

To address this, we have developed and will continue to operate a **weekly monitoring** approach to gather intelligence on how fieldwork is progressing. This allows contractors and in-house trusts to provide weekly updates through an easy-to-complete tool. The structure of the tool means that where there are new staff at in-house trusts and contractors who join a survey they can use the tool with little support from the Coordination Centre. Where support is required our team of staff are experienced in troubleshooting and providing advice on the weekly-monitoring process. This information will allow us to raise any concern we may have about the progress of a trust with either their contractor or directly with them. Where we have significant concerns about whether a response rate will prohibit the quality and quantity of data for a trust, this will be escalated to CQC for discussion about the most appropriate course of action.

A recent change to fieldwork monitoring has been the addition of a response code of '7: deceased before mailing' in the case-level outcome record for a survey. This has enabled us to better understand the progression of fieldwork.

Communication and support

Throughout the survey process, expert support will be offered to stakeholders on a daily basis. This will be provided via a number of channels that already exist in the programme:

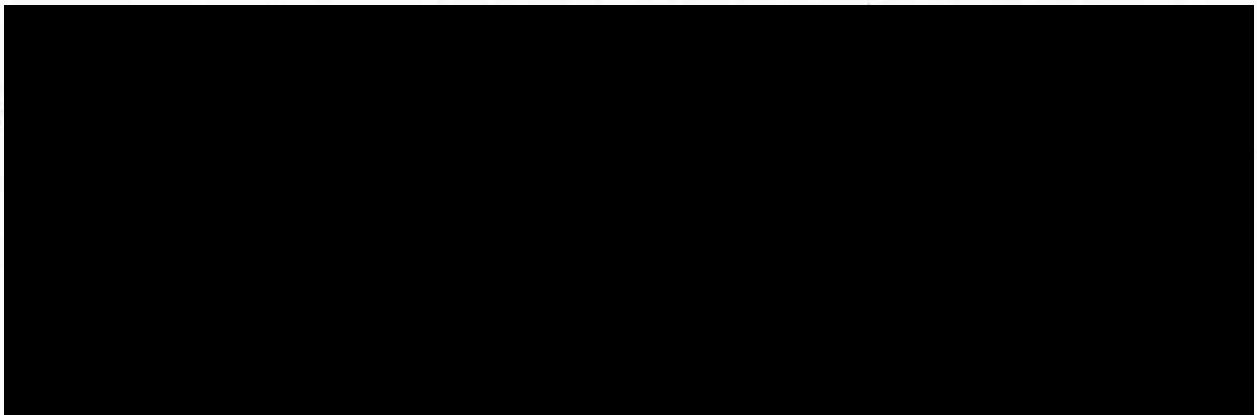
A dedicated website (www.nhssurveys.org) where survey documentation and results are published. This provides the information and supporting documentation that users need to implement the national surveys in a standardised manner.

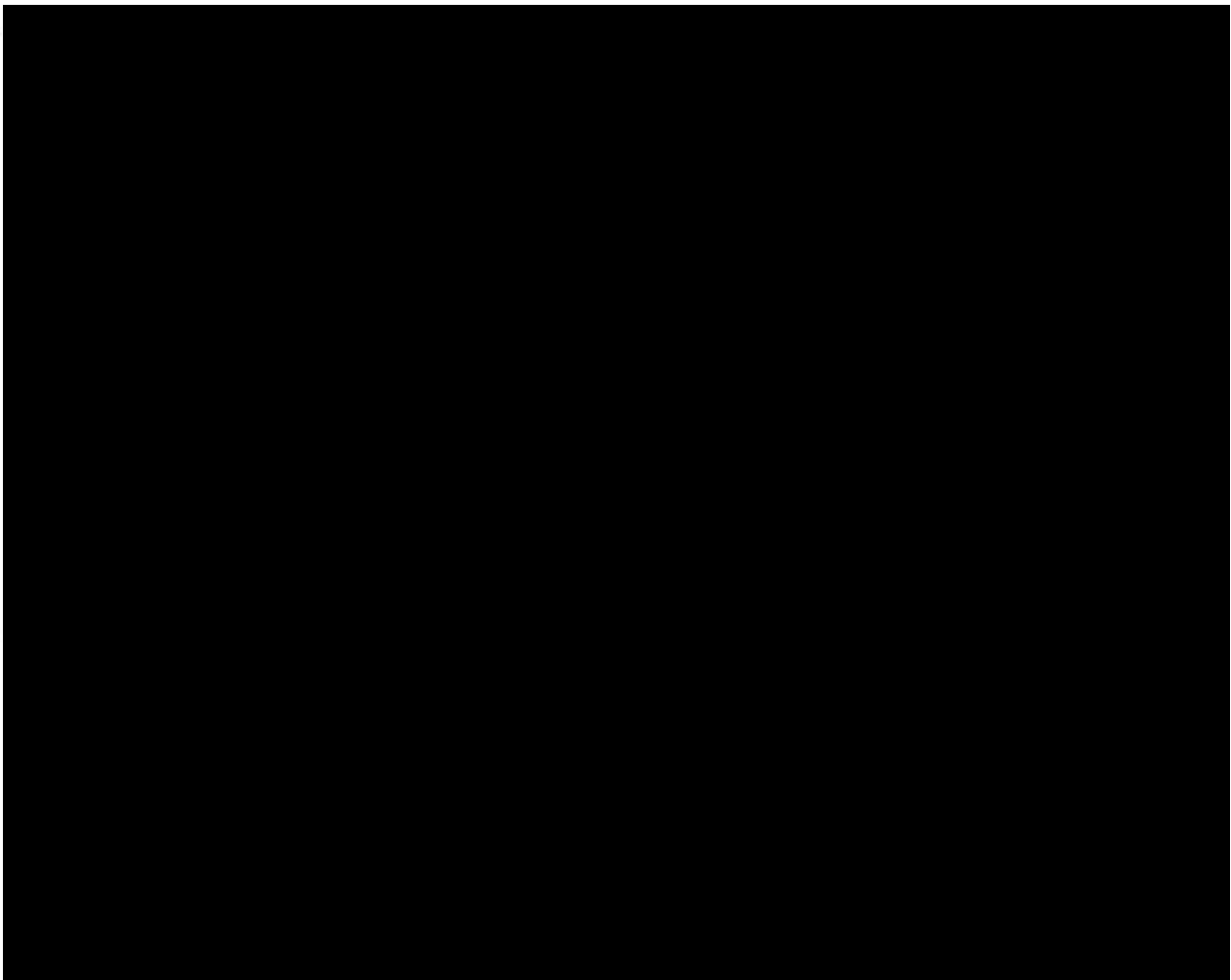
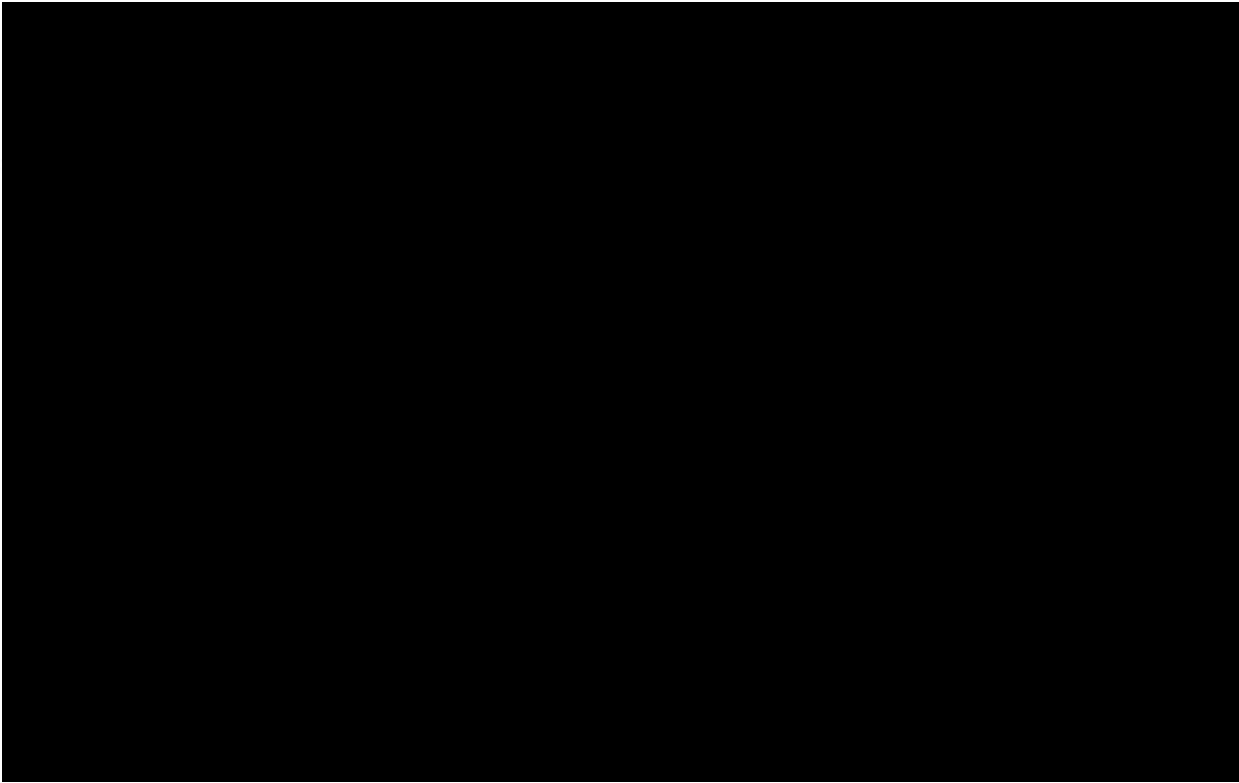
An 'Advice Centre' and survey-specific email 'helplines'. Emails to these addresses are automatically sent to all researchers working on a project to ensure that queries are dealt with quickly. Research Associates will field day-to-day emails and queries, undertaking the majority of the work to ensure efficiency, with issues or concerns raised with Senior Research Associates and escalated further if required.

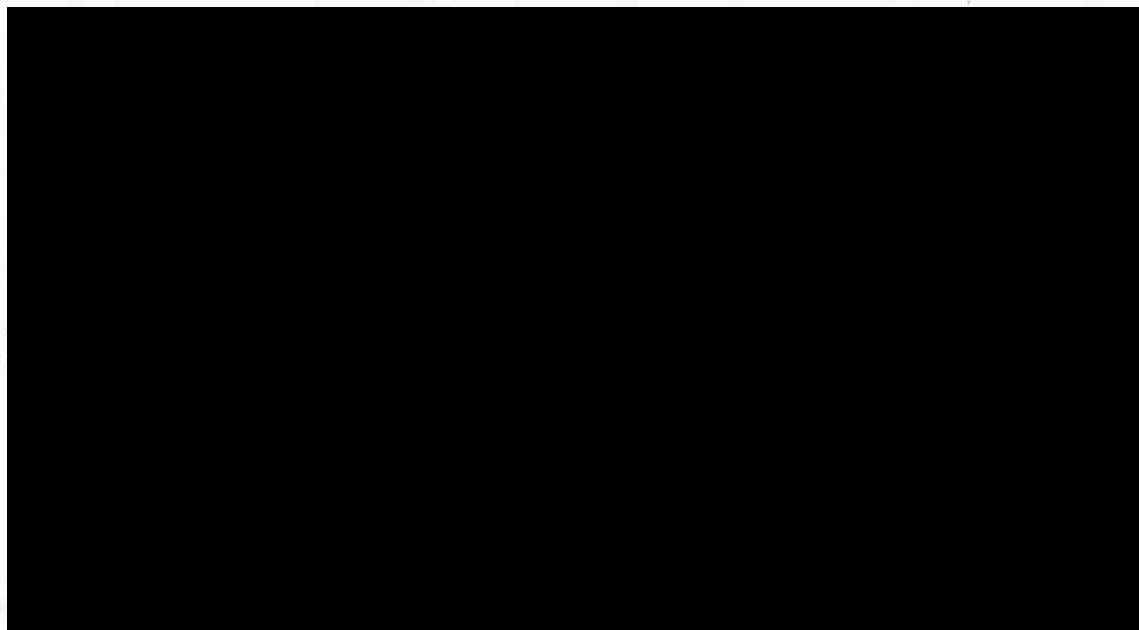
A dedicated telephone 'advice' line where queries are responded to and advice given to trusts on elements of the survey process.

Approved contractor briefings and trust webinars. These provide an opportunity to raise queries collectively and allows for clarifications to be given in advance of the survey commencing.

This range of channels has made it easy for trusts and contractors to get information and support.



