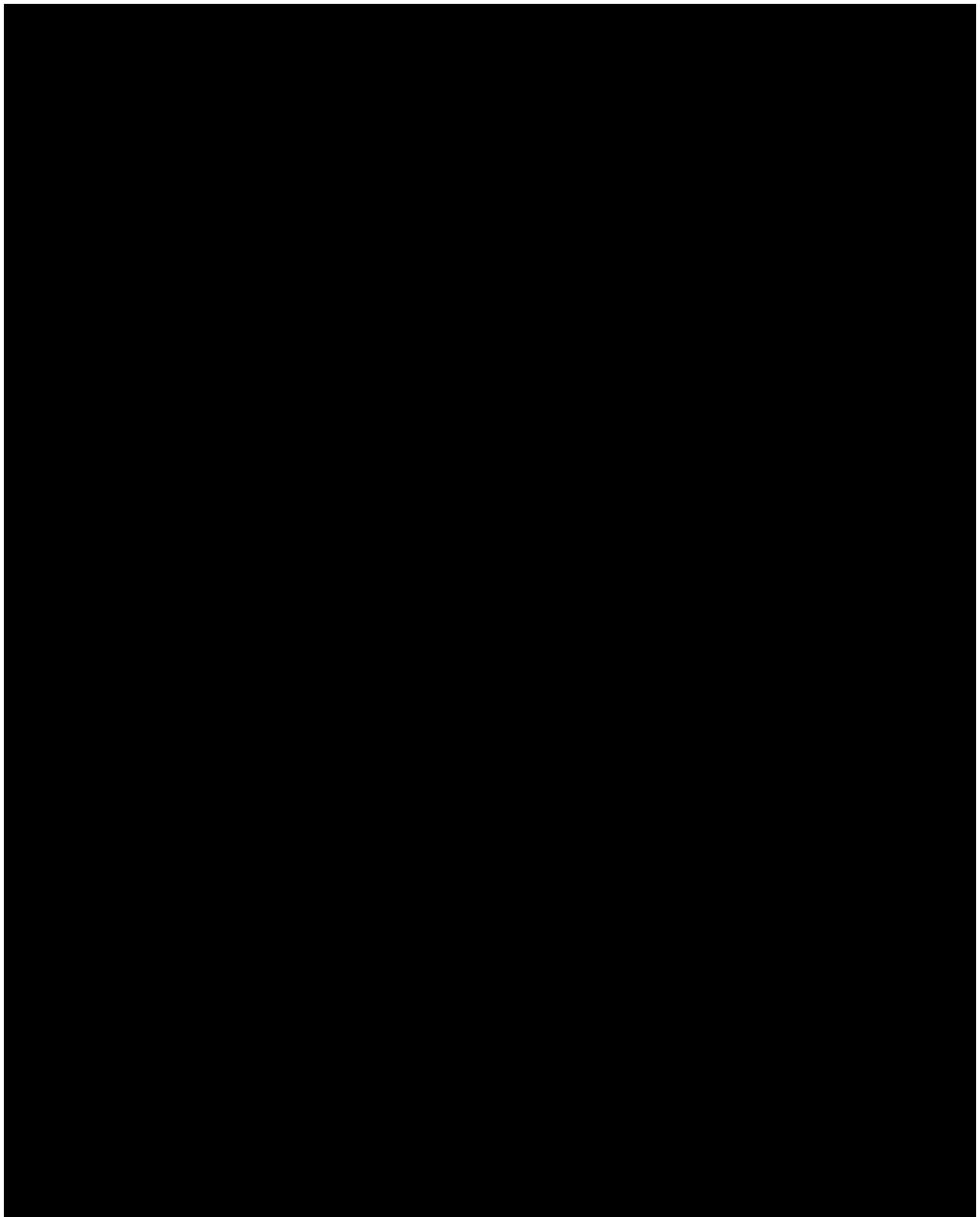
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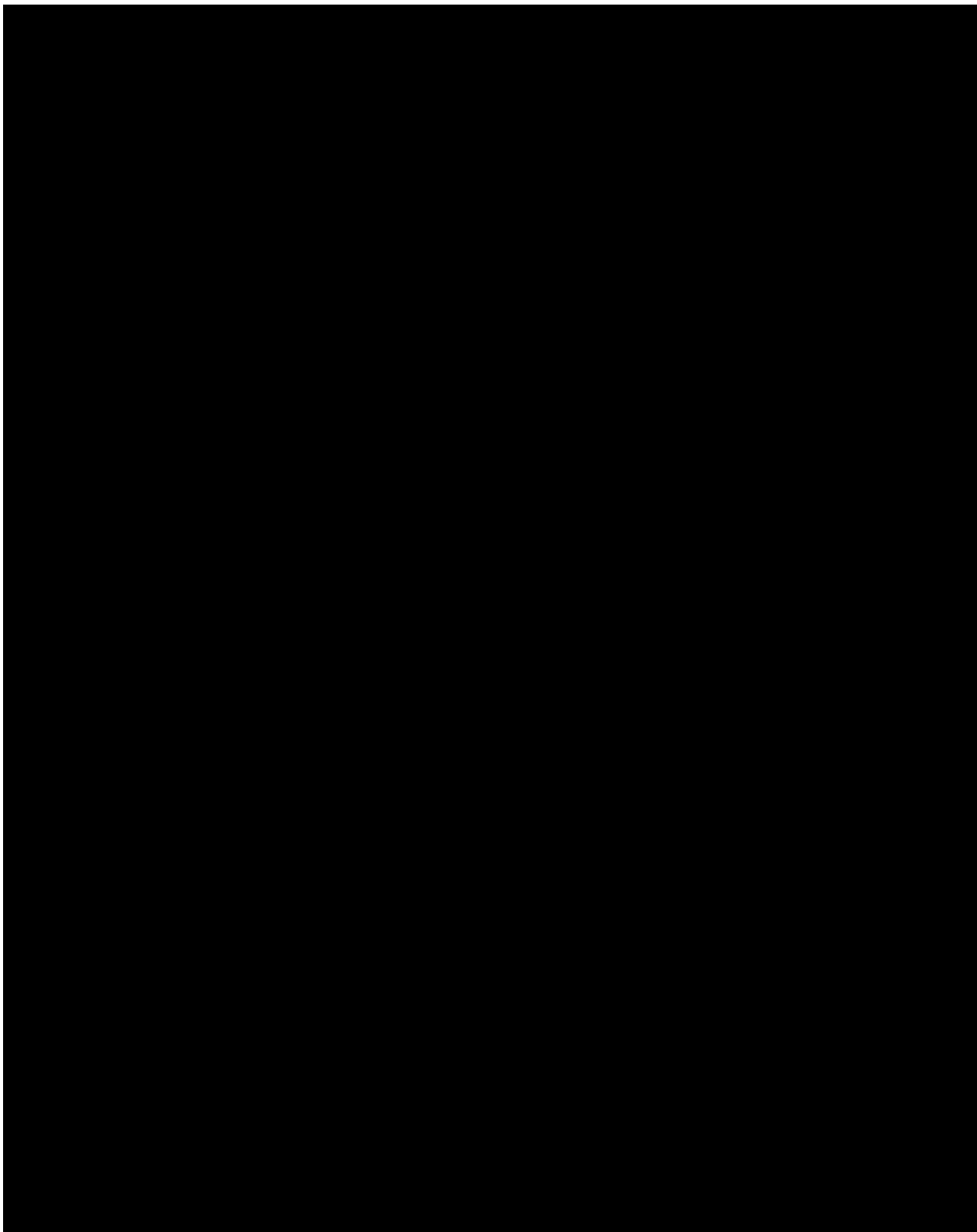
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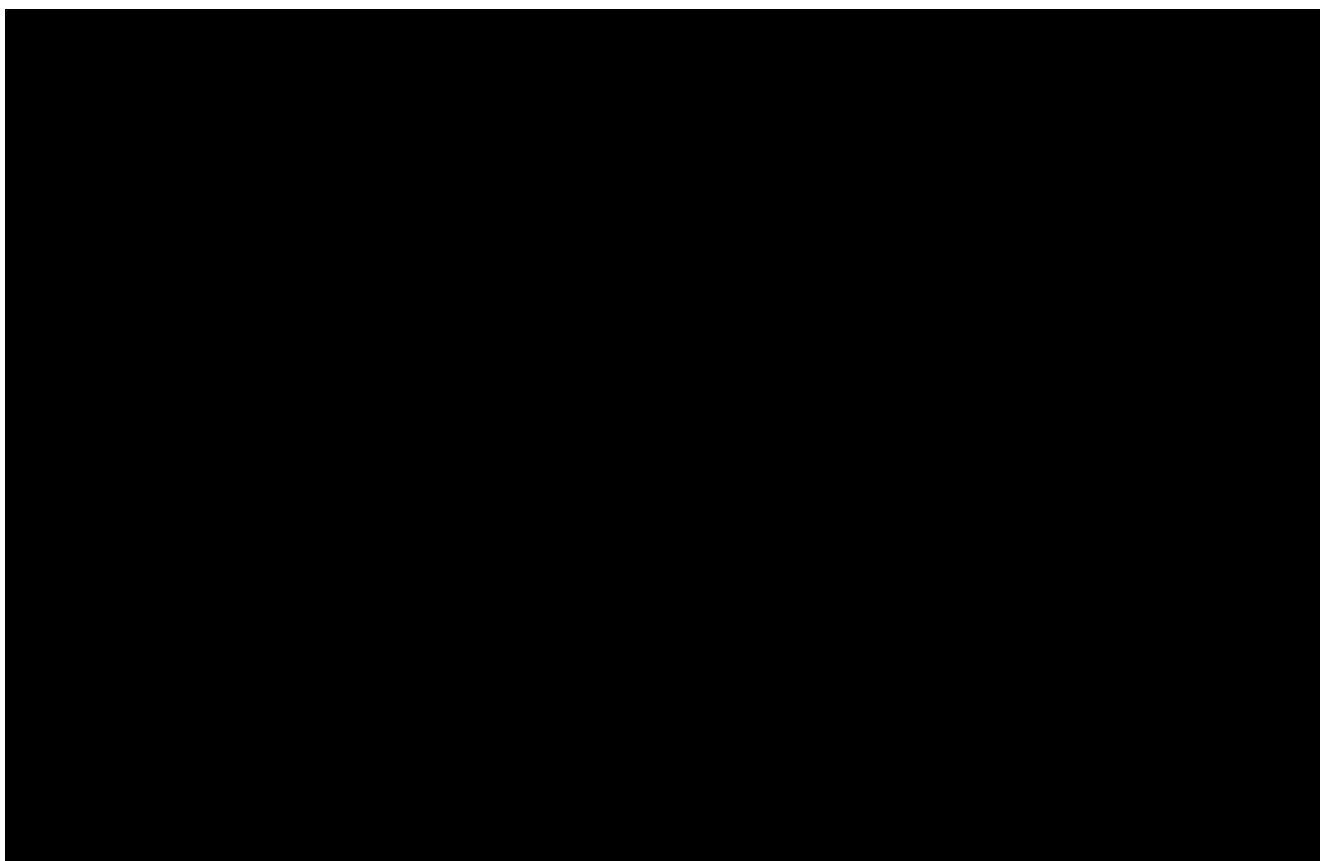
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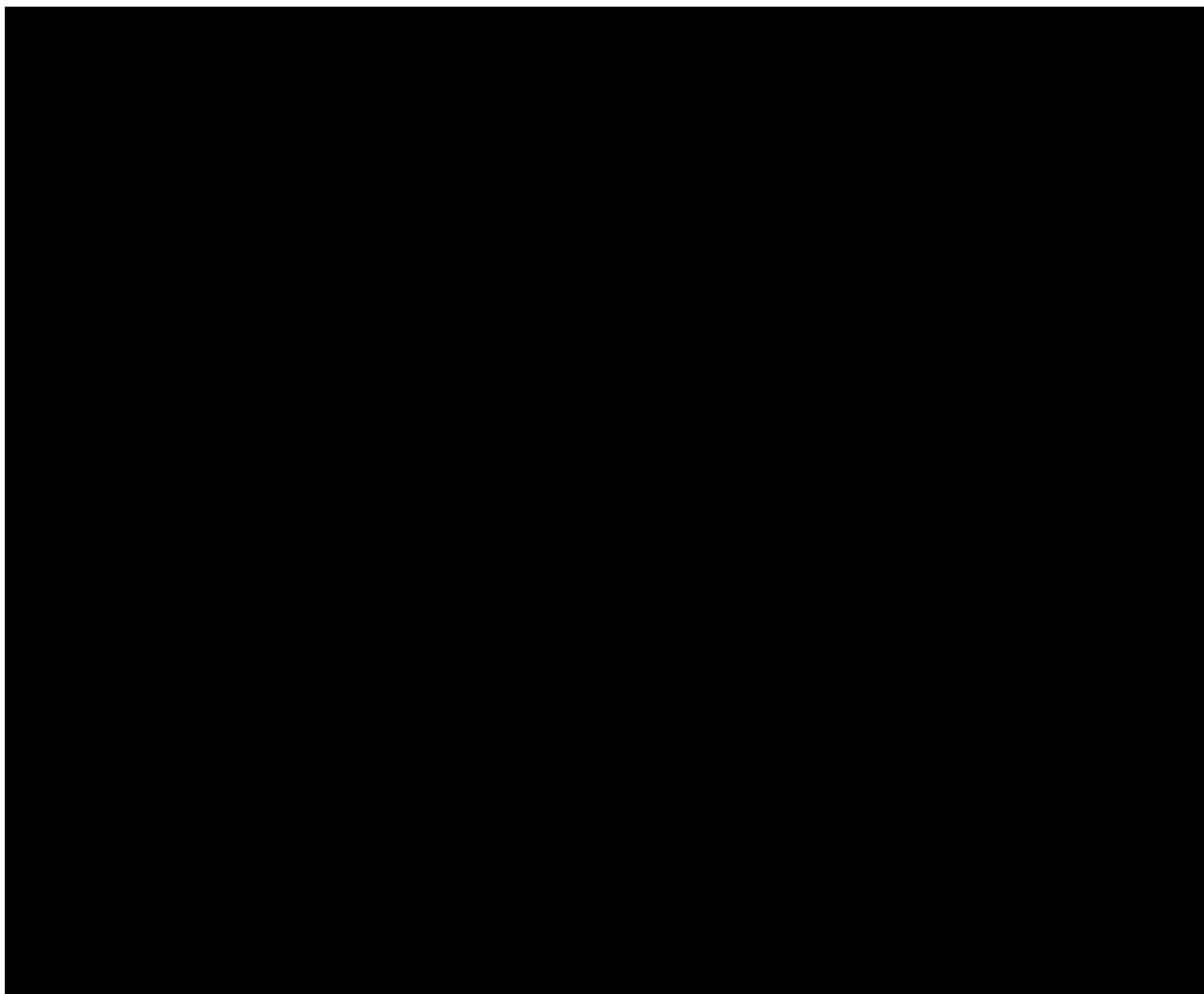
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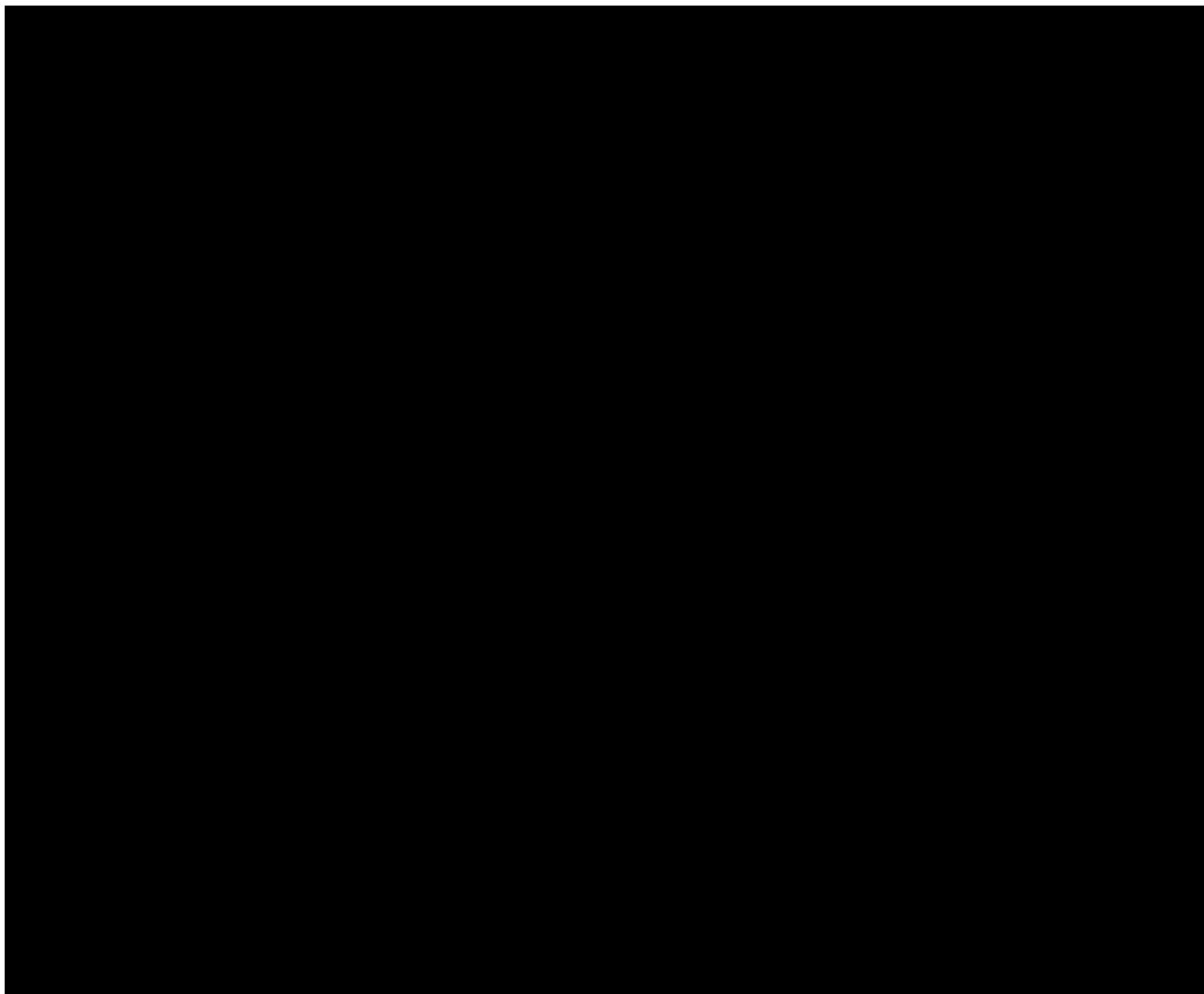
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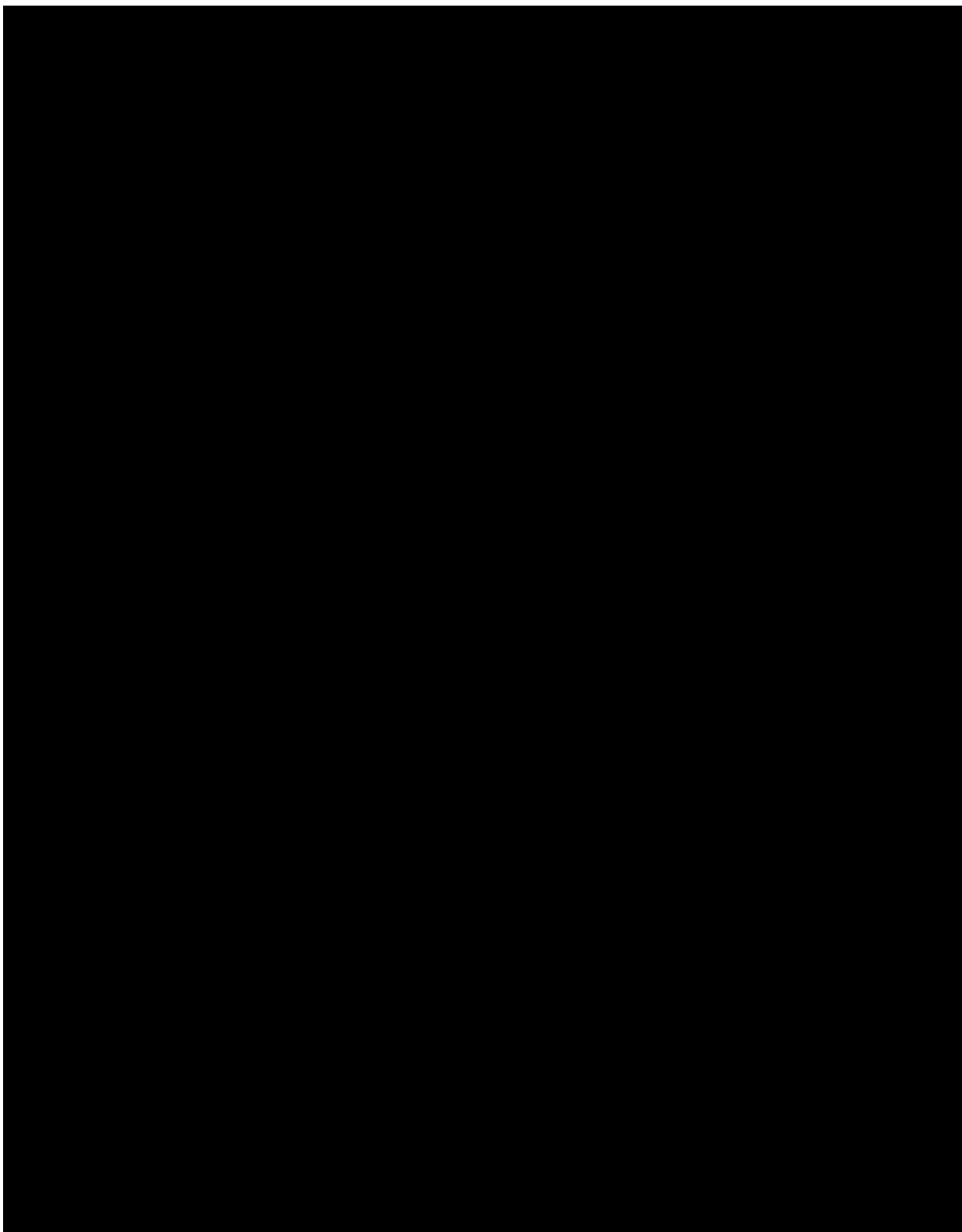
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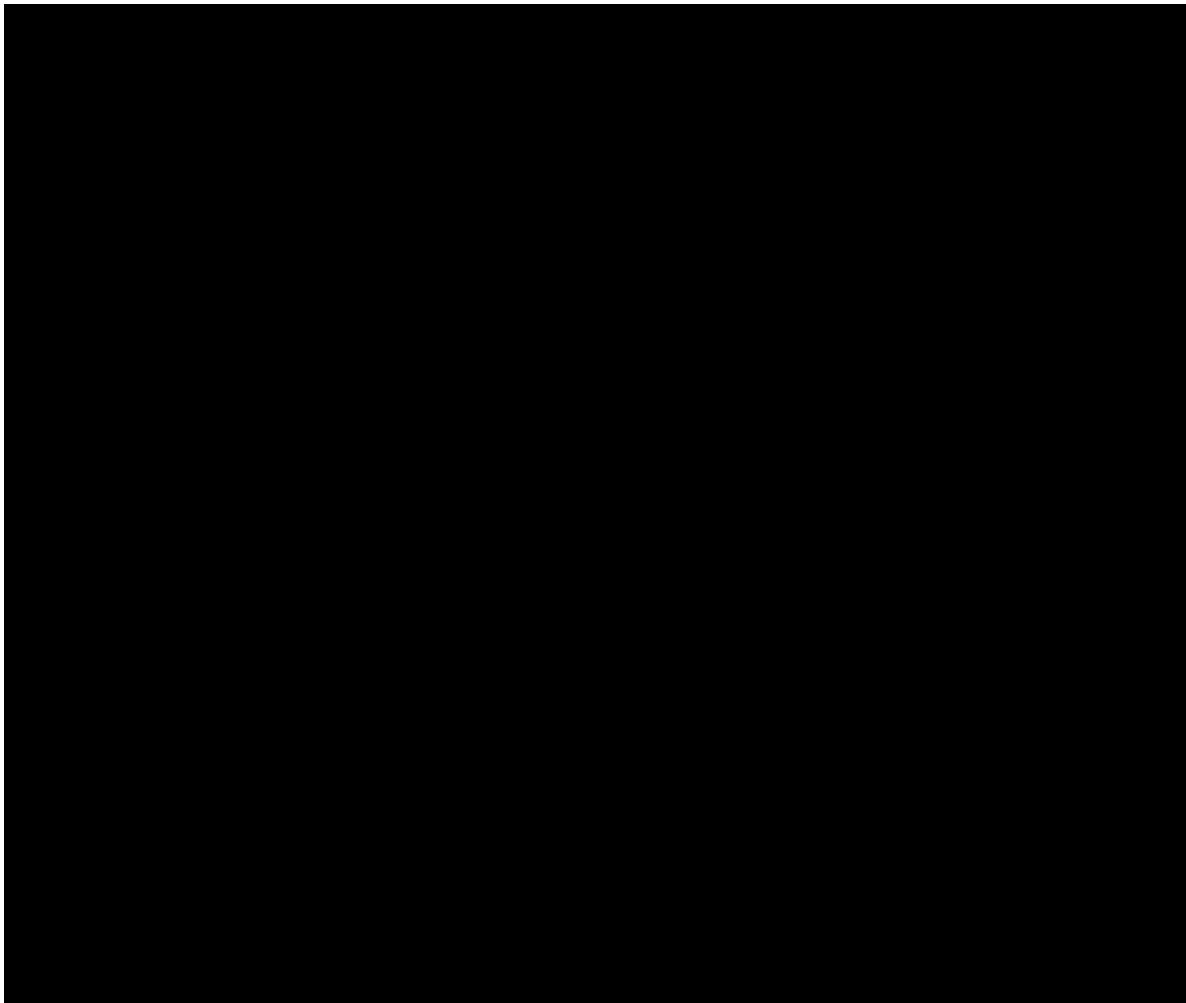
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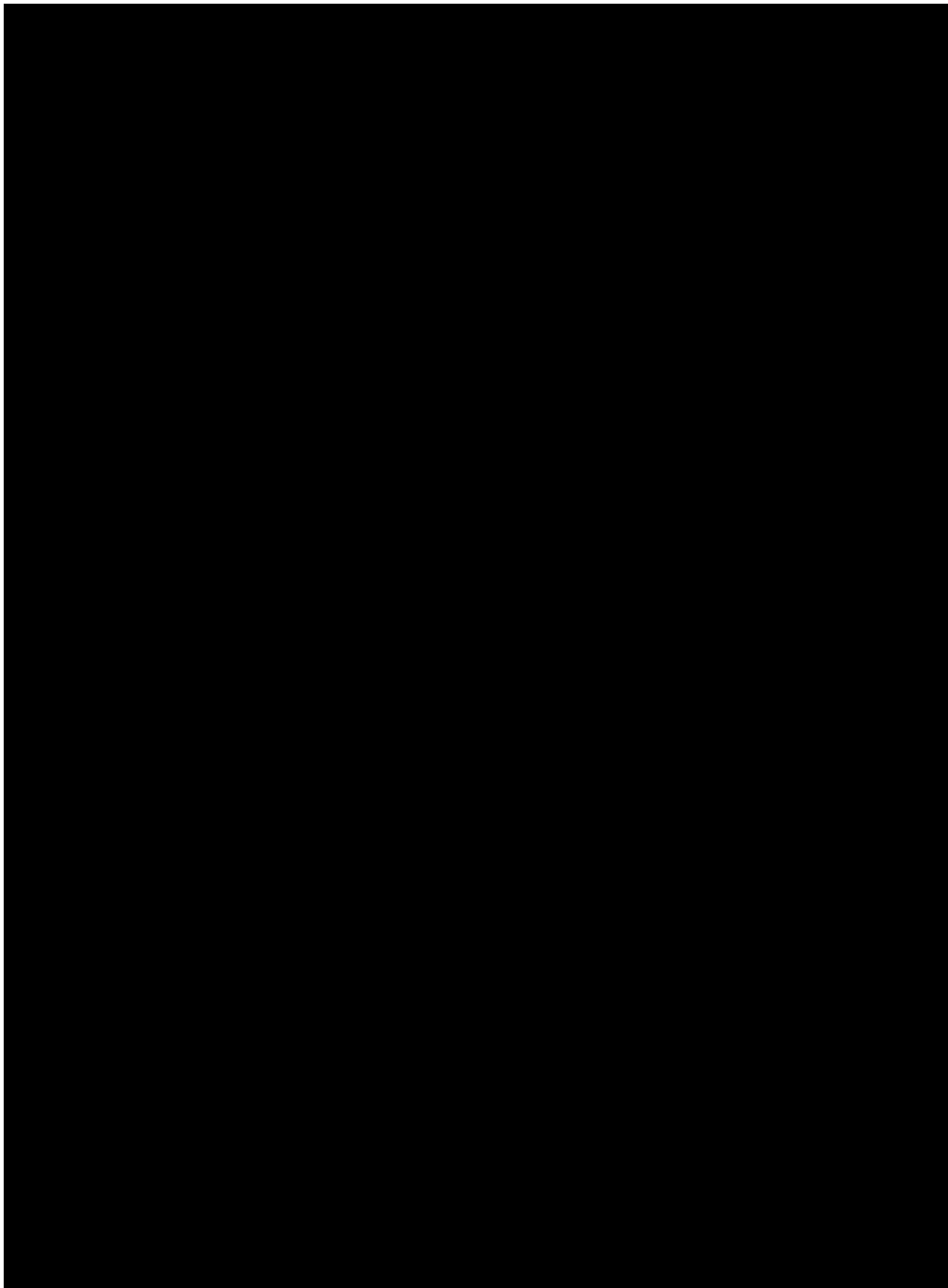
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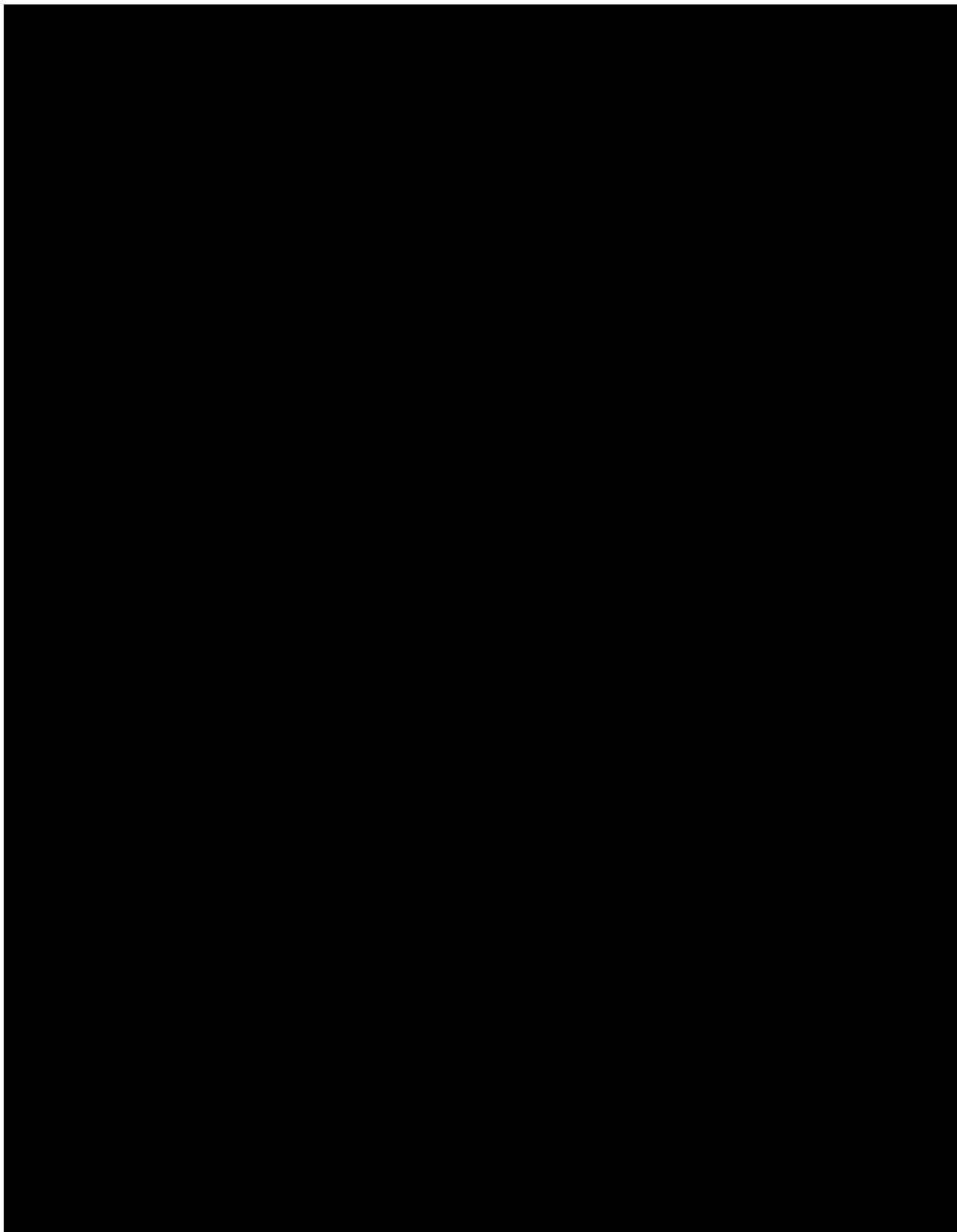
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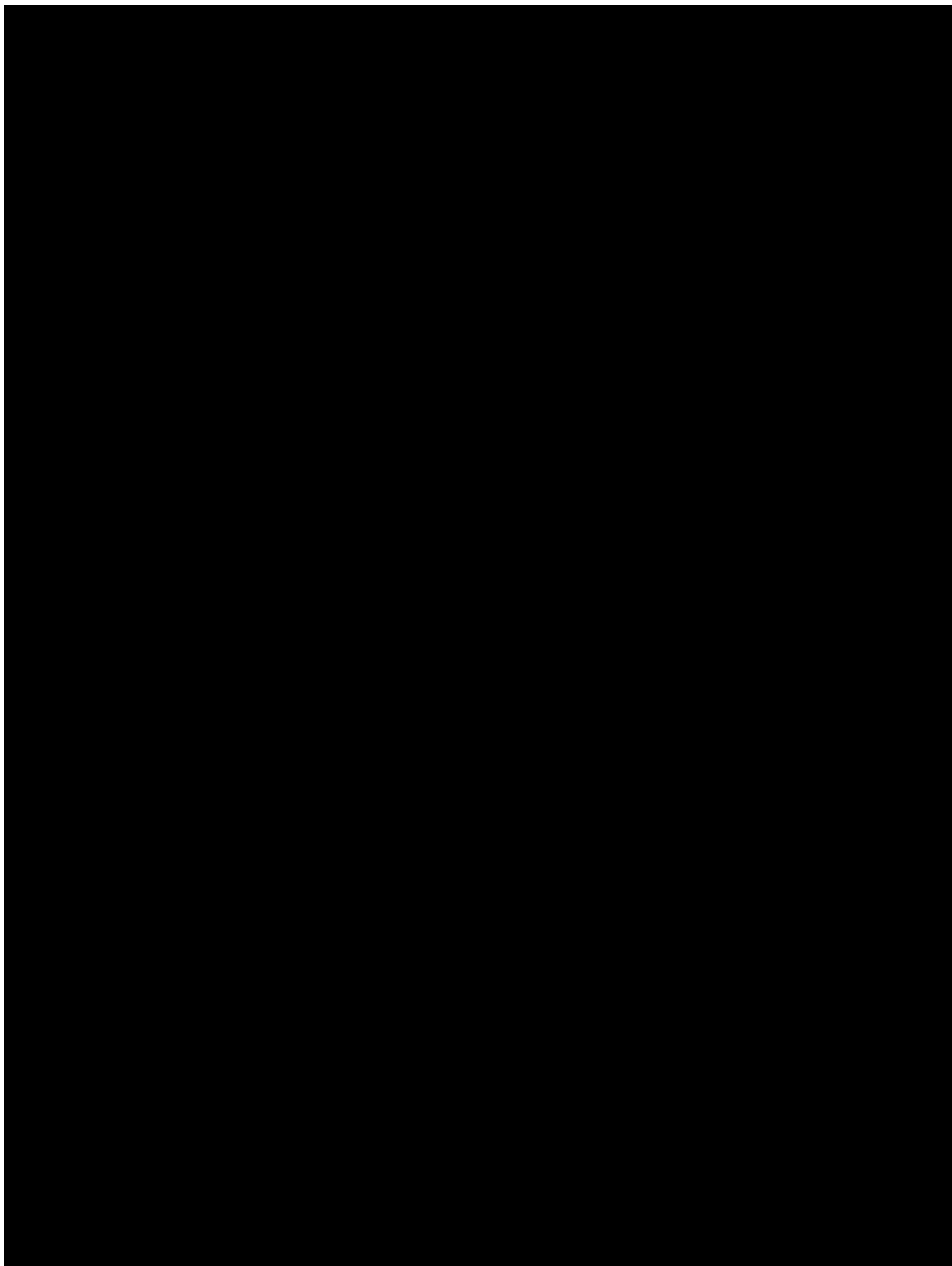
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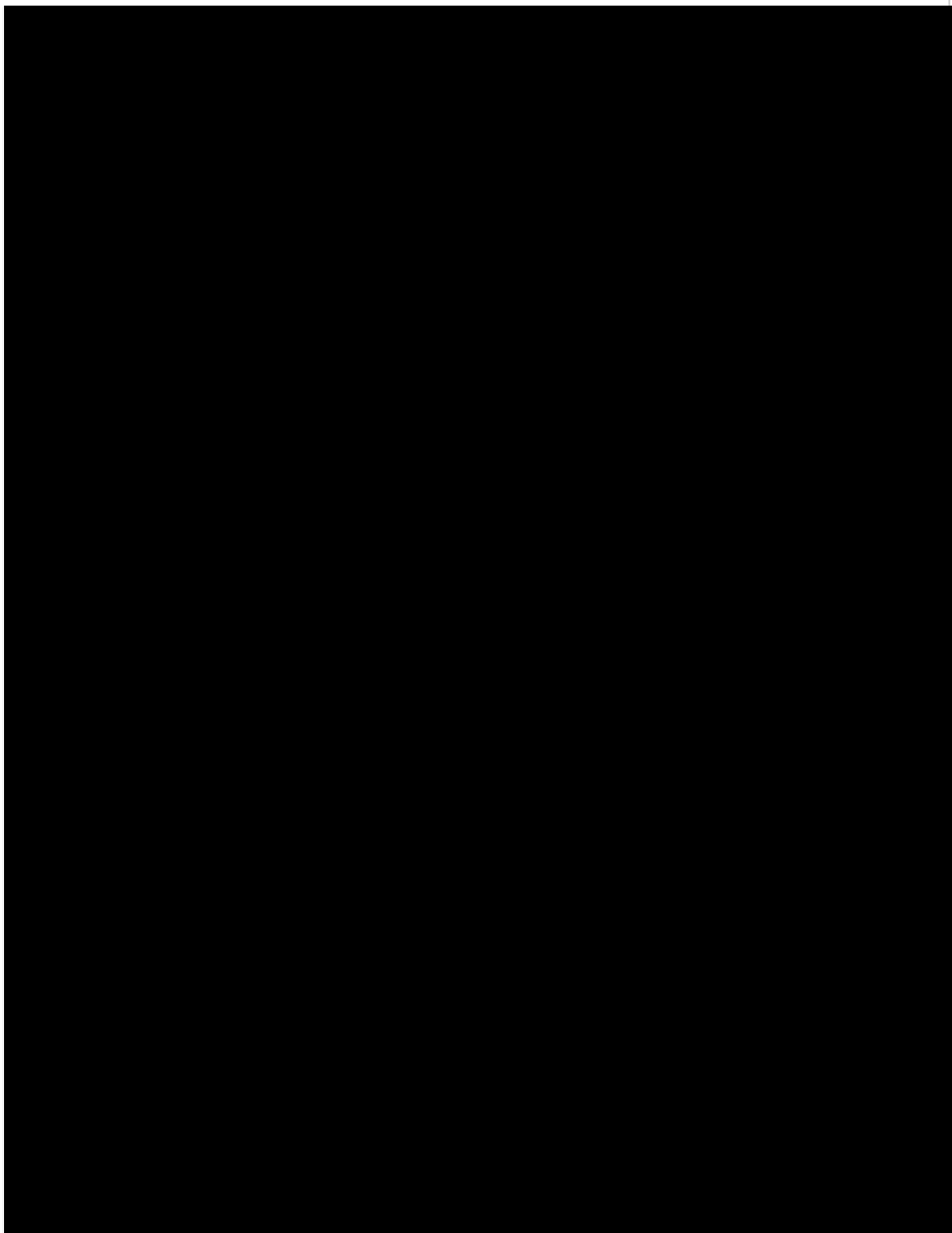
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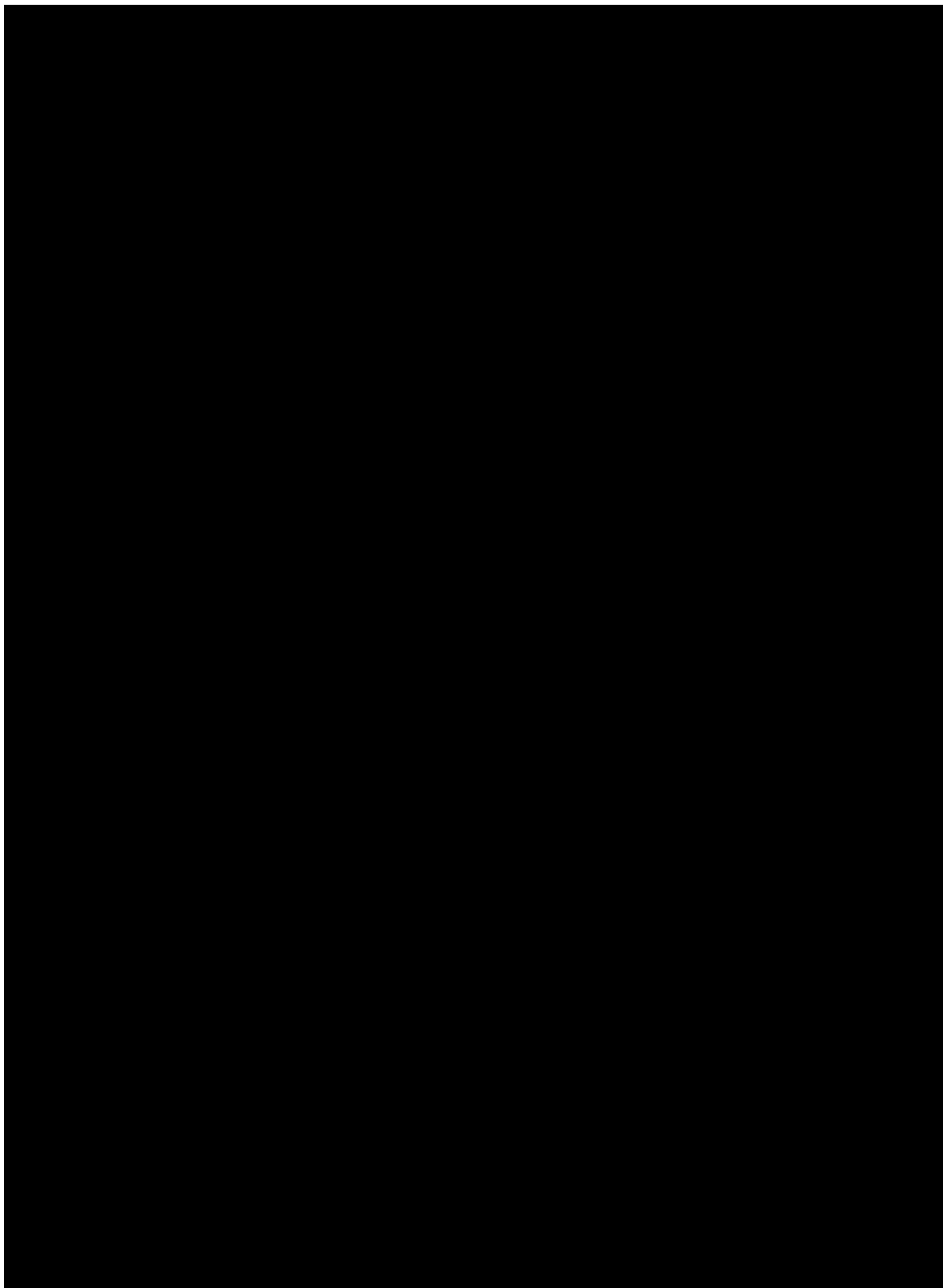
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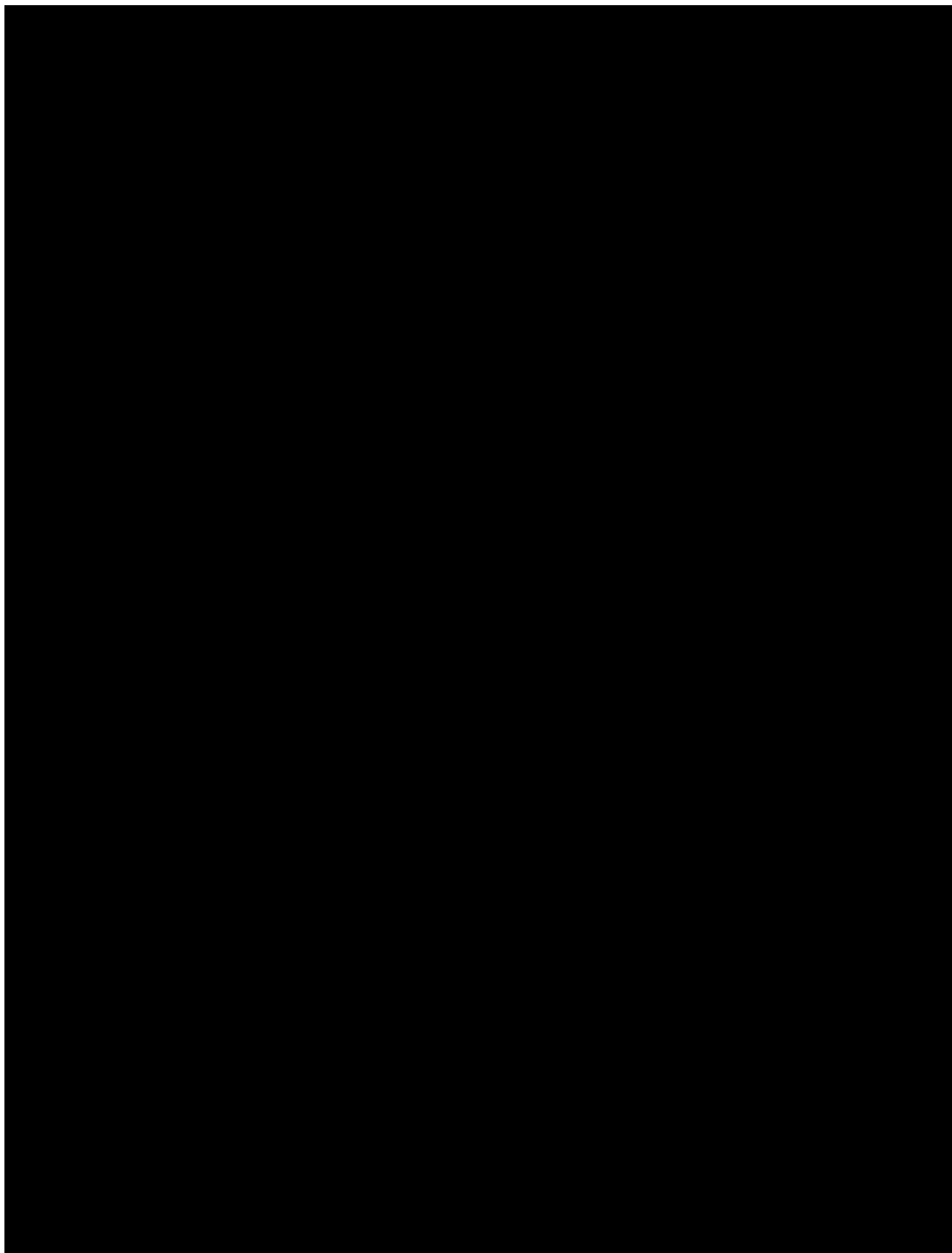
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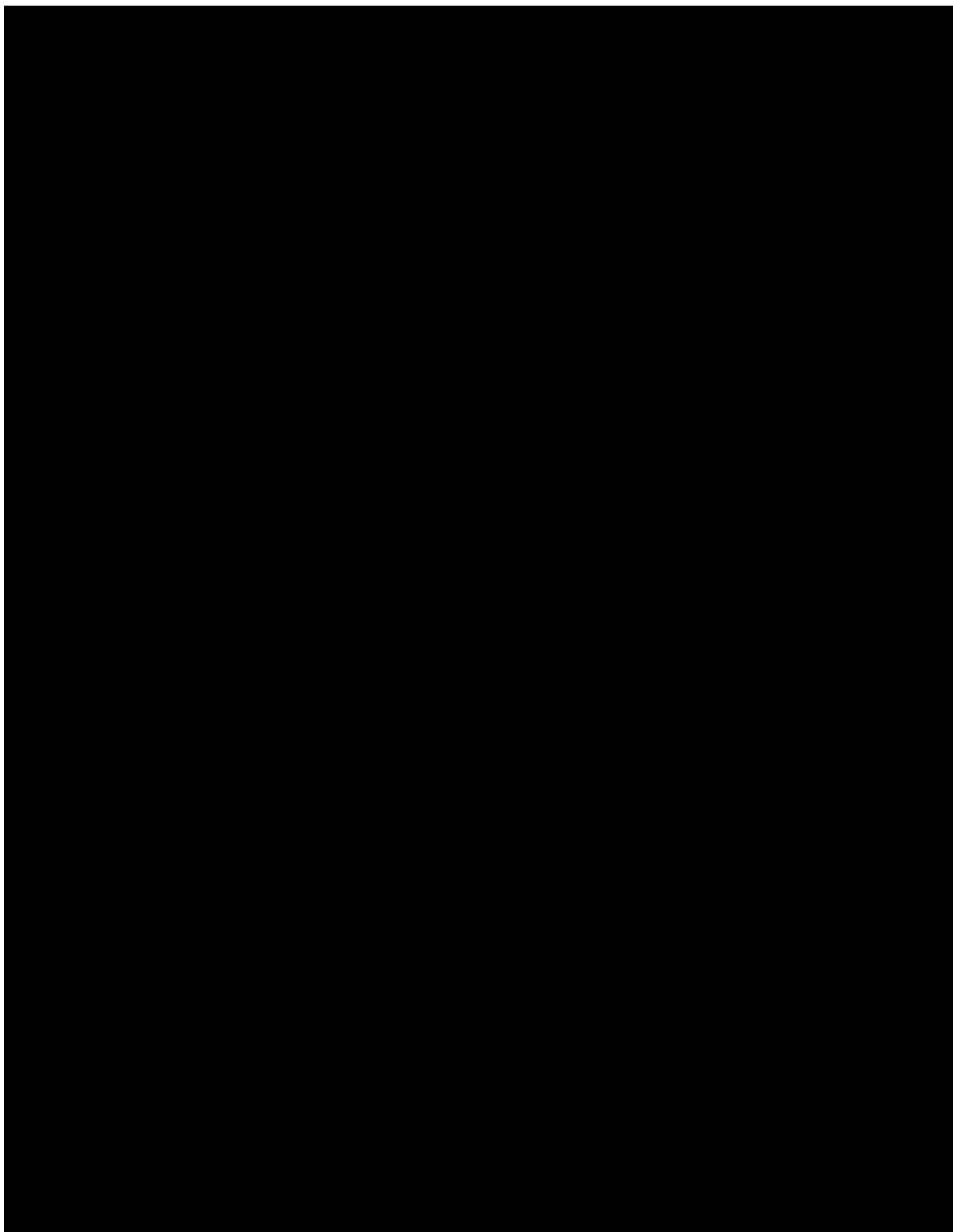
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SCHEDULE 3 (PERFORMANCE LEVELS)

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SCHEDULE 3

PERFORMANCE LEVELS

SCHEDULE 3 (PERFORMANCE LEVELS)

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Schedule 3 (*Performance Levels*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.1 of Part B of Annex 1;
“End User”	any person authorised by the Authority to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1(a) of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Contract, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 6.1 of Part B of Annex 1;
“Service Availability”	has the meaning given in Paragraph 2 of Part B of Annex 1;
“Service Downtime”	any period of time during which any of the Services are not Available; and
“System Response Time”	has the meaning given in Paragraph 3.1 of Part B of Annex 1.

SCHEDULE 3 (PERFORMANCE LEVELS)

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Part A: Performance Indicators and Service Credits

1 PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services and Social Value by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2 SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “**Repeat KPI Failure**”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

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P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels		Service Points
Target Performance Level:	99%	0
Minor KPI Failure:	98.0% - 98.9%	1
Serious KPI Failure:	97.0% - 97.9%	2
Severe KPI Failure:	96.0% - 96.9%	3
KPI Service Threshold:	below 96%	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response

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Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

4 PERMITTED MAINTENANCE

- 4.1 The Supplier shall, on giving at least three months' notice to the Authority, be allowed to book a maximum of 5 hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Authority.

5 SERVICE CREDITS

- 5.1 Schedule 15 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

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Part B: Performance Monitoring

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
- (a) a report to the Authority's Contract Manager which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the "**Performance Monitoring Report**"); and
 - (b) a report created by the Supplier to the Authority's Contract Manager which summarises the Supplier's performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the "**Balanced Scorecard Report**").

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

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- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- (l) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

- (m) a rolling total of the number of Performance Failures that have occurred over the past twelve Service Periods;
- (n) the amount of Service Credits that have been incurred by the Supplier over the past twelve Service Periods;
- (o) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- (p) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

Balanced Scorecard Report

1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;

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- (e) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
 - (f) Milestone trend chart, showing performance of the overall programme;
 - (g) Risk and Issues
 - (h) sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy; and
 - (i) Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

2 PERFORMANCE RECORDS

- 2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, Orders placed, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to

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verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3 PERFORMANCE VERIFICATION

- 3.1 The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Contract against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

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Annex 1: Key Performance Indicators and Subsidiary Performance Indicators

Part 1: Key Performance Indicators and Subsidiary Performance Indicators Tables

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services are set out below:

1 Key Performance Indicators

1.1 Product acceptance Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI1.1	Product acceptance – Stock Secure and Non Stock Secure Forms	% of all Stock Secure and Non Stock Secure forms delivered to specification in accordance with the requirements set out in Schedule 2 during Service Period.	Every Calendar Month	25	Target Performance Level: 99.9% Minor KPI Failure: 98.9% - 99.8% Serious KPI Failure: 97.9% - 98.8% Severe KPI Failure: 96.9% - 97.8% KPI Service Threshold: below 96.9%	0 1 2 3 4
KPI1.2	Product acceptance	% of all Stock Non Secure	Every Calendar	10	Target Performance	0

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	– Stock Non-Secure Forms	Forms delivered to specification in accordance with the requirements set out in Schedule 2 during Service Period.	Month		Level: 99.9%	
					Minor KPI Failure: 98.9% - 99.8%	1
					Serious KPI Failure: 97.9% - 98.8%	2
					Severe KPI Failure: 96.9% - 97.8%	3
					KPI Service Threshold: below 96.9%	4
KPI1.3	Product acceptance – Stock HwHC Forms	% of all Stock HwHC Forms delivered to specification in accordance with the requirements set out in Schedule 2 during Service Period.	Every Calendar Month	10	Target Performance Level: 99.9%	0
					Minor KPI Failure: 98.9% - 99.8%	1
					Serious KPI Failure: 97.9% - 98.8%	2
					Severe KPI Failure: 96.9% - 97.8%	3
					KPI Service Threshold: below 96.9%	4

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI1.4	Product acceptance – EHIC and GHIC	% of all EHIC and GHIC products delivered to specification in accordance with the requirements set out in Schedule 2 during Service Period.	Every Calendar Month	15	Target Performance Level: 99.9% Minor KPI Failure: 98.9% - 99.8% Serious KPI Failure: 97.9% - 98.8% Severe KPI Failure: 96.9% - 97.8% KPI Service Threshold: below 96.9%	0 1 2 3 4
KPI1.5	Product acceptance – Exemptions excluding Tax Credit Certificate	% of all Exemptions products excluding Tax Credit Certificates delivered to specification in accordance with the requirements set out in Schedule 2	Every Calendar Month	10	Target Performance Level: 99.9% Minor KPI Failure: 98.9% - 99.8% Serious KPI Failure: 97.9% - 98.8% Severe KPI Failure: 96.9% - 97.8%	0 1 2 3

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		during Service Period.			KPI Service Threshold: below 96.9%	4
KPI1.6	Product acceptance – Tax Credit Certificates	% of all Tax Credit Certificates delivered to specification in accordance with the requirements set out in Schedule 2 during Service Period.	Every Calendar Month	10	Target Performance Level: 99.9%	0
					Minor KPI Failure: 98.9% - 99.8%	1
					Serious KPI Failure: 97.9% - 98.8%	2
					Severe KPI Failure: 96.9% - 97.8%	3
					KPI Service Threshold: below 96.9%	4
KPI1.7	Product acceptance – Pensions Payroll Information	% of all Pensions Payroll Information delivered to specification in accordance with the requirements set out in Schedule 2 during Service	Every Calendar Month	10	Target Performance Level: 99.9%	0
					Minor KPI Failure: 98.9% - 99.8%	1
					Serious KPI Failure: 97.9% - 98.8%	2
					Severe KPI Failure: 96.9% - 97.8%	3

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
		Period.			KPI Service Threshold: below 96.9%	4
KPI1.8	Product acceptance – Ad-Hoc Jobs	% of all Ad-Hoc Jobs delivered to specification as set out the Ad-Hoc Job requirements during Service Period.	Every Calendar Month	8	Target Performance Level: 99.9% Minor KPI Failure: 98.9% - 99.8% Serious KPI Failure: 97.9% - 98.8% Severe KPI Failure: 96.9% - 97.8% KPI Service Threshold: below 96.9%	0 1 2 3 4
KPI1.9	Product acceptance – Profanities	By Exception, volume of products containing Profanities which are despatched during Service Period.	Every Calendar Month	8	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2	0 1 2

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					Severe KPI Failure: 3	3
					KPI Service Threshold: 4	4
KPI1.10	Product acceptance – Card Carrier match	By exception, volume of packs where the Card does NOT match the Carrier which are despatched during Service Period.	Every Calendar Month	10	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2 Severe KPI Failure: 3 KPI Service Threshold: 4	0 1 2 3 4
KPI1.11	Product acceptance – Covid Pass	% of all Covid Pass products delivered to specification in accordance with the requirements set out in Schedule 2 during Service	Every Calendar Month	15	Target Performance Level: 99.9% Minor KPI Failure: 98.9% - 99.8% Serious KPI Failure: 97.9% - 98.8%	0 1 2

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					Severe KPI Failure: 96.9% - 97.8%	3
					KPI Service Threshold: below 96.9%	4

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1.2 Online Ordering Portal availability Key Performance Indicator

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI2.1	Online Ordering Portal availability	% of time Online Ordering Portal available and fully operational during Service Period.	Every Calendar Month	10	Target Performance Level: 97%	0
					Minor KPI Failure: 96% - 96.9%	1
					Serious KPI Failure: 95% - 95.9%	2
					Severe KPI Failure: 94% - 94.9%	3
					KPI Service Threshold: below 94%	4

1.3 Delivery timescale Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
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KPI3.1	Delivery timescale - Stock HwHC Public	% of Stock HWHC Orders from members of the public despatched within one working day during Service Period.	Every Calendar Month	8	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4
KPI3.2	Delivery Timescale – Stock Secure and Non Stock Secure Forms	% of Stock and Non Stock Secure forms Order lines despatched within six working days during Service Period.	Every Calendar Month	15	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4

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KPI3.3	Delivery Timescale -Stock Non-	% of Stock Non Secure Order Lines	Every Calendar Month	10	Target Performance Level: 99%	0
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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
	Secure Print	despatched within six working days during Service Period.			Minor KPI Failure: 98% - 98.9% Serious KPI Failure: 97% - 97.9% Severe KPI Failure: 96% - 96.9% KPI Service Threshold: below 96%	1 2 3 4
KPI3.4	Delivery Timescale —Stock HwHC forms ordered via the Online Ordering Portal	% of Stock HwHC Order lines ordered via the Online Ordering Portal despatched within six working days during Service Period.	Every Calendar Month	10	Target Performance Level: 99% Minor KPI Failure: 98% - 98.9% Serious KPI Failure: 97% - 97.9% Severe KPI Failure: 96% - 96.9% KPI Service Threshold: below 96%	0 1 2 3 4

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KPI3.5	Delivery Timescale – Tax Credit Certificate Bulk	% of TCC Packs despatched in April and October prior to five working days of the end of the month the data was received during the Service Period.	Every Calendar Month	15	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4
KPI3.6	Delivery Timescale – EHIC and GHIC	% of EHIC and GHIC Packs despatched within one working day of receipt of the data during ServicePeriod.	Every Calendar Month	15	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4

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KPI3.7	Delivery Timescale - Exemptions excluding Tax	% of Exemption Packs	Every Calendar Month	10	Target Performance Level: 99%	0
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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
	Credit Certificates	excluding Tax Credit Certificates despatched within one working day of receipt of the data during ServicePeriod.			Minor KPI Failure: 98% - 98.9% Serious KPI Failure: 97% - 97.9% Severe KPI Failure: 96% - 96.9% KPI Service Threshold: below 96%	1 2 3 4
KPI3.8	Delivery Timescale – Tax Credit Certificatesexcluding bulk job	% of Tax Credit Certificate Packs despatched within one working day of receipt of the data during Service Period - Excluding April and October Bulk job.	Every Calendar Month	10	Target Performance Level: 99% Minor KPI Failure: 98% - 98.9% Serious KPI Failure: 97% - 97.9% Severe KPI Failure: 96% - 96.9% KPI Service Threshold: below 96%	0 1 2 3 4

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KPI3.9	Delivery Timescale – Pensions Payroll Information	% of Pensions Payroll Information despatched within the timescale agreed in the specification during Service Period.	Every Calendar Month	8	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4
KPI3.10	Delivery Timescale – Ad-Hoc Jobs	By Exception, Volume of Ad-Hoc Jobs NOT despatched within the timescale agreed in the specification during Service Period.	Every Calendar Month	8	Target Performance Level: 0	0
					Minor KPI Failure: 1	1
					Serious KPI Failure: 2	2
					Severe KPI Failure: 3	3
					KPI Service Threshold: 4	4

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KPI3.11	Delivery Timescale - Covid Pass	% of Covid Pass products despatched within one working day of receipt of the data during Service Period.	Every Calendar Month	15	Target Performance Level: 99%	0
					Minor KPI Failure: 98% - 98.9%	1
					Serious KPI Failure: 97% - 97.9%	2
					Severe KPI Failure: 96% - 96.9%	3
					KPI Service Threshold: below 96%	4

1.4 Delivery accuracy Key Performance Indicator

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI4.1	Delivery Accuracy	By exception, Volume of deliveries NOT made to the correct address during the Service Period.	Every Calendar Month	10	Target Performance Level: 0	0
					Minor KPI Failure: 1	1
					Serious KPI Failure: 2	2

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					Severe KPI Failure: 3	3
					KPI Service Threshold: 4	4

1.5 Proof of deliveries signed for Key Performance Indicator

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI5.1	Proof of deliveries signed	By exception, volume of proof of deliveries NOT signed for during the Service Period - excluding direct deliveries to the public.	Every Calendar Month	8	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2 Severe KPI Failure: 3 KPI Service Threshold: 4	0 1 2 3 4

1.6 Artwork timeliness Key Performance Indicator

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI6.1	Artwork timeliness	By exception, volume of artwork NOT provided within 5 working days during Service Period.	Every Calendar Month	6	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2 Severe KPI Failure: 3 KPI Service Threshold: 4	0 1 2 3 4

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1.7 Quotation timeliness Key Performance Indicator

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI7.1	Quotation timeliness	By exception, volume of quotations NOT provided within 10 working days during Service Period.	Every Calendar Month	6	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2 Severe KPI Failure: 3 KPI Service Threshold: 4	0 1 2 3 4

1.8 Issue, query and complaint handling Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI8.1	Handling of issues/ queries/ complaints	By exception, volume of call	Every Calendar	3	Target Performance	0

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	in relation to this Agreement	initiators NOT contacted within one working day during Service Period.	Month		Level: 0	
					Minor KPI Failure: 1	1
					Serious KPI Failure: 2	2
					Severe KPI Failure: 3	3
					KPI Service Threshold: 4	4
KPI8.2	Handling of issues/ queries/ complaints in relation to this Agreement	By exception, volume of issues or complaints, which are the fault of the Supplier, which are NOT resolved within 5 working days during Service Period, excluding any	Every Calendar Month	3	Target Performance Level: 0	0
					Minor KPI Failure: 1	1
					Serious KPI Failure: 2	2
					Severe KPI Failure: 3	3

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		issuesresolved via the provisions in Schedule 23			KPI Service Threshold: 4	4
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1.9 Social Value Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI9.1	Social Value – Carbon Reduction	Provision of an annual report showing progress against all sections outlined in the Carbon Reduction Plan PPN (06/21) relative to the contract.	Every Calendar Year	15	<p>Target Performance Level: 0.00% negative deviation from Carbon Reduction Plan</p> <p>Minor KPI Failure: 0.01% - 2.50% negative deviation from Carbon Reduction Plan</p> <p>Serious KPI Failure: 2.51% - 5.00% negative deviation from Carbon Reduction Plan</p> <p>Severe KPI Failure: 5.01% - 7.50% negative deviation from Carbon Reduction Plan</p> <p>KPI Service Threshold: greater than 7.51% negative deviation from</p>	<p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>

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					Carbon Reduction Plan	
KPI9.2	Social Value – Waste & Resource Efficiency	Provision of an annual report showing progress against all waste management improvement, waste treatment data and traceability in relation to the contract	Every Calendar Year	15	<p>Target Performance Level: 0.00% negative deviate on from waste management improvement, waste treatment data and traceability plan</p> <p>Minor KPI Failure: 0.01% - 2.50% negative deviation from waste management improvement, waste treatment data and traceability plan</p> <p>Serious KPI Failure: 2.51% - 5.00% negative deviation from waste management improvement, waste treatment data and traceability plan</p> <p>Severe KPI Failure: 5.01% - 7.50% negative deviation from waste</p>	<p>0</p> <p>0</p> <p>0</p> <p>0</p>

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					management improvement, waste treatment data and traceability plan	
					KPI Service Threshold: greater than 7.51% negative deviation from waste management improvement, waste treatment data and traceability plan	0
KPI9.3	Social Value – Employment of People from groups under-represented in your workforce.	Percentage of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract. Ensuring this is as a proportion of the total FTE contract workforce, by UK region as a benchmark	Every Calendar Year	15	<p>Target Performance Level: 20.00% of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract as a proportion of the total FTE contract workforce</p> <p>Minor KPI Failure: 19.9% - 15.00% of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract as a proportion of the</p>	<p>0</p> <p>0</p>

SCHEDULE 3 (PERFORMANCE LEVELS)

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				total FTE contract workforce	
				Serious KPI Failure: 14.9% - 10.00% of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract as a proportion of the total FTE contract workforce	0
				Severe KPI Failure: 9.9% - 5.00% of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract as a proportion of the total FTE contract workforce	0
				KPI Service Threshold: less than 4.9% of full-time equivalent (FTE) people from groups under-represented in your workforce employed under the Contract as a proportion	0

SCHEDULE 3 (PERFORMANCE LEVELS)

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					of the total FTE contract workforce	
--	--	--	--	--	-------------------------------------	--

1.10 Management Information provision timeliness Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	KPI Weight	Severity Levels	Service Points
KPI10.1	Management Information Provision As set out in further detail at Schedule 24 – Annex 3 reports 5 - 13	By exception, volume of monthly MI NOT provided by the 10 th working day of the month during the Service Period.	Every Calendar Month	3	Target Performance Level: 0 Minor KPI Failure: 1 Serious KPI Failure: 2 Severe KPI Failure: 3 KPI Service Threshold: 4	0 1 2 3 4

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2 Subsidiary Performance Indicators

Not Used

OPTIONAL SERVICES

Not used.

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Part B: Definitions

1 AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:

- (a) The Authority is able to access and utilise all the functions of the Supplier System and/or the Services; and
- (b) End Users and/or Authorised Users are able to access and utilise permitted functions of the Supplier System and/or the Services; and
- (c) the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- (d) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2 SERVICE AVAILABILITY

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD)}{MP} \times 100$$

where:

MP = total number of hours , excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of hours of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (*Maintenance*) shall be subtracted from the total number of hours in the relevant Service Period; and
- (b) Service Points shall accrue if:
 - (i) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
 - (ii) where maintenance undertaken by the Supplier exceeds 24 hours in any Service Period.

3 RESPONSE TIMES

3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be

SCHEDULE 3 (PERFORMANCE LEVELS)

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measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

- 3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

4 SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:

- (a) the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
- (b) other suggestions for improvements to the Services.

- 4.2 The Authority shall reflect in the Balanced Scorecard Report any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

SCHEDULE 4 (STANDARDS)

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SCHEDULE 4
STANDARDS

SCHEDULE 4 (STANDARDS)

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Schedule 4 (*Standards*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Goods”	shall have the meaning set out in Schedule 2 of this Contract.
“Standards Hub”	the Government’s open and transparent standards adoption process as documented at http://standards.data.gov.uk/ ; and
“Suggested Challenge”	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2 GENERAL

- 2.1 Throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s and/or any Ordering Organisation’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s and/or any Ordering Organisation receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

- 3.1 The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>

SCHEDULE 4 (STANDARDS)

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4 OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with United Kingdom Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles> , as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the United Kingdom Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Contract, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Contract is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the United Kingdom Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5 TECHNOLOGY ARCHITECTURE STANDARDS

- 5.1 The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

6 ACCESSIBLE DIGITAL STANDARDS

- 6.1 The Supplier shall comply with (or with equivalents to):
- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA (as updated from time to time); and
 - (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

SCHEDULE 4 (STANDARDS)

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7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- (a) ITIL v4;
- (b) ISO/IEC 20000-1 2018 “Information technology — Service management – Part 1”;
- (c) ISO/IEC 20000-2 2019 “Information technology — Service management – Part 2”;
- (d) ISO 10007: 2017 “Quality management systems – Guidelines for configuration management”; and
- (e) ISO 22313:2020 “Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301” and, ISO/IEC 27031:2011 and ISO 22301:2019.
- (f) BS25999-1:2006 “Code of Practice for Business Continuity Management” and ISO/IEC 24762:2008 in the provision of “IT Service Continuity Strategy” or “Disaster Recovery” plans.
- (g) ISO 18295-1:2017 “Requirements for customer contact centres”

7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to “Bronze Level”, then this shall be deemed acceptable.