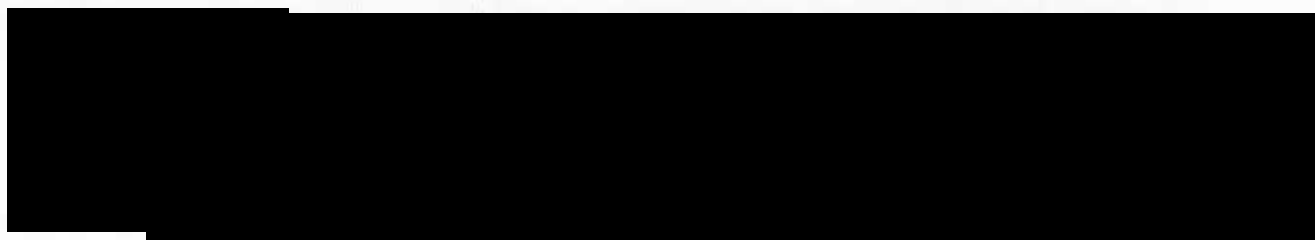




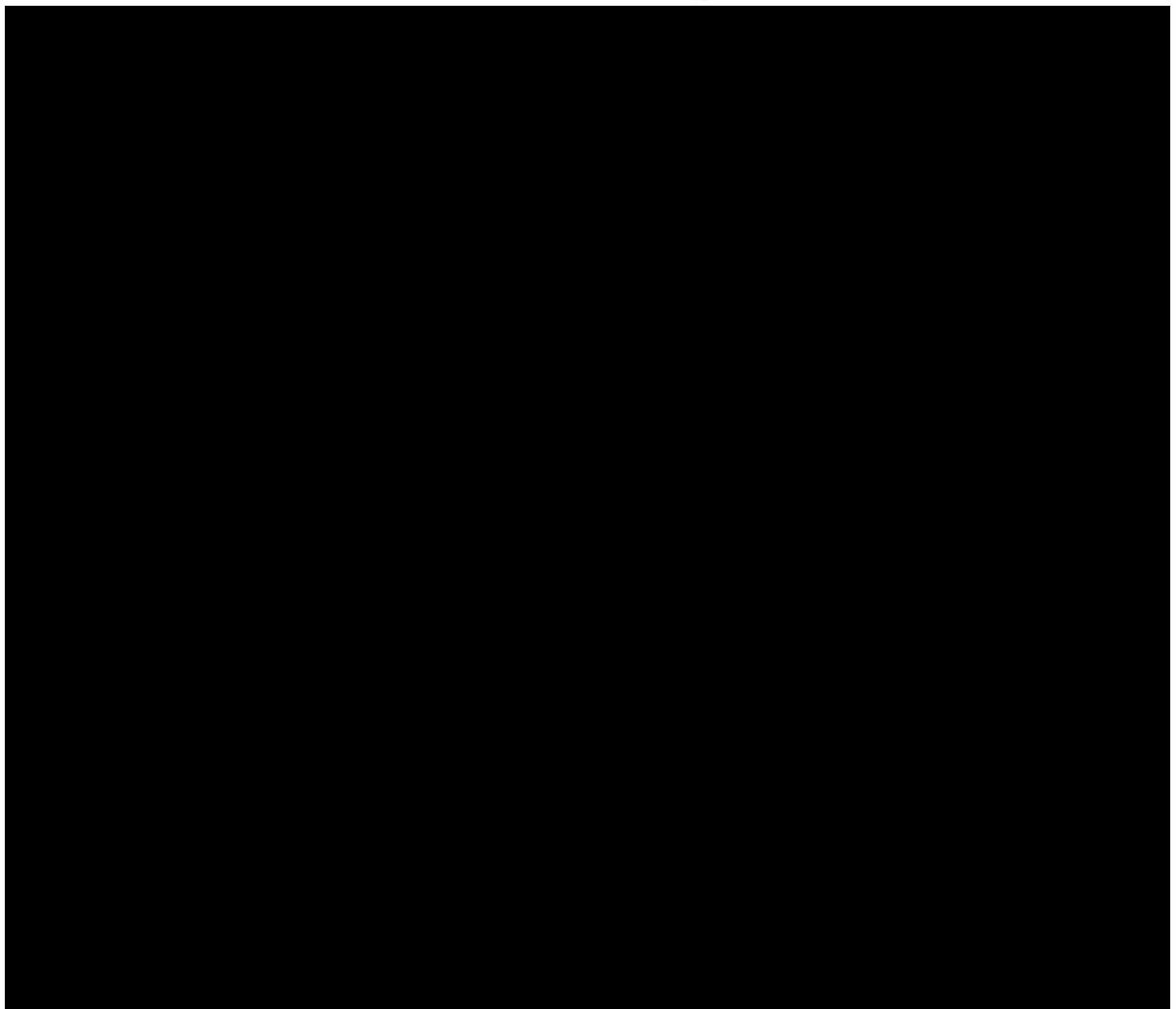
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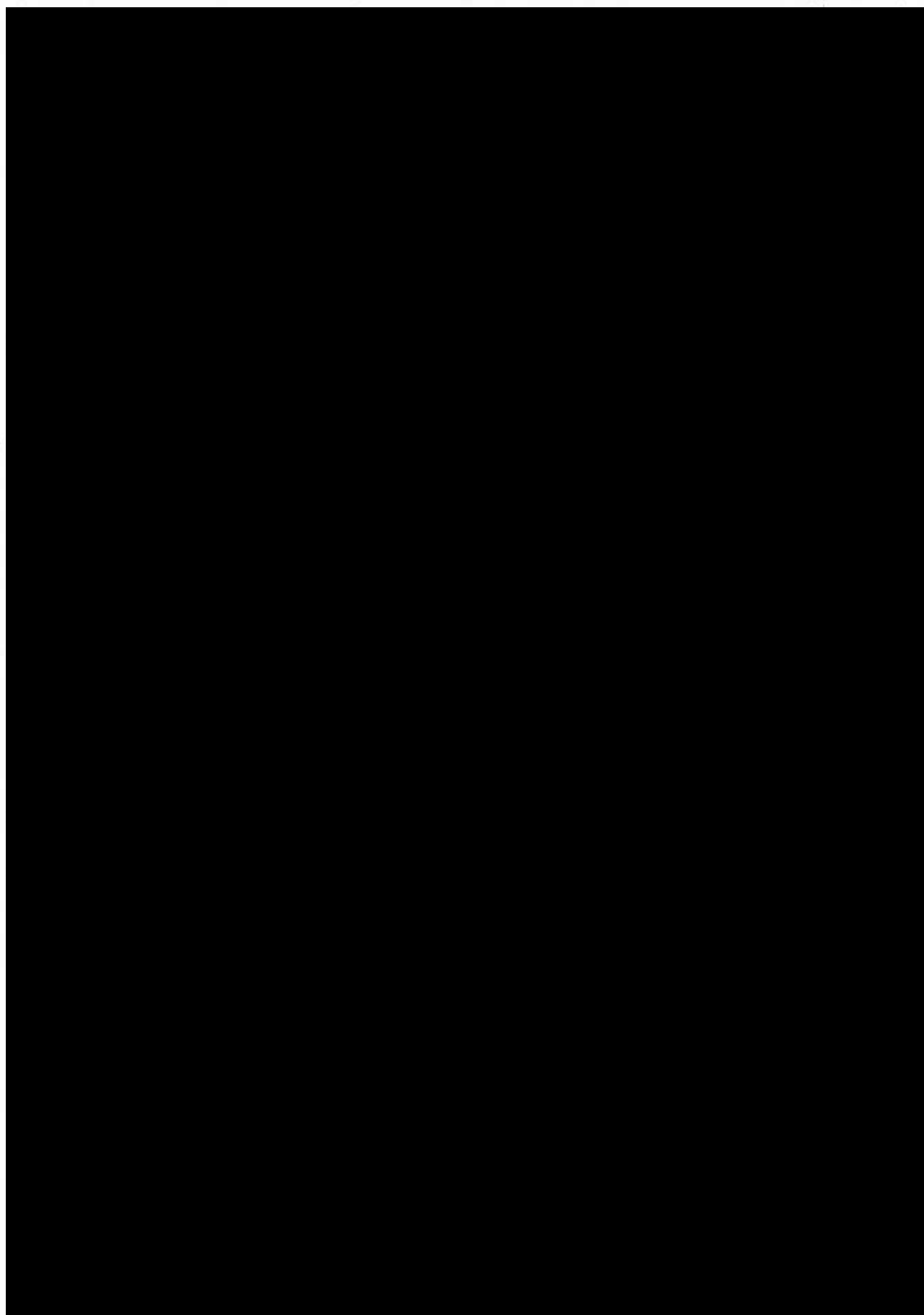
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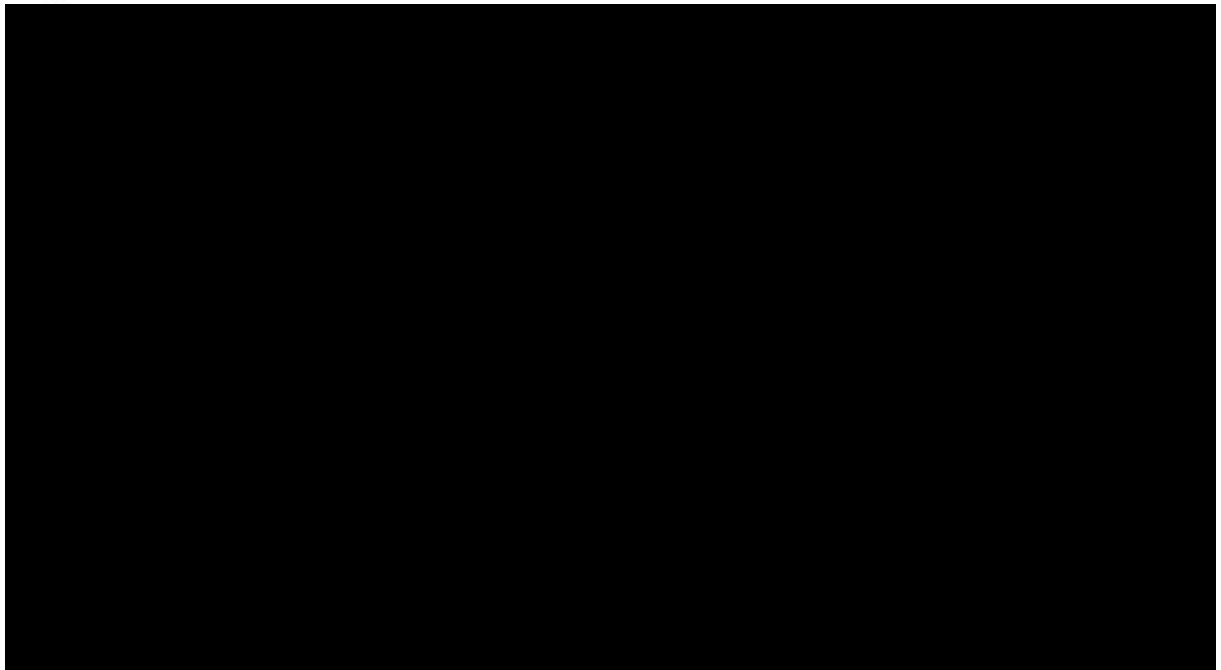
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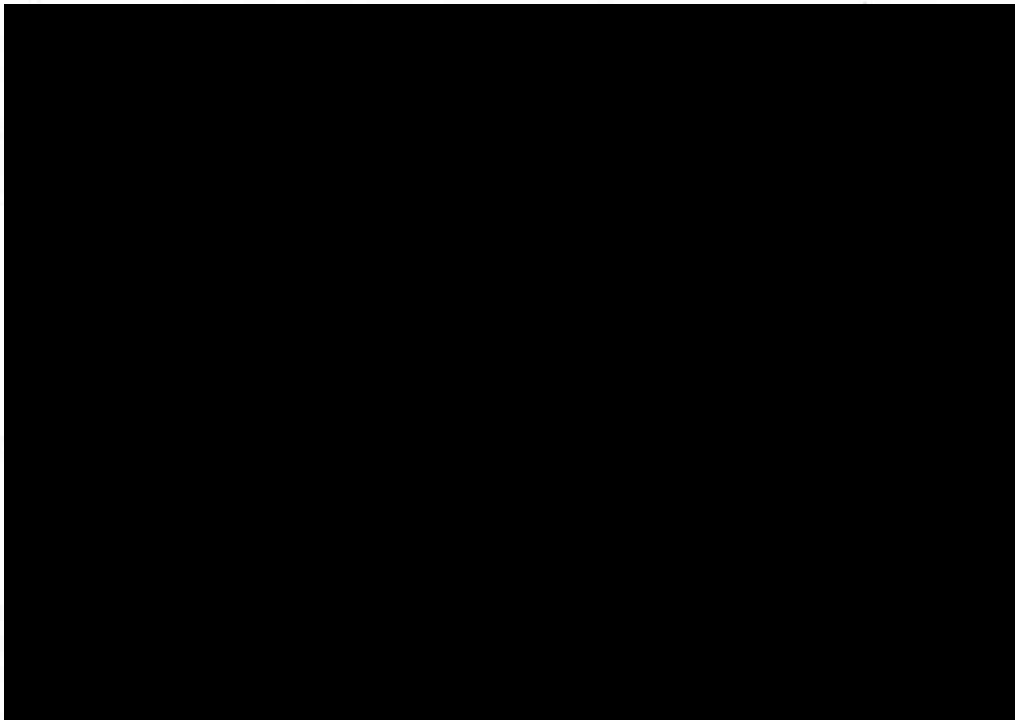


| Circumstance | Percentage (%) |
|-------------------------------|----------------|
| If someone is attacking you | 85 |
| If someone is threatening you | 70 |
| If someone is harassing you | 55 |
| If someone is insulting you | 40 |
| If someone is annoying you | 25 |









Summary

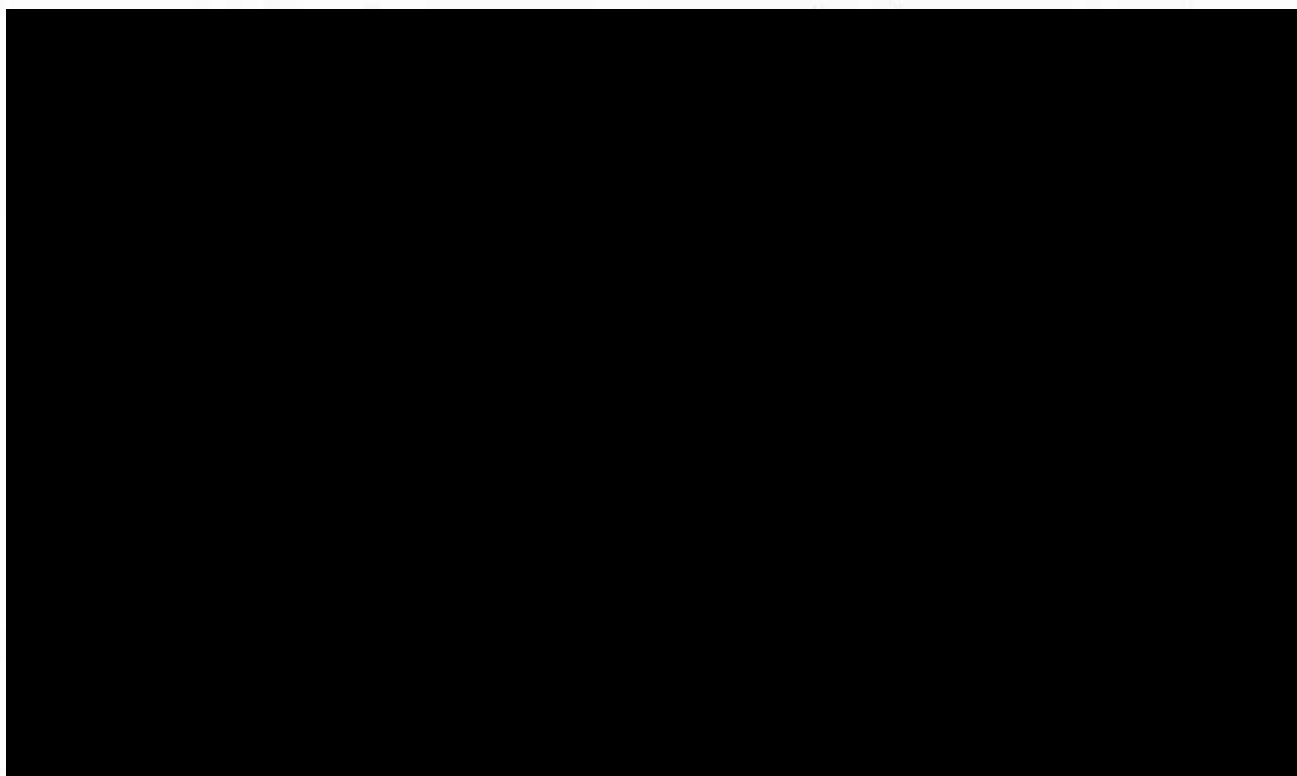
As demonstrated in answer to this question, throughout our time coordinating the NPSP we have successfully introduced innovative improvements that are now relied upon. We have also highlighted further innovations that we are keen to explore with CQC to ensure that improvements continue to be made to surveys using paper methods before they transition to mixed methods.

| EVALUATION QUESTION 03 – RELATIONSHIP MANAGEMENT | WEIGHTING |
|---|-------------------|
| <p>Please provide an assessment of your organisation's approach to working, in partnership, with Commissioning Authorities to ensure the successful delivery of outputs</p> | <p>10%</p> |
| <p><i><u>Evaluation intention</u> - This criterion seeks to establish how the Tenderer will work with CQC to ensure successful delivery and to meet expected quality standards.</i></p> <p><i>Evaluation of this criterion will include:</i></p> <ul style="list-style-type: none"> <i>• an assessment of your organisation's approach to working, in partnership, with CQC to ensure the successful delivery and development of the NHS Patient Survey Programme via paper method;</i> <i>• how you intend to provide appropriate assurance that the work will be delivered to a high quality standard and within agreed timescales and budgets;</i> <i>• Assessment of your approach to the management of risks and issues in developing and delivering this work and the information governance arrangements you will put in place to support delivery.</i> | |
| <p>RESPONSE:</p> | |

Here we describe how we will continue to work in close partnership with CQC and manage the Coordination Centre's programme of activities. We describe our quality-assurance and risk-management processes, as well as our approach to information governance and data protection. Our management approach will be the same for Lots 1 and 2. This consistency provides advantages to CQC and participating organisations. For us, across both Lots, effective partnership means high quality, reliable communication – and we are committed to ensuring that CQC receive regular information on all aspects of projects.

Management structure

We will use a multi-tiered governance approach to ensure that all members of the CQC team have appropriate contact points within the Coordination Centre. This will involve a designated contract manager, programme lead, project leads, a project coordinator and specialist experts. A summary of our management structure can be seen in figure 9 below.





Communication between CQC and the Coordination Centre

Routine information sharing is an integral part of relationship management. Currently, communications are carried out via planned, regular activities, including both written updates and scheduled conversations. These communication activities, which we intend to continue, include:

- **Weekly operational delivery meetings** will be held for every project within the NPSP and conducted via Skype. These will be attended by the project lead with other members of the Coordination Centre as required. These meetings will allow a review of current progress and operational priorities, as well as analysis and management of risks and progress. Following each weekly call, a summary of discussion and action points will be sent by the project lead at the Coordination Centre to the project team at CQC. This written summary ensures that there is a clear audit trail for discussions and decisions made during the operational meetings.
- **Fortnightly senior liaison meetings** will be scheduled between the Coordination Centre's programme lead and the CQC's Analyst Team Leaders, with support from the project coordinator. They will cover the following areas of discussion:

a) project updates such as upcoming deliverables and priorities, changes to project scope, such as the recent independent providers (UEC) project, risks, issues and areas of concern including mitigating actions;

b) programme management information such as overall resourcing plans, upcoming leave for Coordination Centre staff and financial performance where necessary; and

c) improvements and learnings across the programme such as, for example, early submission of s251 applications, the use of coloured materials, the timing of checking hard copies of questionnaires and enabling trusts to commence mailing before the official fieldwork start.

- **Contract review meetings** will be held quarterly, during which the performance of the Coordination Centre is reviewed against the designated KPI's. Currently, these meetings are attended by the senior management in the Coordination Centre (Contract Manager and Programme Lead) with support from the project coordinator in addition to CQC's Contract Manager and Analyst Team Leaders. These meetings will be structured to allow discussion of a number of key points namely a) finance update, b) resourcing update, c) performance against KPI's and any risks, d) AOB as necessary. Specialist experts will also be available to attend to discuss and review progress in the transition programme.
-
- Each project will conclude with a **project review meeting** to discuss performance and identify areas of learning and future innovation that will be fed into future planning and meetings.