7.3 The Supplier shall ensure that equipment meets the following standards and/or their equivalents:

- (h) RFC1812 “Router Requirements for IPv4” RFC 2644 (the update to RFC 1812), and
- (i) RFC2328 “OSPFv2”.

8 SUSTAINABILITY

8.1 The Supplier shall comply with the sustainability requirements set out in the Annex to this Schedule.

SCHEDULE 4 (STANDARDS)

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9 HARDWARE SAFETY STANDARDS

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
 - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
 - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

10 GENERAL STANDARDS

- 10.1 The Supplier must at all times during the Term hold the following accreditations or their equivalents:
- (a) ISO/IEC 9001 2015 (Quality Management Systems);
 - (b) ISO/IEC 19011:2011 (Guidelines for auditing management systems)
 - (c) Such other accreditation required by law; and
 - (d) Any other accreditation required to be held by it pursuant to applicable Department of Health and Social Care (DHSC) guidance and policy as notified by the Authority to the Supplier from time to time. If such DHSC guidance and policy requires a level of certification to achieve the accreditation the Supplier shall be entitled to submit a Change Request in respect of the costs associated with such certification.

SCHEDULE 4 (STANDARDS)

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- 10.2 The Supplier must implement and maintain standard operating procedures for operating all activities undertaken to provide the Service and shall provide copies to the Authority on request.

11 HEALTH AND SAFETY

- 11.1 The Supplier shall maintain and operate all Sites in accordance with safe and efficient warehousing practices, including minimising the risks of damage or contamination of the Goods stored on the Sites in accordance with this Contract.
- 11.2 The Supplier shall ensure that any Goods /or materials required in the production of the Goods are stored in the delivery of the Services which are subject to the requirements of the Control of Substance Hazardous to Health Regulations 2002 are supported by appropriate safety data sheets

12 LEGISLATION AND APPROVALS

- 12.1 The Supplier shall store and distribute Goods in accordance with:
- (a) EU Good Distribution Practice (GDP); and
 - (b) as more particularly described in this Contract.
- 12.2 When for any Goods special storage conditions apply whether in accordance with the Law, Good Industry Practice, Manufacturer's requirements or the Authority's requirements or as stated in the Order, the Supplier shall ensure that:
- (a) any special licences are obtained and maintained;
 - (b) the Goods to which the requirements apply are correctly stored;
and
 - (c) it keeps appropriate records as required by legislation.

13 SECURITY

- 13.1 The Supplier must at all times during the Term hold the following accreditations certified by a UKAS accredited organisation or their equivalents:
- (a) ISO/IEC 19011 "Guidelines for Management Systems" 1400
 - (b) ISO/IEC 27001 "Information Security Management Systems"
 - (c) ISO/IEC 27034+ "Application Security Guidelines"
 - (d)

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- (e) ISO/IEC 17799 “Code of practice for information security management”
- (f) Cyber Essentials Certifications Plus, unless ISO27001 Certified

13.2 The VPN must be compliant with the following standards:

- (a) <https://www.ncsc.gov.uk/guidance/using-ipsec-protect-data#crypt>
- (b) <https://www.ncsc.gov.uk/guidance/tls-external-facing-services#profiles>

14 ETHICAL SOURCING

14.1 The Supplier shall ensure that, where the manufacture or supply of the Goods is from outside of the United Kingdom (UK), the product supplier’s operations shall be carried out in accordance with the health and safety legislation/regulations in that country.

14.2 Suppliers shall ensure that where they manufacture or supply Goods and Services, within the UK, or used in the United Kingdom that the product suppliers operations shall be carried out in a way that complies in accordance with the health and safety legislation regulations of the UK, and the minimum ethical sourcing standards, in order to support CG’s adoption and ratification of the International Labour Organisation (ILO) “Declaration on Fundamental Principles and Rights at Work” and its eight “Key Conventions”. The numbered conventions and their aims are:

- (a) Freedom of Association and Collective Bargaining;
- (b) Equal Remuneration and Discrimination; and
- (c) Forced Labour.

SCHEDULE 4 (STANDARDS)

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ANNEX 1: SUSTAINABILITY

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

“Permitted Item”	means those items which are permissible under this Contract to the extent set out in Table B of this Annex
“Prohibited Items”	means those items which are not permissible under this Contract as set out at Table A of this Annex
“Sustainability Reports”	written reports to be completed by the Supplier containing the information outlined in Table C of this Annex
“Waste Hierarchy”	means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: (a) Prevention; (b) Preparing for re-use; (c) Recycling; (d) Other Recovery; and (e) Disposal.

2 PUBLIC SECTOR EQUALITY DUTY

2.1 In addition to legal obligations, where the Supplier is providing a Service to which the Public Sector Equality duty applies, the Supplier shall support the Authority 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:

- 2.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
- 2.1.2 advance:
 - (a) equality of opportunity; and
 - (b) good relations,

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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.

- 2.2 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.

3 ENVIRONMENTAL REQUIREMENTS

- 3.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws Contract regarding the environment.
- 3.2 The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term.
- 3.3 In performing its obligations under the Contract the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Authority:
- (a) demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
 - (b) prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - (c) 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;
 - (d) 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;
 - (e) 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; minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic

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- compounds and other substances damaging to health and the environment; and
 - (f) reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 3.4 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority (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.
- 3.5 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 3.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
- (a) it is a Permitted Item; or
 - (b) the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 3.7 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Services.
- 3.8 The Supplier shall ensure that any Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.
- 3.9 In delivering the Services, the Supplier must comply with the Authority's sustainability requirements, to be provided to the Supplier by the Authority.
- 3.10 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority:
- 3.10.1 demonstrate that the whole life cycle impacts (including end of use) associated with the Services that extend beyond direct operations into that of the supply chain have been considered and reduced;
 - 3.10.2 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;

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- 3.10.3 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;
- 3.10.4 enhance the natural environment and connecting communities with the environment; and
- 3.10.5 achieve continuous improvement in environmental (and social) performance.
- 3.11 The Supplier shall inform the Authority within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.
- 3.12 The Supplier shall adhere to the environmental standards set out at clause 4.16.9 of Schedule 2 (*Services Description*) and the following environmental standards set out below:
 - 3.12.1 The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.
 - 3.12.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2013 and subsequent replacements).
 - 3.12.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with the Renewable Energy, Energy Efficiency and Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021 and subsequent replacements.
 - 3.12.4 The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.
 - 3.12.5 The supplier shall ensure Paper and envelope products supplied under this Contract shall meet the mandatory minimum standards set out in the Government Buying Standards in the following link:
 - 3.12.6 [www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-paper- and-paper-products](https://www.gov.uk/government/publications/sustainable-procurement-the-gbs-for-paper-and-paper-products)

SCHEDULE 4 (STANDARDS)

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- 3.12.7 The Supplier shall ensure paper and all paper products must comply with <https://www.gov.uk/guidance/timber-procurement-policy-tpp-prove-legality-and-sustainability> where appropriate.
 - 3.12.8 The Supplier shall ensure any virgin pulp used in manufacture comes from sustainably managed woodlands and that both the virgin pulp and the recycling process is chlorine free
 - 3.12.9 The Supplier shall ensure All Inks used in printing shall be free from volatile organic compounds (VOCs) and toxic materials where available;
 - 3.12.10 The Supplier shall ensure all timber and wood-derived Goods for supply or use under this Contract shall comply with the United Kingdom government Timber Procurement Policy (TPP) which requires only timber and wood-derived products originating from an independently verifiable legal and sustainable source are to be provided in association with this opportunity and appropriate documentation shall be required to prove it via the standards set out in the following link; and any successor standards which may supersede TPP during the life time of this Contract. <https://www.gov.uk/guidance/timber-procurement-policy-tpp-prove-legality-and-sustainability>
 - 3.12.11 The Supplier shall ensure that the packaging and disposal of packaging of all products supplied under this Contract is in accordance with the latest Government packaging standards which can be found at the following link:
<https://www.gov.uk/government/publications/packaging-essential-requirements-regulations-guidance-notes>
 - 3.12.12 The Supplier shall comply with NHSBSA Environmental policies and procedures when operating in NHSBSA premises
- 3.13 The Supplier shall meet the applicable Government Buying Standards applicable to Services which can be found online at:
- <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

4 SUPPLIER CODE OF CONDUCT

- 4.1 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:
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf

SCHEDULE 4 (STANDARDS)

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The Authority expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

5 REPORTING REQUIREMENTS

5.1 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance:

5.1.1 with Paragraphs 2.1, 3.1 to 3.6, 3.24 and 4 of this Annex within fourteen (14) days of such request; and

5.1.2 With Paragraphs 2.2, 2.3 and 3.7 to 1.1 of this Annex within thirty (30) days of such request./,

provided that such requests are limited to two per Contract Year.

5.2 The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Contract and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex.

TABLE A – PROHIBITED ITEMS

The following consumer single use plastics are Prohibited Items:	Catering <ul style="list-style-type: none">a. Single use sachets e.g. coffee pods, sauce sachets, milk sachetsb. Take away cutleryc. Take away boxes and platesd. Cups made wholly or partially of plastice. Strawsf. Stirrersg. Water bottles
	Facilities <ul style="list-style-type: none">a. Single use containers e.g. hand soap, cleaning productsb. Wipes containing plastic
	Office Supplies <ul style="list-style-type: none">a. Plastic envelopes

SCHEDULE 4 (STANDARDS)

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	b.	Plastic wrapping for brochures
	c.	Paper or card which is bleached with chlorine
	Packaging	
	a.	Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products.
	b.	Single use carrier bags

SCHEDULE 4 (STANDARDS)

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SCHEDULE 4 (STANDARDS)

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TABLE C – SUSTAINABILITY REPORTS

Sustainability Report Name	Content of Report	Frequency of Report
Sustainability - General	As proportionate and relevant to the Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Services of climate change, including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks.	On the anniversary of the Effective Date
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill.	Before contract award and on the anniversary of the Effective Date.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose waste
Greenhouse Gas Emissions	<p>Detail the Scope 1 and Scope 2 GHG emissions associated with the delivery of the contract.</p> <p>Scope 3 emissions to be reported as required (Optional)</p> <p>Emissions reporting should be in accordance with established best practice and internationally accepted standards.</p> <p>Greenhouse gas reporting from emissions sources (Scope 1, Scope 2 and Scope 3), and specific activities as requested by the</p>	On the anniversary of the Effective Date

SCHEDULE 4 (STANDARDS)

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	Authority. This may include activities such as transportation, energy use and waste disposal.	
Water Use	Volume in metres cubed associated with the delivery of the contract.	On the anniversary of the Effective Date

SCHEDULE 5 (SECURITY MANAGEMENT)

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SCHEDULE 5

SECURITY MANAGEMENT

SCHEDULE 5 (SECURITY MANAGEMENT)

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Schedule 5 (Security Management)

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Breach of Security”	<p>the occurrence of:</p> <ul style="list-style-type: none">(a) any unauthorised access to or use of the Services, the Goods, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement.
“Baseline Personnel Security Standard”	<p>means the Government’s pre-employment screening for personnel as described by its guidance “HMG Baseline Personnel Security Standard” or any replacement of the same.</p>
“CHECK Scheme”	<p>the scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;</p>

SCHEDULE 5 (SECURITY MANAGEMENT)

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“ISMS”	the information security management system and processes developed by the Supplier in accordance with Paragraph 3 as updated from time to time in accordance with this Schedule;
“Security Policy Framework”	the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier;
“Security Tests”	tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2 INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plans are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.
- 2.2 The Parties shall each appoint a member of the Programme Board to be responsible for security. The initial member of the Strategic Joint Team Programme Board appointed by the Supplier for such purpose shall be the person named as such in Schedule 29 (Key Personnel) and the provisions of Clauses 14.5 and 14.6 (Key Personnel) shall apply in relation to such person.
- 2.3 The Authority shall clearly articulate its high-level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day-to-day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall use as a minimum Good Industry Practice in the day-to-day operation of any system holding, transferring or processing the Goods and

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any system that could directly or indirectly have an impact on the Goods, and shall ensure that the Goods remain under the effective control of the Supplier at all times.

- 2.7 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.8 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority (and/or Ordering Organisation) requiring immediate communication and co-operation between the Parties.

3 ISMS

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Authority for the Authority's approval in accordance with Paragraph 4.4 an ISMS (information security management system) for the purposes of this Agreement, which:
- 3.1.1 shall have been tested in accordance with Schedule 14 (*Testing Procedures*); and
 - 3.1.2 shall comply with the requirements of Paragraphs 3.3 to 3.5.
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that it shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
- 3.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Delivery Locations (to the extent possible), the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;
 - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and
 - 3.3.3 at all times provide a level of security which:
 - (a) is in accordance with law and this Agreement;
 - (b) as a minimum demonstrates Good Industry Practice;

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- (c) complies with the Baseline Security Requirements;
 - (d) addresses issues of incompatibility with the Supplier's own organisational security policies;
 - (e) meets any specific security threats of immediate relevance to the Services and/or Authority Data;
 - (f) complies with any security requirements set out in Schedule 2 (Services Description);
 - (g) complies with the Authority's IT policies; and
 - (h) is in accordance with the Security Policy Framework.
- 3.3.4 document the security incident management processes and incident response plans;
- 3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- 3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to Clause 20.11 (Authority Data and Security Requirements) the references to standards, guidance and policies set out in Paragraph 3.3 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.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Authority pursuant to Paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non- approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours

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to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However, any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

- 3.7 Approval by the Authority of the ISMS pursuant to Paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4 SECURITY MANAGEMENT PLAN

- 4.1 Within 20 Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the initial Security Management Plan set out in Annex 2;
 - 4.2.2 comply with the Baseline Security Requirements;
 - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
 - 4.2.4 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - 4.2.5 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Goods, Sites, the Delivery Locations (to the extent possible), the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement

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- or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule and the remainder of this Agreement (including the requirements set out in Paragraph 3.4);
- 4.2.7 demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services;
- 4.2.8 set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in Schedule 13 (*Implementation Plan*) for the Supplier to meet the full obligations of the security requirements set out in this Schedule;
- 4.2.9 set out the scope of the Authority System that is under the control of the Supplier;
- 4.2.10 be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards;
- 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and
- 4.2.12 be in accordance with the Security Policy Framework.
- 4.3 If the Security Management Plan submitted to the Authority pursuant to Paragraph 4.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 4.3 may be

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unreasonably withheld or delayed. However, any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

5 AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

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

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the IT Environment, the Services and/or associated processes;
- 5.1.3 any new perceived or changed security threats; and
- 5.1.4 any reasonable change in requirement requested by the Authority.

- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and following agreement by the Authority amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2 (Services Description) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for

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the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

6 SECURITY TESTING

- 6.1 The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Target Performance levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.1 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in Schedule 2 (*Services*

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Description) (if any)) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of Clause 27.1.3 (*Rectification Plan Process*).

7 [NOT USED]

8 BREACH OF SECURITY

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security 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 take all reasonable steps (which shall include any action or changes reasonably required by the Authority) 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 IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (c) apply agreed or a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance levels, the Supplier shall be granted relief (to the extent that the incident is not attributed to the Supplier) against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
 - (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (e) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within 2 Working Days and without charge (where such

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requests are reasonably related to a possible incident or compromise); and

- 8.2.2 as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
- 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 ISMS with the Baseline Security Requirements or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

9 VULNERABILITES AND CORRECTIVE ACTION

- 9.1 The Authority and the Supplier acknowledge that from time-to-time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.
- 9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third-Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.2.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
- 9.2.4 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g., because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
- 9.2.5 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier

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- 9.2.6 shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
 - 9.2.7 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.3 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third-Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
 - 9.3.1 where upgrading such Supplier COTS Software and Third-Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version; or
 - 9.3.2 otherwise agreed by the Authority in writing.
- 9.4 The Supplier shall:
 - 9.4.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
 - 9.4.2 ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 9.4.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;
 - 9.4.4 pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
 - 9.4.5 from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within 5 Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public

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- release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 9.4.6 propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
 - 9.4.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
 - 9.4.8 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.
- 9.5 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 9, the Supplier shall immediately notify the Authority.
- 9.6 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

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ANNEX 1: BASELINE SECURITY REQUIREMENTS

1 HIGHER CLASSIFICATIONS

- 1.1 The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

2 END USER DEVICES

- 2.1 When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group ("CESG") to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

3 DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The Supplier and Authority recognise the need for the Authority's, Authorised Users and/or Ordering Organisations' information to be safeguarded including but not limited to under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information (and/or other information received by the Supplier under or in connection with this Agreement) will be subject to at all times. All such locations must be within the UK.
- 3.2 Not Used
- 3.3 The Supplier shall:

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- 3.3.1 provide the Authority with all Authority Data and data relating to Ordering Organisations on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Authority Data and data relating to Ordering Organisations in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Authority Data and data relating to Ordering Organisations at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Authority Data and data relating to Ordering Organisations held by the Supplier when requested to do so by the Authority.

4 NETWORKING

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan- government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5 SECURITY ARCHITECTURES

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

6 PERSONNEL SECURITY

- 6.1 Supplier Personnel shall be subject to verification in accordance with the procedures of the Baseline Personnel Security Standard and pre-employment

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checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).

- 6.2 The Supplier shall agree on a case-by-case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from providing the Services and/or accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.

7 IDENTITY, AUTHENTICATION AND ACCESS CONTROL

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

8 AUDIT AND MONITORING

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
 - 8.1.1 logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 8.1.2 security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and

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termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with Paragraph 17 for a period of at least 6 months.

9 PREMISES

- 9.1 All premises used in relation to the delivery the Services under this Agreement shall be:
 - 9.1.1 designed or adapted to ensure that the required storage conditions are maintained at all times.
 - 9.1.2 suitably secure, structurally sound and of sufficient capacity to allow safe storage and handling of the Goods.
 - 9.1.3 fitted with prevention measures, including a monitored intruder alarm system and such other measures to ensure appropriate access control.
 - 9.1.4 compatible with such other additional security requirements as may be required by the Authority from time to time.
 - 9.1.5 In compliance with the following additional requirements and minimum standards where the production or storage of Secure Forms, Exemptions & EHIC are carried out:
 - (a) sufficient physical perimeter security measures;
 - (b) zoned access control, with the facility to provide a full audit trail of all staff movements;
 - (c) CCTV coverage of external perimeter and internal environment. The CCTV shall be monitored 24 hours per day, 365 days per year. The CCTV system has adequate facilities for recording, checking storage and (in the event of an incident) retrieval and review of recordings;
 - (d) current nationally recognised security vetting arrangements such as Disclosure Barring Service (DBS) for staff are in place and are effectively applied and are maintained during the term of this Agreement; and
 - (e) physical security presence where stocks of blank printed Prescription Forms are held.

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- 9.2 The Supplier shall ensure that delivery vehicles have the following security features for Secure Forms only:
 - 9.2.1 Hard sided vehicles;
 - 9.2.2 Vehicles cannot be left unattended unless in an emergency situation and at all times the vehicle must be kept locked and secure;
 - 9.2.3 ID cards for all drivers; and
 - 9.2.4 Comprehensive item tracking with 100% audit trail of each consignment based on barcode scanning of the parcel or pallet label.
- 9.3 The Supplier shall implement appropriate measures including those referred to at paragraph 9.1.3 above to prevent any unauthorised access to the premises and Goods.
- 9.4 The Supplier shall ensure that Goods are stored in segregated areas within the Premises. Such segregated areas should be clearly marked with access strictly limited to authorised personnel.
- 9.5 Any system replacing physical segregation referred to at paragraph 9.3 above, such as electronic segregation based on a computerised system, must be agreed in advance in writing by the Authority and as a minimum must provide equivalent security protection and enable medicinal products to be validated as part of normal stock management processes and at the request of the Authority.
- 9.6 For the purposes of this paragraph 9 any reference to Premises shall be construed as including a reference to Sites as more particularly defined in Schedule 1.

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ANNEX 2: SECURITY MANAGEMENT PLAN

Security Management Plan

Information classification:

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21

Name	
Title	
Date	

Authority Approval

Name	
Title	
Date	

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Document Control

Change Control

Release

Document	Security Management Pla)
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SCHEDULE 5 (SECURITY MANAGEMENT)

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1 Introduction

1.1 Purpose

This document is the Security Management Plan (SMP) for the development, maintenance and operation of an information security management system Scope

This Security Management Plan defines the content, structure and implementation plan for an Information Security Management System (ISMS), including security controls and technical countermeasures commensurate with the requirements of ISO/IEC 27001:2013 (Reference XXX), ISO/IEC 27002:2013 (Reference). The Authority's security policy, procedures and standards may be communicated to the Supplier from time to time and may be included with ISMS scope, subject to contract change.

1.2 Review Process

2 Overall Approach

3 Mapping to ISO/IEC 27001

3.1 ISMS Development

3.2 ISMS Management

3.3 ISMS Security Policy

3.4 Supplier Security Policies

3.5 Document Management Procedure

3.6 Management Review Process

3.7 ISO27001 Certification

3.8 External Audit

4 Security Risk Management

The ISMS defines the security approach and processes for managing security risks.

4.1 Threat Sources

4.2 Risk Assessment

4.3 Business Impact Assessment

4.4 Risk Treatment

4.5 Risk Review

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5 Information Security Management System

This section defines the components of the Information Security Management System to be implemented Information Security Policies

Relevant ISO/IEC 27001:2013 Annex A Control A5

5.1.1 Management Direction for Information Security

5.1.2 Corporate Security Policies

5.2 Organisation of Information Security

Relevant ISO/IEC 27001:2013 Annex A Control: A.6.

5.2.1 Security Governance Structure

5.2.2 Accreditation Management

5.2.3 Certification Management

5.3 Human Resource Security

Relevant ISO/IEC 27001 Annex A Control: A.7.

5.3.1 Pre-employment Screening

5.3.2 Staff Recruitment, On-boarding and Termination

5.3.3 Security Awareness Education

5.4 Asset Management

Relevant ISO/IEC 27001:2013 Annex A Control: A.8.

5.4.1 Infrastructure Assets

5.4.2 Software Assets

5.4.3 Documentation Assets

5.5 Access Control

Relevant ISO/IEC 27001:2013 Annex A Control: A.9.

5.5.1 Platform Specifications and Monitoring

5.5.2 Network Security

5.6 Cryptography

Relevant ISO/IEC 27001:2013 Annex A Control: A.10.

5.6.1 Use of Cryptography

5.6.2 Cryptographic Key Management

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5.7 Physical and Environmental Security

Relevant ISO/IEC 27001:2013 Annex A Control: A.11.

5.7.1 Physical Access Control

5.8 Operations Security

Operations Security - Relevant ISO/IEC 27001:2013 Annex A Control: A.12.

5.8.1 Change Management

5.8.2 Separation of Environments

5.8.3 Segregation of Duties

5.8.4 Protective Monitoring

5.8.5 Protection against Malware

5.8.6 Disposal

5.8.7 Backup and Recovery

5.9 Communications Security

Communications Security - Relevant ISO/IEC 27001:2013 Annex A Control: A.13.

5.9.1 Segregation of Network Environments

Discrete network environments will be segregated to reduce the risks of unauthorised

5.10 Systems Acquisition, Development and Maintenance

Relevant ISO/IEC 27001:2013 Annex A Control: A.14.

5.10.1 Acquisition

5.10.2 Systems Development

5.10.3 Management of Technical Vulnerabilities in Open Source Components

5.10.4 Security Architecture Governance

5.10.5 Application Security

5.10.6 System Maintenance

5.10.7 Security Alerts and Notices

5.11 Supplier Relationships

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Relevant ISO/IEC 27001:2013 Annex A Control: A.15.

5.11.1 Information Security

5.11.2 Service Delivery Management

5.12 Information Security Incident Management

Relevant ISO/IEC 27001:2013 Annex A Control: A.16.

5.12.1 System Security Monitoring

5.12.2 Security Incident Reporting and Response

5.13 Information Security Aspects of Business Continuity Management

Relevant ISO/IEC 27001:2013 Annex A Control: A.17.

5.13.1 Information Security Continuity

5.13.2 Redundancies

5.14 Compliance

Relevant ISO/IEC 27001:2013 Annex A Control: A.18.

5.14.1 Legal, Regulatory and Contractual Requirements

5.14.2 Security Compliance Monitoring

5.14.3 Security Reporting

5.14.4 Health Checks, Penetration Testing and Security Audits

5.14.5 Security Improvements

5.15 Data Protection

5.15.1 Responsibility and Accountability for Data Protection

5.15.2 Data Handling Guidance

5.15.3 Data Protection Baseline Controls

5.15.4 Privacy Impact Assessment

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6 Glossary of Terms

[illegible]

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[Subject to contract]

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END OF DOCUMENT

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SCHEDULE 6

INSURANCE REQUIREMENTS

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Schedule 6 (*Insurance Requirements*)

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 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 date on which the relevant risk commences.
- 1.2 The Supplier:
 - 1.2.1 shall achieve each and every requirement detailed in Annex 1; and
 - 1.2.2 shall ensure that the Insurances are maintained in accordance with Good Industry Practice and (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.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
 - (a) of good financial standing;
 - (b) appropriately regulated;
 - (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
 - (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy:
 - 1.4.1 shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable, and
 - 1.4.2 names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 1.5 If requested in writing by the Authority, the Supplier shall ensure that its brokers give the Authority a letter of undertaking in the form set out in

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Schedule 6 Annex 1 Part G (Broker's Letter of Undertaking) on renewal of each of the Insurances.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall (in addition to notifying the Authority):
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services 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;
 - (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware;
 - (c) 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;
 - (d) ensure that the Insurances contain a clause waiving the insurers' subrogation rights against the Authority and its employees and agents in accordance with Annex 1 Part E;
 - (e) provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Annex 1 Part E; and
 - (f) be and remain liable for the cost of any increase in insurance premiums attributable to the Supplier's acts or omissions, whether under this Contract or otherwise.

3 FAILURE TO INSURE

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

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- 3.3 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Supplier of its liabilities and obligations under this Contract.

4 EVIDENCE OF INSURANCES

- 4.1 The Supplier shall upon the Effective Date and within 5 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.
- 4.2 Provision of the evidence referred to in this paragraph shall be in accordance with the Notice provisions set out at Clause 42 of this Contract. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

5 CANCELLATION

- 5.1 Subject to Paragraph 5.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination, variation, or non-renewal of any of the Insurances. such notification shall be in accordance with the Notice provisions set out at Clause 42 of this Contract.
- 5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

- 6.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority and/or Ordering Organisation receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 6.3 [Not used]
- 6.4 [Not used].
- 6.5 The Supplier shall give the Authority notice within 10 Working Days of any insurance claim being made to or under the Property Damage Insurance required by Schedule 6 Annex 1 Part D1. Such notice shall be given in

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accordance with the notice provisions set out at Clause 42 of this Contract and shall include notification in relation to claims which, but for the application of the applicable policy excess, would be made under the Property Damage Insurance required by Schedule 6 Annex 1 Part D1 and (if required by the Authority) the Supplier shall provide full details of the incident giving rise to the claim

- 6.6 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium and shall provide evidence to the Authority that the premiums payable under the insurance policies have been paid.
- 6.7 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 Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- 6.8 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule 6 Annex 1 (Insurance Requirements) shall be used to promptly reinstate, repair and/or replace the Goods or Stock Holding in respect of which the insurance proceeds were received.
- 6.9 In accordance with paragraph 6.10 below, all insurance proceeds received in respect of the Business Interruption insurance as specified in Annex 1 to this Schedule shall be used to provide suitable alternative storage for the Goods, together with transportation and relocation costs in respect of which the insurance proceeds were received.
- 6.10 The Supplier shall obtain the Authority's written approval in advance of reinstating, repairing, replacing, transporting and/or relocating any Goods or Stock Holding referred to at 6.8 and 6.9 above.

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ANNEX 1: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 10 Working Days after any insurance claim relating to or arising out of the provision of the Services 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 Authority) full details of the incident giving rise to the claim.

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PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

1.1 The Supplier

2 Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Contract.

3 Limit of indemnity

3.1 Not less than **£10,000,000 (ten million pounds)** in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

United Kingdom

5 Period of insurance

5.1 From the date of this Contract for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

6.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

6.2 Cross Liability clause

6.3 Contingent motor.

6.4 Legal defence costs.

6.5 Contractual liability.

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- 6.6 Health and Safety at Work Act(s) clause.
- 6.7 Costs in addition to the limit (other than USA, Canada and Australia).
- 6.8 Data Protection Act clause.
- 6.9 Consumer Protection Act.
- 6.10 Defamation, libel and slander.
- 6.11 Infringement of privacy or wrongful arrest.
- 6.12 Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act.
- 6.13 Waiver of subrogation to the Authority.

7 Principal exclusions

- 7.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.4 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.5 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.6 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

- 8.1 Not to exceed £1,500,000 for each and every third party property damage claim (personal injury claims to be paid in full).

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PART C: UNITED KINGDOM COMPULSORY INSURANCES

- 8.2 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.
- 8.3 Insurances required by law shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of all matters arising out of or in connection with the Services and for which the Supplier is legally liable.
- 8.4 For the avoidance of doubt the Supplier shall take out and maintain Employers Liability Insurance at a minimum level of £5,000,000.00 (five million pounds). Such insurance to be in place from the date of this Contract for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing

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PART D: ADDITIONAL INSURANCES

PART D1: PROPERTY DAMAGE INSURANCE

1 INSURED

The Supplier

each for their respective rights and interests in the Goods and Stock Holding and Contingency Stock Holding

2 INTEREST

To indemnify the Insured against “All risks” of physical loss or damage to the Goods and Stock Holding and Contingency Stock Holding.

3 SUM INSURED

Not less than the total reinstatement or replacement value of the Goods and Stock Holding and Contingency Stock Holding plus provision to include other Principal Extensions as appropriate.

4 TERRITORIAL LIMITS

United Kingdom and whilst in transit anywhere in the United Kingdom including sea transits on recognised roll-on-roll-off ferries.

5 PERIOD OF INSURANCE

From the date of this Contract for the Term and renewable on an annual basis unless agreed otherwise by the Authority in advance in writing.

6 COVER FEATURES AND EXTENSIONS

6.1 Loss through temperature levels exceeding or being below manufacturers' required maximums and minimums.

6.2 Terrorism

6.3 Automatic reinstatement of sums insured

6.4 72 hours clause

6.5 Professional fees

6.6 Debris removal

6.7 Pollution and contamination to the Goods and Stock Holding arising from an event which is not otherwise excluded

6.8 Transshipping charges

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6.9 Carriage of goods by Supplier or sub-contractor or other third party suppliers

6.10 Deterioration of stock

7 PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear/radioactive risks.

7.3 Wear, tear and gradual deterioration.

7.4 Consequential financial losses.

7.5 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

8 MAXIMUM DEDUCTIBLE THRESHOLD

Not to exceed £1,500,000 for each and every claim.

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PART D2: BUSINESS INTERRUPTION INSURANCE:

1 Insured

The Supplier;

2 Interest

The economic additional expenditure necessarily and reasonably incurred for the purpose of providing suitable alternative storage for the Goods (including but not limited to Stock Holding and/or Contingency Stock Holding), including transport and relocation costs, during at least the minimum indemnity period (as set out below) as a result of loss or damage covered under Property Damage Insurance effected in accordance with Schedule 6 Annex 1 Part D1 including physical loss or damage which would be indemnifiable but for the application of any deductible;

3 Sum Insured

3.1 An amount sufficient to cover the sums the subject of the Indemnity for the minimum indemnity period.

4 Maximum Deductible Threshold

Not to exceed 30 days.

5 Minimum Indemnity Period

Not less than 6 (six) months.

6 Period of Insurance

From the date of this Contract for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

7 Principal Exclusions

7.1 Exclusions under the Property Damage Insurance specified in Schedule 6 Annex 1 Part D1, other than for consequential financial losses.

7.2 Delayed response by a public body or state authority.

PART D3: PROFESSIONAL INDEMNITY INSURANCE

8 INSURED

8.1 The Supplier

8.2 The Authority

each for their respective rights and interests in the Goods and Stock Holding.

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9 INTEREST

To indemnify the Insured against “All risks” of physical loss or damage to the Goods

10 SUM INSURED

Not less than the total reinstatement or replacement value of the Goods
plus provision to include other Principal Extensions as appropriate

11 TERRITORIAL LIMITS

United Kingdom and whilst in transit anywhere in the United Kingdom including sea transits on recognised roll-on-roll-off ferries.

12 PERIOD OF INSURANCE

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in advance in writing.

13 COVER FEATURES AND EXTENSIONS

- 13.1 Loss through temperature levels exceeding or being below manufacturers' required maximums and minimums.
- 13.2 Terrorism.
- 13.3 Automatic reinstatement of sums insured.
- 13.4 72 hours clause.
- 13.5 Professional fees.
- 13.6 Debris removal.
- 13.7 Pollution and contamination to the Goods arising from an event which is not otherwise excluded.
- 13.8 Transhipping charges
- 13.9 Carriage of goods by Supplier or sub-contractor or other third party suppliers.
- 13.10 Deterioration of stock.

14 PRINCIPAL EXCLUSIONS

- 14.1 War and related perils
- 14.2 Nuclear and radioactive risks.
- 14.3 Wear, tear and gradual deterioration.

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14.4 Consequential financial losses.

14.5 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

15 MAXIMUM DEDUCTIBLE THRESHOLD

15.1 Not to exceed £1,500,000 for each and every claim.

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PART E: ENDORSEMENTS

Endorsements substantially in the form of the following shall apply to the Property Damage Insurance, details of which are set out in Schedule 6 Annex 1 Part D1. Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Endorsement 1 Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- a) at least 30 days before any such cancellation or termination is to take effect; and
- b) at least 30 days before any reduction in limits or coverage or any increase in deductibles is to take effect.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words “the insured” applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a “Vitiating Act”) committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible

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for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- 1) no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
- 2) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
- 3) save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3 Communications

All notices or other communications under or in connection with this policy shall be given to each insured promptly and in writing. Any such notice will be deemed to be given when delivered.