The number and frequency of meetings should be proportionate to the work being undertaken. For smaller projects it would be sensible to agree a reduced number as part of the project planning. Outside of regular meetings, the Coordination Centre will stay in contact with CQC via a number of contact points:

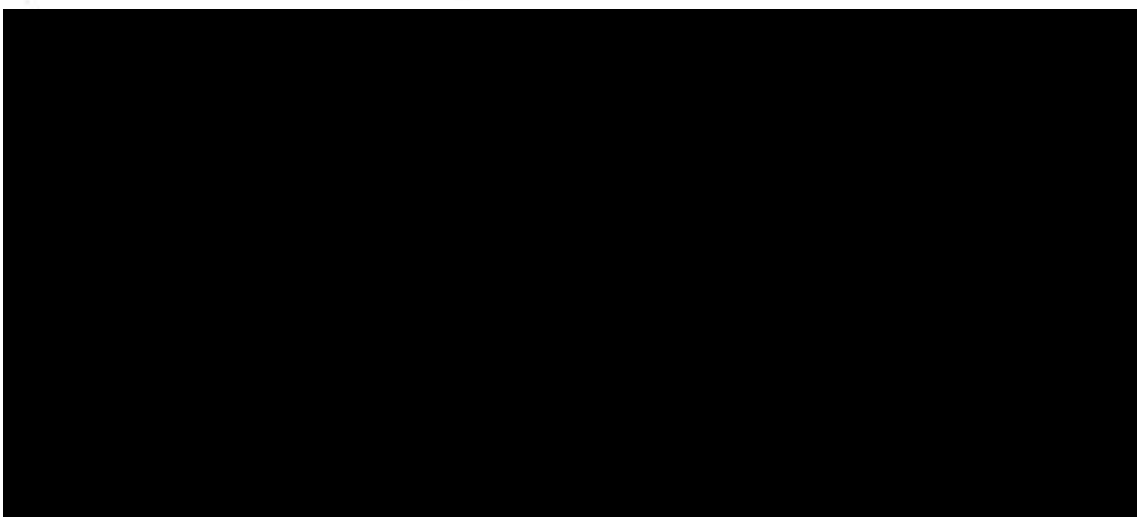
- **Group email addresses** will be in place for each work package (for example, we currently use inpatient@surveycoordination.com for the Adult Inpatient Survey). The email address will be copied on all Coordination Centre correspondence regarding the survey, ensuring that Coordination Centre staff are easily able to access all correspondence relating to a given work package.
-

For programme-level queries, **Picker's senior management team** will be accessible via the contract manager and/or programme lead. Where the contract manager is unavailable, another senior member of staff – normally the Chief Executive – will be briefed on current programme status and available to cover any urgent requirements.

Project management

For all projects, we will implement a rigorous project planning and management methodology. This will ensure that activities are designed to meet CQC's needs and will establish clear deadlines and deliverables that the Coordination Centre will be accountable for. A summary of our project management approach can be seen in figure 10.





We understand that CQC will agree project requirements by preparing specification documents ('briefs') for the Coordination Centre to respond to. As demonstrated by our current approach, our proposals will be concise, and respond to the key aspects of each brief outlining our planned approach to design and delivery. In addition, a detailed timetable and costs will be delivered to CQC setting out the series of activities, deliverables and responsibilities for the project. Following agreement with CQC of the proposal, costs and project timetable, weekly catch-ups will be scheduled (as outlined above).

Following agreement of the project planning information, the Coordination Centre will enact its ongoing project management and quality-assurance approach. A **project control sheet** will be created and stored in the electronic project folder, where all project materials will be placed. The control sheet will keep a record of all project documents (e.g. questionnaires; guidance manuals; reports; and so on) with creation dates, version numbers, and sign-offs from the Coordination Centre and CQC. Importantly, it will include guidance for Coordination Centre staff on the level of internal sign-off required for different documents: published versions of documents such as questionnaires that can influence outcomes of surveys or other collections will usually require sign-off by both a senior research associate and programme lead. This ensures that documents are checked and signed off prior to publication and allows an easy auditing of the project outputs. The control sheet, together with a folder documenting key decisions and sign-offs, ensures our compliance with ISO 27001 requirements and will meet CQC's requirement for "a log [of] all decisions and actions... undertaken in delivering agreed packages of work".

All project files will be stored in a networked, access-controlled project folder restricted to Coordination Centre staff. To track progress, the project timetable will be reviewed and updated at least fortnightly to monitor completion of work and to identify any areas where changes to the timetable are required in response to delays, external factors, or changes in requirements. Summaries of project progress against timetables will be shared with CQC via email, during weekly operational catch-ups, and via the fortnightly performance-review meetings.

Mutual learning and knowledge transfer are important features of our work. We recommend that all completed work packages be subject to an end-of-project review. The review meeting, which will be attended by relevant CQC and Coordination Centre staff, will provide an opportunity to reflect on the project. This will include a review of costs and performance, but also an open discussion about potential areas for improvement and learning. Meetings will be chaired and minutes distributed by the Coordination Centre. The intent is that learning will be carried forward into new projects via improvements set out in project plans, such that

our overall approach embeds basic principles of improvement science to focus on continuous refinement of our methods and processes.

Cost management

As has been the case for the past three years, the Coordination Centre will continue to provide a firm quote for each work package. We are committed to delivering each project at this cost level providing there are no substantial changes to requirements. However, to provide assurance to both CQC and to Picker, spend will be carefully monitored throughout each project.

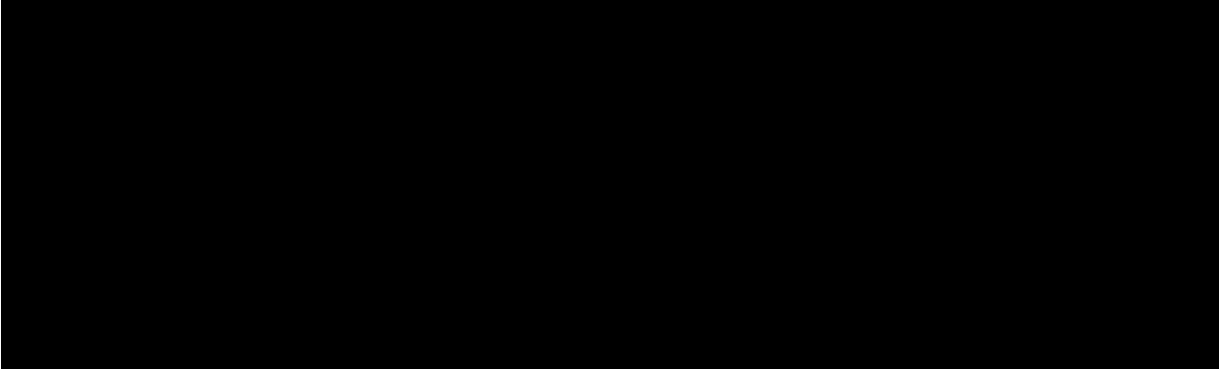
Each new work package will be assigned a separate project identity and reference number on our organisation's customer relationship management system. This system already has a dedicated area for the Coordination Centre, so costs and plans can be stored without being accessible to staff outside of the Coordination Centre team. Staff are able to record time worked on different projects, and will use this functionality to record inputs to work packages. This information can be collated at any time and will form the basis of milestone and project progress updates during monthly calls regarding financial management for the programme. We recognise that projects are likely to fall across financial years with regards to deliverables and milestones. Where this is the case, we will continue to derive pro-rated billings six to eight weeks in advance of year-end and work with CQC to ensure that the correct invoicing is in place.

In order for monthly summaries to be useful they must not simply list spend – this will not reflect the expected peaks and troughs in project spend. Certain stages of projects involve more intensive input than others: sample checking is, for example, considerably more resource intensive than other stages of fieldwork where the Coordination Centre's role is focussed on monitoring and supporting trusts. To help make sense of this, we will prepare projected cost schedules at the start of each project and represent monthly data both as absolute use and under/overspend against projections. This will give a far clearer sense of any potential issues or underspends, and will allow meaningful conversations about reconciliation and reinvestment of underspend where it occurs.

Risk Management

Coordination Centre projects tend to be complex packages of work: a typical life cycle for the national surveys will be in the order of a year, and surveys in particular have many stakeholders plus several layers of authorisations. Thus there are many external factors that have the potential to impact upon project plans. Proactive identification of these, and development of mitigation plans, is an important part of our project-management and governance approach.

We have a standardised approach to risk management. At the start of each project, risks will be mapped in a risk matrix according to their likelihood and potential impact. Where appropriate, mitigating actions will be identified. These fall into two categories: firstly proactive mitigation strategies, where actions are taken to reduce the likelihood of a risk materialising; and secondly reactive mitigation strategies, where actions are planned to reduce impact in the event that a risk that is realised. Monitoring of risks will be completed via a 'status' column on the risk matrix: this will be updated at least monthly and will be assigned a simple 'red-amber-green' coding (table 2) for ease of use and interpretation. In addition, all of our project timetables apply a similar coding approach which is used to indicate where delays are anticipated (such as ethical or s251 approvals) or concerns about high-risk areas.



Recording and monitoring of risks is only one part of an effective risk-management strategy. As detailed above, we will set out and be prepared to implement mitigation strategies for foreseeable risks. In the event of any new risks being added, or any medium- or high-impact risks being escalated to 'red' status, we will discuss and agree mitigation and/or recovery processes with CQC as soon as possible. This will generally involve input from the programme lead and/or the contract manager to ensure that actions are implemented swiftly. For example, on the recent 2018 Maternity Survey there was a delay in acquiring s251 approval. As a result, we have now pulled the date of s251 submissions forward on all subsequent projects and take a proactive approach to monitoring HRA Confidentiality Advisory Group meeting slots.

Quality Assurance

We are committed to delivering surveys, research, and service improvement in a way that ensures the highest quality of work. Picker operates an integrated Quality Assurance and Information Security Management System and is certified by SGS United Kingdom Ltd. to ISO20252:2012, the international standard for organisations conducting market and social research (certificate number GB08/74322). As part of our quality system, we maintain a thorough quality-assurance manual that sets out internal processes consistent with recognised industry best practice. These include clear recording of proposals, costs, key decision points, and authorisations for all projects; a version control approach; physical and environmental security; and a thorough internal audit process. In addition, we have recently implemented an organisational tool to assist with upholding our own quality-assurance framework, which is being rolled out across all projects in the NPSP.

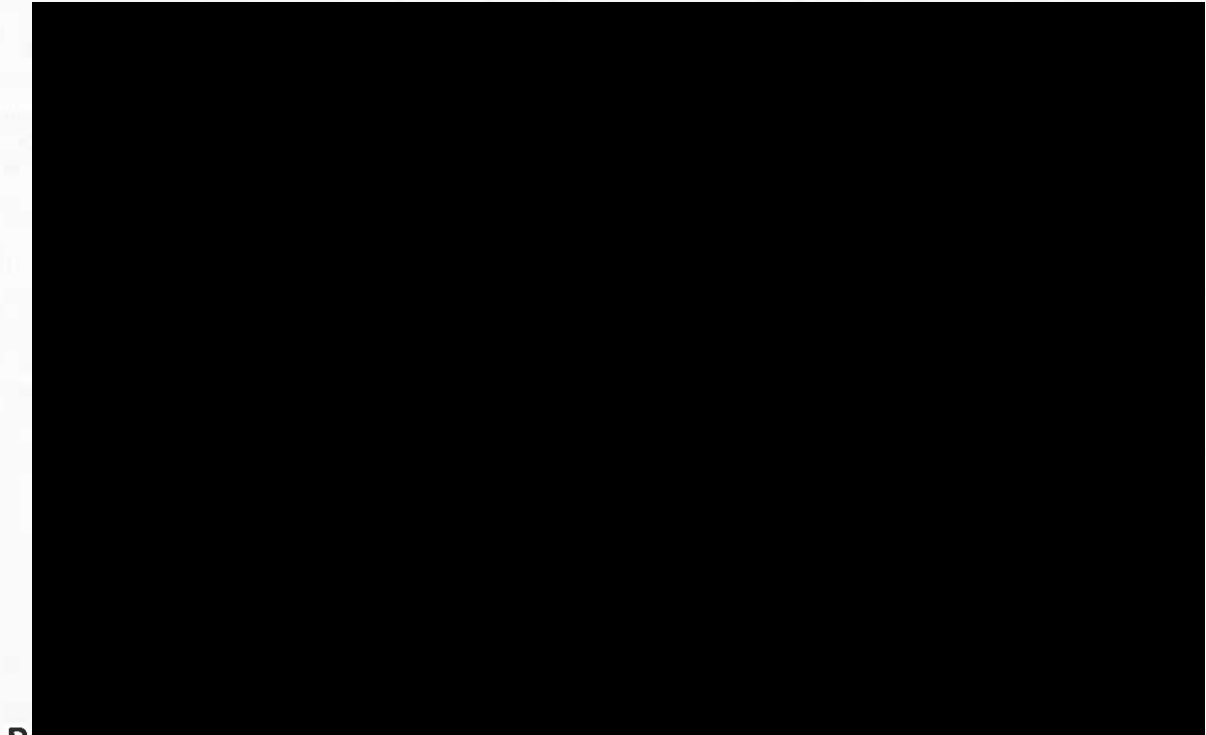
Our systems and processes include a comprehensive business continuity and recovery plan to ensure that the Coordination Centre's functions can be maintained even in the (highly unlikely) event of unanticipated disasters. We have procedures in place to ensure that any sub-contractors we use conform fully to our quality and information-security systems.

In addition to the regular surveillance visits by external bodies, we have our own auditing, quality-assurance and information-security management team. With the help of feedback from our clients, the team continuously monitors the quality of service we provide. This commitment to continuous improvement is evident in our proposal for the Coordination Centre: end-of-project review meetings will provide a platform for feedback from CQC and for learning and improvement.

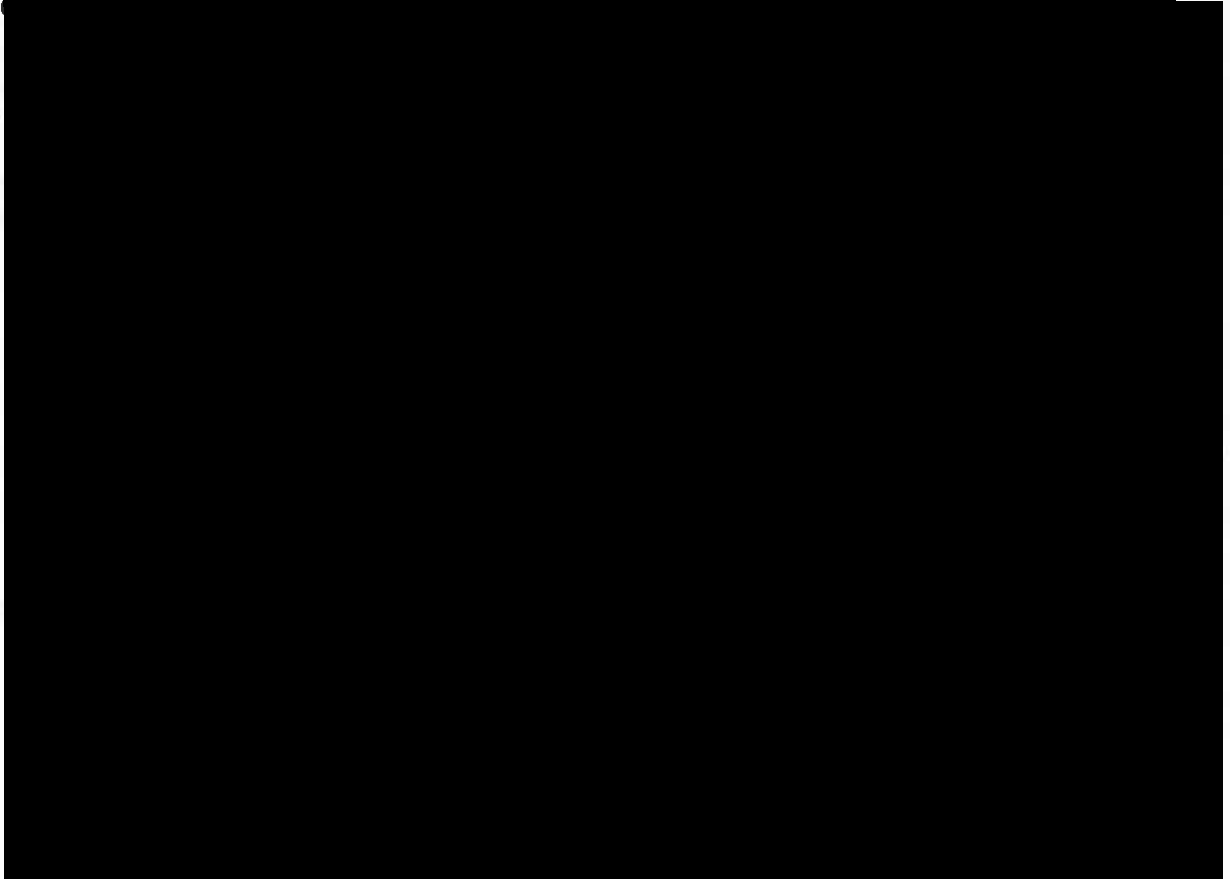
We recognise that CQC has its own internal quality-assurance procedure, including a QA manual for the Intelligence directorate. We have reviewed the content of this manual and can state with confidence that our own internal approach applies at least the same level of scrutiny in all cases.

Our full Quality Assurance and Information Security Management System manual is available on request. A full account of every feature of the manual is beyond the scope of this response document, but it is possible to set out key features that are particularly relevant to the Coordination Centre's approach and processes:

Data analysis & outputs



De





Subcontractors

- Picker maintains a list of approved subcontractors, who are required to complete confidentiality agreements and confirm in writing that they conform to ISO 20252 and 27001 requirements. In addition, where elements of the project require particular information-governance approvals (for example, NHS IG Toolkit approval) we ensure that this is in place before contracting them.
- The performance of approved subcontractors is reviewed annually. This review, and any action taken, is fully documented.