The principal address of the Authority for all notices under or in connection with this policy is that notified from time to time by the Authority for this purpose to the Supplier at the relevant time. The initial principal address of the Authority is as follows:

Address: NHS Business Services Authority, Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE15 8NY

Attention: Head of Commercial Services

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

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PART F - INSURANCE ARRANGEMENTS

- 1 The Supplier must comply with the provisions of this Part F of Schedule 6 Annex 1 when placing or renewing the Property Damage Insurance.
- 2 Not less than sixty (60) Business Days prior to each renewal date in respect of the Property Damage Insurance, the Supplier shall inform the Authority of the forthcoming requirement to place or renew the Property Damage Insurance and provide either:
 - 2.1 confirmation that the existing long term agreement (entered into with the agreement of the Authority) is being maintained; the Supplier having taken advice from reputable insurance brokers experienced in arranging insurances for similar risks, confirming that the renewal quotations represent best value; or
 - 2.2 its proposals for obtaining competitive quotations from at least (three (3) suitable insurers. The Supplier shall take advice from reputable insurance brokers experienced in arranging insurances for similar risks as to which insurers are most likely to provide quotations that will represent best value for money for the Authority as payer of the premiums for such insurance. In considering which insurers to approach, the Supplier shall consider whether it is able to procure the placing of the Property Damage Insurance in any particular manner consistent with the requirements of this Contract that may result in lower premiums and shall include such insurers in its proposal under this paragraph 2.
- 3 Within ten (10) Business Days of receiving a notice from the Supplier pursuant to paragraph 2, the Authority may provide the Supplier with details of any other insurers that it wishes the Supplier to invite to quote for provision of the Property Damage Insurance.
- 4 Not less than thirty (30) Business Days prior to each renewal date for the Property Damage Insurance, the Supplier shall forward to the Authority quotes from the proposed insurers (together with the principal terms and conditions of the relevant insurance policy), to include any insurer nominated by the Authority pursuant to paragraph 3, including a reasoned recommendation as to which quote the Supplier views as offering best value for money for the Authority, taking into account all relevant circumstances.
- 5 Within ten (10) Business Days of receiving a recommendation by the Supplier pursuant to paragraph 4, the Authority must notify the Supplier in writing which insurer it is to place the Property Damage Insurance with, failing which the Supplier shall be entitled to place the Property Damage Insurance with the insurer recommended by the Supplier.
- 6 Proposals pursuant to paragraph 2.2 should include a report prepared by the Supplier's insurance broker on behalf of both the Supplier and the Authority. The report is to be prepared at the Supplier's expense, and should, as a minimum, contain the following information:
 - 6.1 A full breakdown of the insurance cost for the current renewal date, together with the insurance cost for the previous renewal date;

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- 6.2 A spreadsheet (the “Insurance Summary Sheet”) detailing:-
 - 6.2.1 the sum(s) insured/limit of indemnity (i.e. rateable factor);
 - 6.2.2 the premium rate;
 - 6.2.3 the gross premium paid (or to be paid);
 - 6.2.4 the deductible(s) or excesses;
 - 6.2.5 details of any claims (paid or reserved) (including incident date, type and quantum); and
 - 6.2.6 details of any insurance broker remuneration and/or commissions.
- 6.3 Full details of the amount of the premium reasonably considered by the Supplier's insurance broker to be attributable to:
 - 6.3.1 circumstances generally prevailing in the prevailing insurance market together with reasoning for such view; and
 - 6.3.2 the claims history of the Authority,

together with the insurance brokers reasons for such view (specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above).

SCHEDULE 6 (INSURANCE REQUIREMENTS)

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PART G BROKER'S LETTER OF UNDERTAKING

To: The
Authority Dear Sirs

Contract dated [] entered into between [] (the "Supplier") and NHS Business Services Authority (the "Authority") (the "Contract")

1. We refer to the Contract. Unless the context otherwise requires, terms defined in the Contract shall have the same meaning in this letter.
2. We act as insurance broker to the Supplier in respect of the Insurances and in that capacity we confirm that the Insurances which are required to be procured pursuant to Schedule 6 Annex 1 of the Contract:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Contract for their respective interests;
 - 2.2 are, to the best of our knowledge as the Supplier's insurance broker, as at today's date, in full force and effect;
 - 2.3 have all premiums due to date in respect of the Insurances paid in full and the Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 have, to the best of our knowledge as the Supplier's insurance broker, been procured so as to ensure that, as at today's date the endorsements set out in Part E (Endorsements) of Schedule 6 Annex 1 of the Contract attached hereto are in full force and effect in respect of the Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Supplier and in consideration of your approving our appointment (or continuing appointment) as brokers in connection with the Insurances, we hereby undertake in relation to the Insurances:
 - 4.1 Notification Obligations
 - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Insurances if we have not received instructions from the Supplier to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
 - 4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Supplier unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
 - 4.2 Advisory Obligations
 - 4.2.1 to notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Insurances;

SCHEDULE 6 (INSURANCE REQUIREMENTS)

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- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Insurances to us, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;
- 4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion would either invalidate or render unenforceable in whole or in part any of the Insurances or which would otherwise materially impact on the extent of cover provided under the Insurances; and
- 4.2.4 in accordance with our duty to the Supplier to notify the Supplier of its pre-contractual duties of disclosure to insurers including the duty to disclose all information that would be considered material in the context of such duty.

4.3 Disclosure Obligations

- 4.3.1 subject to the prior written consent of the Supplier (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Insurances in our capacity as insurance broker to the Supplier, including from any fact, change of circumstance or occurrence notified to such employees which in our reasonable opinion is material to the risks insured against under the Insurances and which properly should be disclosed to insurers or in accordance with the policy terms and conditions of the relevant Insurances as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise;
- 4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Supplier or the Authority and not to disclose such information, without the prior written consent of the Supplier or the Authority as applicable, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time and/or for the purpose of disclosure to the insurers or their agents in respect of the Insurances, providing in both instances, the party receiving the information first enters into appropriate confidentiality arrangements if required by the Authority. Our obligations of confidentiality shall not conflict with our duties owed to the Supplier and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 Administrative Obligations

- 4.4.1 to hold copies of all documents relating to or evidencing the Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in Clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals

SCHEDULE 6 (INSURANCE REQUIREMENTS)

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of such documents;

- 4.4.3 to administer the payment of premiums due pursuant to the Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Insurances;
- 4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:
 - (a) negotiating settlement of Insurance Claims presented in respect of the Insurances;
 - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Insurances, and
 - (c) insofar as it is relevant and practicable, liaising and reporting to the Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5 to advise the Authority as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by the Supplier to make in the terms of the Insurances and which, if effected, in our reasonable opinion as competent and professional Insurance Brokers would result in a material reduction in limits or coverage or increase in deductibles, exclusions or exceptions; and
- 4.4.6 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Insurances (when the same is issued) endorsements substantially in the form set out in Schedule 6 Annex 1 Part E (Endorsements).
- 4.4.7 to provide, prior to each renewal of the Property Damage Insurance, a statement containing
 - (a) the information required to satisfy the requirement of Schedule 6 Annex 1 Part E of the Contract; and
 - (b) our opinion, supported by appropriate evidence, of the generally prevailing market for the Property Damage Insurance.

5. Notification Details

- 5.1 Our obligations at Clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

Head of Commercial Services

NHS Business Services Authority, Stella House, Goldcrest Way, NE15 8NY.

- 6. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Authority that they may not rely on any advice which we have given to the Supplier, and we do not represent that the Insurances are suitable or sufficient to meet the needs of the Authority which must take steps and advice of its own as it considers necessary in order to protect its own position.

SCHEDULE 6 (INSURANCE REQUIREMENTS)

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7. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Supplier in relation to the Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Insurances, arising through common law or otherwise.
8. Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Insurance for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £2,500,000, even if we are negligent. We do not limit liability for our fraud.
9. This letter is given by us on the instructions of the Supplier and with their full knowledge and consent as to its terms.

Yours faithfully

For and on behalf of the Supplier's broker

We consent to the giving of this Letter of Undertaking by our insurance brokers

Yours faithfully

For and on behalf of the Supplier

SCHEDULE 7

AUTHORITY RESPONSIBILITIES

Schedule 7 (*Authority Responsibilities*)

1 INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Contract. Any obligations of the Authority in Schedule 2 (Services Description) and Schedule 8 (Supplier Solution) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

- 2.1 The Authority shall:
- (a) perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except Schedule 2 (Services Description) and Schedule 8 (Supplier Solution));
 - (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
 - (c) provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Contract as defined in the Implementation Plan;
 - (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
 - (e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

3 SPECIFIC OBLIGATIONS

- 3.1 The Authority shall, in relation to this Contract perform the Authority's responsibilities identified as such in this Contract the details of which are set out below:

Document	Location (Paragraph)
<i>N/A</i>	<i>N/A</i>

SCHEDULE 8

SUPPLIER SOLUTION

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1 PART 1 DEFINITIONS AND INTRODUCTION

1.1 Definitions

In this Schedule the following definitions shall apply:

“Account Manager”	means the account manager or otherwise named individual, employed to assume overall responsibility of the Supplier’s obligations under this agreement and who is the Supplier’s single point of contact for the purposes of this Contract.
“Adare”	Adare SEC, a subcontractor the Supplier will use for <ul style="list-style-type: none"> • the secure production, warehousing, dispatch / delivery of Secure Forms, • the production, dispatch / delivery of NHS Pensions Payroll, HRT PPC, Covid Passes, Tax Credit Certificates, and • the warehousing, despatch / delivery of HwHC Forms
“Ad Hoc Jobs”	Means a non-Catalogue item quoted for and/or ordered via the Online Ordering Portal.
“API”	means Application Programming Interface.
“Authorised User”	means any person classified by the Authority as a Test/Admin User, Super User and User who are authorised to place Orders under this Framework Contract by and on behalf of the Authority and/or Ordering Organisations;
“Authorised User Profile”	a record of data taken from the Authorised User Registration Document which contains the data stated in paragraph 5.3.2 of Schedule 2.
“Business Hours”	The Supplier’s hours of operations, 0800 – 1700, Monday - Friday, excluding UK Bank Holidays.
“Card”	means a personalised card to a minimum specification of ISO/IEC 15457 and as more particularly set out in accordance with this Contract.
“Carrier”	a personalised paper product which a Card is attached to for delivery.
“Catalogue”	A Catalogue more particularly referred to at paragraphs 3.1.1. to 3.1.6 of Schedule 2 which sets out a list of Goods available for purchase via the Online Ordering Portal.
“Certificate”	a personalised paper product labelled or referred to as a certificate or exemption.
“Contact Centre/Helpdesk”	The Supplier s contact centre and helpdesk established, maintained and provided in accordance with the terms of this Contract.
“Contingency Stock Holding”	means the volume of prescription paper reel stock, WP10SS, FP10SS, FP10DT & NEO2 Forms held by the Supplier at a secure offsite storage facility in accordance with the terms of this Contract.

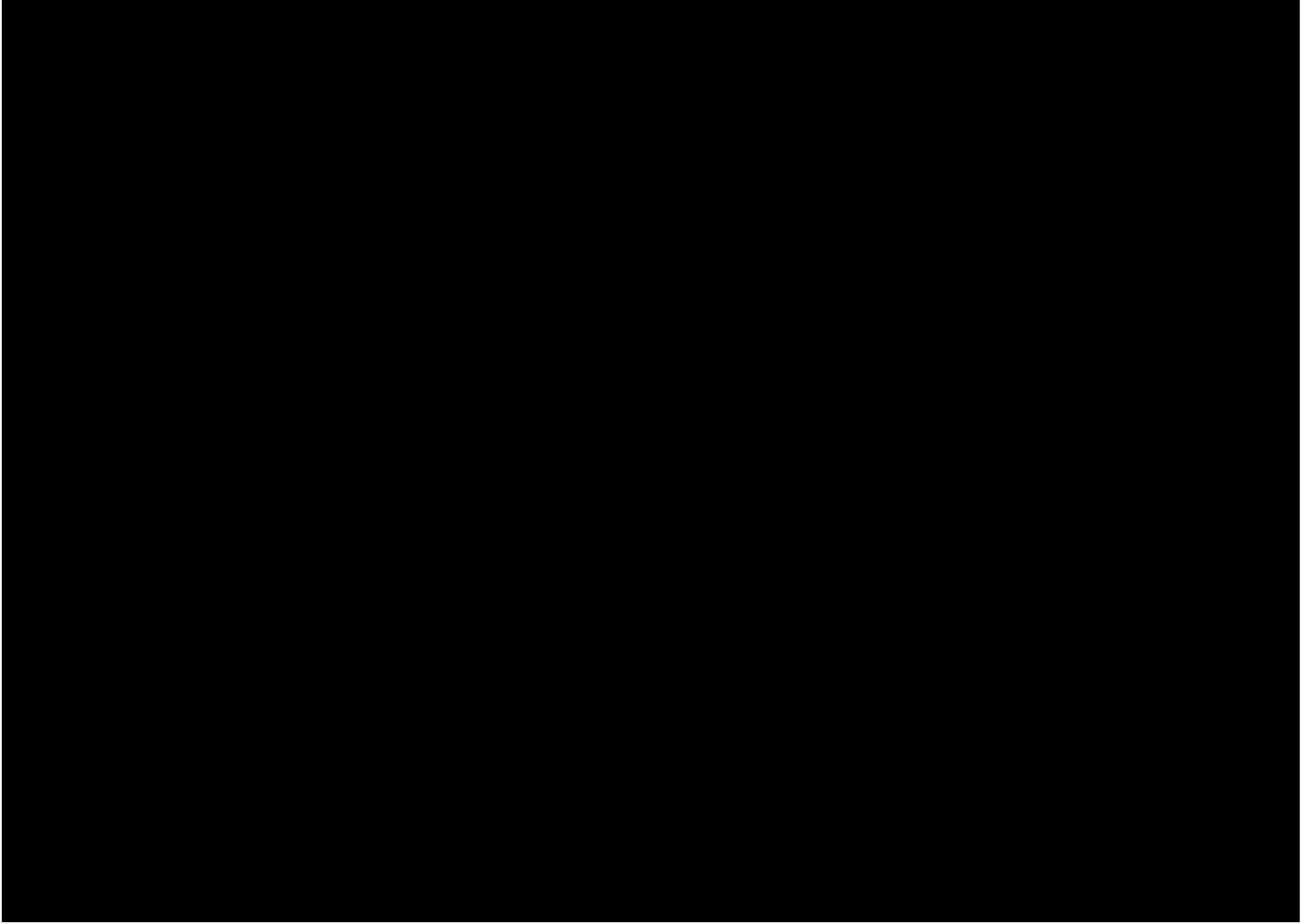
“Covid Pass”	has the meaning set out in Schedule 1 (Definitions);
“Delivery Note”	means the document that accompanies a shipment or consignment and provides details about the Products delivered.
“Delivery Address ID”	a unique numeric code generated by the Supplier, and assigned to the Delivery Address.
“Desktop Test”	means a test which is conducted in accordance with the requirements detailed in Schedule 2 (Service Description) and Schedule 14 (Testing Procedures).
“DHSC”	Department of Health and Social Care, ministerial department of HM Government responsible for HM Government policy on health and adult social care.
“EAL”	means Evaluation Assurance Level.
“EHIC” or “GHIC”	means European Health Insurance Card or Global Health Insurance Card
“EHIC/GHIC Card”	European/Global Health Insurance Card manufactured to ISO/IEC 7810:2003 specifications
“Exemption”	includes but is not limited to Matex, Medex, HRT PPC, PPC and Tax Credits, which provide access to Help with Health Costs to an applicant;
“Forms”	means a printed paper document.
“Form Type”	means the designation given to each Prescription Form identified by the Product Code and as documented in Appendix B to Schedule 2.
“Fulfilment”	means to carry out all operations required to ensure that all Products to be delivered via post are enveloped, batched and sorted ready to dispatch.
“Functional Requirements”	means the part of the IT Specification to define specific behaviours or functions and intended capabilities, appearance and interactions with Users.
“Goods”	means all Products, raw materials and Stock Holding and Contingency Stock Holding.
“HRT PPC”	means a PPC used to collect only specific hormone replacement therapy medication.
“HwHC”	Help with Health Costs.
“HwHC Forms”	means Forms as set out in the HwHC Online Ordering Portal Catalogue.
“Invoice Address”	means an address to which Invoices will be sent, which should be detailed on an Order in accordance with paragraph 4.7.1 of Schedule 2.

“Invoice Address ID”	a unique numeric code generated by the Supplier and assigned to the Invoice Address.
“Job Number”	The unique reference number allocated by the Supplier to each individual print run.
“Live Test”	a full end to end test to include picking, packaging and making Products ready for despatch from the Site where the Stock is held to the Delivery Address, with attendance of the Authority to provide “live” audit.
“Matex”	means Maternity Exemption.
“Medex”	means Medical Exemption.
“NHS Order Processing Database”	means the Supplier tool used to generate information and records relating to the serial numbers despatched against each Secure Form order.
“Non Functional Requirements”	means the constraints within which the Functional Requirements must be delivered.
“Non Secure Form”	means a printed Form without security features.
“Non Stock”	means an item which is not available in an Online Ordering Portal Catalogue which is not readily available off the shelf or available as print on demand.
“NHS Cards and/or Certificates”	means paper or card based Exemptions.
“Online Portal”	means the online ordering portal established, maintained and provided by the Supplier in accordance with the terms of this Contract. Also defined as the Online Ordering Portal.
“Online Ordering Portal”	means the online ordering portal established, maintained and provided by the Supplier in accordance with the terms of this Contract. Also defined as the Online Portal.
“Order”	any request from the Authority, an Ordering Organisations, an Authorised User or member of the public for permitted Products to be processed and despatched to a Delivery Address setting out: <ul style="list-style-type: none"> - details of the Products required; - quantities required; - and any specific instructions for processing and delivery.
“Ordering Organisation”	Organisations who are specified or referred to at paragraph 2.8 of Schedule 2.
“Ordering Organisation Code”	a unique alphanumeric Code assigned by the Authority to each Ordering Organisation.
“Pack”	means all packaging and contents for an EHIC, GHIC, NHS Pensions Payroll Information or Exemption Order to be despatched.
“PEP”	means Pension Employer Products.

“Prescribers”	a person who is permitted to prescribe a prescription for a patient.
“Prescriber Data”	the details of Prescribers issued to the Supplier for Prescribers in England and Wales.
“Prescription Forms”	means Secure series of Forms that must be used for the prescribing and dispensing of drugs and appliances in the NHS and for the prescribing of controlled drugs only by private Prescribers in the UK and Crown Dependencies.
“Print on Demand”	a system or process whereby individual copies are printed to order, typically using digital technology.
“PPC”	means Prescription Pre-Payment Certificate.
“Profanity or Profanities”	any word which the Authority deems could cause offence.
“Product or Products”	means the products set out in Appendix A and/or an Ad Hoc Order(s).
“Product Code”	means the unique numerical or alphanumerical code assigned to a product to aid identification.
“Product Name”	the individual name of the product detailed in the specification.
“Product Sponsor”	The organisation with responsibility for the content and layout of a Product or Products.
“Recipient”	for the purposes of this Schedule only an individual or entity receiving the Product or Products.
“Registration Document”	a document hosted on the Online Ordering Portal used to add a new Authorised User to the Online Ordering Portal.
“RPO”	means recovery point objective which is the point in time you can recover to in the event of a disaster.
“Sandbox”	a testing environment that isolates untested code including changes and outright experimentation from the production environment or repository.
“Schema”	instructions to show which data is to be used to populate each data field in personalised Products.
“Secure File Transfer”	the process to transfer data files securely as more particularly described in Schedule 2.
“Secure Form”	A printed Form which contains obvious and covert features aimed at preventing fraud and counterfeit activity including but not necessarily limited to the Forms set out at Appendix B to Schedule 2.
“Secure Product”	means all Secure Forms and all EHIC and Exemptions.
“Service Commencement Test”	means the tests to be applied to ensure that the Supplier is ready to commence Service provision, and detailed in Schedule 14 (Testing Procedures);

“Specification Builder”	Is the functionality on the Online Ordering Portal that is a self-service job creation and submission tool for non-standard or bespoke Ad Hoc jobs
“SME”	means a small medium enterprise as defined by the European Union.
“Staci”	The Supplier’s warehousing supplier for Non-Secure Forms.
“Stock Holding”	means Goods and /or raw materials excluding Contingency Stock Holding.
“Stock Secure”	Secure Forms which are warehoused/stored by the Supplier and always available for purchase by Ordering Organisations in accordance with this Contract
“Stock Non Secure”	means Forms (excluding Secure Forms) which are warehoused/stored by the Supplier and always available for purchase by Ordering Organisations in accordance with this Contract.
“Storage and Distribution Plan”	means the plan to be created and implemented by the Supplier in accordance with this Contract which sets out the manner in which the Supplier shall deliver store and distribute the Services or Goods.
“Sub Catalogue”	means a sub-set of Products within a catalogue usually collated by clinical use.
“Super User”	an Authorised User who can only be registered by the Authority who has authority to place Orders via the Online Ordering Portal and who can register users to have access to place Orders via the Online Ordering Portal.
“Supplier”	Xerox (UK) Limited - the supplier proposing a solution for the Authority’s requirement for NHS Prescriptions, Card and Print (PCP) in Schedule 2.
“Tax Credit Certificate”	means a Tax Credit Exemption certificate which allows the recipient to claim for Help with Health Costs, including free prescriptions and dental treatment. issued by the Authority on behalf of HMRC.
“Test/Admin User”	an Authorised User who can access the system in any user capacity to check functionality and access rights. Orders placed by a Test/Admin User will not be processed, fulfilled or invoiced.
“Thames Technology”	A subcontractor for the production and delivery / despatch of EHIC, GHIC, Matex, Medex and PPC Cards/Certificates.
“Users”	an Authorised User with access to place Orders via the Online Ordering Portal with the exception of Super User and Test/Admin User.
“Xerox”	The Supplier proposing a solution for the Authority’s requirement for NHS Prescriptions, Card and Print (PCP) in Schedule 2.

2 PART 2 OVERVIEW



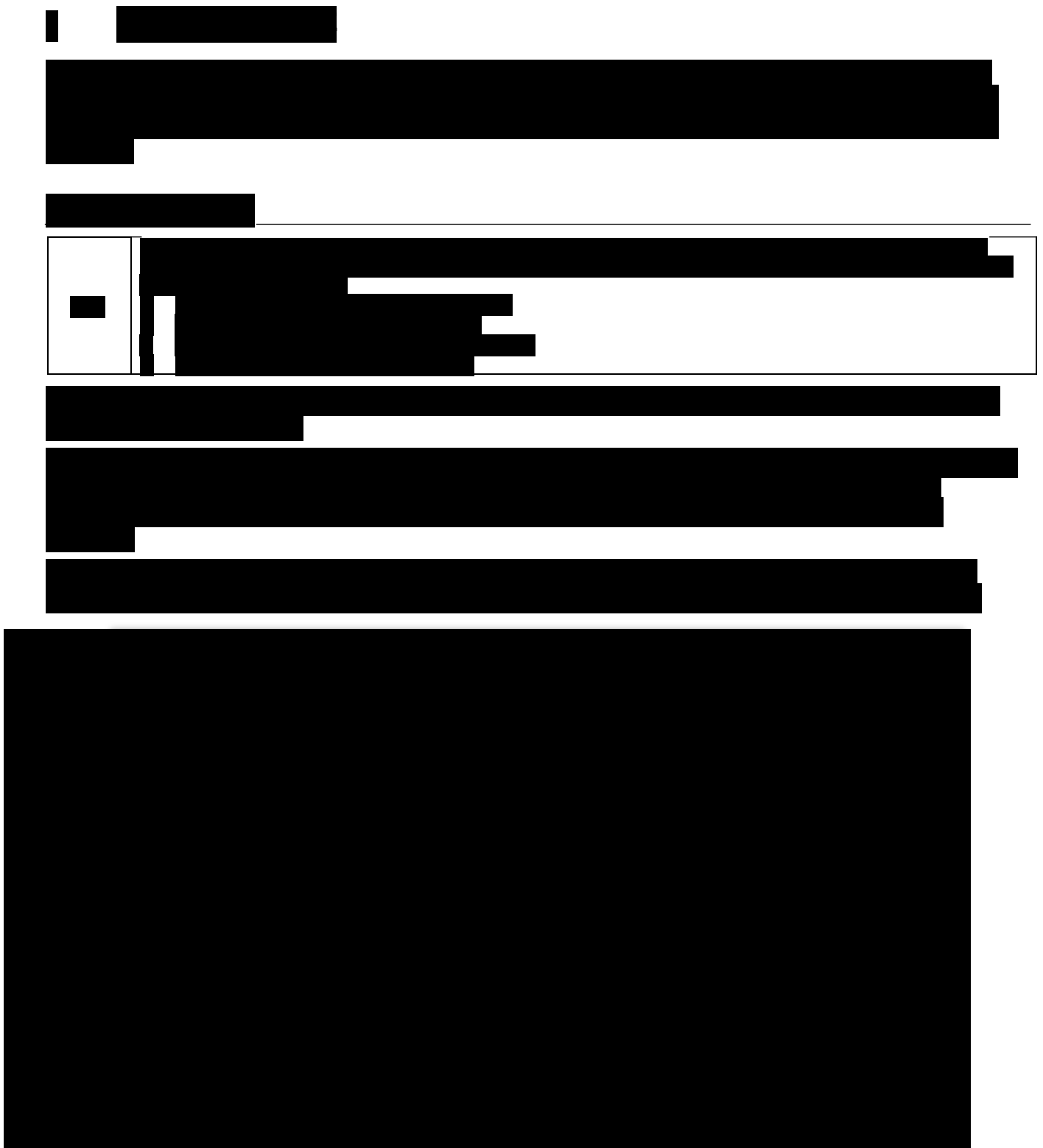


Figure 2: Online Catalogue landing page.





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4 PART 4 OPERATIONAL SERVICES REQUIREMENTS

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Both the Pension Payroll information and Tax Credit Certificates will be a white paper solution. This

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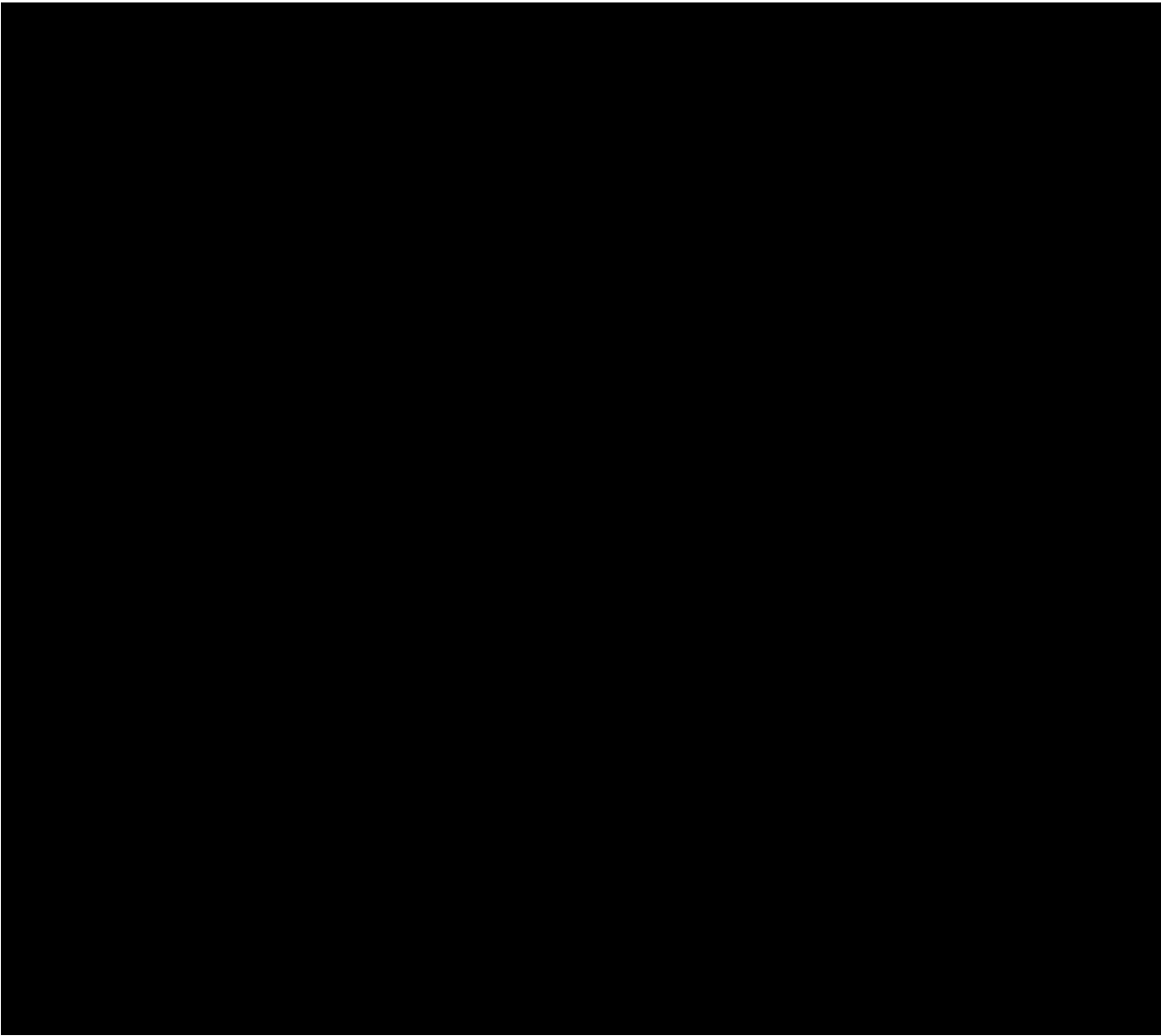
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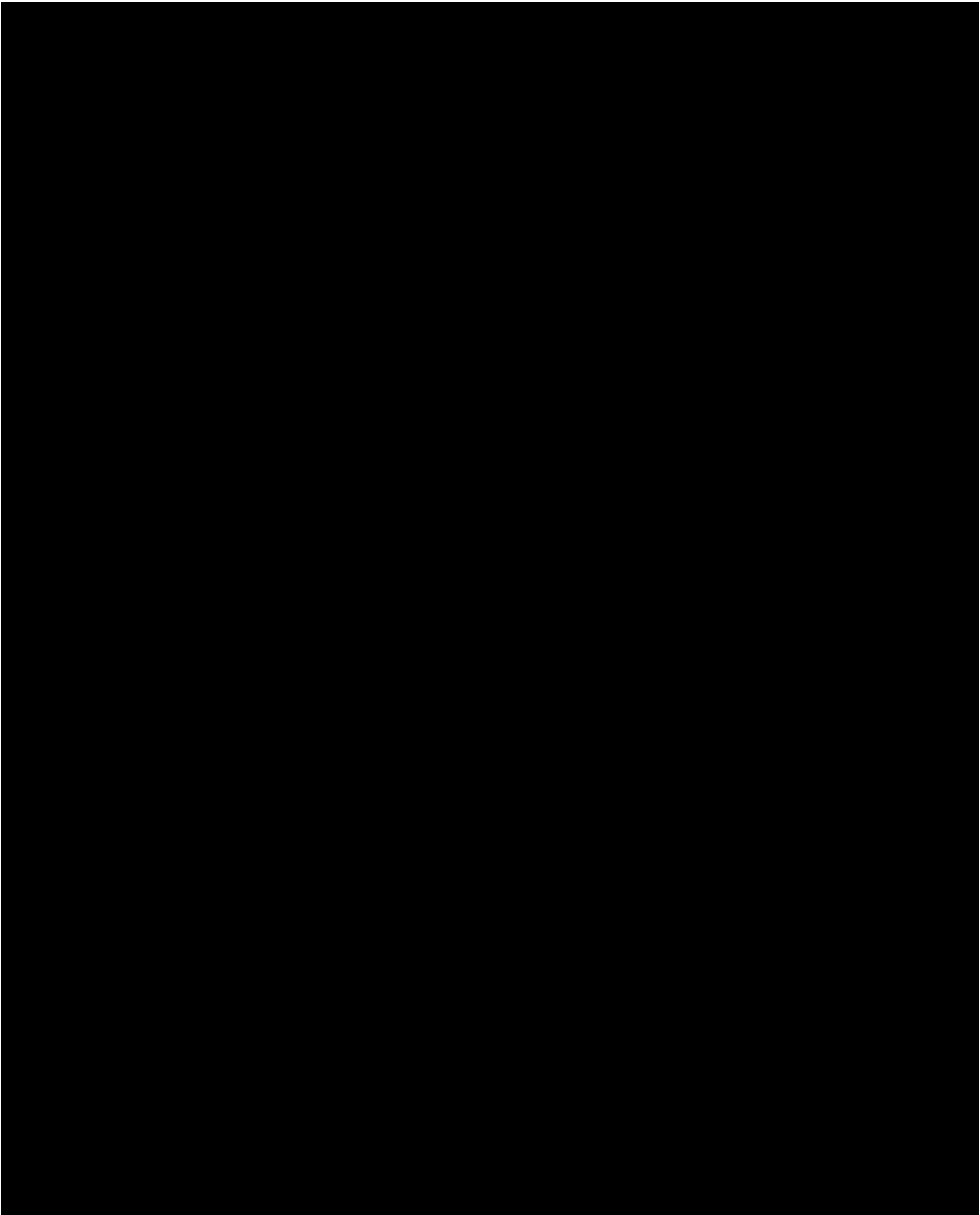
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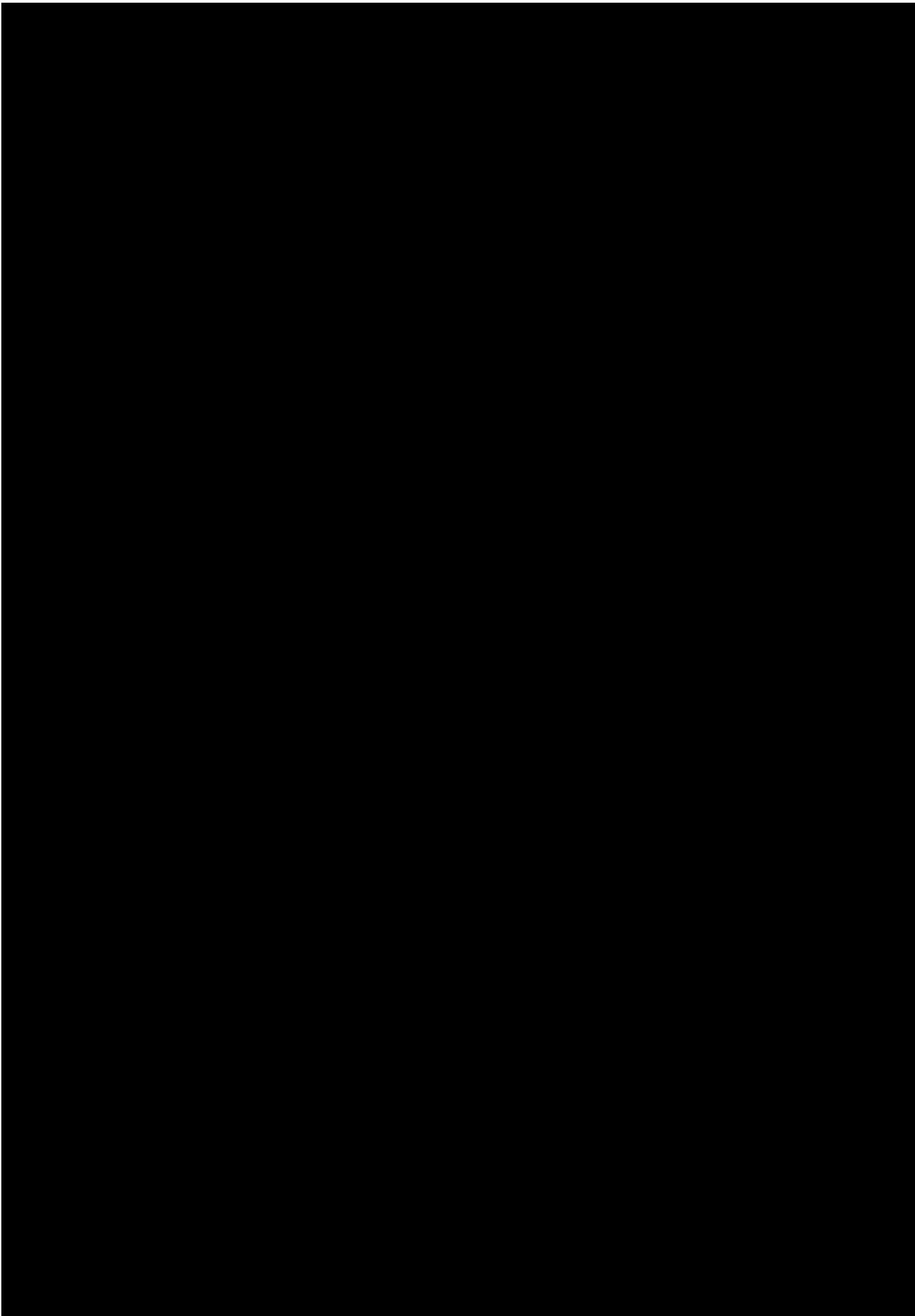
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In accordance with the Authority's requirements in 4.8.17, the Supplier confirms our agreement to the