If a quality-assurance issue were to occur, we will undertake a full internal investigation to fully understand the intricacies of the situation. In doing so, we are able to ensure that corrective action can be taken and improvements made to existing processes. Where an issue has been identified, we will provide a written summary to CQC outlining the situation, next steps and what actions have been taken to prevent a re-occurrence of the issue.

Information Governance

Picker has UKAS accredited certification for its information security management system (ISO27001:2005) from SGS (certificate number GB10/80275). We have a 100% score on version 14 (2016-17) of the NHS information governance toolkit (organisation reference 8HV74) and are registered under the Data Protection Act 1998 (Z4942556). All of our research is fully compliant with the Market Research Society's (MRS's) Code of Conduct, and we are registered as MRS Company Partners. We are fully compliant with the requirements of the General Data Protection Regulation (GDPR).

As part of our information-governance approach, we have clear policies on management and use of confidential and identifiable data. Paper questionnaires and qualitative recordings are retained for six months unless another retention period is agreed with the client. Sensitive or confidential material is stored securely in line with our data-protection policy: again, records are destroyed securely after six months unless a separate retention period has been agreed. Procedures are documented in our Quality Assurance and Information Security Management Systems manual.

As well as having a robust organisational policy around information governance, the Coordination Centre itself has exceptional knowledge and experience of dealing with issues related to confidentiality and data protection. We are highly conscious of the requirements governing the release of patient identifiable data from NHS trusts, and of the importance of s251 of the NHS Act (2006). For the NPSP, CAG applications are drafted by the Coordination Centre with review undertaken by CQC. Through this process we have demonstrated our considerable experience of these applications, including attendance at CAG meetings to help present the case for the work. Whilst the national surveys within the NPSP fall under a standard precedent set review process for s251, the Coordination Centre team is also skilled and experienced in submitting applications for full committee review such as is the case with the current national audit of patient contact information held on trust records. Consequently, we are uniquely placed to support CQC in handling confidentiality issues related to paper based surveys.

Given the change to the data protection regulations (GDPR), key members of the organisation, including our Data Protection Officer, have been comprehensively trained on the implications of the GDPR with particular focus for the NPSP. In addition, the Coordination Centre team will receive training regarding specific data protection processes that will need to be adhered to, following the introduction of GDPR, across the surveys within the NPSP.

We have an organisational policy on safeguarding children and vulnerable adults, which is maintained in accordance with relevant legislation and is consistent with CQC's own approach. All staff receive formal safeguarding training, and the policy and its implementation are overseen by Picker's CEO in his capacity as strategic safeguarding officer (SSO).

Whilst not a legal requirement, all eligible researchers within the Coordination Centre have enhanced DBS clearance adding another layer of security and assurance when working with members of the public such as during cognitive testing of questionnaire tools and other qualitative research activities.

Avoiding conflicts of interest

In keeping with our commitment to transparency, we consider it important to set out how we will manage our organisation's dual status as the Coordination Centre and as an approved survey contractor, assuming we are successful in a combination of the lots for the current tender. As this dual status has existed for some time, it is easy for us to give assurances about how any potential conflicts of interest will be handled.

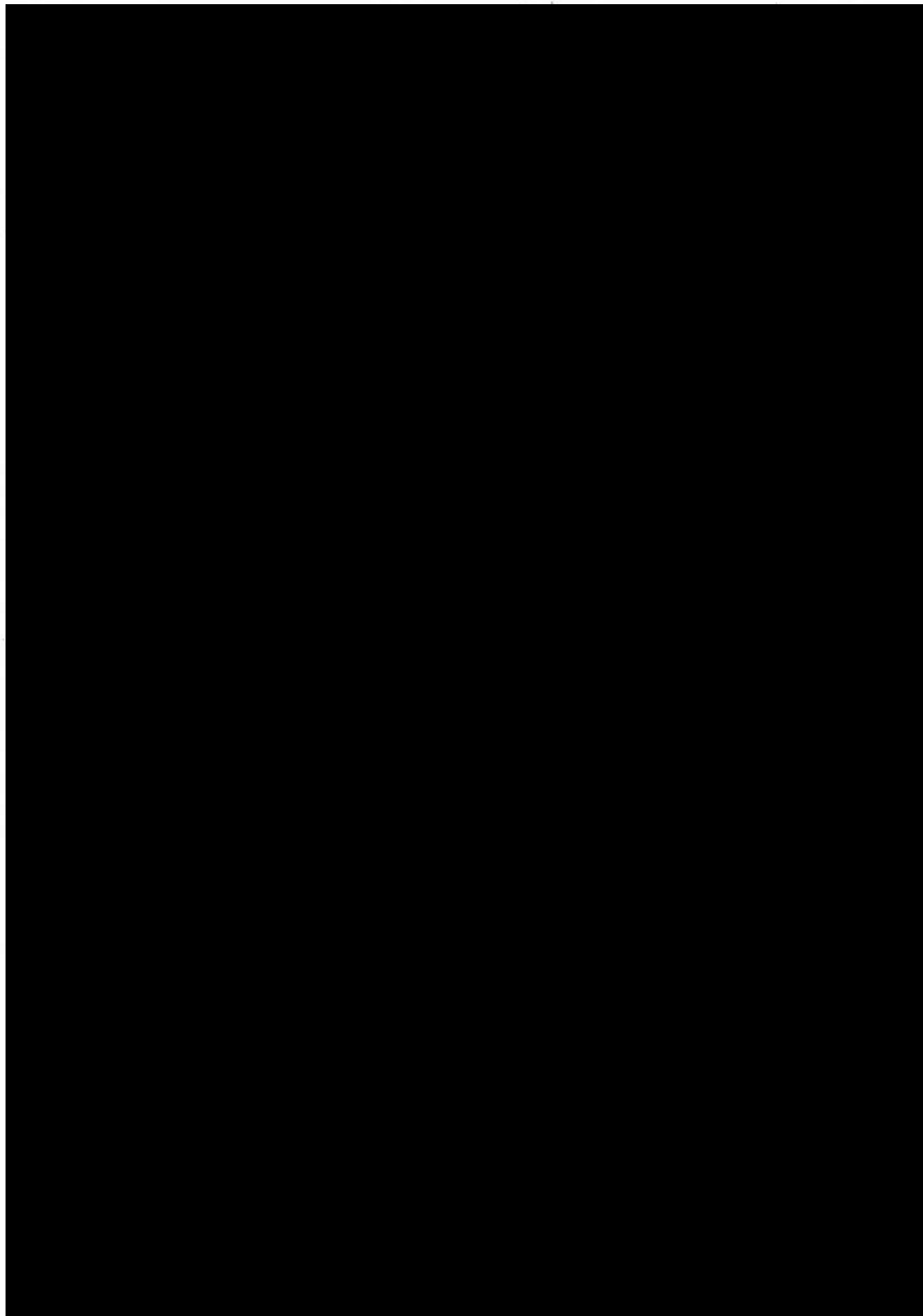
Picker has an Operations Division who work as an approved contractor for NHS patient and staff surveys. Simultaneously, but separately, our survey coordination team manage the Coordination Centres for the NHS Patient and Staff Survey Programmes on behalf of CQC and NHS England respectively. This arrangement has been in place for the duration of the current NPSP, which has been operating since 2002, and since 2011 for the NHS staff survey. We have always avoided conflicts of interest between our organisation's work as an approved survey contractor and as a Coordination Centre.

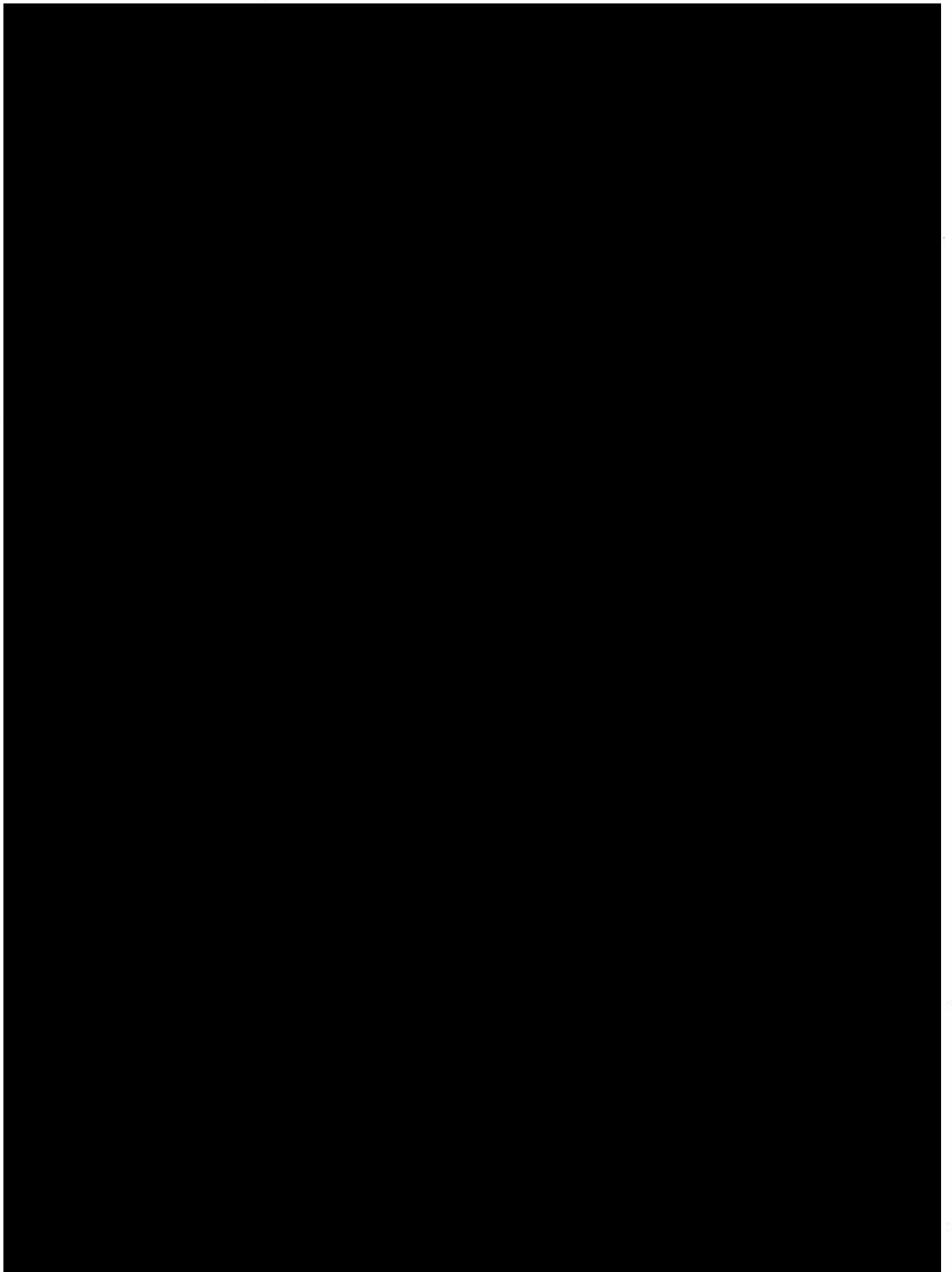
By having a strict system in place we ensure the Operations Division do not have access to any information not available to other contractors for patient or staff surveys. This rule will be retained and strictly followed for the new Coordination Centre. The Coordination team operate on a secure computer network, with all files relating to the management of the NPSP accessible only to members of the research directorate. All communications with approved contractors (including Picker's Operations Division) will be agreed in advance with CQC. As is current practice, at no time will Picker's Operations Division receive preferential treatment or information prior to its wider release. In the extremely unlikely event of accidental disclosure of privileged information to Picker's Operations Division team – or, indeed, to any other approved survey contractor – we will notify CQC immediately and agree an appropriate resolution (this might, for example, include releasing the information to other contractors). In such an eventuality we will also conduct a full internal investigation to identify the cause of the disclosure and to put in place systems to preclude the possibility of repetition – but we must stress that in over fifteen years of working both as an approved contractor and as a Coordination Centre Picker has *never* experienced an accidental disclosure of privileged information.

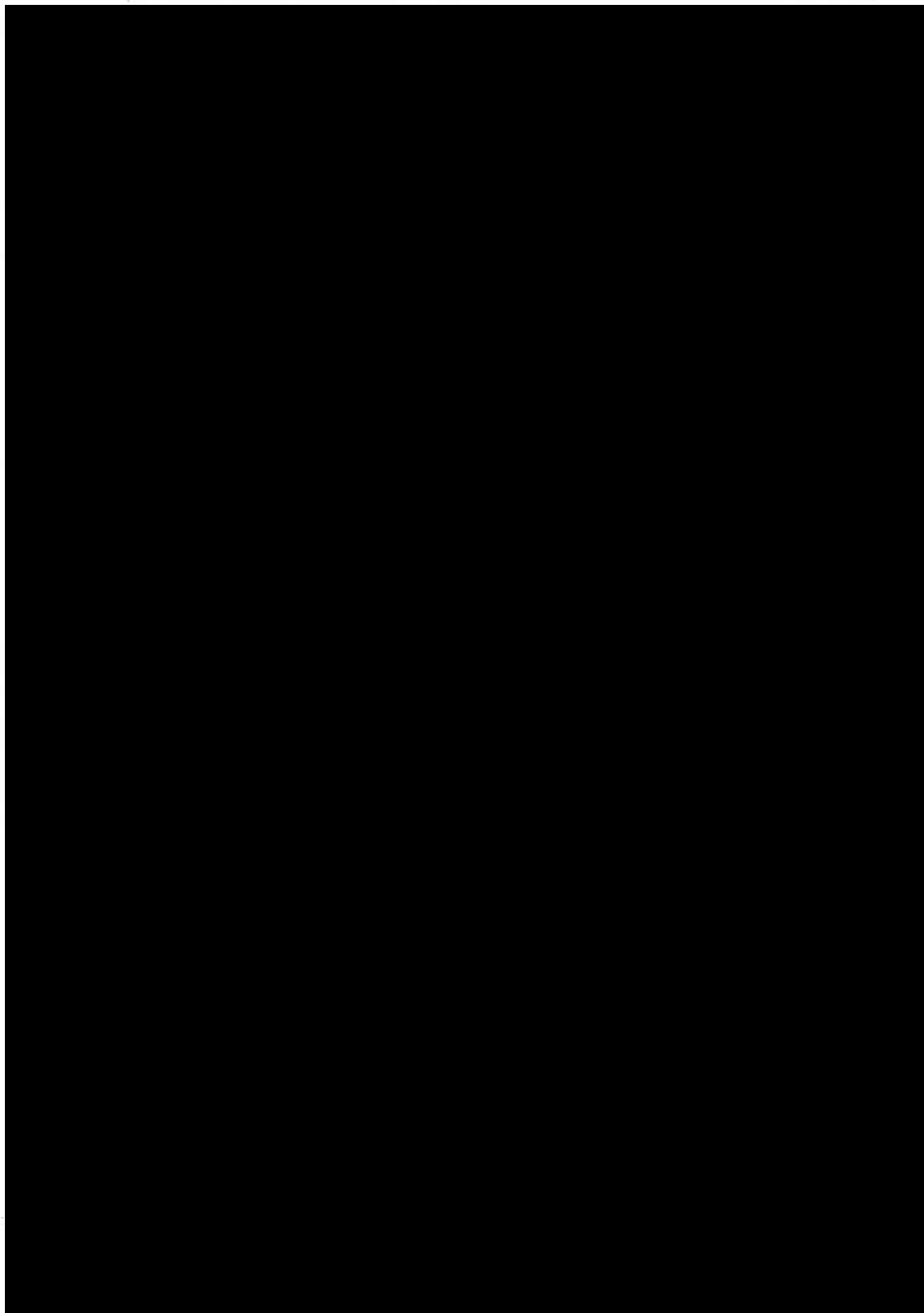
Having employed a successful system for a number of years we are completely confident that we can successfully avoid and deal with any conflict of interest that may arise. Moreover