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- I [REDACTED]
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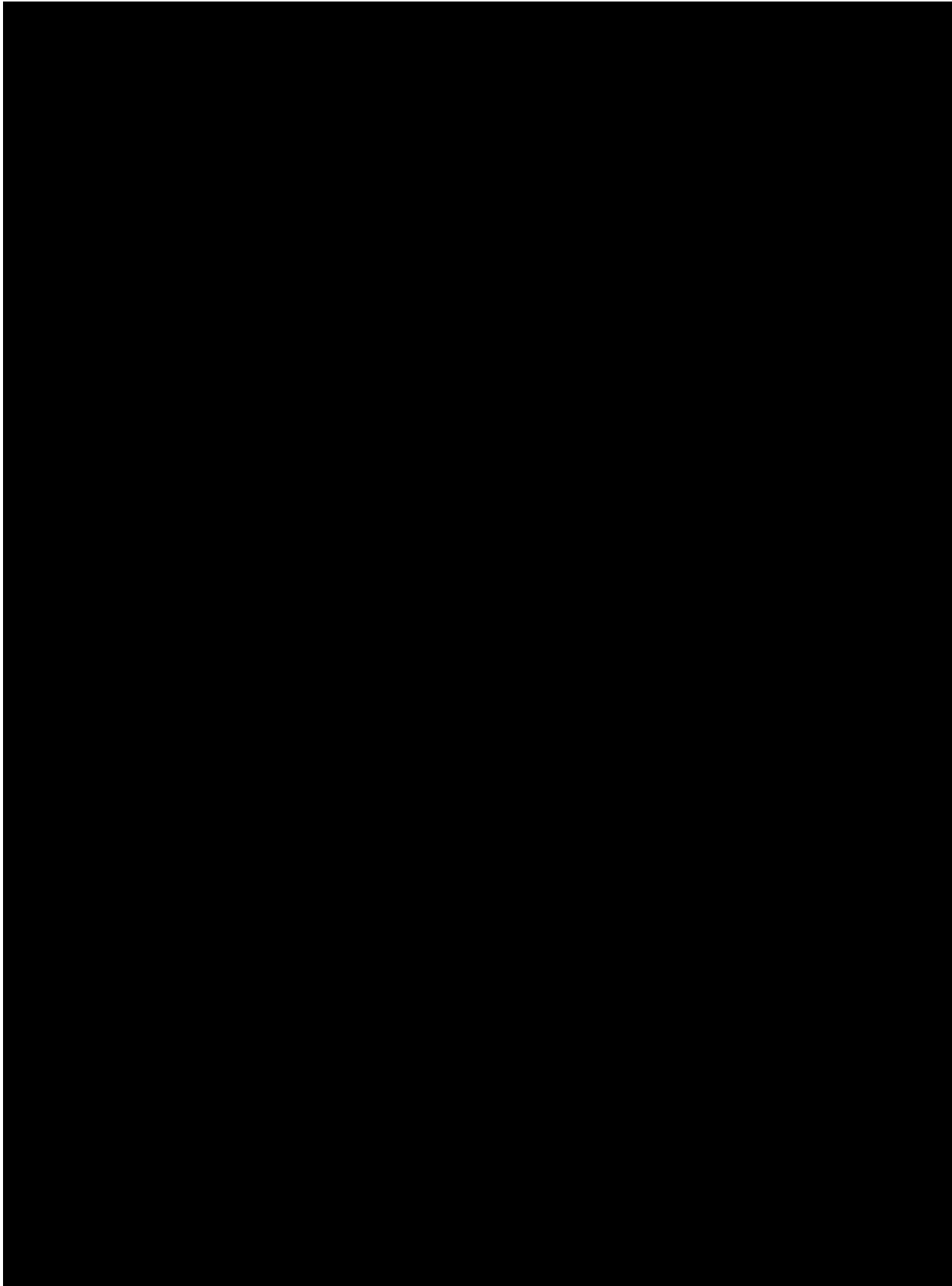
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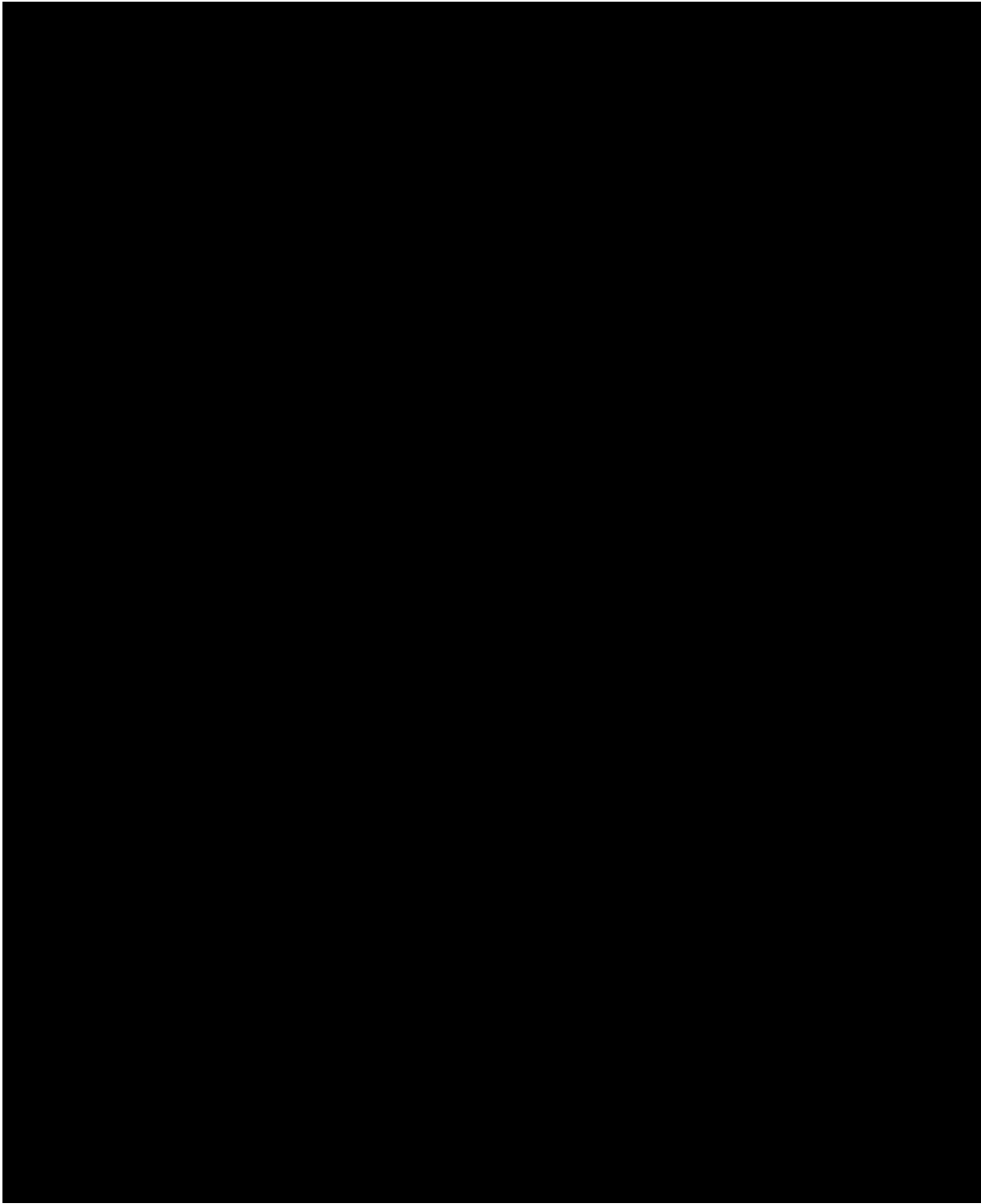
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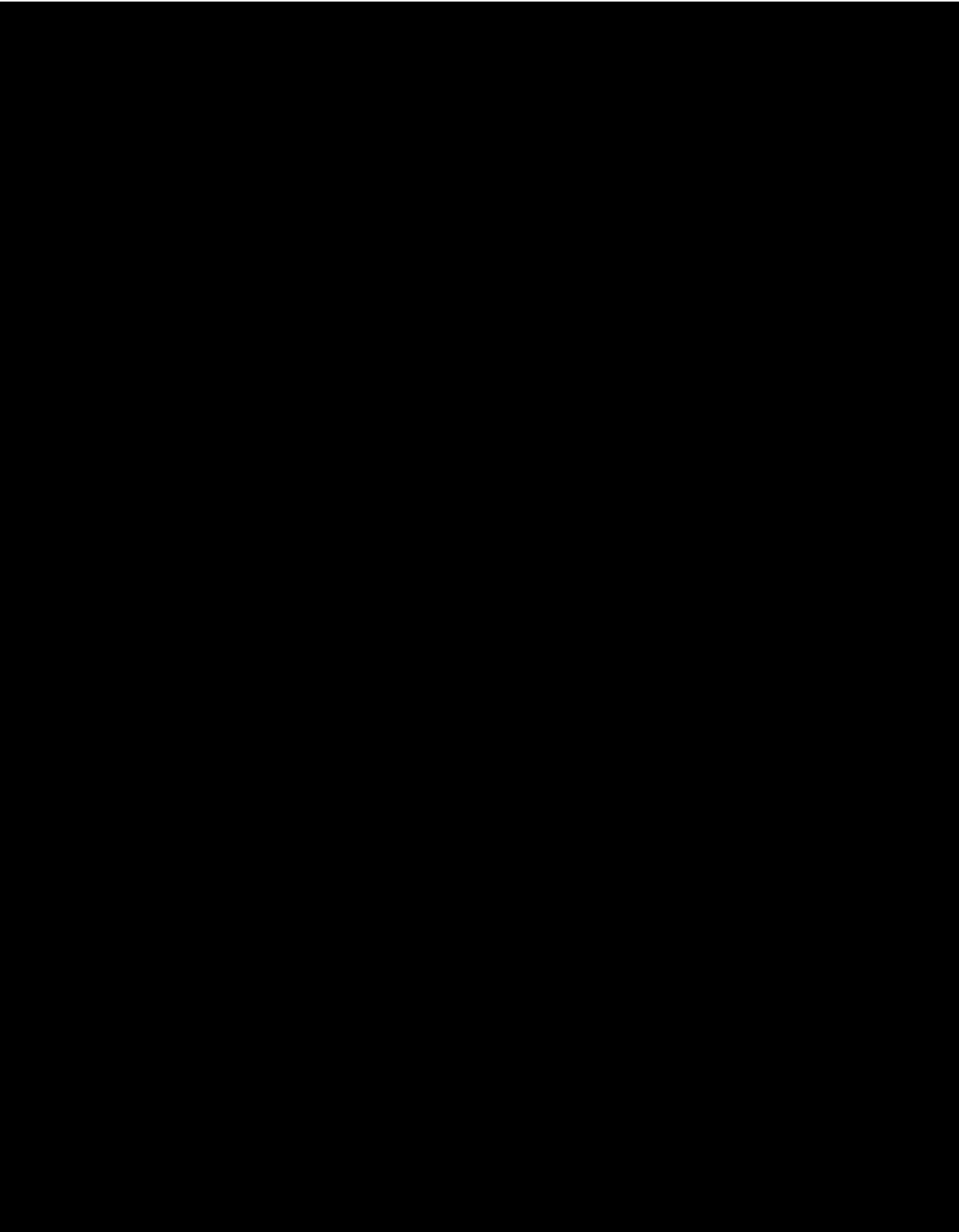
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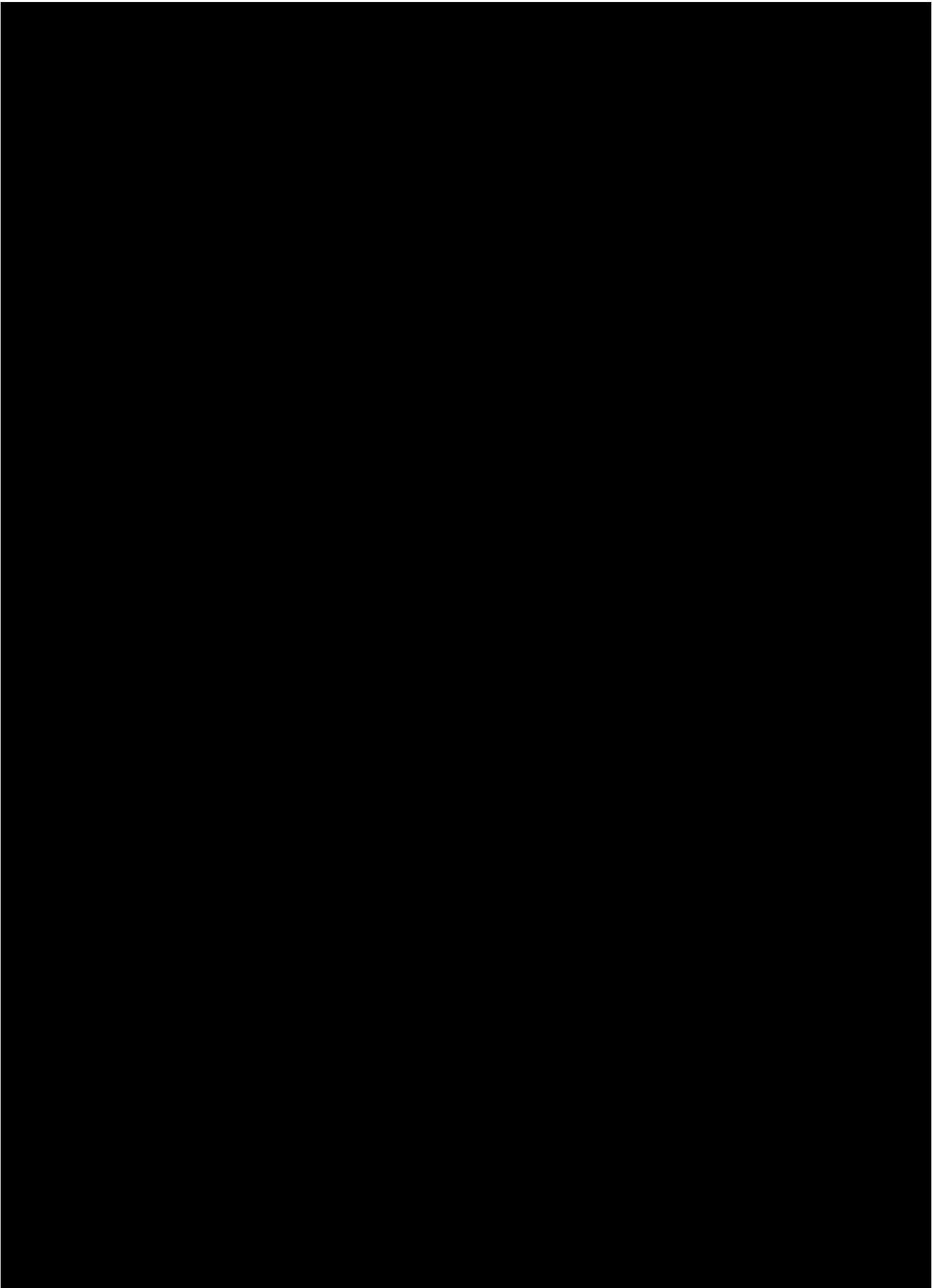


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Page 63

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In order to mutually agree the most appropriate measurements a Climate Specialist, and the Service

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35-44	30%
45-54	40%
55-64	50%
65-74	60%
75-84	70%
85+	80%

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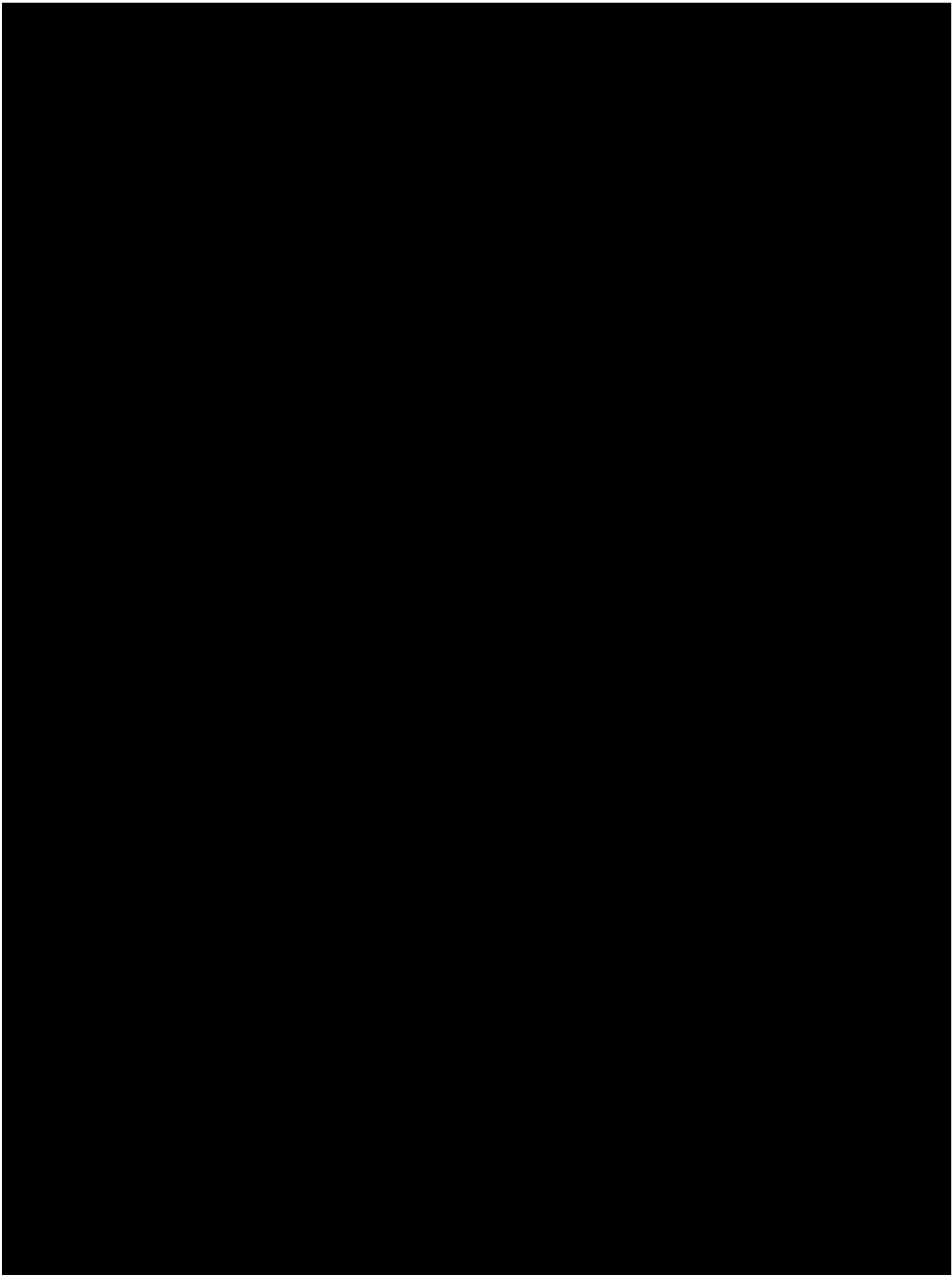
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Notification for Orders by Ordering Organisations are automatically sent to the relevant Key-

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stock rotation). When the stock is picked from the location, the bar code is scanned again (for draw

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SCHEDULE 9

COMMERCIALLY SENSITIVE INFORMATION

Schedule 9 (*Commercially Sensitive Information*)

- 1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column "Duration of Confidentiality").
- 2 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 19 (Confidentiality), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
3		All financial values (save for the overall Agreement value) and/or percentages of contract values within this Agreement, including information related to and the results of any Benchmark Review or audit.	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry or termination of the Contract.
4		Schedule 8 Supplier Solution	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry or termination of the Contract.
5		Schedule 10 Notified Key Sub-Contractors	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry

			or termination of the Contract.
6		Schedule 15 (Charges and Invoicing) - Annex 1: Pricing Mechanism – in accordance with tender response Annex 2: Rate Card Applicable Pricing – in accordance with tender response	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry or termination of the Contract.
7		Schedule 19 (Financial Reports and Audit Rights) – Any information provided by the Supplier in accordance with Schedule 7.5	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry or termination of the Contract.
8		Schedule 29 (Key Personnel) – any names of individuals	For the duration of the tender process, the period of the Contract, including any extension period and two (2) years after expiry or termination of the Contract.

SCHEDULE 10

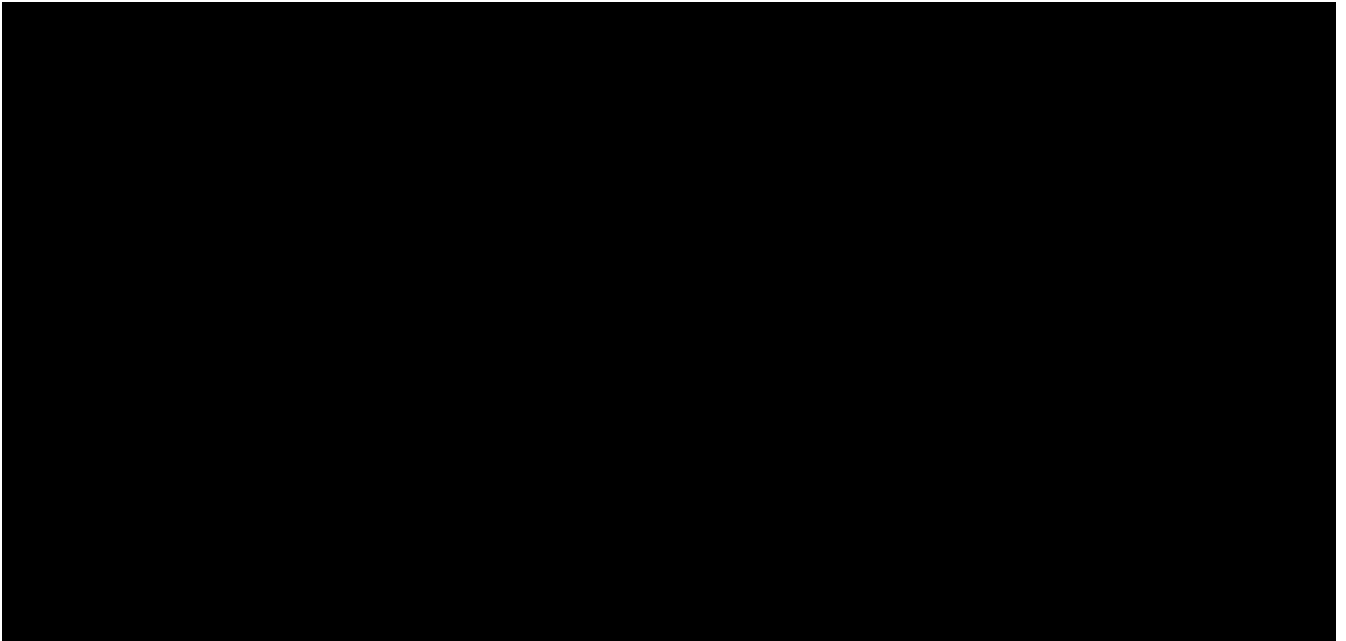
NOTIFIED KEY SUB-CONTRACTORS

Schedule 10 (*Notified Key Sub-Contractors*)

I [REDACTED]

I [REDACTED]

[REDACTED]



SCHEDULE 11

THIRD PARTY CONTRACTS

Schedule 11 (*Third Party Contracts*)

I [REDACTED]

I [REDACTED]

[REDACTED]

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

Crown copyright 2022

Schedule 12 (*Software*)

1 THE SOFTWARE

- 1.1 The Software below is licensed to the Authority in accordance with Clause 16 (*Intellectual Property Rights*) and Schedule 32 (Intellectual Property Rights).
- 1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

Crown copyright 2022

2 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
XMPIE/ Ustore	Xerox	Web2Print and catalogue management system	Enterprise	N/A	N/A	Non-COTS	
XPP	Xerox	Collateral Management System – Xerox Order Portal	Enterprise	N/A	N/A	Non-COTS	
EFT Server	GlobalScape	Support for SFTP services and processing of received data (routing, re-formatting, content.	Enterprise	N/A	N/A	COTS	
Oracle	Xerox	Bespoke functionality as part of the Xerox supply chain management systems including: Inventory & stock management Inventory & financial management MI & reporting (presentation and	Enterprise	N/A	N/A	Non-COTS	

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

Crown copyright 2022

		collation of data from legacy systems)					
Avaya ACD Technology	Xerox	Contact Centre/Help Desk will utilise the existing solution "Avaya ACD Technology" for call routing.	Enterprise	N/A	N/A	COTS	
SysAid	Xerox	Systems administration tool used internally by Xerox to manage issues (workflow, status, setting & reporting)	Enterprise	N/A	N/A	COTS	
Oracle RightNow	Xerox	Contact Centre/Help Desk will utilise the existing solution	< 15 Users	Up to 15 Users	N/A	COTS	

3 THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry
Asset Management	Xinet	Digital Asset Management	Enterprise	N/A	N/A	COTS	

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

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System (XDAM)		(DAM)					
Adobe Indesigner	Adobe	Used as the main tool to modify and create digital content, forms and design other outputs.	< 10 Users	For use up to 10 Users			
Hopewiser Mail Sortation	Thames Technology	Used to sort mail items into batches to achieve highest postage discounts (based on utilising MailMark)	Enterprise	N/A	N/A	COTS	
EHIC's card creation system	Thames Technology	Thames Technology in-house software program linked to MS Access	Enterprise	N/A	N/A	Non-COTS	
Microsoft NAV Enterprise Resource Planning (ERP)	Adare	ERP system holds the production templates for the print and fulfilment solution, including the production machine routing, materials used, postal service and service levels.	Enterprise	N/A	N/A	Non-COTS	
ATOM	Adare	Adare's Tracking, Observation & Measurement Systems – provides the capability to trace each individual data record and	Enterprise	N/A	N/A	Non-COTS	

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

Crown copyright 2022

		associated communication from receipt to despatch and all points in between – data transfer, validation, composition etc. It provides an audit trail for all printed communications.					
Microsoft Office Tools	Microsoft	Office productivity tools including: MS Access, Excel.	Enterprise	N/A	N/A	COTS	
McAfee Security	Adare	GFI LANGuard server, with McAfee VirsuScan Enterprise	Enterprise	N/A	N/A	COTS	

SCHEDULE 12 (SOFTWARE)

[Subject to contract]

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ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

[Supplier letterhead]

**[insert Authority
name and address]**

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [insert date] in respect of [brief summary of subject of the Agreement] (the “**Contract**”). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Paragraph [2.4(b) **[use this if Options 1 or 2 in Schedule 32 (Intellectual Property Rights) are chosen]**] [2.5(b) **[use this if Options 3 or 4 in Schedule 32 (Intellectual Property Rights) are used]**] of Schedule 32 (Intellectual Property Rights) of the Contract we confirm that:

- 4 the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
- 5 notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Paragraph [2.4(b) **[use this if Options 1 or 2 in Schedule 32 (Intellectual Property Rights) are chosen]**] [2.5(b) **[use this if Options 3 or 4 in Schedule 32 (Intellectual Property Rights) are used]**] of Schedule 32 (Intellectual Property Rights) of the Contract.

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the “**Sub-licensee**”); and
- (2) [*insert name*] of [*insert address*] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [*insert name of Authority*] (the “**Authority**”) and the Supplier are party to a contract dated [*insert date*] (the “**Contract**”) for the provision by the Supplier of [*insert brief description of services*] to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;
 - (c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
 - (d) Information derived from any of the above,
- but not including any Information that:
- (a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;
 - (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (c) was independently developed without access to the Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential

Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

- (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
 - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided

pursuant to or in anticipation of the Sub-licence.

- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub- licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub- licensee of any of the provisions of this Agreement. Accordingly, the Sub- licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub- licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

- 5.2 Any Notice:

- (a) if to be given to the Supplier shall be sent to:

- [Address]

- Attention: [*Contact name and/or position, e.g. “The Finance Director”*]

- (b) if to be given to the Sub- licensee shall be sent to:

- [Name of Organisation]

- [Address]

Attention: []

6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Sub-licensee*]

Signature:

Date:

Name:

Position:

SCHEDULE 13

IMPLEMENTATION PLAN

Schedule 13 (*Implementation Plan*)

1 INTRODUCTION

1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2 OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Annex 1.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 29 (*Authority Cause*)).

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones set out at Annex 1 together with the relevant timescales for any additional milestones put forward by the Supplier:
 - (i) the completion of each project or design document
 - (ii) the operational service infrastructure;
 - (iii) the completion of the build phase;
 - (iv) the completion of any Testing to be undertaken in accordance with Schedule 14 (Testing Procedures); and
 - (v) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in line with Annex 1 together with a high level plan for

the rest of the programme, in conformity with the Authority Requirements;

- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Authority.

3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:

- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
- (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

3.5 If the Authority rejects the draft Detailed Implementation Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every month starting 3 months from the Effective Date;
 - (b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 21 (Governance)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 29 (*Authority Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

5 GOVERNMENT REVIEWS

- 5.1 The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charge

ANNEX 1: OUTLINE IMPLEMENTATION PLAN

Milestone	Deliverables (<i>bulleted list showing all Deliverables (and associated tasks) required for each Milestone</i>)	Duration (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to CPP
TM1 Detailed Transition & Implementation Plan	<p>Provide a plan including the following non exhaustive list:</p> <ul style="list-style-type: none"> End to end TUPE Plan Artwork migration from exiting to Supplier Risk & Issues management plan Testing strategy and plan Detailed stock holding transition plan Business Continuity plan Disaster Recovery plan Training plan 		1 st November 2023		
TM2 Scan testing	<p>Supplier to provide blank, separated prescription forms to Authority and separated prescription forms with populated information on for Scan testing.</p> <p>Only when the scan testing is accepted as successful by the Authority in compliance with Schedule 2 will TM2 be achieved</p>		31 st January 2024	Authority to provide data to populate forms.	
TM3 Testing Product Quality	<p>Produce (electronic copy) of mock prescriptions and Exemptions, Covid Pass and EHIC/GHIC of all types for Authority to verify layout of Schema is correct</p> <p>- Produce 2 x hard copies of products and Authority to approve/reject quality.</p>		31 st January 2024		

Milestone	Deliverables (<i>bulleted list showing all Deliverables (and associated tasks) required for each Milestone</i>)	Duration (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to CPP
	Only when the above are accepted by the Authority that they are in compliance with Schedule 2.1 will TM3 be achieved.				
TM4 Contact Centre/Helpdesk	<p>Successful development of a fully tested and accepted Contact Centre/Helpdesk</p> <p>Transfer of Contact Centre/Helpdesk telephone number</p> <p>Resource & training of contact centre/helpdesk staff</p> <p>Only when the above are accepted by the Authority will TM4 be achieved.</p>		Friday 28 th June 2024		
TM5 IT Infrastructure and Testing	<p>Supplier must have successfully tested infrastructure in place to send and receive extract files</p> <p>Extracts have been successfully tested between Authority and Supplier as sent and received</p> <p>Extracts have been successfully be tested between NHS Wales and Supplier as sent and received</p> <p>All data in extract has successfully been received in the format sent</p> <p>Acknowledgements have been successfully tested between Supplier and the Authority</p> <p>Acknowledgements have been successfully tested between Supplier and NHS Wales</p> <p>Online Ordering Portal performance has been successfully tested against Functional and Non Functional Requirements of Schedule 2.1 and user acceptance testing (UAT) is complete.</p> <p>Supplier has successfully achieved compliance and integration with Authority SIAM tool in accordance with Schedule 2.1</p> <p>Authority sign off and acceptance shall only be given once all of the above set out for this TM5 have been achieved.</p>		31 st March 2024		
TM6	Supplier to produce migration plan and work with the Authority and exiting supplier to develop and agree any required downtime to facilitate migration of Online Ordering Portal Address		Friday 28 th June 2024		

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to CPP
Online Ordering Portal Address Migration	Only when the Authority when Authority has approved the migration plan and Online Ordering Portal Address is successfully migrated and tested will this TM6 be achieved.				
TM7 EHIC & Exemptions delivery test	Supplier to issue test EHIC/GHIC, Exemptions and Covid Pass to Authority for Card/Carrier mismatch, profanity filters, data is correct, packaging quality, pack size sufficient testing. Only when the above are accepted by the Authority that they are in compliance with Schedule 2 will TM7 be achieved.		31 st January 2024		
TM8 Training	Online –ordering portal training for all Authorised Users successfully delivered. Only when the Authority accepts that training has been successfully delivered will TM8 be achieved.		Friday 28 th June 2024		
TM9 Management Information	Supplier to create and provide to the Authority a full set of Monthly Management Information (MI) Only when the Authority accepts that the MI is in compliance with Schedule 24 (Reports and Records Provisions) with TM9 be achieved.		Friday 28 th June 2024		
TM10 Stock Holding and Contingency Stock Holding Transfer	Stock Holding and Contingency Stock Holding successfully transferred from exiting supplier to Supplier and held in Suppliers facilities in accordance with Authority Requirements Only when the Authority accepts that the above is in compliance with Schedule 2 will TM10 be achieved.		Friday 28 th June 2024		
TM11 Service Readiness	Service Readiness test to check that that Milestone 1 – TM1 – TM10 have been delivered with any outstanding remedial actions completed		Friday 28 th June 2024		CPP

Milestone	Deliverables (<i>bulleted list showing all Deliverables (and associated tasks) required for each Milestone</i>)	Duration (<i>Working Days</i>)	Milestone Date	Authority Responsibilities (<i>if applicable</i>)	Link to CPP
TM12 Post Implementatio n	Post Implementation Daily Report advising Authority of: System and Service Performance Details of any non conformances and impact Remedial action/service improvement plan if required for any non conformances		ongoing		

SCHEDULE 14
(TESTING PROCEDURES)

Schedule 14 (*Testing Procedures*)

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Threshold”	Issue in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Management Log”	Issue a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;

“Test Criteria”	Success	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”		any person appointed by the Authority pursuant to Paragraph 10.1; and
“Testing Procedures”		the applicable testing procedures and Test Success Criteria set out in this Schedule.

2 RISK

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
- (b) affect the Authority's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (ii) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:

- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
- (b) the Services are implemented in accordance with this Contract/ or any Order; and
- (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3 TESTING OVERVIEW

3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The Supplier shall not submit any Deliverable for Testing:

- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
- (b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

- (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

- 4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
 - (a) Ensure that the Test Strategy clearly identifies the process, systems an infrastructure that is to be tested and how they relate to:
 - (i) the implementation plan and appropriate milestones;
 - (ii) the Operational Services.
- 4.2 The final Test Strategy shall include:
 - (a) an overview of how Testing will be conducted;
 - (i) in accordance with the Implementation Plan; and
 - (ii) to ensure that the Deliverables and performance levels can be assessed in accordance with the Key Performance Indicators set out at Schedule 3 and the Service Specification.
 - (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
 - (c) the method for mapping the expected Test results to the Test Success Criteria;
 - (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - (e) the procedure to be followed to sign off each Test;
 - (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test

Issue Management Log, and a sample plan for the resolution of Test Issues;

- (g) the names and contact details of the Authority's and the Supplier's Test representatives;
- (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
- (i) the technical environments required to support the Tests; and
- (j) the procedure for managing the configuration of the Test environments.

5 TEST PLANS

5.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as may be set out in the Implementation Plan or may be specified elsewhere).

5.2 Each Test Plan shall include as a minimum:

- (a) the relevant Test definition and the purpose of the Test, if applicable the Milestone or Key performance Indicator or element of the Service Specification to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied; a detailed procedure for the Tests to be carried out, including:
 - (i) the timetable for the Tests, including start and end dates;
 - (ii) the Testing mechanism and strategy in relation to physical infrastructure, call outs, systems, software or such other elements/requirements as may be relevant or specified by the Authority;

dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (iv) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

- (v) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
- (vi) the Test Schedule;
- (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- (b) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

6 TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Annex 4; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan) or as may otherwise be specified by the Authority.

7.2 Each Test Specification shall include as a minimum:

- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for Testing;
- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and

- (ii) a method to process the Test results to establish their content.

8 TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.
- 8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Authority in relation to each Test:
 - (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - (a) an overview of the Testing conducted;
 - (b) identification of the relevant Test Success Criteria that have been satisfied;
 - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and

- (f) the specification for any equipment, assets, hardware and software used throughout Testing and any changes that were applied to the equipment, assets, hardware and/or software during Testing.

9 TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10 TEST WITNESSING

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - (a) shall actively review the Test documentation;
 - (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - (c) shall not be involved in the execution of any Test;
 - (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;

- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and
 - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
 - (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

- (b) subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

- 11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate if applicable) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12 OUTCOME OF TESTING

- 12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

- (a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;
- (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*).
- (d) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Key Milestone as set out in Schedule 13 Annex 1, then without prejudice to the Authority's other rights and remedies, such failure will constitute a Supplier Termination Event.

- 12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- (a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - (b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 Not used.
- 13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:
- (a) the applicable Test Issues ; and
 - (b) any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*) and the Authority shall refuse to issue a Milestone Achievement Certificate where:
- (a) there is one or more Material Test Issue(s); or
 - (b) the information required under Schedule 24 (*Reports and Records Provisions*) (Annex 3: *Records To Upload To Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and

- (b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

- 1 Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 2 Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
 - 2.1 causes a Component to become unusable or a substantial element of the Services to be unachievable;
 - 2.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.3 has an adverse impact on any other Component(s), processes to be followed by the supplier or any other area of the Services;
- 3 Severity Level 3 Test Issue:** a Test Issue which:
 - 3.1 causes a Component to become unusable or a substantial element of the Services to be unachievable;
 - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3 has an impact on any other Component(s) or any other area of the Services, processes to be followed by the supplier;

but for which, as reasonably determined by the Authority, there is a practicable workaround available;
- 4 Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 5 Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF AUTHORITY]**

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: **[insert description of Deliverables]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Authority]** (the “**Authority**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 14 (Testing Procedures) of the Contract.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 14 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Authority]**

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF AUTHORITY]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the agreement (the “**Contract**”) relating to the provision of the Services between the **[name of Authority]** (the “**Authority**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 14 (Testing Procedures) of the Contract.

[We confirm that all the Deliverables relating to Milestone **[number]** have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 14 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 15 (Charges and Invoicing)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[Authority]**

ANNEX 4: TEST SUCCESS CRITERIA

1 Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria
TM11 – Service readiness test	TM1–TM10 must have been successfully achieved and agreed as such by the Authority	TM1-TM10 achieved with any and all remediation completed to the satisfaction and sign off by the Authority

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SCHEDULE 15

CHARGES AND INVOICING

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Schedule 15 (*Charges and Invoicing*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- | | | |
|--------------------------|---------------|---|
| “Achieved Margin” | Profit | the cumulative Supplier Profit Margin calculated from (and including) the Operational Services Commencement Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year; |
| “Costs” | | <p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none">(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:<ul style="list-style-type: none">(i) base salary paid to the Supplier Personnel;(ii) employer’s national insurance contributions;(iii) Employer 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 perform the Services (but not including items included within limb (b) below); and(ix) reasonable recruitment costs, as agreed with the Authority;(b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting |

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principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those 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 delivery of the Services;
- (d) Not Used;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) amounts payable under Schedule 17 (Benchmarking); and
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Indexation” and the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
“Index”

“Invoicing Address” the relevant address that the Supplier shall submit and invoice to in respect of the Ordering

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	Organisation place an Order;
“Man Day”	the Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Management Fee”	means 2% of unit charge for all Products in Tables 1 and 2 of Annex 1 and all Tables in Annex 2 of Schedule 15 (<i>Charges and Invoicing</i>);
“Man Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) including allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel;
“Overhead & Profit Margin Cap”	the cumulative total of Overhead and Profit Margin shall not exceed 10% of the Charges excluding the Management Fee and Pass Through Costs;
“Paper Rates”	only demonstrable fluctuations in the purchase price of pulp and paper in line with the RISI PPI Pulp and Paper Week (http://www.risiinfo.com/product/ppi-pulp-paper-week/);
“Pass Through Costs”	shall only include the postage costs which have been agreed between the Parties during the procurement process and are set out in Annex 1 of Schedule 15 (<i>Charges and Invoicing</i>);
“Reimbursable Expenses”	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 Authority's expenses policy current from time to time, but not including: (a) travel expenses incurred as a result of Supplier Personnel travelling to and from

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		their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and
		(b) subsistence expenses incurred by Supplier Personnel 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;
“Service Factor”	Credit	in relation to Service Credits, the percentage of the total available Service Credits applicable for a given Service Period attributed to each Weighted Service Point;
“Service Credit Value”		an amount calculated in accordance with Part C Paragraph 3 of this Schedule 15 (<i>Charges and Invoicing</i>);
“Supplier Profit”		in relation to a period (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs plus Overhead (in nominal cash flow terms) for the relevant period or in relation to the relevant period;
“Supplier Margin”	Profit	in relation to a period (as the context requires), the Supplier Profit for the relevant period divided by the total Charges excluding the Management Fee over the same period and expressed as a percentage;
“Supporting Documentation”		sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Unit of Measure (UOM)”	Measure	the Unit of Measure for each product as indicated in the Tables set out at Annex 1 of this Schedule 15 (<i>Charges and Invoicing</i>);
“Weighted Point”	Service	the value set out the tables at Paragraph 1 of Part 1 of Annex 1 of Schedule 3 (<i>Performance Levels</i>) and calculated in accordance with the worked

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example set out in Paragraph 3.2(b) of this
Schedule 15 (*Charges and Invoicing*).

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PART A: PRICING

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PART C: ADJUSTMENTS TO THE CHARGES

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accrual of Service Points in excess of such financial limit in accordance with

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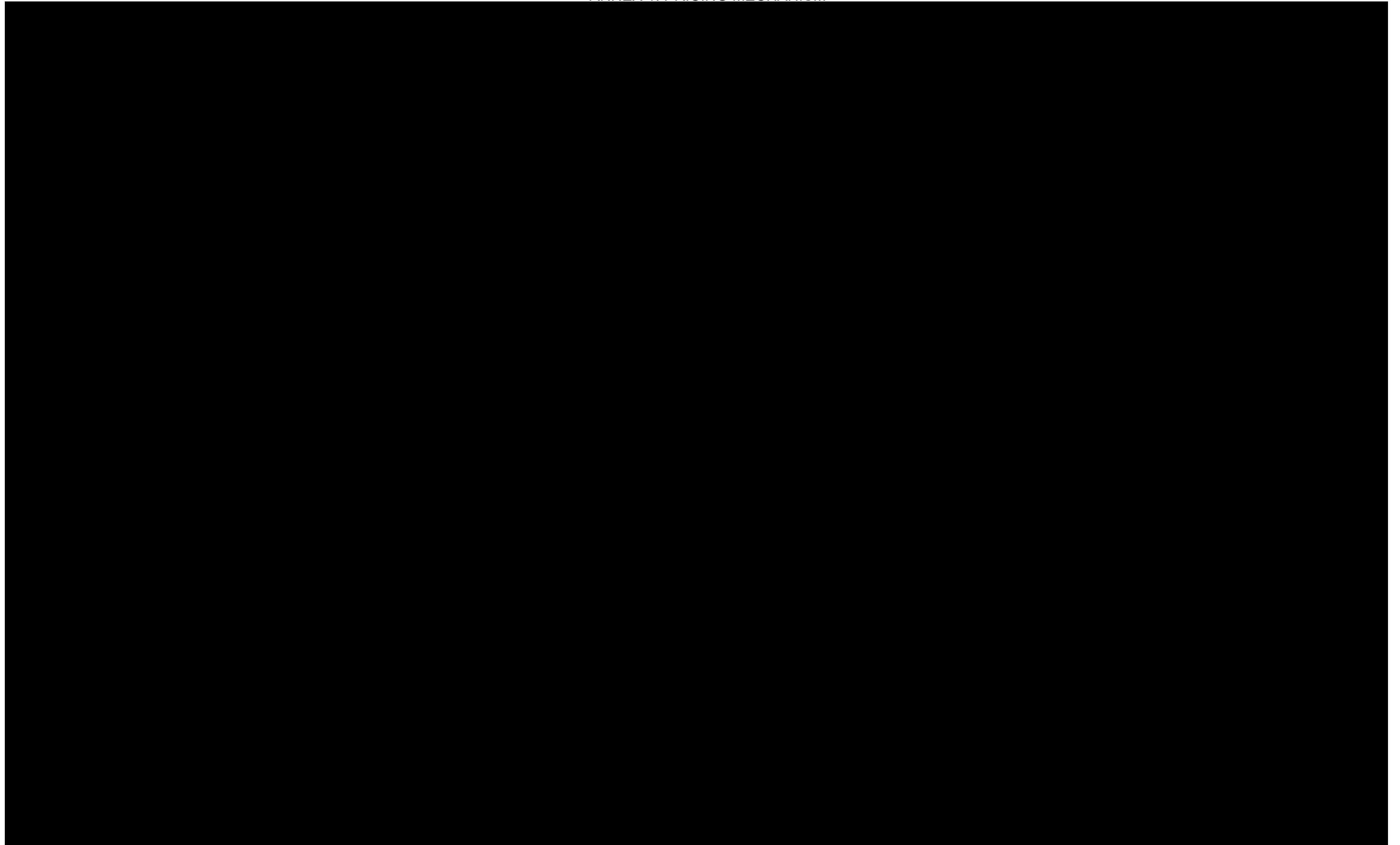
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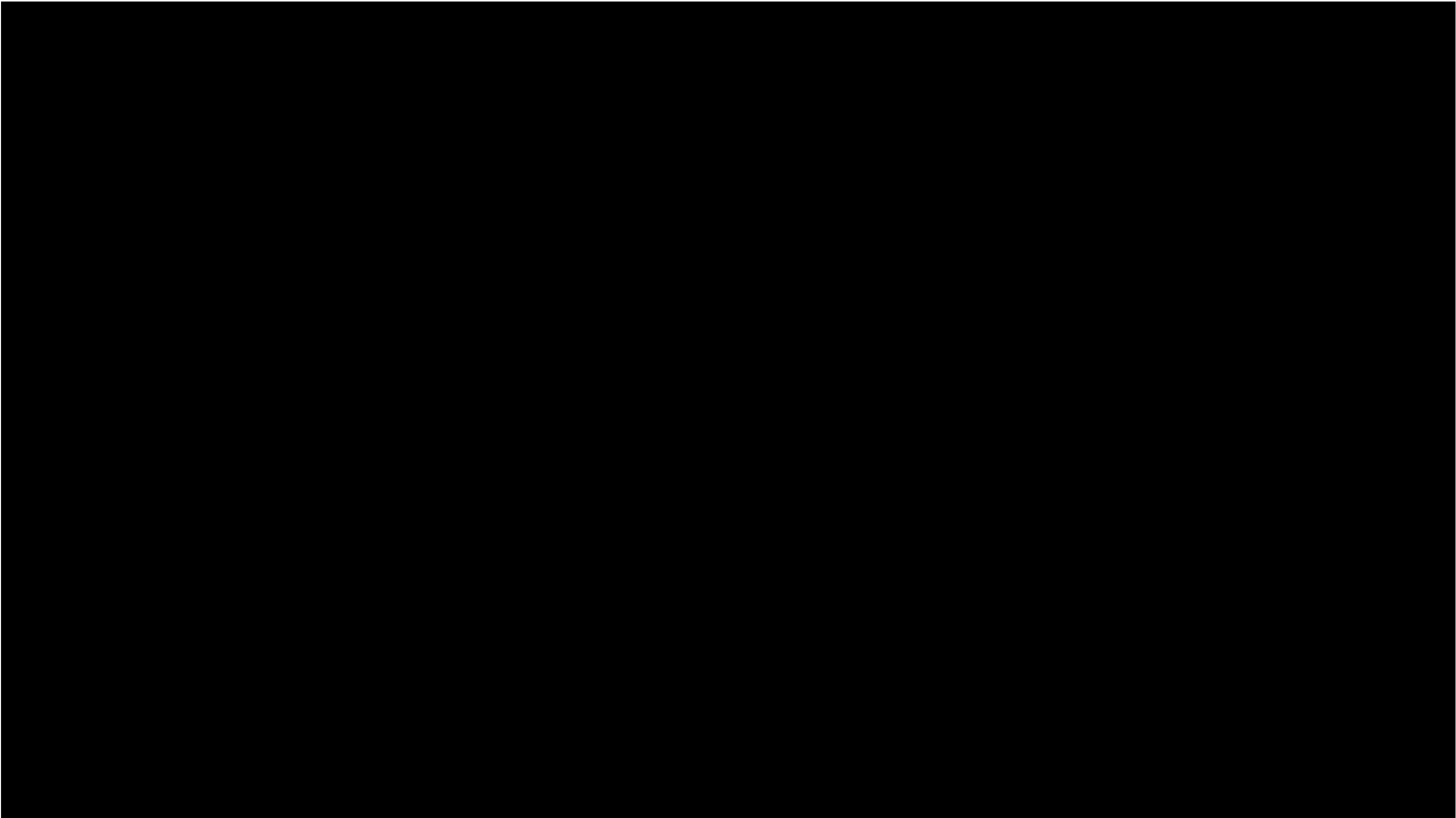
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ANNEX 1: PRICING MECHANISM



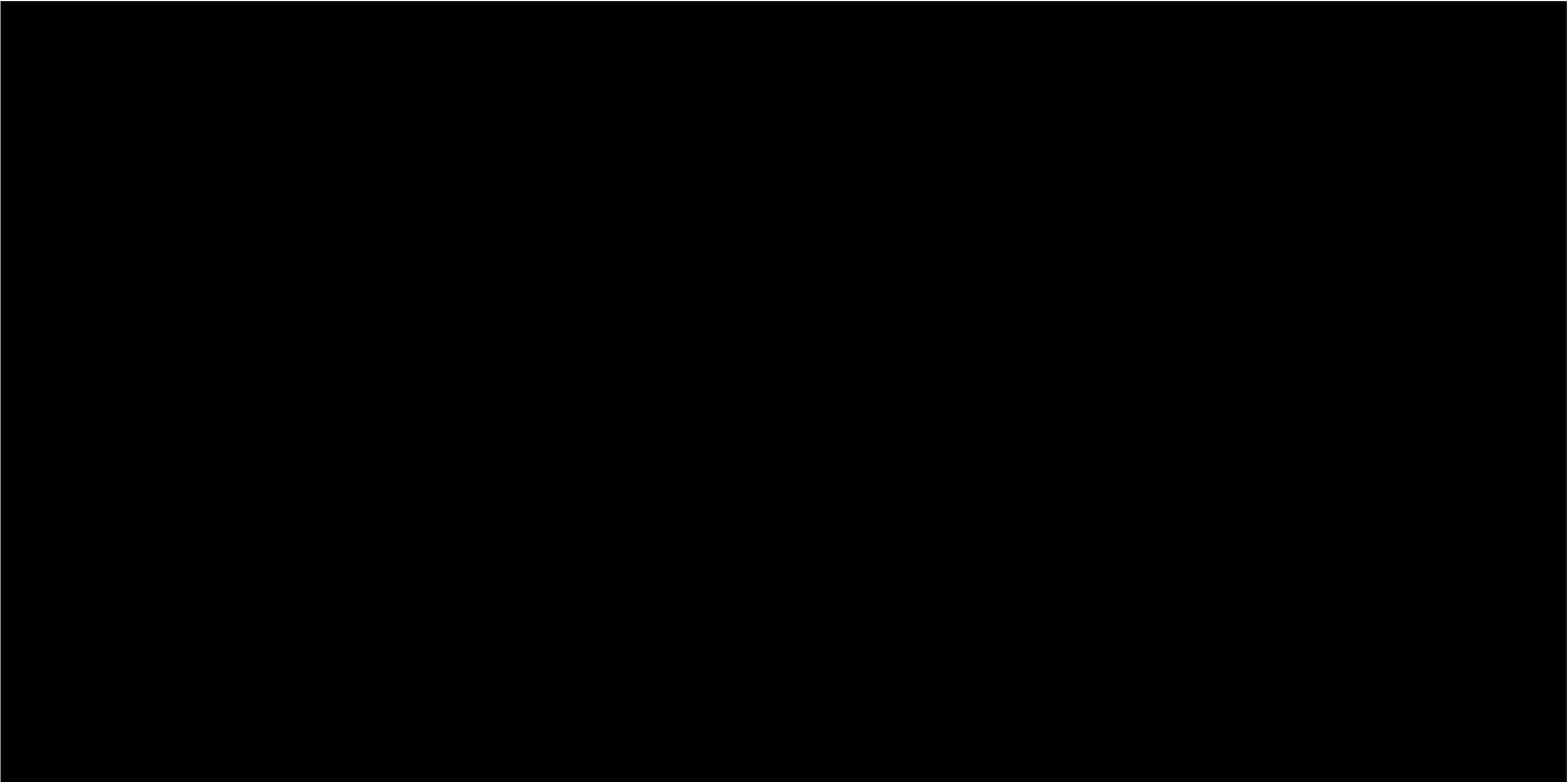
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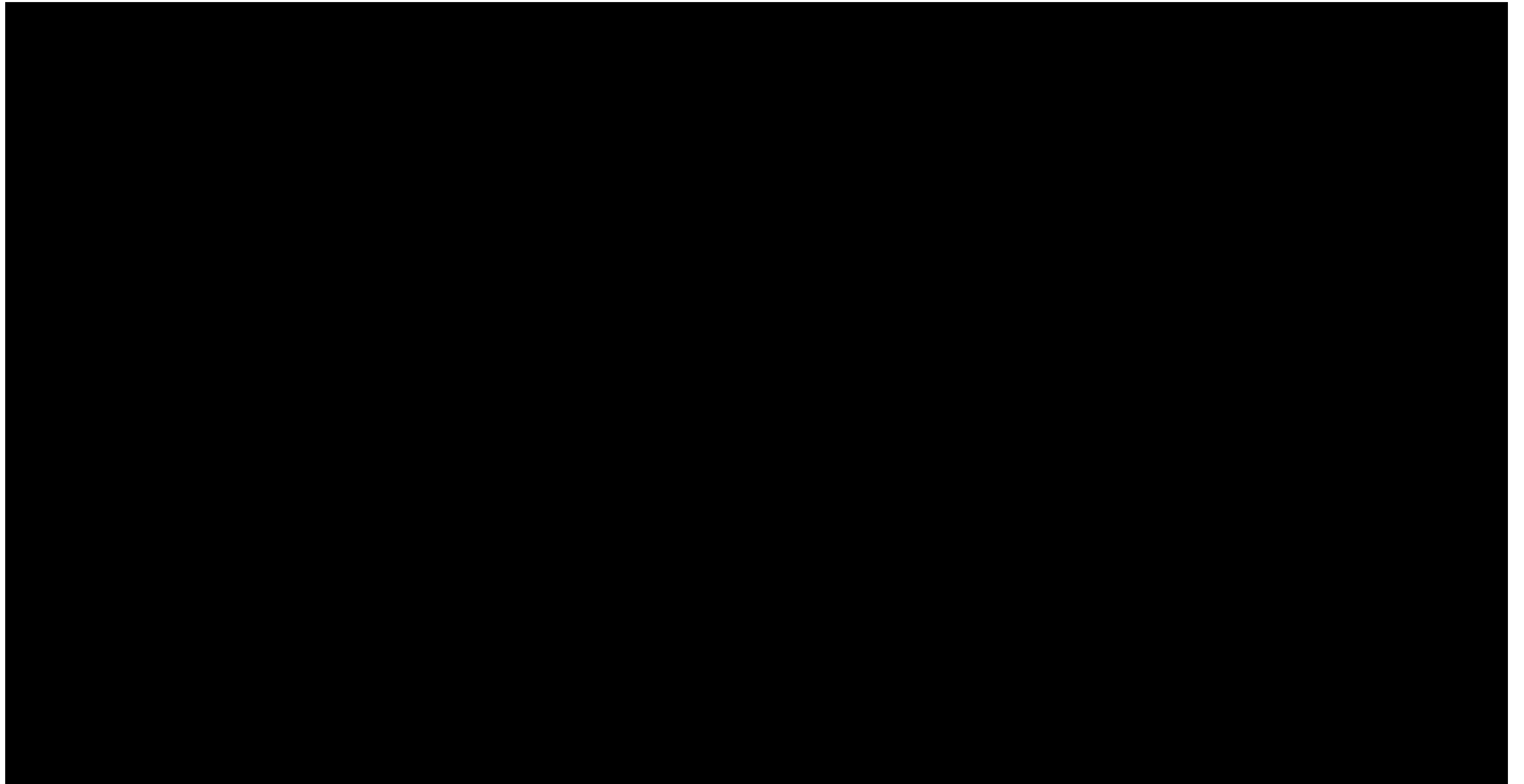
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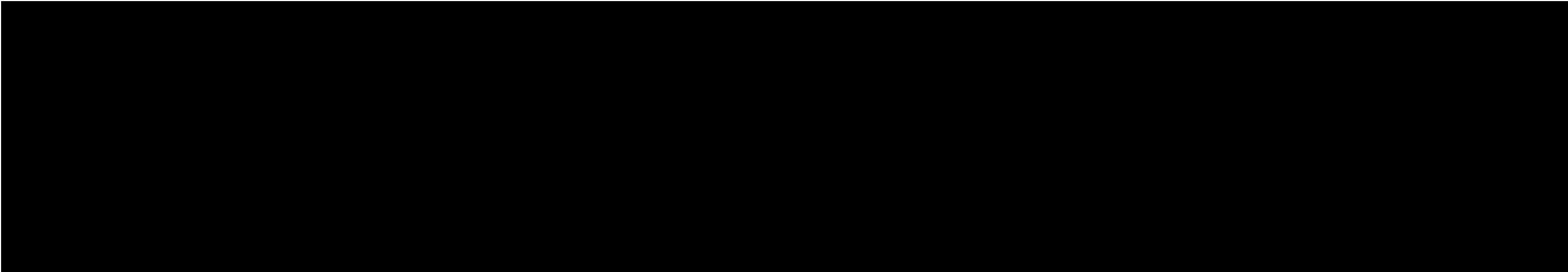
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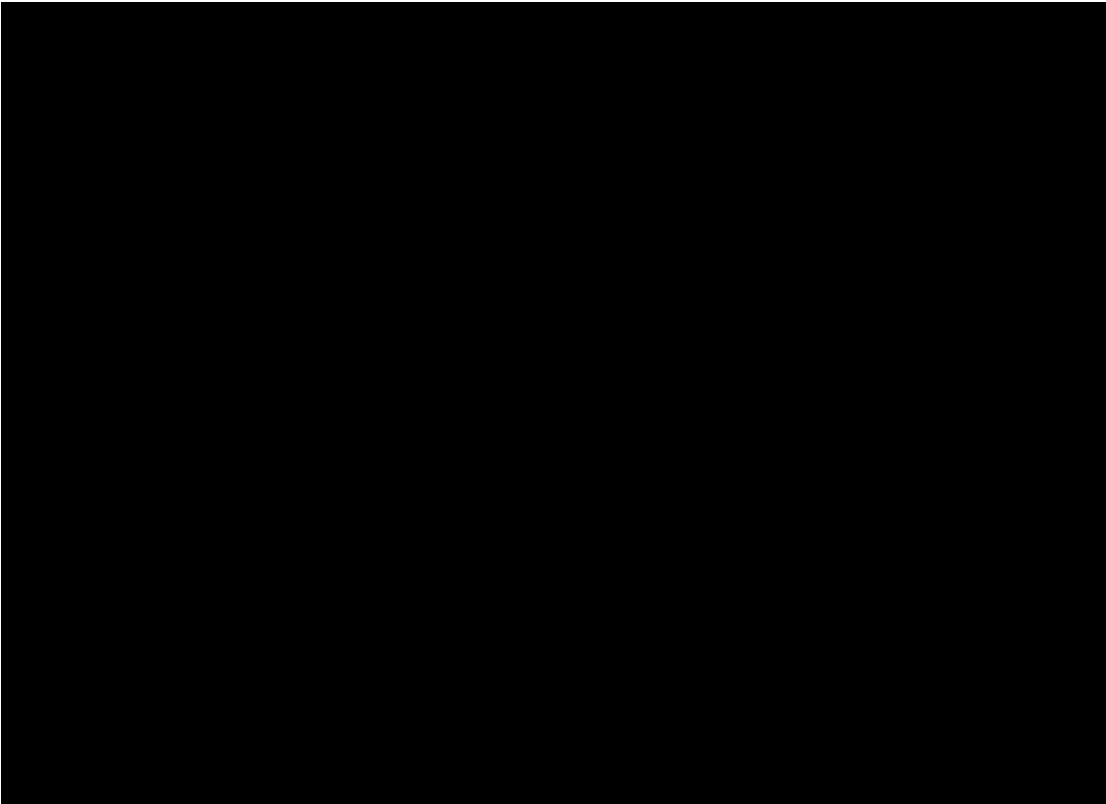
ANNEX 2: RATE CARD APPLICABLE PRICING

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SCHEDULE 16 (PAYMENTS ON TERMINATION)

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SCHEDULE 16

PAYMENTS ON TERMINATION

SCHEDULE 16 (PAYMENTS ON TERMINATION)

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Schedule 16 (*Payments on Termination*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel” any Supplier Personnel who:

- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this

SCHEDULE 16 (PAYMENTS ON TERMINATION)

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provision in respect of such employees;

“Breakage Payment”	Costs	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
“Contract Costs”	Breakage	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Contract;
“Dedicated Personnel”	Supplier	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Maximum Unrecovered Overhead and Profit Margin”		means the amount stated in Column C of Annex 1 which shall not exceed 10% of the sum of the figures in Column A + B of Annex 1;
“Redundancy Costs”		<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none">(a) any statutory redundancy payment; and(a) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his

SCHEDULE 16 (PAYMENTS ON TERMINATION)

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or her transfer to the Supplier under the Employment Regulations;

“Request Estimate” for a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 31.1(a) (*Termination by the Authority*) to terminate this Contract for convenience on a specified Termination Date;

“Termination Estimate” has the meaning given in Paragraph 11.2;

“Third Party Contract” a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 11 (Third Party Contracts));

“Total Transition Costs” the Costs relating to transition not exceeding £0, evidenced on an open book basis, to the extent that they have not already been recovered via the Charges;

“Unrecovered Payment” an amount equal to the lower of:

- (a) the sum of the Total Transition Costs (less recovered Total Transition Costs) plus the Maximum Unrecovered Overhead and Profit Margin (if applicable); and
- (b) the amount specified in Paragraph 4.

2 TERMINATION PAYMENT

2.1 The Termination Payment payable pursuant to Clause 32.3 (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

3.1 Subject to Paragraph 3.2 below, the Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Contract which:

- (a) would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;

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- (c) are incurred under arrangements or agreements that are directly associated with this Contract;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third-Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 25 (Exit Management); and
- (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

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- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Contract; and/or
 - (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the maximum Termination Payment set out in Column D of Annex 1; or
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND TOTAL TRANSITION COSTS

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Total Transition Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
 - (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Payment payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction,

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the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 23 (Dispute Resolution Procedure).

6 NOT USED

7 FULL AND FINAL SETTLEMENT

- 7.1 Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

- 8.1 All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 15 (Charges and Invoicing).

9 SET OFF

- 9.1 The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable or may become payable by an Ordering Organisation relating to this Contract and pursuant to this Schedule.

10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 25 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6-month period.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment that would be payable

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by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:

- (a) be based on the relevant amounts set out in the Financial Model;
- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third-Party Contract and appropriate supporting documentation;
 - (iii) supporting evidence in respect of any costs relating to the Total Transition Costs;
 - (iv) such information as the Authority may reasonably require; and
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Contract.

11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of Termination Payment (calculated based on the Total Transition Costs, Breakage Costs Payment and Maximum Unrecovered Overhead and Profit Margin) that the Authority shall be liable to pay to the Supplier pursuant to this Contract:

Termination Date	Column A Total Transition Costs	Column B Breakage Costs Payment	Column C Maximum Unrecovered Overhead and Profit Margin	Column D Termination Payment Column A + Column B + Column C
Effective Date	Total Transition Costs at Termination Date	Breakage Costs Payment at Termination Date	10% of Maximum Total Transition Costs (Column A) + 10% of Maximum Breakage Costs Payment (Column B)	A + B + C
Contract Year 1	Total Transition Costs less recovered Total Transition Costs at Termination Date	Breakage Costs Payment at Termination Date	10% of Maximum Total Transition Costs (Column A) + 10% of Maximum Breakage Costs Payment (Column B)	A + B + C
Contract Year 2	Total Transition Costs less recovered Total Transition	Breakage Costs Payment at Termination Date	NIL	A + B + C

	Costs at Termination Date			
Contract Year 3	Total Transition Costs less recovered Total Transition Costs at Termination Date	Breakage Costs Payment at Termination Date	NIL	A + B + C
Contract Year 4	Total Transition Costs less recovered Total Transition Costs at Termination Date	Breakage Costs Payment at Termination Date	NIL	A + B + C
Contract Year 5 (if option to extend is taken up)	NIL	Breakage Costs Payment at Termination Date	NIL	A + B + C
Contract Year 6 (if option to extend is taken up)	NIL	Breakage Costs Payment at Termination Date	NIL	A + B + C

SCHEDULE 17

BENCHMARKING

Schedule 17 (*Benchmarking*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;

“Good Value”

in relation to a Benchmarked Service, that:

- (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

“Upper Quartile”

the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Authority shall appoint as the Benchmarkers to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarkers to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarkers and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarkers shall not be compensated on a contingency fee or incentive basis.

- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

4 BENCHMARK REVIEW

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

- (a) a proposed timetable for the Benchmark Review;
- (b) a description of the information that the Benchmarker requires each Party to provide;
- (c) a description of the benchmarking methodology to be used;
- (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
- (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
- (f) a description of how the Benchmarker will scope and identify the Comparison Group;
- (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
- (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.

- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.

- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.

- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 25.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
 - (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and

- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 BENCHMARK REPORT

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data

5.2 The Benchmarker shall act as an expert and not as an arbitrator.

- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarking has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarking has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;

- (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
- (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

ANNEX 2: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) **[insert name]** of **[insert address]** (the “**Supplier**”); and
- (2) **[insert name]** of **[insert address]** (the “**Benchmarker**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [insert name of Authority] (the “**Authority**”) and the Supplier are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Supplier of [insert brief description of services] to the Authority.
- (B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “**Permitted Purpose**”).

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be

confidential which comes (or has come) to the Benchmarkers' attention or into the Benchmarkers' possession in connection with the Permitted Purpose;

(c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarkers or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

(d) Information derived from any of the above, but not including any Information that:

(a) was in the possession of the Benchmarkers without obligation of confidentiality prior to its disclosure by the Supplier;

(b) the Benchmarkers obtained on a non-confidential basis from a third party who is not, to the Benchmarkers' knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarkers;

(c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(d) was independently developed without access to the Confidential Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Permitted Purpose”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarking, the Benchmarking shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

- (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
- (iii) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of this Schedule 17 (Benchmarking) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;

- (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarkers acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarkers of any of the provisions of this Agreement. Accordingly, the Benchmarkers acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarkers to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
- 5.2 Any Notice:
 - (a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [*Contact name and/or position, e.g. "The Finance Director"*]

(b) if to be given to the Benchmarker shall be sent to:

[*Name of Organisation*]

[*Address*]

Attention: []

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature: _____

Date:

Name:

Position:

For and on behalf of [*name of Benchmarker*]

Signature: _____

Date:

Name:

Position:

SCHEDULE 18

FINANCIAL DISTRESS

Schedule 18 (*Financial Distress*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Financial Indicators”	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
“Credit Rating Level”	a credit rating level as specified in Annex 1 of this Schedule;
“Credit Rating Threshold”	the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 2 of this Schedule;
“FDE Group”	means the Supplier, Key Sub-contractors and the Guarantor and the Monitored Suppliers;
“Financial Indicators”	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; 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 Paragraph 5.1 of this Schedule;
“Monitored Suppliers”	means those entities specified at Paragraph 5.2 of this Schedule;
“Rating Agencies”	the rating agencies listed in Annex 1 of this Schedule.

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

- (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 of this Schedule; and

- (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier's auditors or Guarantor's auditors (as the case may be) thereafter provide the Authority within ten (10) Working Days of the end of each Contract Year and within ten (10) Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

A is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor (as the case may be);

B is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date;

C is the value at the relevant date of all account receivables of the Supplier or the Guarantor (as the case may be); and

D is the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be).

2.4 The Supplier shall:

- (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
- (b) 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 Paragraph 5.1 (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; and
- (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress

Event any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 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.

- 2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
- (a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 of this Schedule ceases to hold a Credit Rating for that entity.
- 2.6 Each report submitted by the Supplier pursuant to Paragraph 2.4(b) shall:
- (a) be a single report with separate sections for each of the FDE Group entities;
 - (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
 - (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - (d) 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
 - (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making 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 an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied 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 Authority which the Authority (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 Authority which the Authority, 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:
 - (i) any FDE Group entity makes a public announcement which contains adverse 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 an 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 an FDE Group entity of any financial indebtedness;
 - (iv) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (v) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

- (vi) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

- (j) any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.5.