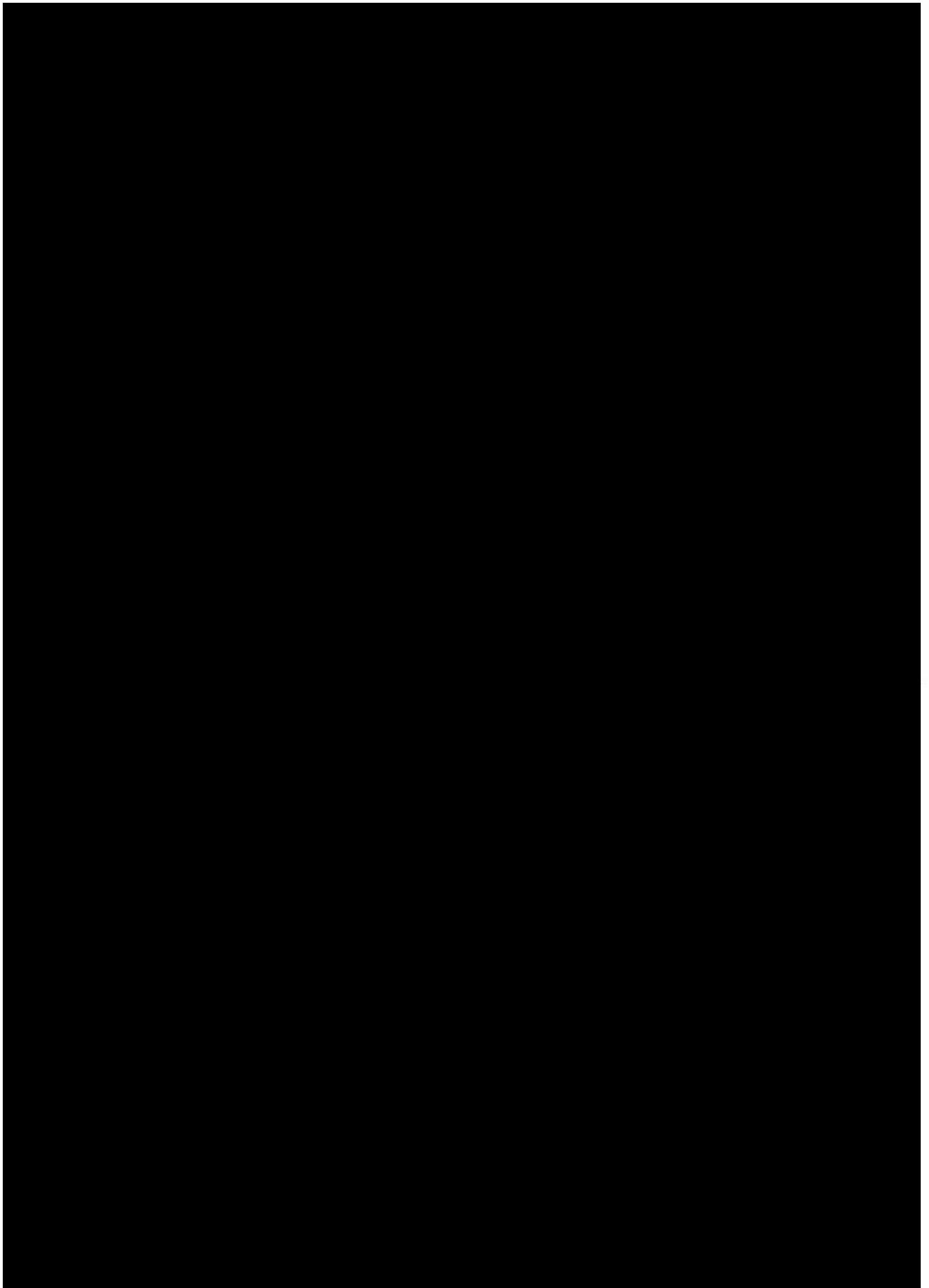
we would like to stress that our organisational expertise in survey design, development and implementation derives in part from our extensive experience of providing surveys to NHS trusts and other clients. Such knowledge is vital for the Coordination Centre role and we believe an organisation that lacked experience of working as a survey provider would be unable to fulfil this function adequately.

| EVALUATION QUESTION 04 – EXPERIENCE AND TEAM | WEIGHTING |
|---|-----------|
| Please provide details of the expertise and experience of key individuals and/or teams whose responsibility will be to ensure that the requirements are delivered. | 20% |
| <p><i><u>Evaluation intention</u> - This criterion seeks to establish that the Tenderer has the resources, expertise and capability to ensure successful delivery. This must include a plan to increase resources as needed for additional work packages that require either additional personnel or additional technical or specialist experience and skills.</i></p> <p><i>Evaluation of this criterion will include an assessment of the team who will deliver the work including the number of FTE posts dedicated to the programme, their grade and experience in delivering similar work within the last three years.</i></p> | |
| | |
| RESPONSE: | |

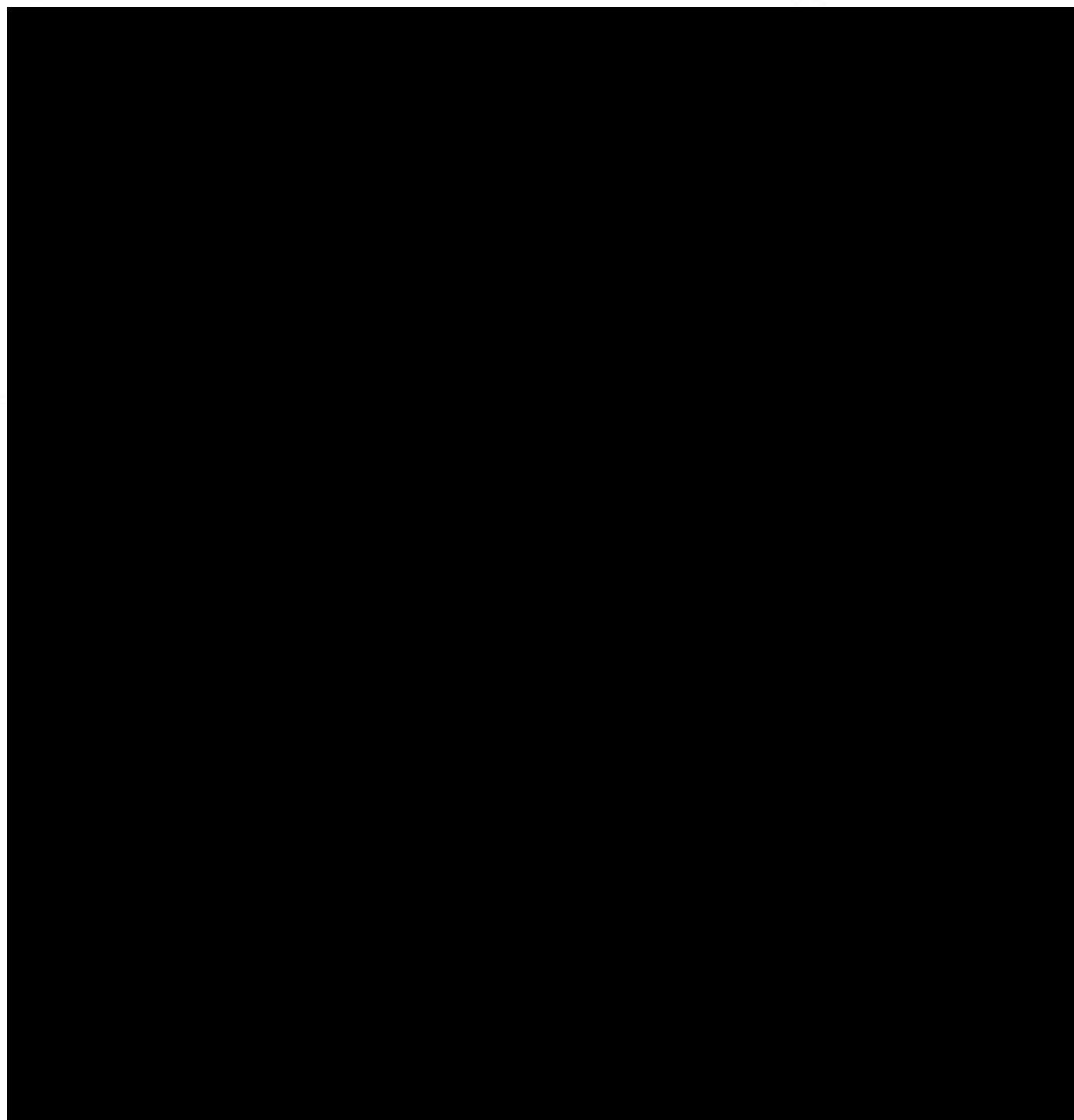






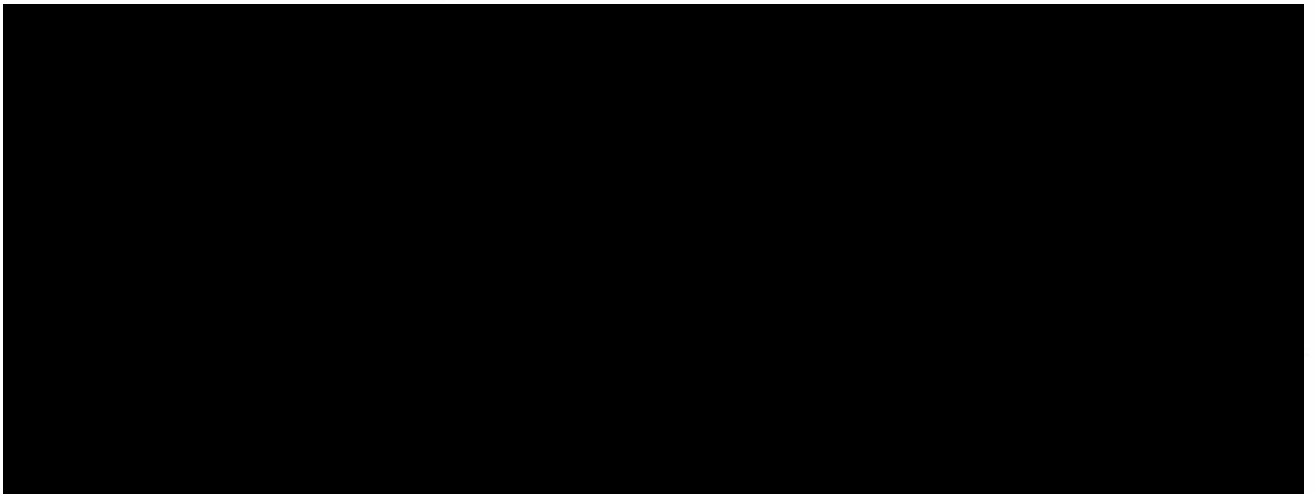
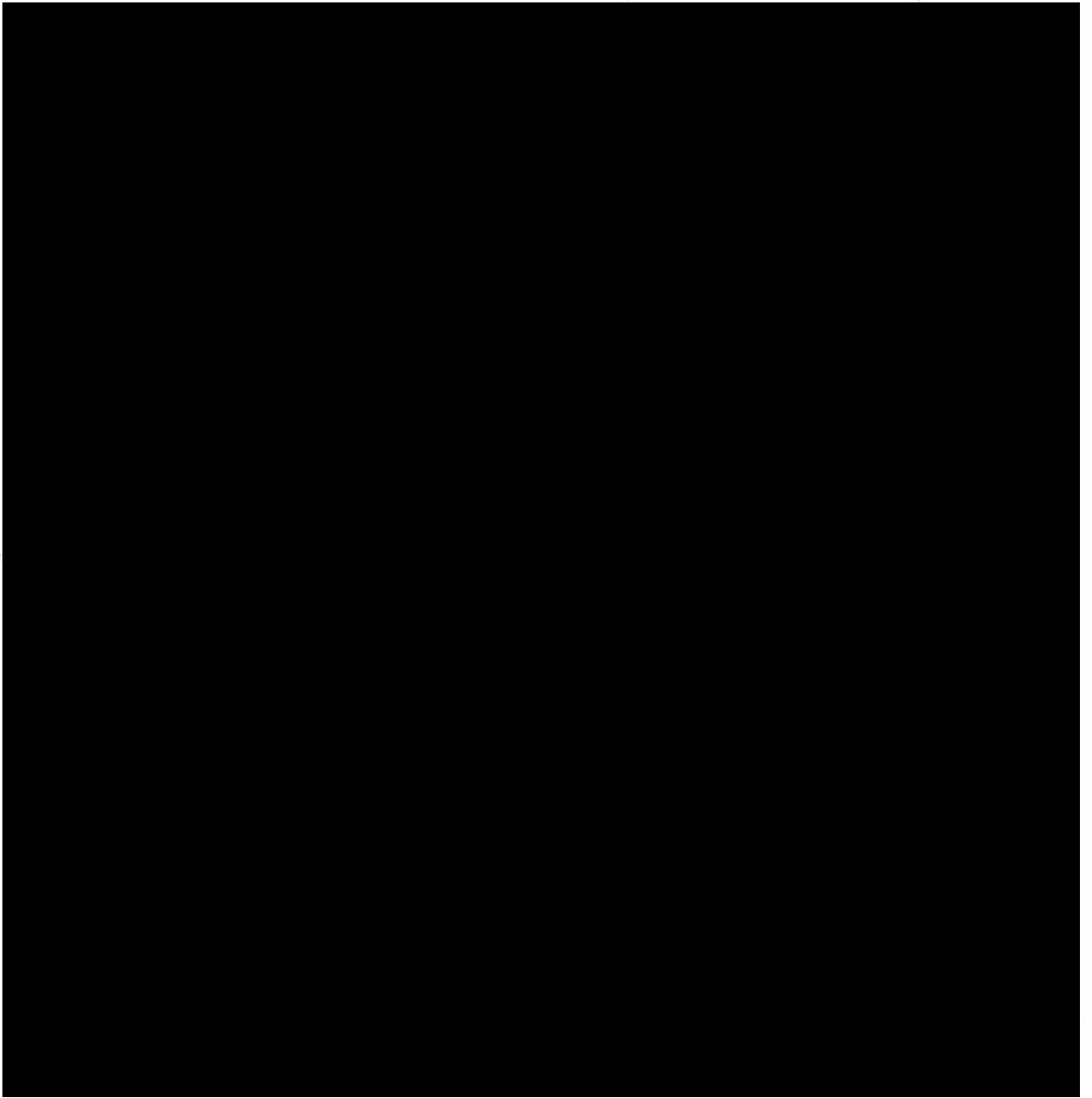






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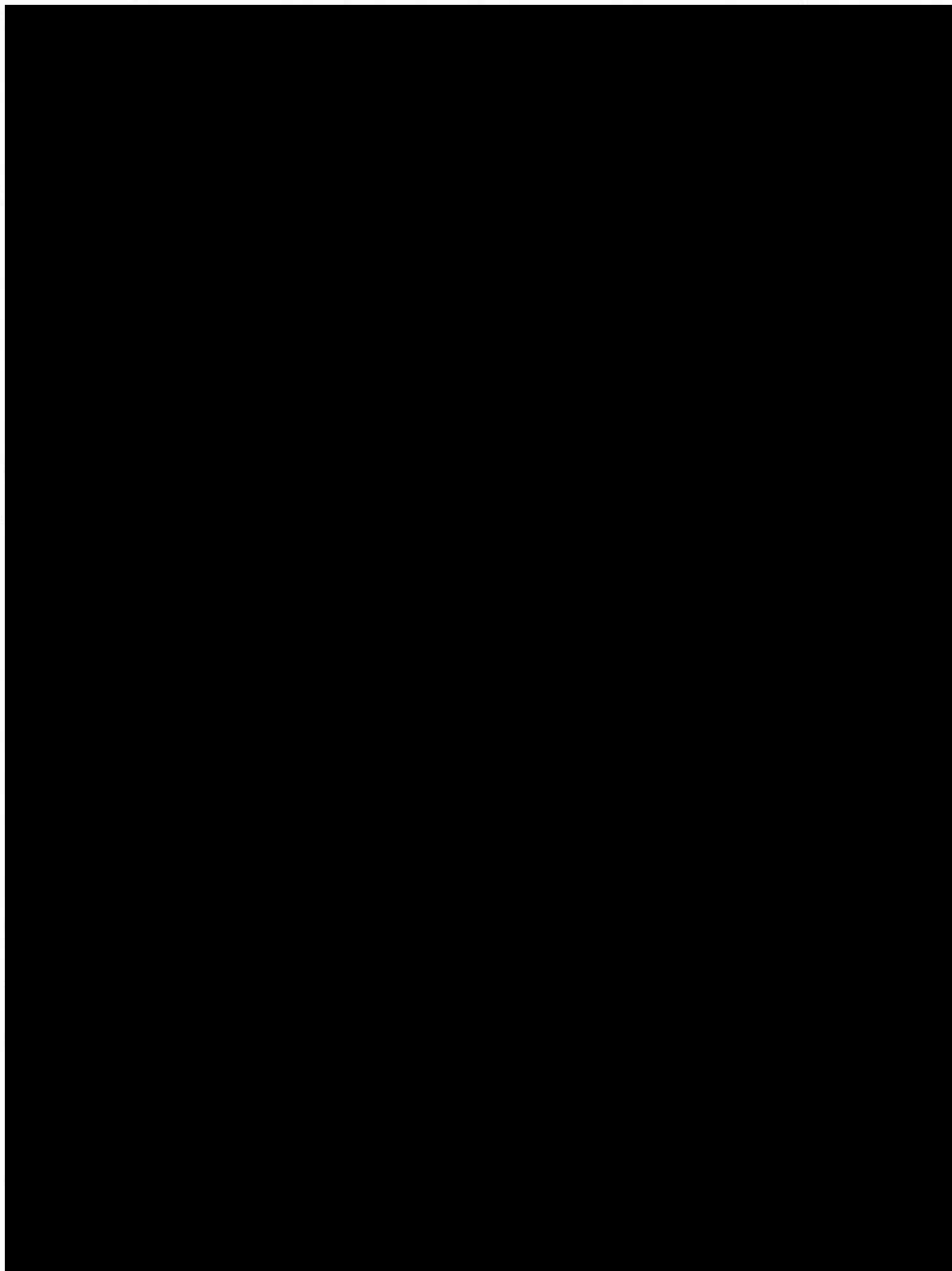
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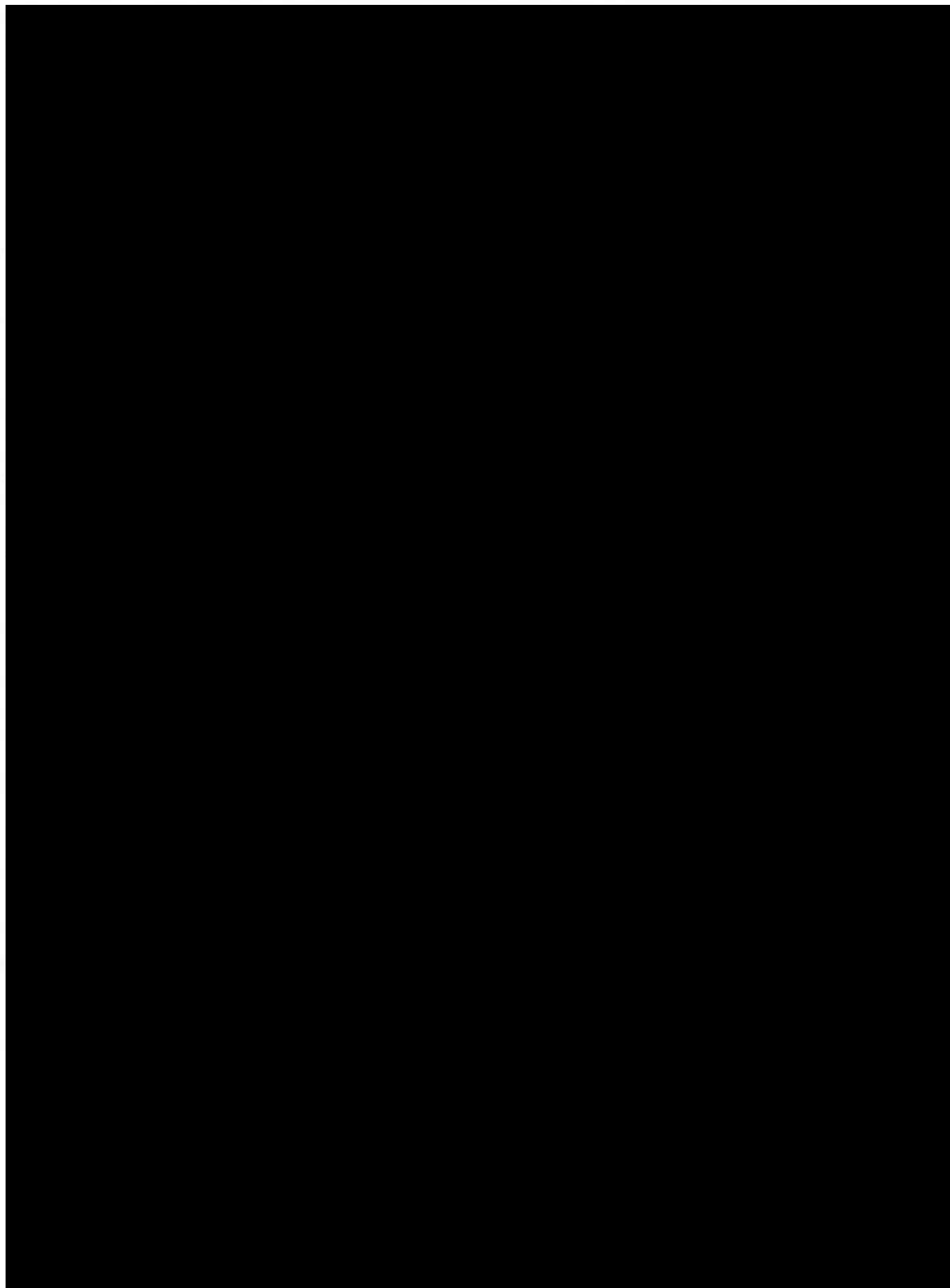


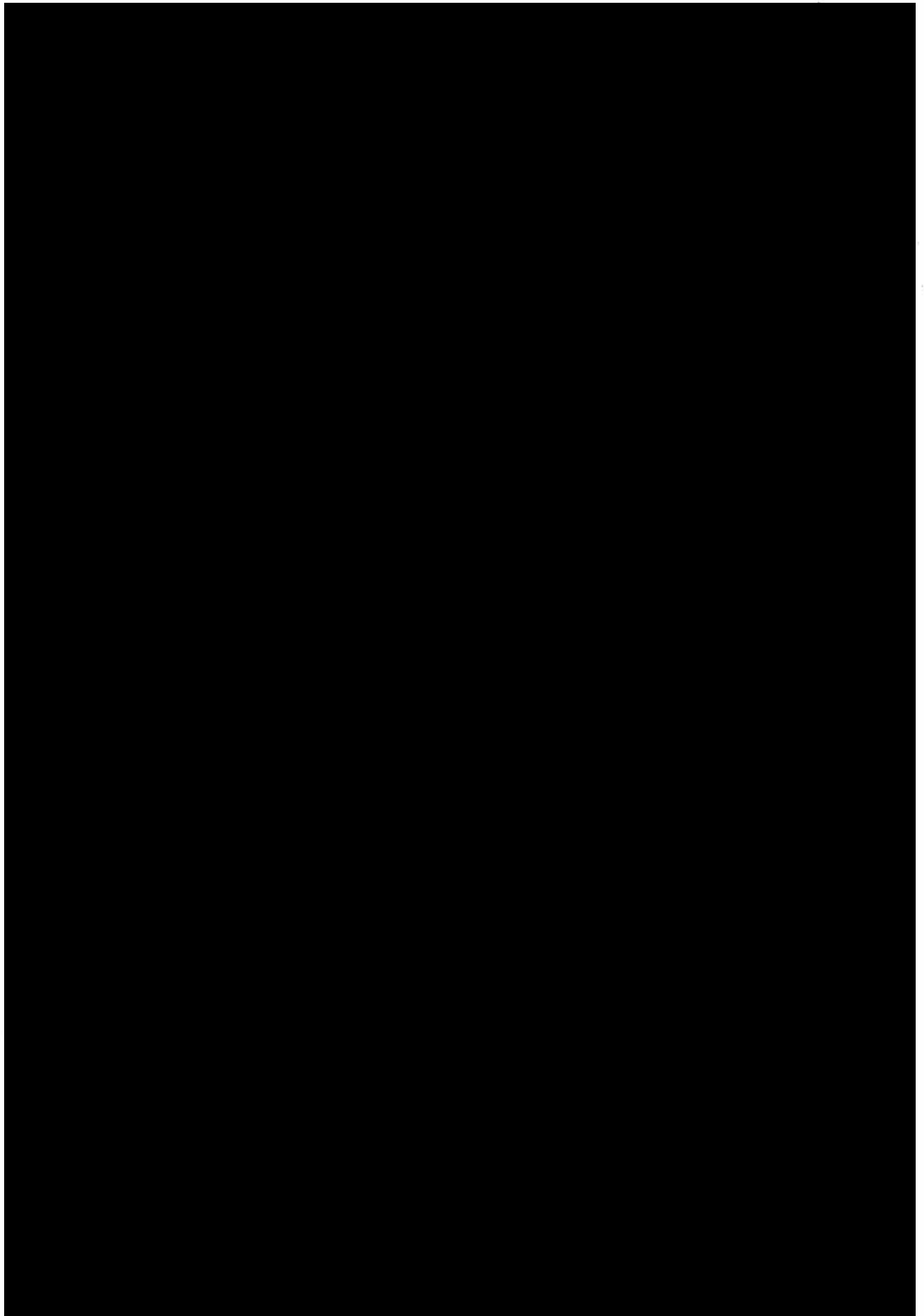
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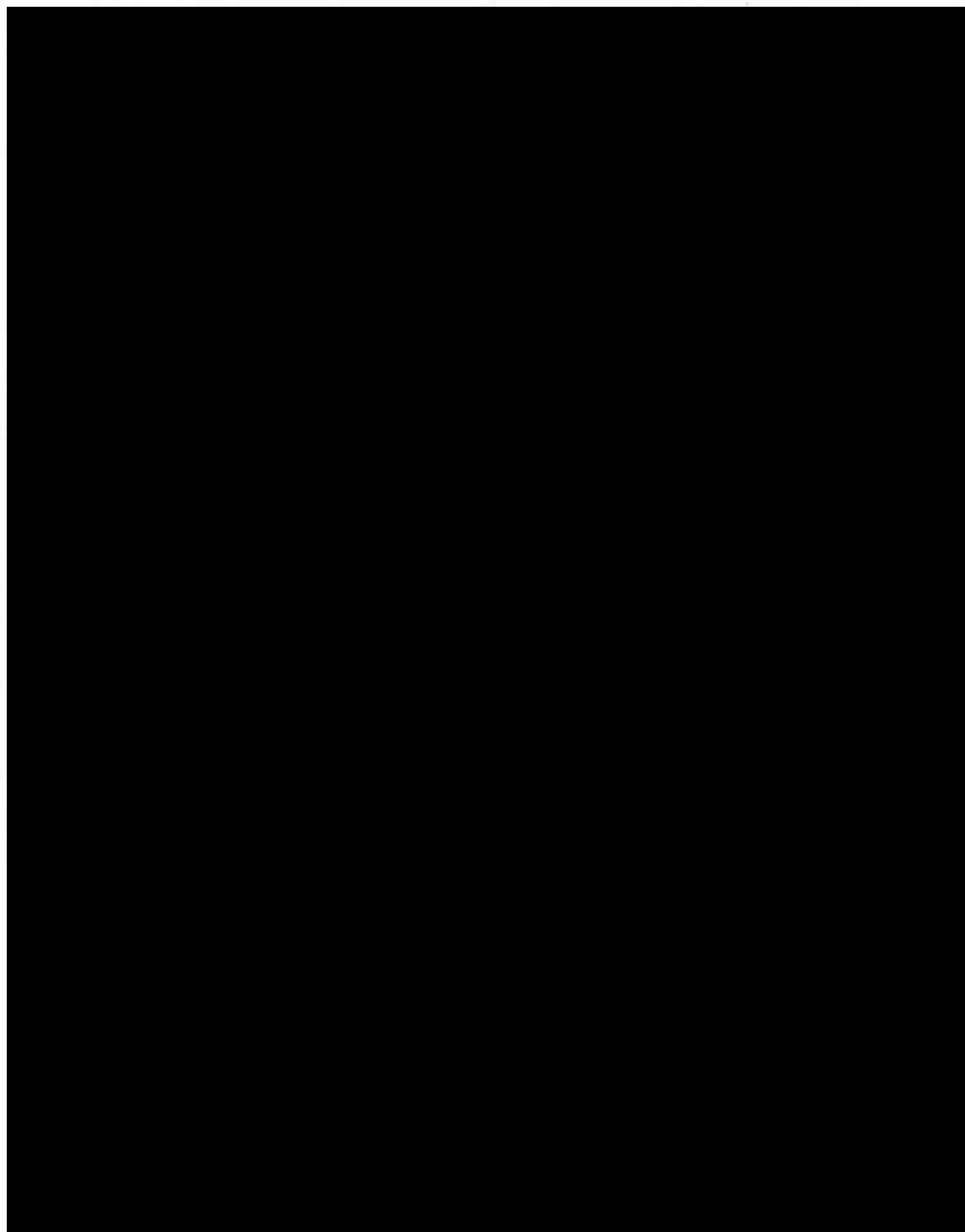
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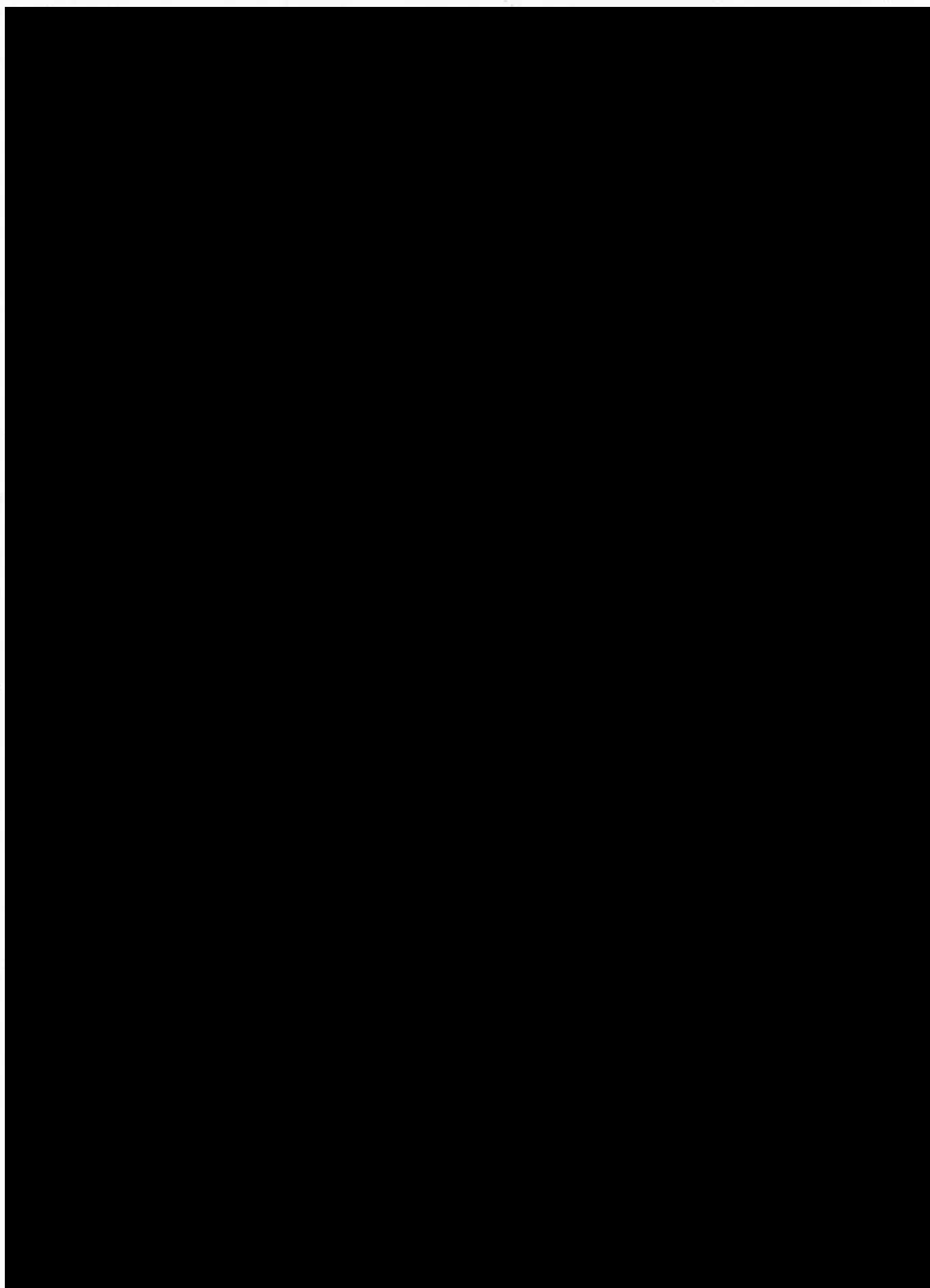