4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress

Event or such other period as the Authority may permit and notify to the Supplier in writing); and

- (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.7, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation 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 Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:

- (a) approved by the Authority;
- (b) referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or
- (c) finally rejected by the Authority.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Contract, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and

ensures the continued performance and delivery of the Services in accordance with this Contract; and

- (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
 - (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.5(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5(a) shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
 - (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.5.
- 4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- (a) obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - (b) agreeing in advance with the Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
 - (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
 - (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction,

anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

- 5.1 Subject to the calculation methodology set out at Annex 3 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 follows:

Financial Indicator	Calculation¹	Financial Target Threshold:	Monitoring and Reporting Frequency
1. Free Cash Flow to Net Debt Ratio	<i>Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt</i>	<i>> 15%</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>
2. Acid Ratio	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities]</i>	<i>>0.5:1 times</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>
3. Net Asset value	<i>Net Asset Value = Net Assets</i>	<i>> Nil</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>
4. Turnover Value	<i>Turnover in published accounts</i>	<i>>£100m</i>	<i>Turnover for the previous two financial years has to be over £100m. Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>
5. Current Asset Ratio	<i>Current Assets/Current Liabilities</i>	<i>1:1</i>	<i>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date</i>

Key: ¹ – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Monitored Supplier	Applicable Financial Indicators (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers)
Xerox Limited	1 – Free Cash Flow to Net Debt Ratio 2 – Acid Ratio 3 – Net Asset value 4 – Turnover Value 5 – Current Asset Ratio

6 TERMINATION RIGHTS

- 6.1 The Authority shall be entitled to terminate this Contract under Clause 31.1(b) (*Termination by the Authority*) if:
- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4(c);
 - (b) the Supplier fails to comply with any part of Paragraph 4.3;
 - (c) the Authority finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.4 to 4.5(a); and/or
 - (d) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.5(c).

7 PRIMACY OF CREDIT RATINGS

- 7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(j), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 of this Schedule, then:
- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.5; and
 - (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 1.1 Part B to Schedule 26 then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within one hundred and twenty (120) days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
- (a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.
- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

Rating Agency 1 Dun & Bradstreet

- Credit Rating Level 1 = 1 – Minimal Risk
- Credit Rating Level 2 = 2 – Low Risk
- Credit Rating Level 3 = 3 – Slightly greater than average risk
- Credit Rating Level 4 = 4 – Significant level of risk

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit Rating (long term) <i>(insert credit rating issued for the entity at the Effective Date)</i>	Credit Rating Threshold <i>(insert the actual rating (e.g. AA-) or the Credit Rating Level (e.g. Credit Rating Level 3))</i>
Supplier	Dun & Bradstreet – Risk Indicator Score of 2	Dun & Bradstreet – Risk Indicator Score of 1 or 2
Guarantor	Dun & Bradstreet – Risk Indicator Score of 2	Dun & Bradstreet – Risk Indicator Score of 1 or 2
Key-Sub-contractors		If applicable

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

- 1 *Terminology*: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 2 *Groups*: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 1 *Foreign currency conversion*: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 2 *Treatment of non-underlying items*: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 Free Cash Flow to Net Debt Ratio	<p><i>“Free Cash Flow”</i> = Net Cash Flow from Operating Activities – Capital Expenditure</p> <p><i>“Capital Expenditure”</i> = Purchase of property, plant & equipment + purchase of intangible assets</p> <p><i>“Net Debt”</i> = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents</p> <p>The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements.</p> <p><u><i>Net Cash Flow from Operating Activities</i></u>: This should be stated after deduction of interest and tax paid.</p> <p><u><i>Capital expenditure</i></u>: The elements of capital expenditure may be described slightly differently but will be found under ‘Cash flows from investing activities’ in the Statement of</p>

	<p>Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.</p> <p><u>Net Debt</u>: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p>
2 Acid Ratio	All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.
3 Net Asset value	Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).
4 Annual Turnover	The elements used to calculate the Turnover should be shown on the face of the Income Statement in a standard set of financial statements.

5 Current Ratio	All elements that are used to calculate the Current Ratio are available on the face of the Balance Sheet in a standard set of financial statements.
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ANNEX 4: BOARD CONFIRMATION

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 18 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting;
or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair

Signed

Date

Director

Signed

Date

SCHEDULE 19

FINANCIAL REPORTS AND AUDIT RIGHTS

Schedule 19 (*Financial Reports and Audit Rights*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

**“Financial
Transparency
Objectives”**

has the meaning given in Paragraph 1 of Part A;

“Material Change”

a Change which:

- (g) materially changes the profile of the Charges; or
- (h) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

“Onerous Contract”

a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;

**“Onerous Contract
Report”**

means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

“Open Book Data”

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (i) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (j) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (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's Profit Margin; and
- (iv) Reimbursable Expenses;
- (k) Overheads;
- (l) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (m) the Supplier Profit achieved over the Term and on an annual basis;
- (n) 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;
- (o) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (p) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

(a) **Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (iii) Not used.

(b) **Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

(c) **Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "**Financial Transparency Objectives**").

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

3 ONEROUS CONTRACTS

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
 - (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
 - (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes

to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

[illegible]

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SCHEDULE 20

ANTICIPATED SAVINGS

Schedule 20 (*Anticipated Savings*)

This Schedule defines the key benefit categories in which savings are anticipated.
Benefits to be agreed at contract management stage.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	TBC	£[amount] per annum	Contract Years [x] to [y]

SCHEDULE 21 (GOVERNANCE)

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SCHEDULE 21

GOVERNANCE

SCHEDULE 21 (GOVERNANCE)

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Schedule 21 (*Governance*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Board Member” the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

“Boards” the Performance Insight Management Board, and the Strategic Joint Team Programme Board, and **“Board”** shall mean any of them;

“Performance Insight Management Board” means the body described in Paragraph 4; and

“Strategic Joint Team Programme Board” means the body described in Paragraph 5.

2 MANAGEMENT OF THE SERVICES

2.1 The Supplier and the Authority shall each appoint Contracts Manager and a Contracts Team for the purposes of this Contract through whom the Services shall be managed at a day-to-day.

2.2 Both 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.

3 BOARDS

Establishment and structure of the Boards

3.1 The Boards shall be established by the Authority for the purposes of this Contract on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board, the:

(a) Authority Board Members;

(b) Supplier Board Members;

SCHEDULE 21 (GOVERNANCE)

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- (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - (d) location of the Board's meetings; and
 - (e) planned start date by which the Board shall be established,
- shall be as set out in Annex 1.

3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

3.4 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) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- (b) that he/she is debriefed by such delegate after the Board Meeting.

3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:

- (a) scheduling Board meetings;
- (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Board meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
- (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.

SCHEDULE 21 (GOVERNANCE)

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- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE PERFORMANCE INSIGHT MANAGEMENT BOARD

- 4.1 The Performance Insight Management Board shall be responsible for the executive management of the Services and shall:
- (a) be accountable to the Strategic Joint Team Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - (b) report to the Strategic Joint Team Programme Board on significant issues requiring decision and resolution by the Strategic Joint Team Programme Board and on progress against any resolution plans required;
 - (c) receive analyse and monitor operational data and reports from an agreed supplier inventory, including but not limited to:
 - (i) Services delivery;
 - (ii) Performance against Key Performance Indicators;
 - (iii) Progress against resolution plans;
 - (iv) Budgets;
 - (v) Possible future initiatives and developments;
 - (d) review and report to the Strategic Joint Team Programme Board on service management, co-ordination of individual projects and any risks arising from operational issues;
 - (e) not used;
 - (f) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Strategic Joint Team Programme Board;
 - (g) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same; and
 - (h) subject to Schedule 22 (Change Control Procedure) assess the impact of and approve or reject all Change Requests. Changes

SCHEDULE 21 (GOVERNANCE)

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which will have a significant impact on the Services shall be escalated to the Strategic Joint Team Programme Board;

- (i) in collaboration with the Supplier review, assess and evaluate the cost and benefit for any alternative means of delivering the Services and any material technology updates or changes (whether proposed by the Supplier or the Authority) which would be beneficial to support or enhance the delivery of the Services;
- (j) monitor and oversee the Supplier to help facilitate the identification and management of risks relating to the performance of the Services;
- (k) provide assurance to the Strategic Joint Team Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a quarterly basis;
- (l) identify the risks to be reported to the Strategic Joint Team Programme Board via the regular risk reports; and
- (m) identify risks relating to or arising out of the performance of the Services and provision owners of these risks.

5 ROLE OF THE STRATEGIC JOINT TEAM PROGRAMME BOARD

5.1 The Strategic Joint Team Programme Board shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Performance Insight Management Board; and
- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Strategic Joint Team Programme Board shall:

- (a) ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Performance Insight Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services;

SCHEDULE 21 (GOVERNANCE)

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- (d) not used; and
- (e) provide guidance and authorisation to the Change Management Board on relevant Changes.

6 CONTRACT MANAGEMENT MECHANISMS

- 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 Authority, processes for:
 - (a) the identification and management and removal of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

to reach a mutually satisfactory outcome.

7 ANNUAL REVIEW

- 7.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 7.2 The meetings shall be attended by the Strategic Joint Team Programme Board Service Delivery Regional Lead of the Supplier and the Senior Service Delivery Manager – Patient Services of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Performance Insight Management Board Representation and Structure

Authority Members of Performance Insight Management Board	[Contract Manager Chairperson] Senior Service Delivery Manager – Patient Services Senior Service Delivery Manager – Overseas Healthcare Services Commercial Officer
Supplier Members of Performance Insight Management Board	Service Delivery Manager Operations Manager
Start Date for Performance Insight Management Board meetings	1 st August 2024
Frequency of Performance Insight Management Board meetings	Monthly
Location of Performance Insight Management Board meetings	By Video Conference or dial in or face to face

Strategic Joint Team Programme Board Representation and Structure

Authority members of Strategic Joint Team Programme Board	[Contract Manager Chairperson Head of Health Exemption Services Head of Overseas Health Services Senior Service Delivery Manager –Patient Services Senior Service Delivery Manager – Overseas Healthcare Services Head of Patient Services Commercial Officer Commercial Manager]
Supplier members of Strategic Joint Team Programme Board	Service Delivery Regional Lead Client Manager Service Delivery Manager Operations Manager
Start date for Strategic Joint Team Programme Board meetings	1 st August 2024
Frequency of Strategic Joint Team Programme Board meetings	Quarterly
Location of Strategic Joint Team Programme Board meetings	By Video Conference or dial in or face to face

SCHEDULE 22

CHANGE CONTROL PROCEDURE

Schedule 22 (*Change Control Procedure*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- (b) unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - (e) save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 14 (Testing Procedures), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

3 COSTS

- 3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
 - (b) the Supplier shall bear all costs incurred in undertaking an Impact Assessment.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 15 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) the nature of the request for clarification; and
- (b) the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;
- (c) any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not

reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days. The Supplier shall be responsible for all costs incurred by the Authority in respect of the Authority's time and actions taken to rectify the Change Request and/or Impact Assessment.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.

6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or

- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8 FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 6 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £1,000,000 and the impact of the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9 OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- (a) have an impact on the business of the Authority and/ or Organising Organisations;
- (b) require a change to this Contract;

- (c) have an impact on the provision of the Services; or
 - (d) involve the Authority and/ or Organising Organisations in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.
- 9.3 The RFOC shall include the following details:
 - (a) the proposed Operational Change; and
 - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 COMMUNICATIONS

- 10.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

11 AD HOC JOBS

- 11.1 Any other provision of this Contract, an Ad Hoc Job shall not be regarded as a Change to this Contract, and the provisions of this Schedule shall not apply to Ad Hoc Jobs

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

SCHEDULE 23

DISPUTE RESOLUTION PROCEDURE

Schedule 23 (*Dispute Resolution Procedure*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre 1 Patternoster Lane, St Paul’s, London, EC4M 7BQ;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Contract; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also

be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).
- 2.7 At the Authority's Discretion and notwithstanding any other provision of the Agreement, the Authority may at any time refer a dispute to Adjudication with accordance with the provisions at Paragraph 7 below.

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
 - (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the

Dispute as soon as possible by commercial negotiation between the Authority's Head of Commercial Services and the Supplier's Associate General Counsel.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other

request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- (a) for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
 - (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7 or Adjudication in accordance with Paragraph 10, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8, or Paragraph 10.

- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the **“Multi-Party Dispute Resolution Board”**) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together **“Multi-Party Dispute Representatives”**).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- the dispute may, at the Authority’s discretion, be referred to Adjudication, in accordance with Paragraph 10 below

- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
 - (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
 - (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

10 Adjudication

- 10.1 The Authority may by giving notice to the Supplier, refer the Dispute to an adjudicator (the Adjudicator) selected in accordance with paragraph 10.2 – 10.4 below.
- 10.2 The Authority shall nominate up to three potential adjudicators to consider the Dispute.
- 10.3 Within five (5) days of the nomination referred to at paragraph 10.2 above, the Supplier will confirm which Adjudicator it agrees may consider the Dispute.
- 10.4 If the Authority and the Supplier fail to agree the identity of the Adjudicator the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert within five (5) Business Days of any application for such appointment by either party.
- 10.5 Within seven (7) days of appointment in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.
- 10.6 In any event the Adjudicator shall provide to both Parties his written decision on the Dispute within twenty eight (28) days of appointment (or such other period as the Parties may agree after the reference). The Adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of

the Authority which referred the Dispute. The Adjudicator shall give written reasons for his decision. Unless and until revised, cancelled or varied by a decision of the court, pursuant to paragraph 6 of this Schedule, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

- 10.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 10.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 10.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- 10.10 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 21 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 10.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

11 Final Determination

- 11.1 All Disputes, to the extent not finally resolved pursuant to the procedures set out in the foregoing provisions of this Schedule shall be subject to proceedings to be commenced by either of the Parties to this Agreement either in the High Court or the Technology and Construction Court in London.
- 11.2 Unless this Agreement has already been repudiated or terminated, the Parties shall, (notwithstanding that any Dispute is subject to the Dispute Resolution Procedure set

SCHEDULE 24

REPORTS AND RECORDS PROVISIONS

Schedule 24 (*Reports and Records Provisions*)

1 **TRANSPARENCY REPORTS**

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the **"Transparency Reports"**).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority 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 Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2 **OTHER REPORTS**

- 2.1 The Authority may require any or all of the following reports:
 - (a) delay reports;
 - (b) reports relating to Testing and tests carried out under Schedule 5 (Security Management) and Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);
 - (c) reports which the Supplier is required to supply as part of the Management Information;
 - (d) annual reports on the Insurances;
 - (e) security reports; Force Majeure Event reports; and
 - (f) any other report the Authority reasonably requires.

3 **RECORDS**

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together **"Records"**):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;

- (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
 - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 3.7 The Supplier shall comply with the data and reporting requirements set out at Annex 3 and paragraphs 4.13.1 and 5.7 of Schedule 2 (*Services Description*). The authority will approve the format, content and layout of all reports.

4 Virtual Library

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable

legislation governing the use or processing of personal data) make information about this Contract available in accordance with the requirements outlined in this Schedule.

4.2 The Supplier shall ensure that the Virtual Library is:

- (a) capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
- (b) structured so that each document uploaded has a unique identifier which is automatically assigned;
- (c) readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,
- (d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
- (e) structured and maintained in accordance with the security requirements as set out in this Contract including those set out in Schedule 5 (Security Management);
- (f) created and based on open standards in Schedule 4 (Standards); and
- (g) backed up on a secure off-site system.

4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Paragraph 2.1 of Schedule 32 (Intellectual Property Rights) of this Contract.

4.4 The Supplier shall upload complete and accurate information specified in Annex 3 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.

4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:

print@nhsbsa.nhs.uk

4.6 Except for notices under Clause 42.4 or items covered by Clause 42.6, where the Supplier is under an obligation to provide information to the Authority in a

provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.

- 4.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Annex 3) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3) from the Initial Upload Date.
- 4.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:
 - (a) be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10(b) of this Schedule); and
 - (b) report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other

than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.

- 4.14 In the event of a conflict between any requirement in this Contract (excluding Annex 3) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Contract shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 4.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major sub-contractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			
<i>(Project Santiago)</i>			

The Supplier will agree with the Authority the Transparency Reports required through the Term which may incorporate information from the areas set out in the table above. Please note, the above is not an exhaustive list.

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

- 1 This Contract, its Schedules and all amendments to such documents.
- 2 All other documents which this Contract expressly requires to be prepared.
- 3 Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
- 4 Notices, reports and other documentation submitted by any Expert.
- 5 All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
- 6 Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
- 7 All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
- 8 All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
- 9 Documents prepared by the Supplier in support of claims for the Charges.
- 10 Documents submitted by the Supplier pursuant to the Change Control Procedure.
- 11 Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
- 12 Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 13 Invoices and records related to VAT sought to be recovered by the Supplier.
- 14 Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
- 15 Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
- 16 All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.

- 17 All journals and audit trail data referred to in Schedule 5 (Security Management).
- 18 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f), 5.8(b), Paragraphs 2.1(a) and 2.2(a)(ii)	Documentation	As appropriate and agreed by the Authority	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
Cl 14.3	Key Personnel	Sch 29	Effective Date	On replacement of Key Personnel	Authority
Sch 3, Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 3, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Authority
[If using Part A – Security Assurance] Sch 5, Para 4.4	Security Management Plan	Sch 5, Annex 3	Within [20] Working Days of the date of the Contract	Regular review and at least annually	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
[If using Part A – Security Assurance] Sch 5, Para 6.1, 6.2 and 6.3	Security certificates	As appropriate and agreed by the Authority	Prior to receiving, storing or processing any Authority Data	-	-
[If using Part B – Security Accreditation] Sch 5, Para 4.2	Core Information Management System diagram	Sch 5, Annex 3	The date specified in the Detailed Implementation Plan	Regular review and at least annually	Authority
[If using Part B – Security Accreditation] Sch 5, Para 7.1, 7.4, 7.6	Security certificates	Sch 5, Annex 3	Prior to receiving, storing or processing any Authority Data	-	-
Sch 6, Para 4	Evidence of Insurances	Sch 6	Effective Date	Within fifteen (15) days after policy renewal or replacement	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 9	Commercially Sensitive Information	Sch 9	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor
CI 15.7	Notified Key Subcontractors	Sch 10	Effective Date	On replacement of key subcontractor	Authority
Sch 11, Para 1	Third Party Contracts	Sch 11	Effective Date	On appointment of subcontract	Authority
CI 15.6 and 15.7	Notified Key Sub-Contractors	Sch 10	Effective Date	With each approved appointment or variation	Authority
CI 15.28	Supply chain Transparency Reports	Sch 24, Annex 4	thirty days prior to the of the end of each financial year	Every twelve (12) months	Authority
CI 16 and Schedule 32 (Intellectual Property Rights)	Software	Sch 12 and Annex 1 to Schedule 32 (Intellectual Property Rights)	Operational Services Commencement Date	Upon Agreement by the Authority to vary the information	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
CI 6.4	Detailed Implementation Plan	Sch 13	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Authority
CI 33.8(h)	Annual slavery and human trafficking report	As appropriate and agreed by the Authority	Within twelve (12) months	Every twelve (12) months	Authority
Sch 14, Para 4	Test Strategy	As appropriate and agreed by the Authority	Within 20 Working Days of Effective Date	Upon update to the test strategy	Authority
Sch 14, Para 5	Test Plan	As appropriate and agreed by the Authority	20 prior Working Days of relevant test	Upon update to the test plan	Authority
Sch 14, Para 8	Test Specification	As appropriate and agreed by the Authority	10 prior Working Days of relevant test	Upon update to the test specification	Authority
Sch 14, Para 8	Test Report	As appropriate and agreed by the Authority	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following	Reissue with each retest	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
			the relevant test completion		
Sch 15, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 15, Annex 4	Risk Register	Sch 15, Annex 4	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority
Sch 17, Para 4	Benchmarking Plan	Sch 17	Upon receipt from Benchmarker	Approval of Plan	Authority and Auditor
Sch 17, Para 5	Benchmarking report	Sch 17	Upon receipt from Benchmarker	Any update	Authority and Auditor
Sch 18, Para 2.3(b)	Financial Indicator Reports	Sch 18, Para 2.5	As specified in Para 2.3(b) of Sch 18	As specified in Para 2.3(b) of Sch 18	Authority
Sch 18 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or	On a regular basis (not less than fortnightly)	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
			awareness of a Financial Distress Event		
Sch 19, Part B, Para 1.1	Contract Amendment Report	Sch 19, Part B, Para 1.2	Within 1 month of a material change being agreed	-	Authority
Sch 19, Para 1.1	Quarterly Contract Report	Sch 19, Part B, Para 1.2	Within 1 month of the end of each Quarter	-	Authority
Sch 19, Part B, para 1.1	Annual Contract Report	Sch 19, Part B, Para 1.2	Within 1 month of the end of the Contract Year to which that report relates	-	Authority
Sch 19, Part B, para 1.1	Financial Reconciliation Report	Sch 19, Part B, Para 1.2	Within 6 months after the end of the Term	-	Authority
Sch 21, Para 3.3	Representation and Structure of boards	Sch 21 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 21, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson	-	Authority
Sch 22 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-	Authority
Sch 22 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 22 Para 5.4	Authority
Sch 22, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority
Sch 22, Para 4	Change Request	Sch 22, Annex 1	Within 10 Working Days of Authority issuing the Change Request	-	Authority
Sch 23, Para 2.1	Dispute Notice	Sch 23 Para 2.2	No longer than 20 Working Days from an	Any variation	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
			unresolved dispute arising		
Sch 23, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 24, Para 1	Reports and Records Provisions	Sch 24, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 24, Annex 1	Authority
Sch 25, Para 2.1(a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 25, Para 2.1(b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 25, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 25, Para 5.1	Exit Plan	Sch 25, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				Authority following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Contract	
Sch 25, Para 6.3(e)	Provide up to date Registers during the Termination Assistance Period	As appropriate	As requested by the Authority	As appropriate	
Sch 25, Para 6.7(b)	Authority Data (handback)	Sch 25, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 25, Annex 1, Para 1.1, Para 1.2 Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the	As specified in the Termination Assistance Notice or otherwise requested by the Authority	-

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
			Termination Assistance Period		
Sch 26 Service Continuity	Service Continuity Plan	Sch 26, Para 2.2	Within 40 Working Days from the Effective Date	Sch 26, Para 7.1	Authority
Sch 26, Para 7.2	Service Continuity Plan Review Report	Sch 26, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 26, Part B	Corporate Resolution Planning Information	Sch 26, Part B, Para 2.3	Sch 26 Part B Para 2.2	Sch 26, Para 11.8	Authority
Sch 18 Para 8	Board Confirmation	As set out at Annex 4 of Sch 18	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 28, Part E, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch 28, Para 1.1(a) - (d)	At such intervals as are reasonably requested by the Authority	Authority
Sch 28, Part E, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Authority and, at the discretion of the Authority, the Replacement Supplier and/or any Replacement Subcontractor
Sch 28, Part E, Para 1.6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date	-	Authority
Sch 28, Part E, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Authority	Within 5 Working Days following the Service Transfer Date	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 28, Annex E1	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 29	Key Personnel	Sch 29	Effective Date	As amended from time to time	Authority
Sch 31, Annex 1 Para 2.1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[]	[]	£[]	[]

SCHEDULE 25 (EXIT MANAGEMENT)

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SCHEDULE 25

EXIT MANAGEMENT

SCHEDULE 25 (EXIT MANAGEMENT)

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Schedule 25 (*Exit Management*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Contract which is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Contract in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or(c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;

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“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: <ul style="list-style-type: none">(d) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or(e) as a result of the expiry of the Initial Term or any Extension Period;
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Authority;
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 7.2(b).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and
 - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services; and

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(iii) such other information as may be requested by the Authority.

- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
 - (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall promptly (and in any event within ten (10) Working Days) provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

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- (c) an inventory of Authority Data in the Supplier's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- (g) an inventory of Goods, including but not limited to details of location and quantity; and
- (h) such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and

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- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES

- 4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5 EXIT PLAN

- 5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
 - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
 - (b) complies with the requirements set out in Paragraph 5.3; and
 - (c) is otherwise reasonably satisfactory to the Authority.
- 5.2 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 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
 - (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;

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- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - (e) the management structure to be employed during the Termination Assistance Period;
 - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (Staff Transfer); and
 - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each

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Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a **"Termination Assistance Notice"**) at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and
 - (c) date that the Supplier ceases to provide the Services
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months

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after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract;

6.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Service or, if applicable, beyond the end of the Termination Assistance period ;and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such

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reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon 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 Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- (a) cease to use the Authority Data;
 - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Contract;
 - (ii) all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;

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- (v) allow the Authority or Replacement Supplier to purchase the Contingency Stock Holding and/or Stock Holding at net cost. The Supplier may add a reasonable one off delivery cost to the Contingency Stock Holding and Stock Holding to be transferred.
 - (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).
- 6.8 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 Services 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 Services or for statutory compliance purposes.
- 6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

7 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;

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- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - (i) which, if any, of:
 - (A) the Exclusive Assets that are not Transferable Assets; and
 - (B) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and
- (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Any assets which transfer to the Authority shall transfer with the full title guarantee, be of satisfactory quality and in full working order. Where requested by the Supplier, the Authority 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.

7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

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- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same. Cost shall only be applicable if not recovered during the Term.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority 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:
 - (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
 - (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and 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.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

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- 7.9 The Supplier shall indemnify the Authority (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 Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Schedule 32 (*Intellectual Property Rights*).

8 SUPPLIER PERSONNEL

- 8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 28 (Staff Transfer) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be

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required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:

- (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
- (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.

9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.

9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 APPORTIONMENTS

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
- (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier 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
- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

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- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

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ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify including but not limited to:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
 - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) 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 Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
 - (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
 - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;

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- (j) agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
- (k) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (l) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
- (m) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- (n) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (o) assisting in establishing naming conventions for any new production site;
- (p) risk registers;
- (q) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (r) generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;
- (s) access to technical specifications relating to bespoke configurations/ modifications to software;
- (t) confirmation that all vendor change control requests Change Control Requests in respect of software support arrangements have been submitted to the authority as part of the exit management process;

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- a list of software and vendors used to provide the services. In the case of any third party software vendors software support arrangements sufficient details should be provided to enable the Authority to retain a relationship with that vendor in relation to future service provision;
- (u) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - (v) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
 - (w) delivering copies of the print ready artwork files to the Authority and/or the Replacement Supplier (via agreed secure transfer method);
 - (x) assisting with the loading, testing and implementation of the production databases;
 - (y) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
 - (z) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous 12 month period;
 - (aa) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
 - (bb) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
 - (cc) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
 - (dd) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
 - (ee) providing access to the Authority 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 Services to the Authority and/or the Replacement Supplier;

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- (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (ff) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
 - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
 - (iv) allowing the Authority 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 Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions,
 - (v) day release for transferring staff to be trained;

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

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- (ii) Picking/Packing of Goods
- (iii) Management of Goods during exit

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 22.1(n) for agreement by the Authority at the time of termination or expiry of this Contract;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 22.1(r), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 22.1(z), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 22.1(aa) 22.1(z) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information,

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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 Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 22.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

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ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

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This Agreement is dated [] 20[] (the “Effective Date”).

Between:

- (1) **[INSERT NAME OF AUTHORITY]** (the “**Authority**”) [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the “**Counterparty**”),

together the “**Parties**” and each a “**Party**”.

BACKGROUND

- A. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (“**Agreement**”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the “**Purpose**”).
- C. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

“**Affiliate**” means 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;

“**Agreement**” means this ethical walls agreement duly executed by the Parties;

“**Bid Team**” means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

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“Central Government Body” means 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, including:

- a) Government Departments;
- b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- c) Non-Ministerial Departments; or
- d) Executive Agencies;

“Conflicted Personnel” means any Representatives of:

- a) the Counterparty;
- b) any of the Counterparty’s Affiliates; and/or
- c) any Subcontractors,

who, because of the Counterparty’s, any of its Affiliates’ and/or any Subcontractors’ relationship with the Authority under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

“Contract” means any pre-existing or previous contract between the Authority and:

- (a) the Counterparty;
- (b) any of the Counterparty’s Affiliates;
- (c) any Subcontractor; and
- (d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

“Control” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

“Effective Date” means the date of this Agreement as set out above;

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“Invitation to Tender” or “ITT” means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);

“ITT Process” means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

“ITT Response” means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

“Procurement Process” means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of all contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Authority;

“Procurement Regulations” means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

“Purpose” has the meaning given to it in recital B to this Agreement;

“Representative” refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

“Subcontractor” means an existing or proposed subcontractor of:

- a) the Counterparty; and/or

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b) any of the Counterparty's Affiliates,

who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

"Third Party" means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

"Working Day" means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty's Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms **"associate"**, **"holding company"**, **"subsidiary"**, **"subsidiary undertaking"** and **"wholly owned subsidiary"** have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words **"include"** and **"including"** are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2 ETHICAL WALLS

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

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Conflicts of Interest

2.2 The Counterparty:

2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and

2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.

2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:

2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;

2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;

2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:

(a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or

(b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,

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becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;

- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors in a form to be approved by the Authority;
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

2.4 The Counterparty shall:

- 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and

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- 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

Exclusion from the ITT Process

- 2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Authority pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

Bid Costs

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:
- 2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
- 2.10.2 any Third Party,
- as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

Specific Remedies

- 2.11 The Counterparty acknowledges and agrees that:

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2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

3 SOLE RESPONSIBILITY

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

4 WAIVER AND INVALIDITY

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5 ASSIGNMENT AND NOVATION

5.1 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

5.2.1 any Central Government Body; or

5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and

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5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

7 TRANSPARENCY

7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8 NOTICES

8.1 Any notices sent under this Agreement must be in writing.

8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email.	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery.	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am	Properly addressed and delivered as evidenced by signature of a delivery receipt.

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Manner of Delivery	Deemed time of service	Proof of service
	on the next Working Day.	
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact	Richard Pitceathly Associate General Counsel	Head of Commercial Services
Address	Xerox (UK) Limited, Building 4, Uxbridge Business Park, Sanderson Road, Uxbridge. Middlesex. UB8 1DH	Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE22 6NZ
Email	Richard.pitceathly@xerox.com	sean.murphy@nhsbsa.nhs.uk

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 WAIVER AND CUMULATIVE REMEDIES

- 9.1 The rights and remedies under this Agreement may be waived only by notice, and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

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No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10 TERM

- 10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date/[or for the period of the duration of the Procurement Process]

11 GOVERNING LAW AND JURISDICTION

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

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Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

**SCHEDULE 26 (SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION
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SCHEDULE 26

**SERVICE CONTINUITY PLAN AND CORPORATE
RESOLUTION PLANNING**

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Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)

PART A: SERVICE CONTINUITY PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Department”	<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> <p>(a) Government Department; or</p> <p>(b) Non-Ministerial Department.</p>
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 48 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2(a)(iv).

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“Related Service Provider”	any person who provides services to the Authority in relation to this Contract from time to time, which persons include as at the Effective Date ;
“Review Report”	has the meaning given in Paragraphs 7.2(a) to 7.2(c);
“Service Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

2 SERVICE CONTINUITY PLAN

- 2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
 - (b) the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
- (a) be divided into four parts:
 - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**);
 - (iii) Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**);
 - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and
 - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

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- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority and/ or any Ordering Organisation by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority, any third party and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility

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which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;

- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The Service Continuity Plan shall be designed so as to ensure that:

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- (a) the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
 - (c) it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators 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 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
 - (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - (a) address the various possible levels of failures of or disruptions to the Services;

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- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority and the continuity of performance of 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 Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - (a) the technical design and build specification of the Disaster Recovery System;
 - (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;

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- (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) 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;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule;
- (f) testing and management arrangements; and
- (g) protection of goods.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-

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contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;

- (c) plans to manage and mitigate identified risks;
- (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 12 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph 2.8(b)(i), in which case that Corporate Change Event Grace Period will apply); and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service

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Continuity Plan and shall assess their suitability having regard to any change to the Services 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 Service Continuity Plan or the last review of the Service Continuity 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 Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a **“Review Report”**) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the **“Supplier's Proposals”**) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The

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provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) 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 Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;

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- (b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - (c) the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTINUITY PLAN

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
 - (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

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PART B: CORPORATE RESOLUTION PLANNING

1 Service Status and Supplier Status

- 1.1 This Contract is a Critical Service Contract.
- 1.2 The Supplier shall notify the Authority and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

2 Provision of Corporate Resolution Planning Information (CRP Information)

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
 - (a) where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with CRP Information within 60 days of the Effective Date; and
 - (b) except where it has already been provided in accordance with Paragraph 2.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
 - (a) is full, comprehensive, accurate and up to date;
 - (b) is split into three parts:
 - (i) Exposure Information (Contracts List);
 - (ii) Corporate Resolvability Assessment (Structural Review);
 - (iii) Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at

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<https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

- (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
 - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or CNI and the nature of those agreements; and
 - (e) complies with the requirements set out at Annex 1 (*Exposure Information (Contracts List)*), Annex 2 (*Corporate Resolvability Assessment (Structural Review)*) and Annex 3 (*Financial Information And Commentary*) respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP

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Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.

2.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 18 (Financial Distress)
- (b) within 30 days of a Corporate Change Event unless:
 - (i) the Supplier requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate

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Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or

- (ii) not required pursuant to Paragraph 2.10;
 - (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
 - (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 2.8(a) 2.8(b) or 2.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8(d); or
 - (ii) unless not required pursuant to Paragraph 2.10.
- 2.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8(a) to (d) of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.
- 2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:
- (a) Aa3 or better from Moody's; or
 - (b) AA- or better from Standard and Poor's; or
 - (c) AA- or better from Fitch;
- the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph

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7.1 of Schedule 18 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

- 2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 2.8.

3 Termination Rights

- 3.1 The Authority shall be entitled to terminate this Contract under Clause 31.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:
- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
 - (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

4 Confidentiality and usage of CRP Information

- 4.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 19 (*Confidentiality*).
- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to

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enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.

4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
- (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (i) summarising the information;
 - (ii) grouping the information;
 - (iii) anonymising the information; and
 - (iv) presenting the information in general terms

4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

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ANNEX 1: EXPOSURE INFORMATION (CONTRACTS LIST)

- 1 The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - (c) involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

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ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)

- 1 The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

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ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY

- 1** The Supplier shall:
 - 1.1** provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
 - 1.2** ensure that the information is presented in a simple, effective and easily understood manner.
- 2** For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule 26 (Service Continuity Plan and Corporate Resolution Planning). If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

SCHEDULE 27

CONDUCT OF CLAIMS

Schedule 27 (*Conduct of Claims*)

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

SCHEDULE 28 (STAFF TRANSFER)

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SCHEDULE 28

STAFF TRANSFER

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Schedule 28 (*Staff Transfer*)

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Admission Agreement”	as defined in Part A;
“Fair Deal Employees”	as defined in Part D;
“Former Supplier”	a supplier supplying services to the Authority 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 sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including:</p> <ul style="list-style-type: none">(a) any amendments to that document immediately prior to the Relevant Transfer Date;(b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”	HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”</i> issued in June 2004;
“Replacement Sub-	a sub-contractor of the Replacement Supplier to
contractor”	whom Transferring Supplier Employees will

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contractor”	transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“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. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“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 Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex E2 in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
“Statutory Schemes”	means the CSPA, NHSPA or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel 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

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such list will no longer be provided by the Supplier;

**“Transferring
Authority Employees”**

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“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; and

**“Transferring Supplier
Employees”**

those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

3 APPLICABLE PARTS OF THIS SCHEDULE

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

Part C (No Staff Transfer On Start Date)

(a) *Part D (Pensions)*

- (i) - Annex D1 (CSPS)
- (ii) - Annex D2 (NHSPS)
- (iii) - Annex D3 (LGPS)
- (iv) - Annex D4 (Other Schemes)

(b) *Part E (Staff Transfer on Exit)*

- (i) Annex E1 (List Of Notified Sub-Contractors)
- (ii) Annex E2 (Staffing Information)

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PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant 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 which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring

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Authority Employees which the Authority is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) 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:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee 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 Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority 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 Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

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- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
 - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

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- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) 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,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.
- 3 SUPPLIER INDEMNITIES AND OBLIGATIONS**
- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor in respect

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- of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
 - (f) 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:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

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- (ii) in relation to any employee who is not a Transferring Authority Employee, 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 Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) a failure of the Supplier or any Sub-contractor 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 Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
 - (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant 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 any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

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4 INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

- 6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
 - (b) Part D (and its Annexes) to this Staff Transfer Schedule.