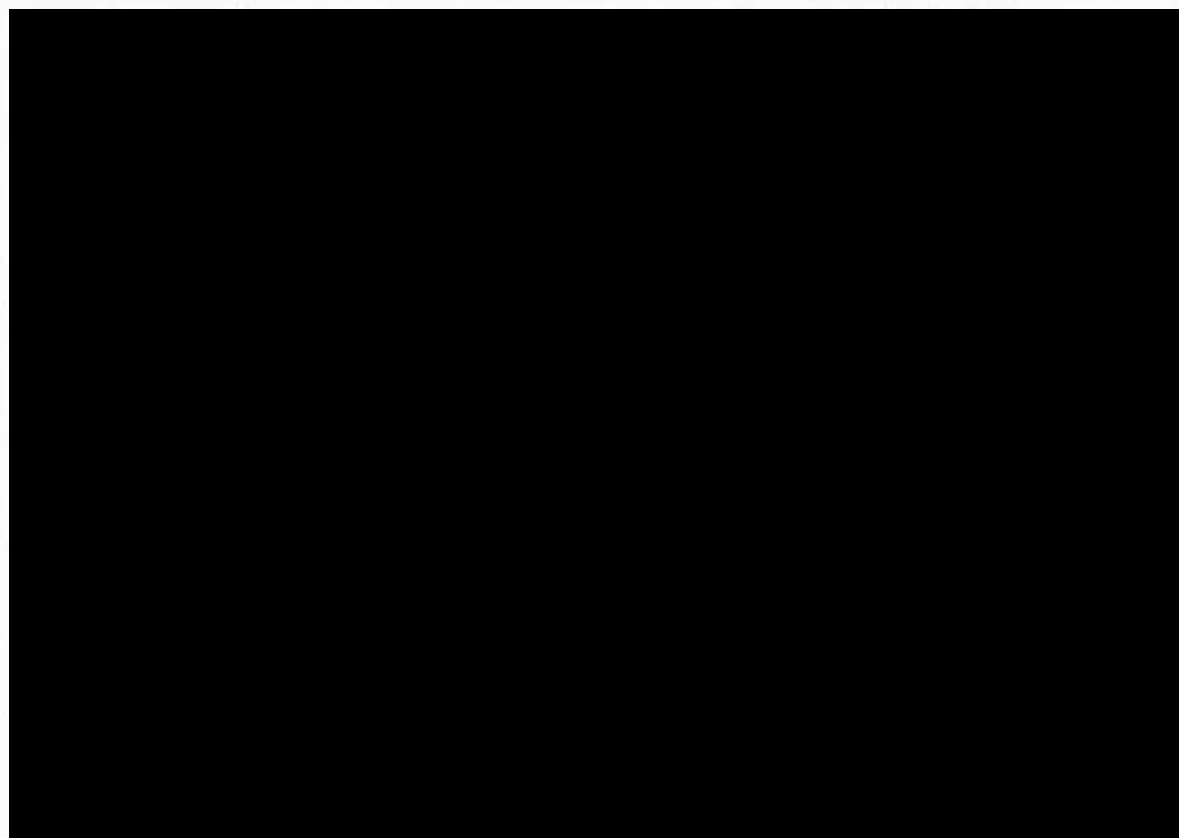
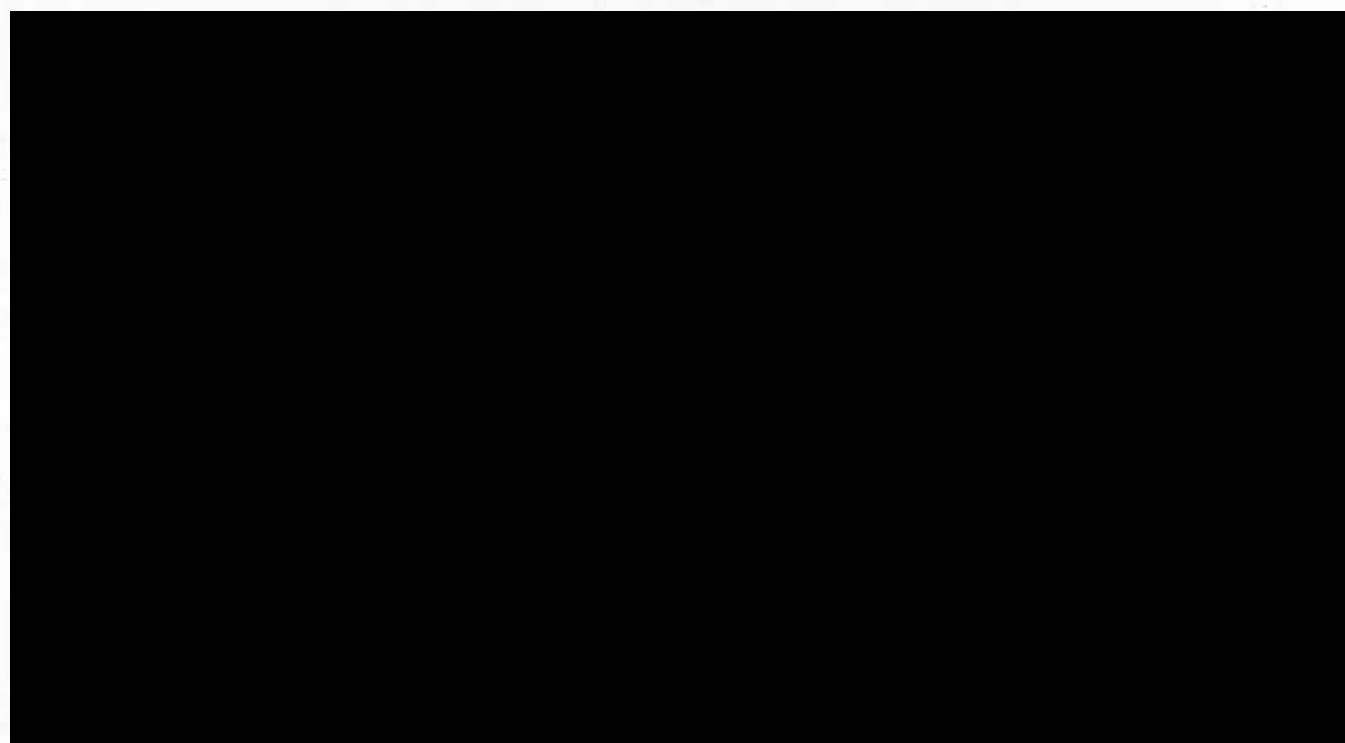


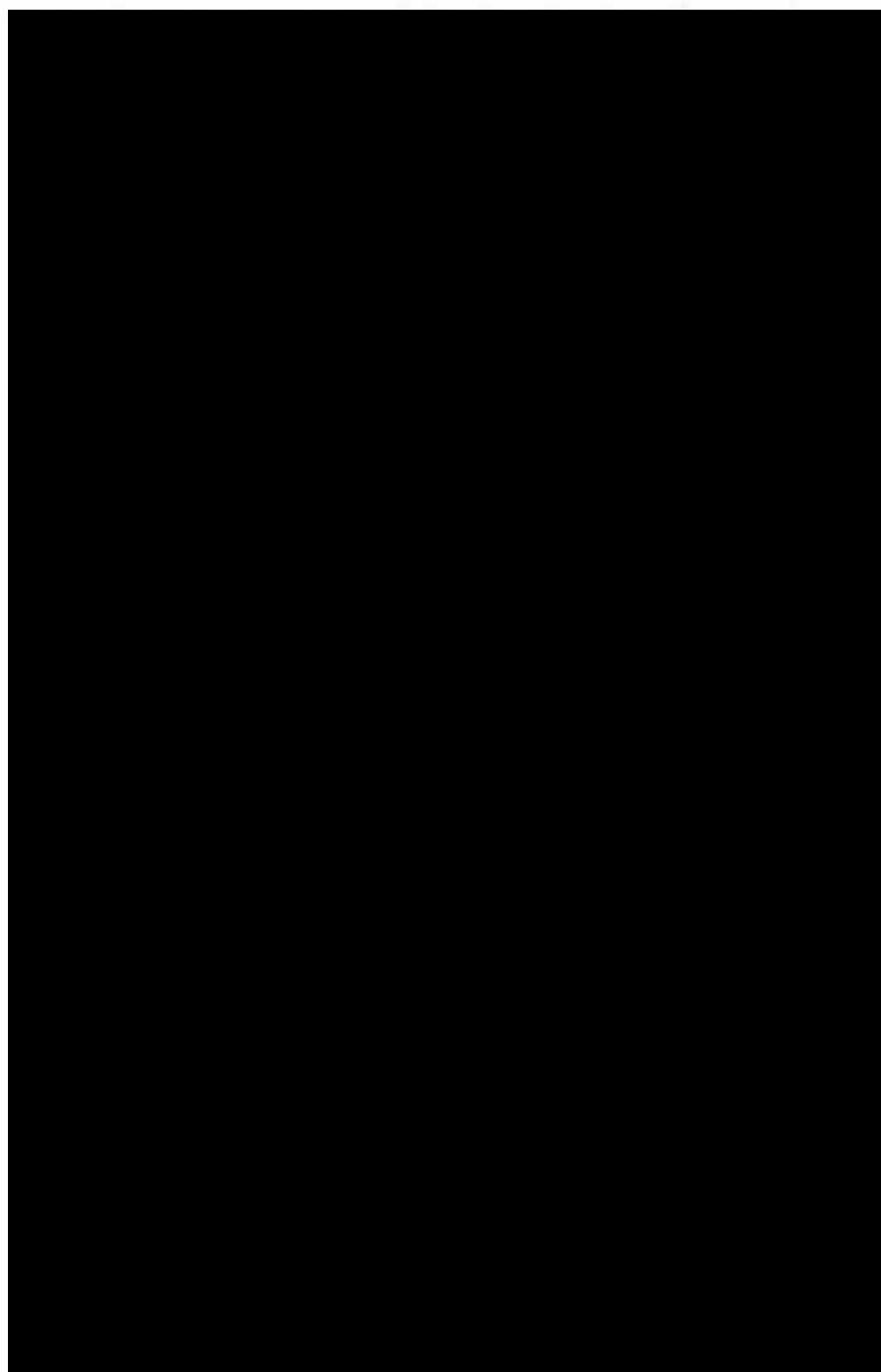


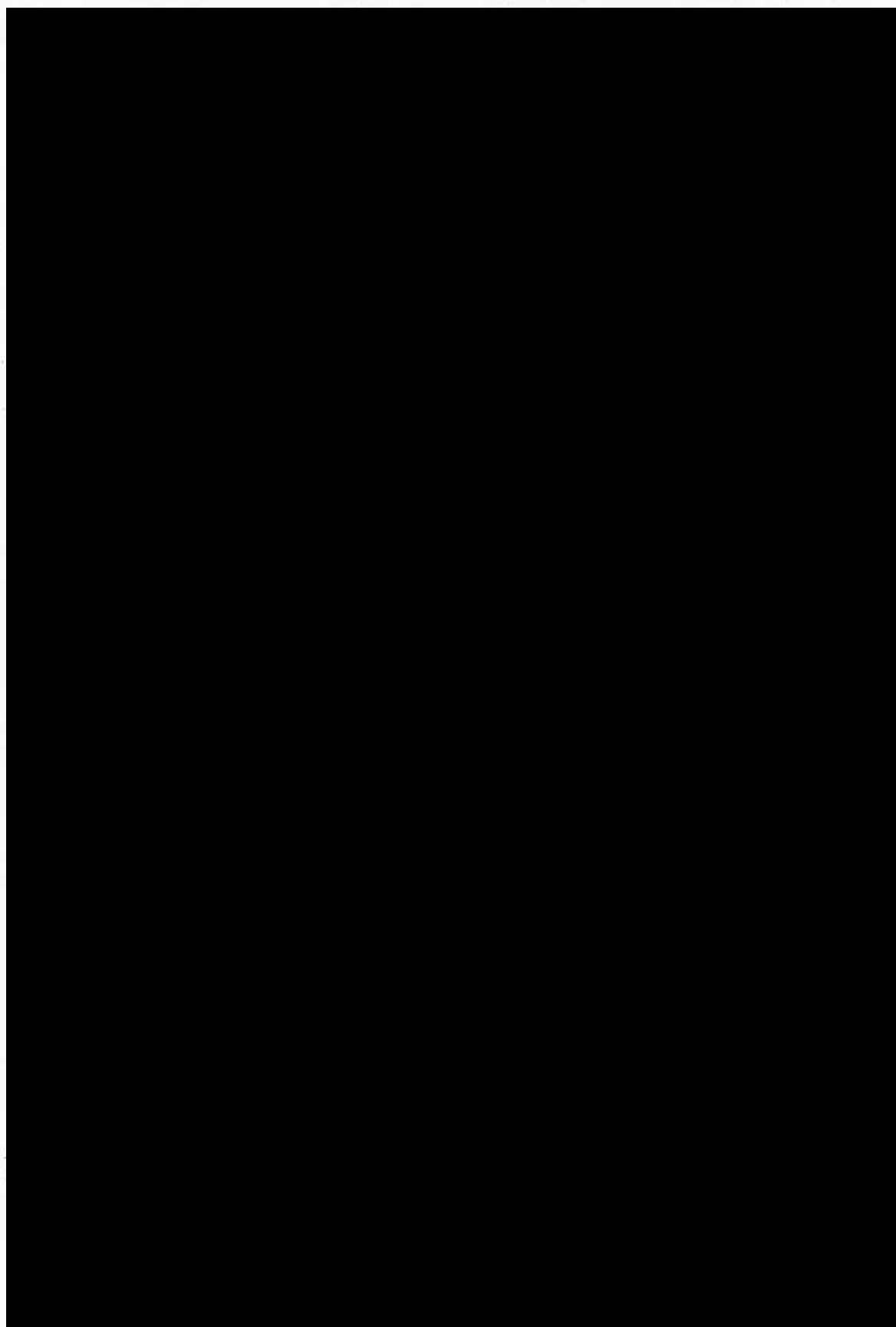


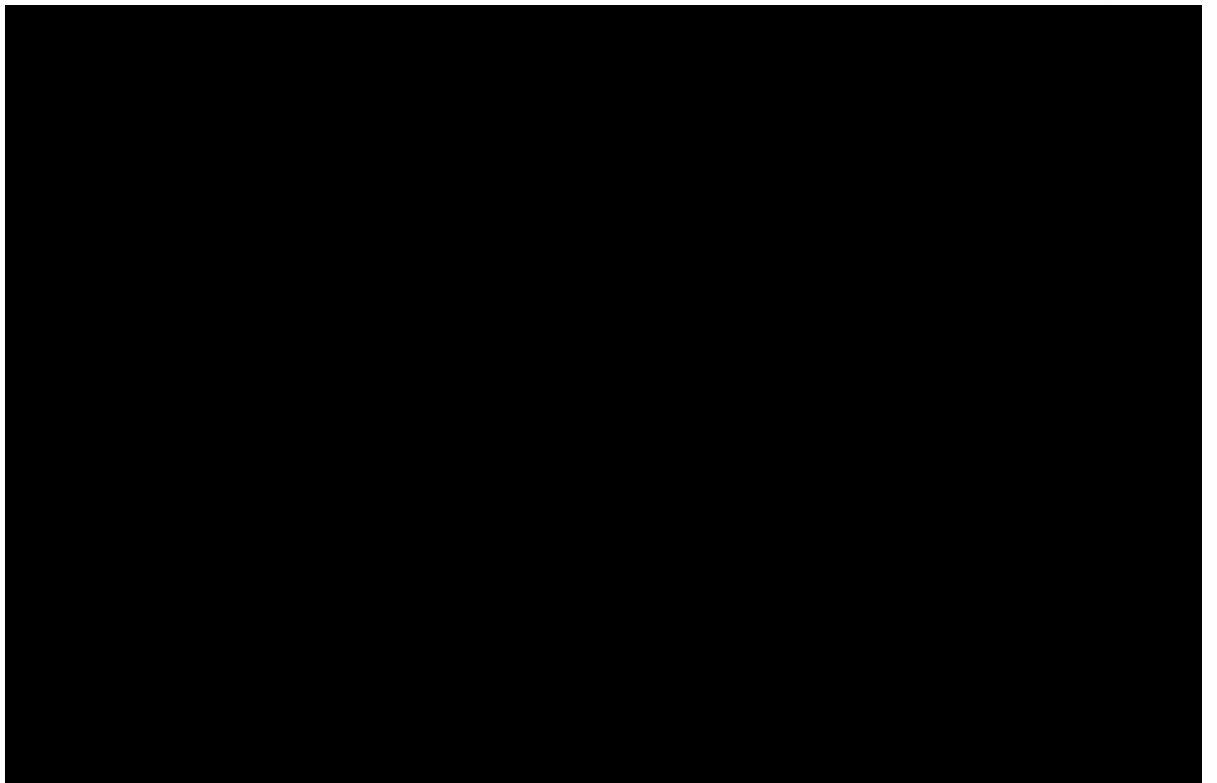
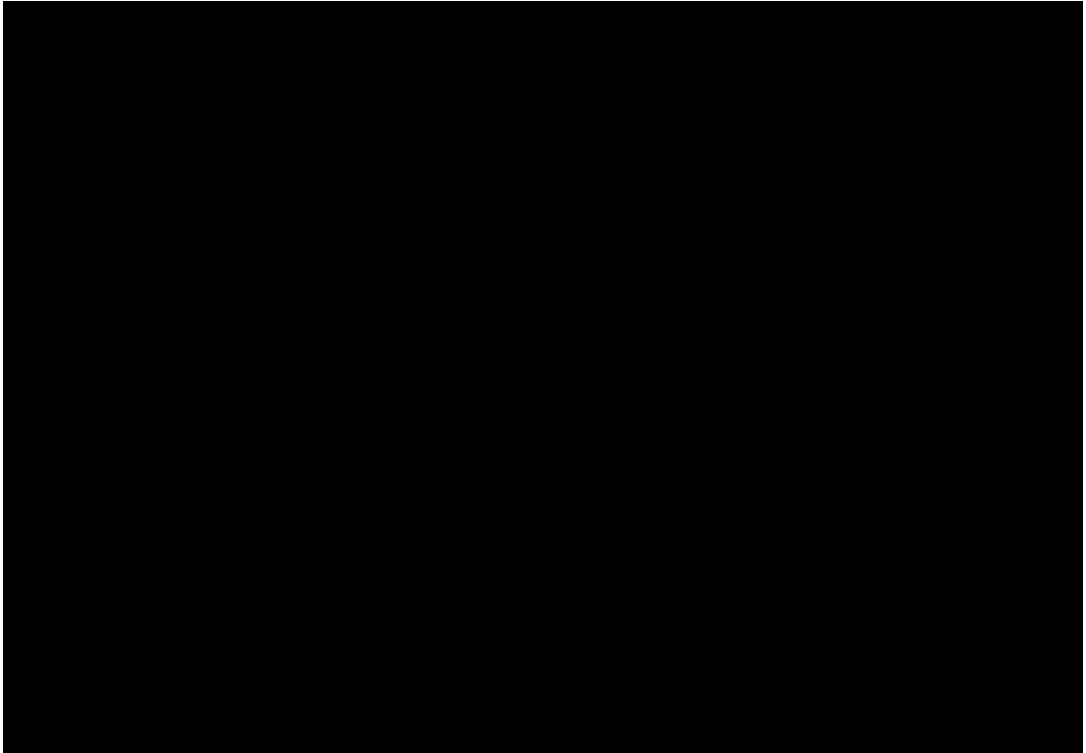