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PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant 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 which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring

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Former Supplier Employees; and/or

- (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) 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:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee 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 Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier 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 Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier 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 Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the

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Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

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2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

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- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) 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:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations

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arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Supplier Employee, 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 Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) a failure of the Supplier or any Sub-contractor 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 Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
 - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant 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 any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made

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between the Supplier and the Former Supplier.

4 INFORMATION

- 4.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - (b) Old Fair Deal; and/or
 - (c) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 PENSIONS

- 7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:
- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

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- (b) Part D (and its Annexes) to this Staff Transfer Schedule.

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PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority 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 Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and

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subject also to Paragraph 2.4, the Authority shall:

- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority 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 Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
 - (a) shall not apply to:
 - (i) 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,

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in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

- 3.1 Where in this Part C the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

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PART D: PENSIONS

1 DEFINITIONS

1.1 In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes to this Part D:

“Actuary”	a Fellow of the Institute and Faculty of Actuaries;
“Admission Agreement”	either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
“Best Value Direction”	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
“Broadly Comparable”	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and/or</p> <p>(a) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,</p> <p>and “Broad Comparability” shall be construed accordingly;</p>
“CSPS”	the schemes as defined in Annex D1 to this Part D;
“Direction Letter/Determination”	has the meaning in Annex D2 to this Part D;
“Fair Deal Eligible	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS

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Employees”	Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);
“Fair Deal Employees”	<p>any of:</p> <ul style="list-style-type: none">(a) Transferring Authority Employees;(b) Transferring Former Supplier Employees; and/or(c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;(d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)(e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Authority;
“Fund Actuary”	a Fund Actuary as defined in Annex D3 to this Part D;
“LGPS”	the scheme as defined in Annex D3 to this Part D;
“NHSPS”	the schemes as defined in Annex D2 to this Part D; and
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for Staff Pensions:</i>

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Staff Transfer from Central Government” issued in October 2013 including:

any amendments to that document immediately prior to the Relevant Transfer Date; and

any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Authority.

2 PARTICIPATION

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The Supplier undertakes:

- (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- (b) subject to Paragraph 12 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.

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3 PROVISION OF INFORMATION

3.1 The Supplier undertakes to the Authority:

- (a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
- (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed); and
- (c) retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.

4 INDEMNITIES

4.1 The Supplier shall indemnify and keep indemnified the Authority, NHS Pensions, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
 - (ii) arise out of the failure of the Supplier and/or any relevant

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Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or

- (d) arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Contract; and
- (b) shall not be affected by the caps on liability contained in Clause 23 (*Limitations on Liability*).

5 DISPUTES

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:

- (a) who will act as an expert and not as an arbitrator;
- (b) whose decision will be final and binding on the Authority and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 41 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

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- 7.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
 - (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:
- (a) notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
 - (b) consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
 - (c) procure that the employer to which the Fair Deal Eligible Employees are transferred (the “**New Employer**”) complies with the provisions of this Part D and its Annexes provided that references to the “Supplier” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Fair Deal Employees” will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

9 PENSION ISSUES ON EXPIRY OR TERMINATION

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme’s Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to

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participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10 BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE

- 10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.
- 10.2 Such Broadly Comparable pension scheme must be:
- (a) established by the Relevant Transfer Date;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Authority);
 - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing

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participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;

- (c) instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
- (d) provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:

- (a) allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk

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transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and

- (b) if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this Paragraph.

11 BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

- 11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 10.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.
- 11.2 Such Broadly Comparable pension scheme must be:
 - (a) established by the date of cessation of participation in the Statutory Scheme;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);

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- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- (a) supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- (c) where required to do so by the Authority, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- (d) provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to

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future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this Paragraph.

12 RIGHT OF SET-OFF

- 12.1 The Authority shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:
- (a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;
 - (b) any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Sub-contractor

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or due from any third party under any indemnity, bond or guarantee;
or

- (c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

- 12.2 The Authority shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Authority as result of Paragraphs 12.1 above.

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ANNEX D1: CSPA

1 DEFINITIONS

- 1.1 In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings:

“CSPA Admission Agreement”	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
“CSPA Eligible Employee”	any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Agreement;
“CSPA Fair Deal Employee”	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal;
“CSPA”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 FUTURE SERVICE BENEFITS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPA Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section

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of the CSPA for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPA Admission Agreement in accordance with Paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 11 of Part D.

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ANNEX D2: NHSPS

1 DEFINITIONS

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

“Direction Letter/Determination” an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;

“NHS Broadly Comparable Employees” means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension

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scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

“NHSPS Eligible Employees”

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

“NHSPS Fair Deal Employees”

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an “open” Direction Letter/Determination or other NHSPS “access” facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is

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	not an NHSPS Fair Deal Employee;
“NHS Body”	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
“NHS Pensions”	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
“NHSPS”	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
“NHS Pension Scheme Regulations”	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
“NHS Premature Retirement Rights”	rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
“Pension Benefits”	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and

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- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
 - (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
 - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Sub-contractors (if any) will) provide

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any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3 NHS PREMATURE RETIREMENT RIGHTS

- 3.1 From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.

4 NHS BROADLY COMPARABLE EMPLOYEES

- 4.1 The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

5 BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.

6 COMPENSATION

- 6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
- (a) the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
 - (b) a Broadly Comparable pension scheme,

the Authority may in its sole discretion permit the Supplier (or any of its Sub-

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contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under Paragraph 7 (*Breach*) of Part D of this Schedule.

7 SUPPLIER INDEMNITIES

- 7.1 The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

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ANNEX D3: LGPS

1 DEFINITIONS

1.1 In this Annex D3 LGPS to Part D: Pensions, the following words have the following meanings:

“2013 Regulations”	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
“Administering Authority”	in relation to the Fund [insert name] , the relevant administering authority of that Fund for the purposes of the 2013 Regulations;
“Fund Actuary”	the actuary to a Fund appointed by the Administering Authority of the Fund;
“Fund”	[insert name], a pension fund within the LGPS;
[“Initial Contribution Rate”]	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
“LGPS”	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
“LGPS Admission Agreement”	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
“LGPS Admission Body”	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
“LGPS Eligible Employees”	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
“LGPS Fair Deal Employees”	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
“LGPS Regulations”	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings

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and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2 SUPPLIER TO BECOME AN LGPS ADMISSION BODY

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Sub-contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

OPTION 1

- 2.2 [Any LGPS Fair Deal Employees who:

- (a) were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- (b) were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

OPTION 2

[Any LGPS Fair Deal Employees whether:

- (c) active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- (d) eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension

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scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.3 The Supplier will (and will procure that its Sub-contractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3 BROADLY COMPARABLE SCHEME

- 3.1 If the Supplier and/or any of its Sub-contractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
- 3.2 If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

4 DISCRETIONARY BENEFITS

- 4.1 Where the Supplier and/or any of its Sub-contractors is an LGPS Admission Body, the Supplier shall (and procure that its Sub-contractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

5 LGPS RISK SHARING

- 5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “**Excess Amount**”) shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.
- 5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or payments to the Fund in

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aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Authority an amount equal to A–B (the “**Refund Amount**”) where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and

B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.

5.4 The Supplier and any Sub-contractors shall at all times be responsible for the following costs:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- (b) any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- (c) any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- (d) any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;

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- (f) any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - (g) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
 - (h) any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
 - (i) the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or
 - (j) any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Sub-contractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Sub-contractor shall) notify the Authority in writing within twenty (20) Working Days:
 - (a) of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and

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provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and

- (b) of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

5.8 Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Authority shall either:

- (a) notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
- (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
- (c) request a meeting with the Supplier to discuss or clarify the information or evidence provided.

5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

5.10 Any Excess Amount or Exit Payment agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.

5.11 Any Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.

5.12 This Paragraph 5 shall survive termination of this Contract.

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ANNEX D4: OTHER SCHEMES

[Guidance: Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

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PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - (c) the date which is 12 months before the end of the Term; and
 - (d) receipt of a written request of the Authority at any time (provided that the Authority 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 DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority 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 Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor 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 Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

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- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel 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;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) 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 Personnel List;
- (e) 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); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D

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(*Pensions*) of this Schedule 28 (*Staff Transfer*) (as appropriate);
and

- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor 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, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Authority 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 Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority 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

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Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-contractor 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 Sub-contractor 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 Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor 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;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) 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 Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory

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authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) 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
 - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel 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 Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, 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;
 - (e) a failure of the Supplier or any Sub-contractor 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);
 - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
 - (g) 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 Sub-contractor 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 Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities 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 Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee

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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 Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor 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.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in

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applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

(a) shall not apply to:

(i) 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,

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel 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,

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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:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

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

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

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- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (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 Personnel 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;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) 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:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel 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
 - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel 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 Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor 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;

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- (g) a failure of the Replacement Supplier or Replacement Sub-contractor 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 Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel 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 Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 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 Sub-contractor (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 Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

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ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS

SCHEDULE 28 (STAFF TRANSFER)

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ANNEX E2: STAFFING INFORMATION

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)

[Subject to contract]

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EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

- 1 *If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.*
- 1 *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 2 *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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EMPLOYEE DETAILS & KEY TERMS							
Detail s	Job Titl e	Grad e / band	Work Locatio n	Ag e	Employment status (for example, employee, fixed-term employee, self- employed, agency worker)?	Continuou s service date (dd/mm/yy)	Date employmen t started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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		ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS					
Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp						

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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No						
Emp No						
Emp No						

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						

SCHEDULE 33 (CALL OFF TERMS FOR ORDERING ORGANISATION)**[Subject to contract]**

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Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

	OTHER		
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			
Emp No			
Emp No			
Emp No			
Emp No			

SCHEDULE 29 (KEY PERSONNEL)

[Subject to contract]

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SCHEDULE 29

KEY PERSONNEL

Schedule 29 (*Key Personnel*)

[REDACTED]

[REDACTED]

SCHEDULE 30 (DEED OF GUARANTEE)

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Schedule 30

DEED OF GUARANTEE

SCHEDULE 30 (DEED OF GUARANTEE)

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Schedule 30 (*Deed of Guarantee*)

Xerox Limited

- and -

NHS Business Service Authority

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the “**Deed**”)

BETWEEN:

- (1) **XEROX LIMITED** a company incorporated in England and Wales under registered number 575914 whose registered office is at Building 4, Uxbridge Business Park, Sanderson Road, Uxbridge, Middlesex, UB8 1DH. (the “**Guarantor**”); and
- (2) (the “**Authority**”).

together the “**Parties**” and each a “**Party**”.

BACKGROUND:

- (A) The Authority has awarded a contract dated [insert date] to Xerox UK Limited (the “**Supplier**”) for the provision of NHS Prescriptions, Cards and Print (the “**Guaranteed Agreement**”).
- (B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
- (C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The **following** definitions apply in this Deed:

SCHEDULE 30 (DEED OF GUARANTEE)

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“Business Day”	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
“Control”	means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: <ul style="list-style-type: none">(a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or(b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;
“Guaranteed Agreement”	has the meaning given to it in Recital (A);
“Guaranteed Obligations”	has the meaning given to it in Clause 2.1(a);
“Supplier”	has the meaning given to it in Recital (A);
“VAT”	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

1.2 Unless otherwise stated, any reference in this Deed to:

- (a) the “Guarantor”, the “Authority”, the “Supplier” or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- (b) “assets” includes present and future properties, revenues and rights of every description;
- (c) this “Deed”, or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (d) “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (e) a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust,

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joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

- (f) the words “including”, “includes”, “in particular”, “for example” or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- (g) a time of day is a reference to London time.

2 GUARANTEE AND INDEMNITY

2.1 The Guarantor:

- (a) guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the “**Guaranteed Obligations**”);
- (b) shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- (c) shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:

- (a) any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
- (b) any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
- (c) provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

3 AUTHORITY PROTECTIONS

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Continuing Guarantee

- 3.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

- 3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
- (a) any arrangement made between the Supplier and the Authority;
 - (b) any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
 - (c) any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
 - (d) any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
 - (e) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
 - (f) any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
 - (g) any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

- 3.3 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

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Deferral of rights

- 3.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
- (a) be subrogated to any right or security of the Authority;
 - (b) claim or prove in competition with the Authority against the Supplier or any other person;
 - (c) demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
 - (d) take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
 - (e) claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority under this Deed.

4 VARIATION OF THE GUARANTEED AGREEMENT

- 4.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

5 PAYMENT AND COSTS

- 5.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:
- (a) without any set-off, condition or counterclaim whatsoever; and
 - (b) free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

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- (a) the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
 - (b) the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.
- 5.4 The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:
 - (a) the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
 - (b) any discharge or release of this Deed.

6 CONDITIONAL DISCHARGE

- 6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Guarantor represents and warrants to the Authority that:

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- (a) it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
- (c) it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- (d) it has been duly authorised to enter into this Deed;
- (e) it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- (f) this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- (g) all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- (h) that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- (i) that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

8 ASSIGNMENT

- 8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.

9 VARIATION

- 9.1 No variation of this Deed shall be effective unless it is in writing and signed by the parties.

SCHEDULE 30 (DEED OF GUARANTEE)

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10 DEMANDS AND NOTICES

- 10.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:
- (a) For the Attention of Richard Pitceathly - Associate General Counsel
 - (b) Building 4, Uxbridge Business Park, Sanderson Road, Uxbridge, Middlesex, UB8 1DH.
- 10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
- 10.3 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:
- (a) if delivered by hand, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
- 10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 10.5 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

11 ENTIRE AGREEMENT

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

12 WAIVER

- 12.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other

SCHEDULE 30 (DEED OF GUARANTEE)

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right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

13 SEVERANCE

- 13.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

14 THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

15 GOVERNING LAW AND JURISDICTION

- 15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

SCHEDULE 30 (DEED OF GUARANTEE)

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Executed as a deed by Xerox Limited
acting by [insert name of Director] a
director, in the presence of a witness:

.....
[Signature of Witness]

.....
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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SCHEDULE 31

PROCESSING PERSONAL DATA

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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Schedule 31 (*Processing Personal Data*)

- 1 This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
- 2 The contact details of the Authority's Data Protection Officer are:
- 3 Name: Chris Gooday
- 4 Email address: dataprotection@nhsbsa.nhs.uk
- 5 The contact details of the Supplier's Data Protection Officer are:
privacy@xerox.com
- 6 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 7 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Authority is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none">• Authority Personal Data <p>The Supplier is Controller and the Authority is Processor</p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause 21.2 to 21.15 of the following Personal Data:</i></p> <ul style="list-style-type: none">• Supplier Personal Data <p>The Parties are Joint Controllers</p> <p><i>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none">• n/a

SCHEDULE 31 (PROCESSING PERSONAL DATA)**[Subject to contract]**

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	<p>The Parties are Independent Controllers of Personal Data</p> <p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p><i>N/a</i></p>
Duration of the processing	<p>The Processor shall process the Personal Data for no longer than is absolutely necessary in accordance with the terms of the Contract, or until the termination of this Contract (whichever is sooner).</p> <p>Any financial transaction information (which is not Personal Data) will be retained for a period of 6 years plus the year the data was gathered. At the end of the retention period the data will be held for no longer than is absolutely necessary in accordance with delivering the Services or until the termination of this Contract (whichever is sooner).</p>
Nature and purposes of the processing	<p>Where the Authority is Controller and the Supplier is Processor:</p> <p>Supplier shall receive Personal Data by secure data transfer from the Authority and NHS Wales</p> <p>Supplier shall receive Personal Data from members of the public ordering LIS forms and Covid Passes direct from Supplier's contact centre.</p> <p>Printing the Forms which contain Personal Data, Cards, Certificates & NHS Pensions Payroll Information</p> <p>Performance of the Supplier's obligations under this Contract.</p> <p>Where the Supplier is Controller and the Authority is Processor – NOT USED</p> <p>Authority shall receive Personal Data by [means] for the performance of the Authority's obligations under this Contract.</p>
Type of Personal Data	<p>Where the Authority is Controller and the Supplier is Processor:</p>

SCHEDULE 31 (PROCESSING PERSONAL DATA)**[Subject to contract]**

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	<p>Name and business address of Authorised Users.</p> <p>Name and members of the public address and date of birth as relevant (noting that any member of the public could contact the Authority or the Supplier in relation to the Services.</p> <p>NHS Pensions Payroll Information</p> <p>Prescriber Name and Prescriber code</p> <p>Where the Supplier is Controller and the Authority is Processor</p> <p>Name, e-mail address and job title of Supplier Personnel</p>
Categories of Data Subject	<p>Where the Authority is Controller and the Supplier is Processor:</p> <p>Members of the public – as described above.</p> <p>Prescribers</p> <p>NHS Pensioners</p> <p>Where the Supplier is Controller and the Authority is Processor</p> <p>Supplier Personnel</p>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	<p>Where the Authority is Controller and the Supplier is Processor:</p> <p>During the Term, when the Processing is complete in line with the “Duration of Processing” section above, the Processor shall cease to use the Authority Data, and shall Provide the Authority with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority).</p> <p>The Supplier shall erase from any computers, storage devices and storage media all Authority Data and promptly certify to the Authority that it has completed such deletion.</p> <p>On termination or expiry of the Contract, the Supplier shall comply with the provisions of Schedule 25 (Exit Management) in relation to the Authority Data,</p>

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract	<p>The Online Ordering Portal will reside in a Xerox UK DataCentre. The Supplier's Key Subcontractors, Adare and Thames Technology also have UK DataCentres where Personal Data will be processed, compliant with UK GDPR requirements.</p>
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach	<p>The Authority has in place a security incident reporting process whereby data breaches are documented, reported, triaged, and investigated.</p> <p>Serious breaches are scored and reported to the ICO where necessary.</p> <p>The Supplier shall comply with the security requirements set out in this Contract, including for the avoidance of doubt Schedule 5 (Security Management).</p> <p>On detection of a potential Security Breach affecting the Supplier's Service or Authority, the Supplier would promptly and without undue delay notify the Authority of any such incident. The Supplier will establish a communication plan with the Authority and other affected parties to assemble a coordinated response. Including Authority and other Supplier subject matter experts, linking into the Supplier's Corporate Incident Management process and will result in the identification and selection of an overall investigation lead. The Supplier's Service Delivery Manager will at all times be responsible for leading the Suppliers investigations as part of any cross-supplier team.</p> <p>Once the Team has been identified, responsibilities and containment activities will be agreed. This could include Supplier affected infrastructure being isolated (taking devices or hosts off-network), or, by changing access arrangements to the Supplier's systems or facilities, and those of the Supplier's Key Subcontractors. Where the Supplier's infrastructure is affected, recovery operations will be implemented in order to restore services back to agreed levels. This may include the invocation of the Suppliers' disaster recovery facilities, or, supporting other suppliers in invoking supplier disaster recovery.</p> <p>Assessment of Ongoing risk: Where a Supplier breach has occurred, following the initial containment activities and working in collaboration with the Breach Management Team, the Supplier's Service Delivery Manager will be responsible for coordinating a formal risk assessment \of any adverse consequences of continued operation to</p>

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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	<p>identify that may be required to ensure restitution and remedial activities will avoid further disruption to client business. Where an Authority or Supplier breach has occurred, the Supplier's Service Delivery Manager will manage and coordinate any supporting Supplier risk assessment activities through the Breach Management Team.</p> <p>Notification of Breach: As Data Processor, the Supplier will communicate contractual, regulatory, or legislative breaches through the Breach Management Team and will support the development of any communication plans.</p> <p>The Supplier's Service Delivery Manager will be responsible for documenting steps carried out by the Suppliers' personnel in terms of how and when the breach occurred and what data was involved in line with the reporting requirements of UK GDPR if there is a loss of client Personal Data. This will include details of those activities have been completed to respond to the risks posed by the breach, and, details of the security measures in place along with details of the security procedures in place at the time the breach occurred.</p> <p>Evaluation and Response: The Supplier's Service Delivery Manager will be responsible for producing a breach report of any actual, potential or attempted Supplier breach and the steps taken to contain and recover the breach. Where a Supplier or Authority breach has occurred then the Supplier will support the production of a breach report through the Breach Management Team. Lessons learned from any security breaches will be fed back into the Supplier's policy, processes and technical solution as a remedial action plan to prevent such occurrences or similar occurrences reoccurring, this may also include further security education and awareness training.</p>
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- 8 The Supplier is hereby instructed by the Authority:
- 8.1 to Process the Authority Personal Data for the sole purpose of providing the Services and to the extent necessary to provide the Services, and not to Process the Authority Personal Data for its own purposes or third party purposes;
- 8.2 not to transfer the Authority Personal Data outside of the United Kingdom, except in the circumstances described in Clause 21.5(d); and
- 8.3 for the purpose of Article 28(3)(d) and Article 28(2) of the UK GDPR, not to engage a Sub- contractor without the Authority's prior specific written authorisation as set out in or referred to in Clause 21.12.

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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SCHEDULE 31 (PROCESSING PERSONAL DATA)

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ANNEX 1: JOINT CONTROLLER AGREEMENT

NOT USED

SCHEDULE 31 (PROCESSING PERSONAL DATA)

[Subject to contract]

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ANNEX 2: NOT USED

SCHEDULE 32 (INTELLECTUAL PROPERTY RIGHTS)

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SCHEDULE 32

INTELLECTUAL PROPERTY RIGHTS

Schedule 32 (*Intellectual Property Rights*)

1 INTELLECTUAL PROPERTY RIGHTS

1.1 Except as expressly set out in this Contract:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
 - (i) the Authority Software;
 - (ii) the Authority Data;
 - (iii) the Prescriber Data (as defined in Schedule 2.1); and
 - (iv) the Authority Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

1.4 Unless the Authority otherwise agrees in advance in writing:

- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
- (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires

conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.

- 1.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Paragraph 4 (*Open Source Publication*).
- 1.6 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (*Intellectual Property Rights*) and shall keep Annex 1 updated during the Term.

2 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

- 2.1 Subject to Paragraph 2.17 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) 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 (together the "**Software Supporting Materials**");

but not including any Know-How, trade secrets or Confidential Information.

- 2.2 The Supplier:

- (a) shall:
 - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new

release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

- (iii) without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (*Software*) or sent to the Strategic Joint Team Programme Board for review and approval granted by the Authority.

2.4 The Supplier hereby grants to the Authority:

- (a) subject to the provisions of Paragraph 2.17 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-

license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraphs 2.7 (*Authority's right to sub-licence*) and 2.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

2.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.7 (*Authority's right to sub-license*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority's right to sub-license

2.7 Subject to Paragraph 2.17 (*Patents*) the Authority may sub-license:

- (a) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*); and
- (b) the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Authority; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

2.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:

- (a) A Central Government Body; or
- (b) to any body (including any private limited body and/or 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 Authority.

2.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body (or substitute body

or organisation), the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).

- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 12 (*Software*) or approval is granted by the Authority following a review by the Strategic Joint Team Programme Board and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*) and Paragraph 2.8 (*Authority's right to assign/novate licences*); or
- (b) complied with the provisions of Paragraph 2.12.

- 2.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing either:
 - (i) the terms of the licence from the relevant third party; or
 - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority 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.

2.13 The Supplier shall:

- (a) notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
- (b) unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Paragraph 2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

2.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

2.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or any relevant third party pursuant to or as contemplated by this Paragraph 2.

2.16 The Supplier shall, if requested by the Authority in accordance with Schedule 25 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Replacement Supplier;

- (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier;
 - (iii) the transfer of all Goods held and/or owned and/or stored by or on behalf of the Supplier in connection with this Agreement; and/or
 - (iv) the transfer of IT/IP licences held and/or owned and/or used by or on behalf of the Supplier in connection with this Agreement,
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

- 2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

3 LICENCES GRANTED BY THE AUTHORITY

- 3.1 To the extent that the Authority is able to, the Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (*Confidentiality*); and
 - (b) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 3.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in

accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

- (a) immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
- (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

4 OPEN SOURCE PUBLICATION

- 4.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.
- 4.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
 - (a) are suitable for release as Open Source and the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
 - (b) 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 anything published as Open Source and that the Specially Written Software and the Project Specific IPRs;
 - (i) do not contain any Malicious Software;
 - (ii) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
 - (iii) can be published as Open Source without breaching the rights of any third party; and

- (iv) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.
- 4.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.
- 4.4 The Supplier may within 15 days of the Operational Service Commencement Date request in writing that the Authority excludes all or part of:
 - (a) the Project Specific IPR; or
 - (b) Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Source Publication Material supplied to the Buyer pursuant to Paragraph 4.2,from Open Licence publication.
- 4.5 Any decision to Approve any such request from the Supplier pursuant to Paragraph 4.4 shall be at the Authority's sole discretion, not to be unreasonably withheld, delayed or conditioned.
- 4.6 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Paragraph 4.1.

SCHEDULE 33

CALL OFF TERMS FOR ORDERING ORGANISATIONS

Call-Off Terms

Schedule 33 (*Call Off Terms for Ordering Organisation*)

These call-off terms apply to any and all Orders placed by the Customer(s) via the Supplier's Online Ordering Portal. The call-off terms incorporate all of the terms which apply to or benefit the Ordering Organisations and/or Authorised Users under the Framework save for those sections which have been redacted in the version of the Framework which is shared with the Supplier via Contracts Finder and/or the Online Ordering Portal. The Supplier shall process all Orders in accordance with the terms of the redacted Framework and these call-off terms.

1 **INTERPRETATION**

Unless the context otherwise requires the definitions set out in the Framework shall apply to these call-off terms. In addition the following terms shall apply:

"Customer" means the Ordering Organisation placing the Order using the Online Ordering Portal or the Ordering Organisation on whose behalf an Authorised User is placing an Order;

"Delivery" means the delivery of an Ordered Product or Ordered Products in accordance with Paragraph 4.2 and 4.3;

"Delivery Address" means the address where the Ordered Product or Ordered Products are to be delivered, as notified by the Customer to the Supplier from time to time;

"Framework" means the overarching agreement between the NHS Business Services Authority and the Supplier titled the NHS Prescriptions, Cards & Print framework for inter alia NHS Forms, Print, Exemptions, Cards, GHIC and EHIC, NHS Pensions Payroll and Covid Pass services which establishes a framework arrangement whereby Customers can purchase certain Goods and/or Products; and

"Ordered Products" means the Goods and/or Products ordered by the Customer from time to time from the Supplier via the Supplier's Online Ordering Portal.

In the event of any conflict between these terms and the Framework, the Framework provisions shall apply.

2 **ORDERS**

- 2.1 The Supplier shall supply the Ordered Products in accordance with all Authority Requirements and Target Performance Levels set out in the Framework.
- 2.2 The Customer may amend or cancel an Order in whole or in part at any time before Delivery by giving the Supplier notice in writing.
- 2.3 In the event of any amendment or cancellation of any Ordered Product by the Customer, the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Ordered Products at the time of termination, such compensation shall not include loss of anticipated profits or consequential loss.

- 2.4 In the event of termination of the Framework the provisions in Clause 32.4(b) shall apply for the purpose of the call-off terms and the Customer shall pay for any unpaid Charges for Services received up until the Termination Date.

3 THE ORDERED PRODUCTS

- 3.1 The Supplier shall ensure that the Ordered Products:
- 3.1.1 correspond with their description;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
 - 3.1.3 are free from defects in design, material and workmanship and remain so for 12 months after Delivery or such longer period as the Framework may require;
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage and Delivery of the Ordered Products;
 - 3.1.5 are manufactured, labelled, packaged, stored and delivered in accordance with the terms of the Framework; and
 - 3.1.6 comply with any Delivery instructions made known to the Supplier by the Customer at the time of placing the Order or subsequently.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under these call-off terms.

4 DELIVERY

- 4.1 The Supplier shall ensure that in addition to complying with the requirements detailed in the Framework:
- 4.1.1 the Ordered Products are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
 - 4.1.2 each Delivery of Ordered Products is accompanied by a delivery note which shows the order number, order recipient, product code, product name, volume of each product, bar code of serial numbers for prescription forms (if applicable) and, if the relevant Order is being delivered in instalments, the outstanding balance of Ordered Products remaining to be delivered.
- 4.2 The Supplier shall deliver the Ordered Products specified in each Order:
- 4.2.1 within 6 days or such other period agreed between the Supplier and the Customer;
 - 4.2.2 at the Delivery Address specified by the Customer; and
 - 4.2.3 during the Customer's normal business hours or as instructed by the Customer.

- 4.3 Delivery of Ordered Products is completed once signed for at the specified Delivery Address.
- 4.4 Risk and ownership in the Ordered Products shall pass to the Customer at the time of Delivery;
- 4.5 If a Delivery does not conform to any Delivery requirements specified in the Order or otherwise, Delivery may be rejected or accepted at the sole discretion of the Customer.
- 4.6 The Customer may return Ordered Products to the Supplier, including Ordered Products which:
 - 4.6.1 have not left the control of the Supplier's Delivery driver;
 - 4.6.2 have been rejected by the Customer;
 - 4.6.3 are subject to a product of batch recall;
 - 4.6.4 are alleged to be defective;
 - 4.6.5 have been damaged in transit; and
 - 4.6.6 the Supplier has been directed by the Authority to return.
- 4.7 Where the reason for the return referred to at Paragraph 4.6 above is due to an act or omission of the Supplier, the Ordered Product(s) shall be returned to the Supplier at no extra cost; and
- 4.8 The Supplier shall not deliver Orders in instalments without the Customer's prior written consent.

5 CUSTOMER REMEDIES

- 5.1 If the Ordered Product(s) are not delivered in accordance with the Framework and/or these call-off terms, without limiting any of its other rights or remedies of the Customer and in addition to the rights and remedies in the Framework, and regardless of whether or not the Customer has accepted the Ordered Product(s), the Customer may exercise any one or more of the following remedies:
 - 5.1.1 if the Ordered Product(s) have not yet been delivered, to cancel the Order;
 - 5.1.2 to reject the Ordered Products (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.1.3 to require the Supplier to repair or replace the rejected Ordered Product(s), or to provide a full refund of the price of the rejected Ordered Product(s) (if paid);
 - 5.1.4 to refuse to accept any subsequent Delivery of the incorrect, incomplete or defective Ordered Product(s) which the Supplier attempts to make; and
 - 5.1.5 to claim damages from the Supplier for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Framework and/or these call-off terms.

- 5.2 The conditions set out in these call-off terms shall apply to any repaired or replacement Ordered Products supplied by the Supplier.

6 PRICE AND PAYMENT

- 6.1 Subject to the provisions of the Framework, the Customer shall pay for the Ordered Product(s) in accordance with this Paragraph.

- 6.2 The Price set out on the Online Ordering Portal in respect of the Ordered Product(s):

6.2.1 excludes amounts in respect of Value Added Tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

6.2.2 includes the costs of packing, insurance and carriage of the Ordered Products.

- 6.3 No extra charges shall be effective unless agreed in writing and signed by the Customer.

- 6.4 The Supplier shall, submit on a monthly basis, a consolidated invoice to Customer detailing:

6.4.1 the price of the Ordered Products plus VAT at the prevailing rate (if applicable) in respect of all Ordered Products delivered during the period to which the invoice relates;

6.4.2 all appropriate references and a detailed breakdown of the Ordered Products and any supportive information and/or documents reasonable required by the Customer to substantiate the invoice; and

6.4.3 the date of the Order, the invoice number, the Customer's order number, the Supplier's VAT registration number together with any additional information required under the Framework.

- 6.5 The Customer shall pay correctly rendered invoices within 30 days of receipt of the invoice to the Ordering Organisation.

- 6.6 The Customer may set off and withhold any amount owed to it by the Supplier against any amount due to the Supplier by the Customer under any Order.

- 6.7 If a party fails to make any payment due to the other in accordance with these terms by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This Paragraph shall not apply to payments the defaulting party disputes in good faith.

7 LIABILITY & INDEMNITY

- 7.1 The obligations of the Supplier set out in the Framework relating to liability and indemnity including those contained in Clause 23 of the Framework shall apply to these call-off terms. For the purposes of this Paragraph any reference to the Authority set out in such provisions shall where appropriate in all the circumstances be interpreted as being a reference to the Customer.

8 INSURANCE

- 8.1 The Supplier shall ensure that the requirements for insurance stated under the Framework shall also apply to these call-off terms.

9 COMPLIANCE WITH RELEVANT LAWS AND POLICES

- 9.1 The provisions of the Framework shall also apply to these call-off terms.
- 9.2 In the event the Framework should terminate prior to the termination of these call-off terms, the provisions of the Framework shall be deemed to be incorporated into these call-off terms and will continue to apply.

10 GENERAL

- 10.1 For the avoidance of doubt the following provisions of the Framework shall also apply to these call-off terms:
- 10.1.1 Warranties (Clause 3);
 - 10.1.2 Force Majeure (Clause 30);
 - 10.1.3 Supply Chain Rights and Protections (Clause 15);
 - 10.1.4 Confidentiality (Clause 19);
 - 10.1.5 Where the Customer is subject to the Freedom of Information Act 2000, the Transparency and Freedom of Information provisions (Clause 20);
 - 10.1.6 Protection of Personal Data (Clause 21);
 - 10.1.7 Conflicts of Interest (Clause 33.6 – 33.7); and
 - 10.1.8 All other provisions of the Framework which benefit the Customer.

11 DISPUTES

- 11.1 The parties shall immediately notify the Authority of the existence of any issue(s) arising out of or relating to these call-off terms and the Supplier and the Customer shall work together in good faith to resolve any dispute.

12 ENTIRE AGREEMENT

- 12.1 These terms, the terms of the Framework and any specific terms in any Order or in writing by the Customer or the Authority constitutes the entire agreement between the parties relating to the Order and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13 WAIVER

- 13.1 No failure or delay by a party to exercise any right or remedy provided under these terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial

exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14 SEVERANCE

- 14.1 If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Paragraph shall not affect the validity and enforceability of the rest of these terms.

15 NOTICES

- 15.1 Any notice or other communication given to a party under or in connection with these terms shall be in writing, addressed to that party at that party's address or such other address as that party may have specified to the other party in writing in accordance with this Paragraph, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Paragraph 15.1); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Working Day after transmission.
- 15.3 The provisions of this Paragraph shall not apply to the service of any proceedings or other documents in any legal action.

16 GOVERNING LAW

- 16.1 These terms, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

17 JURISDICTION

- 17.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms or its subject matter or formation.