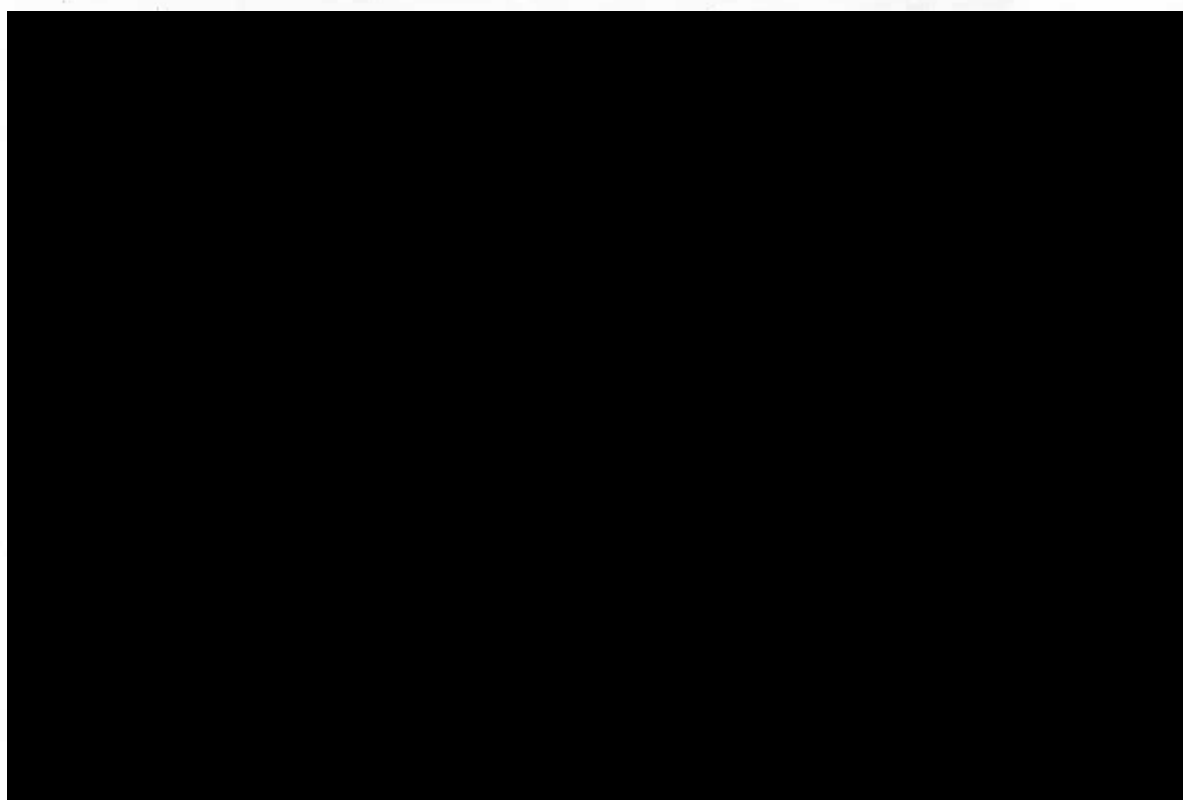
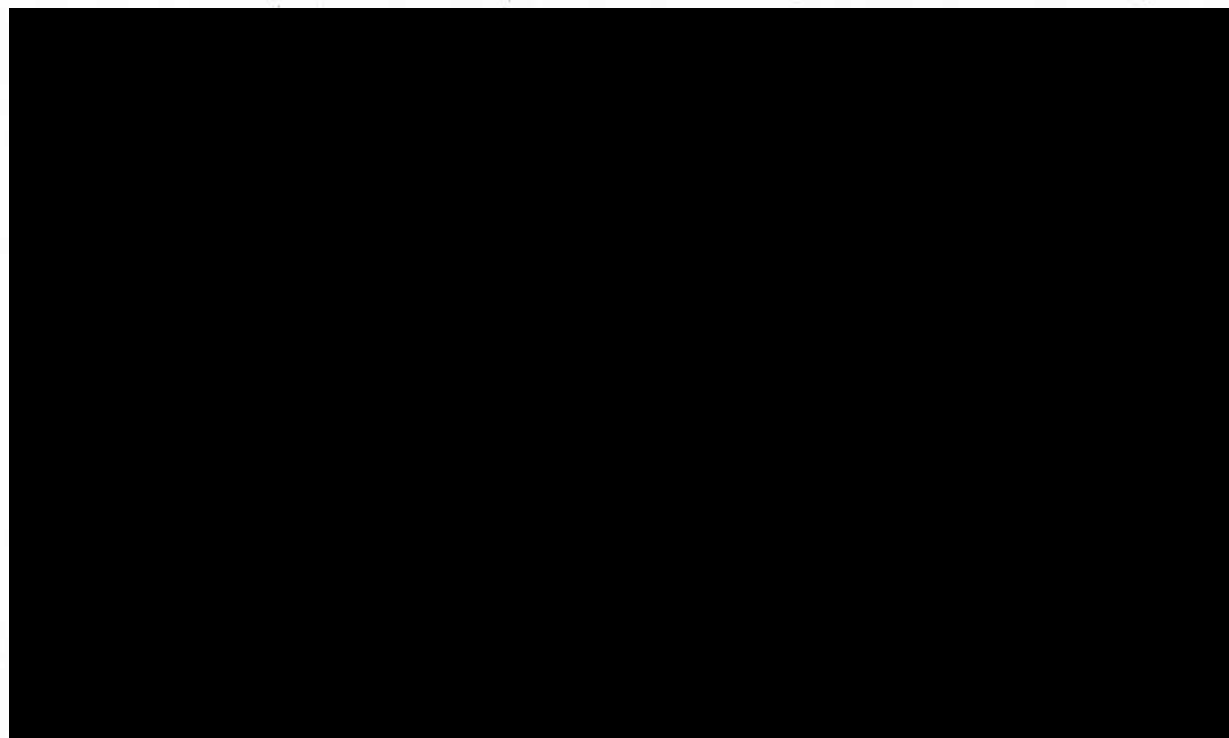


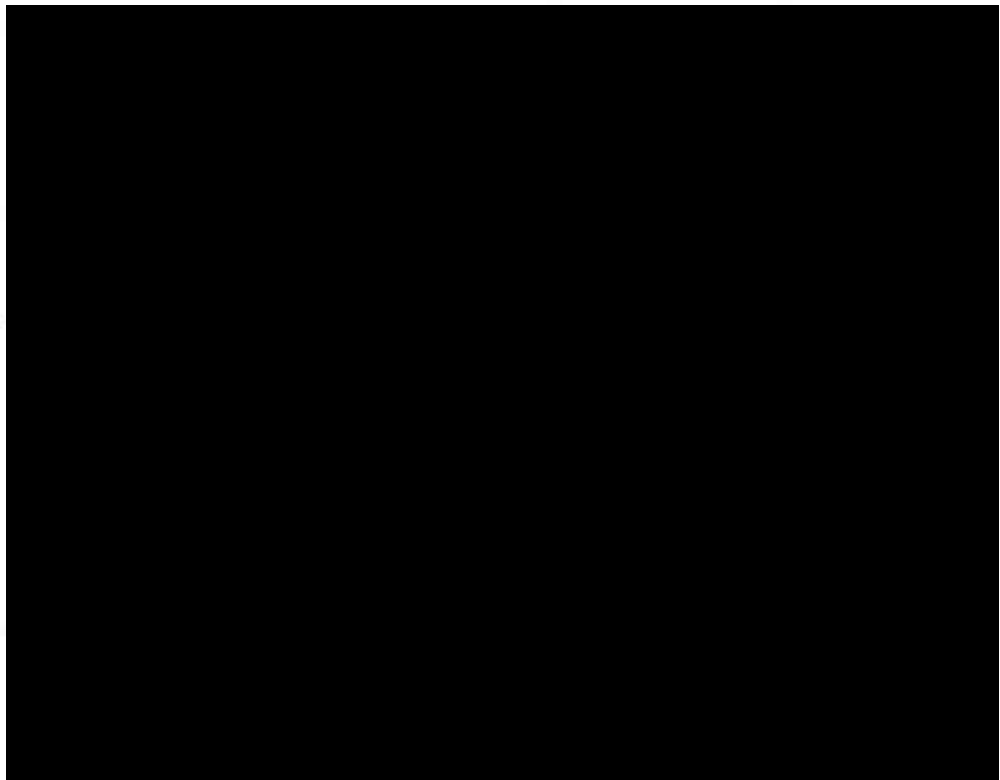


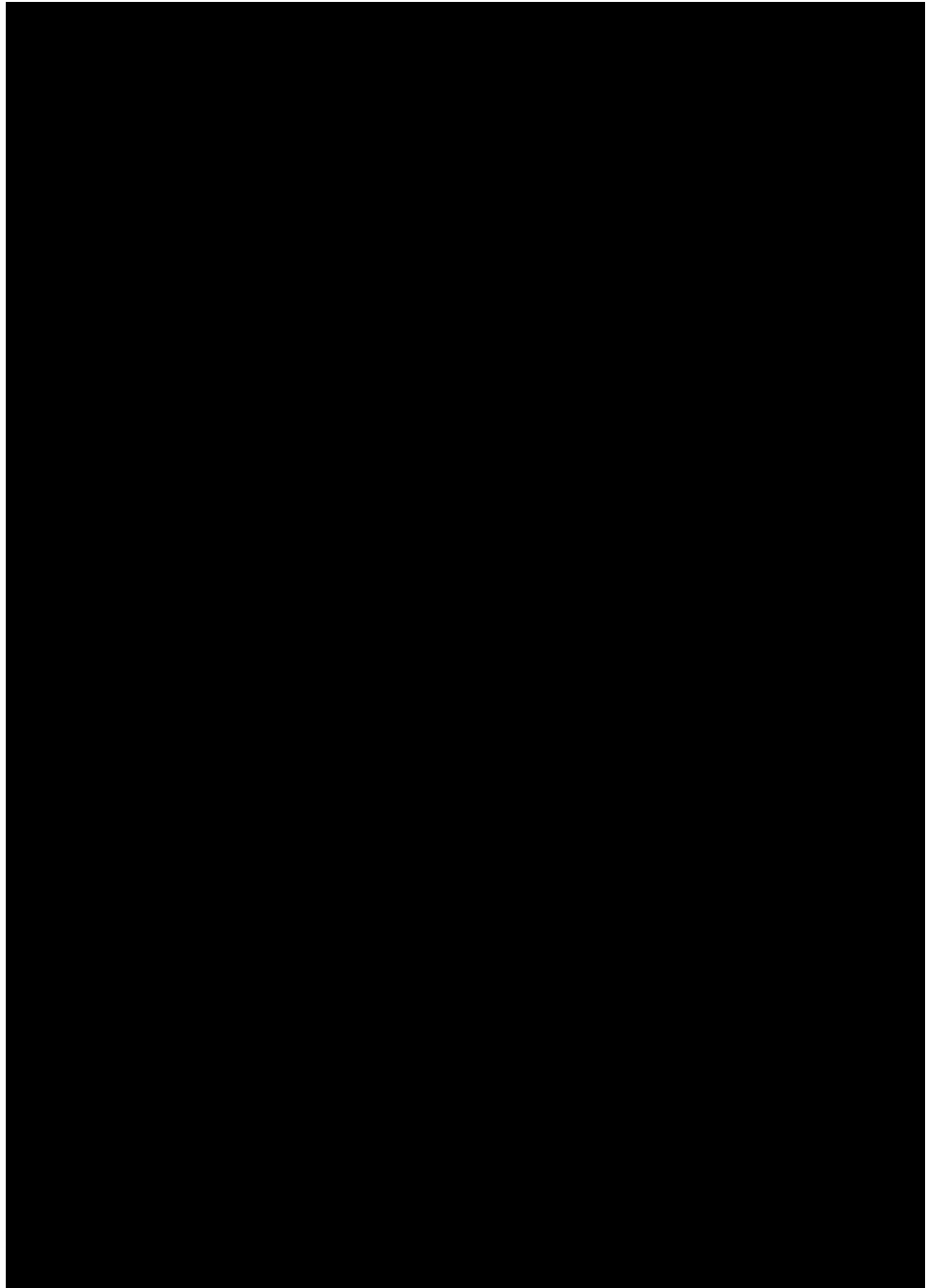


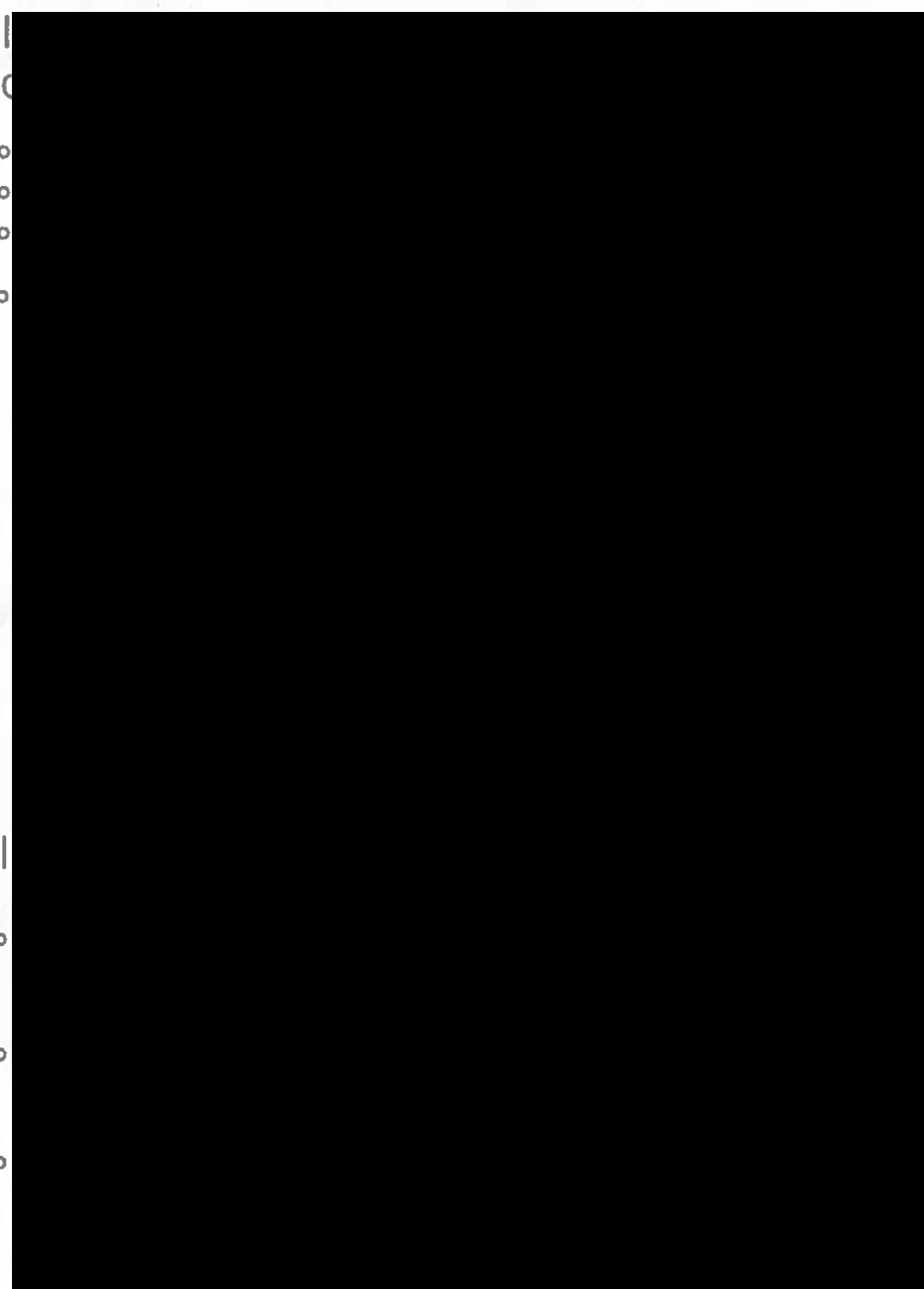


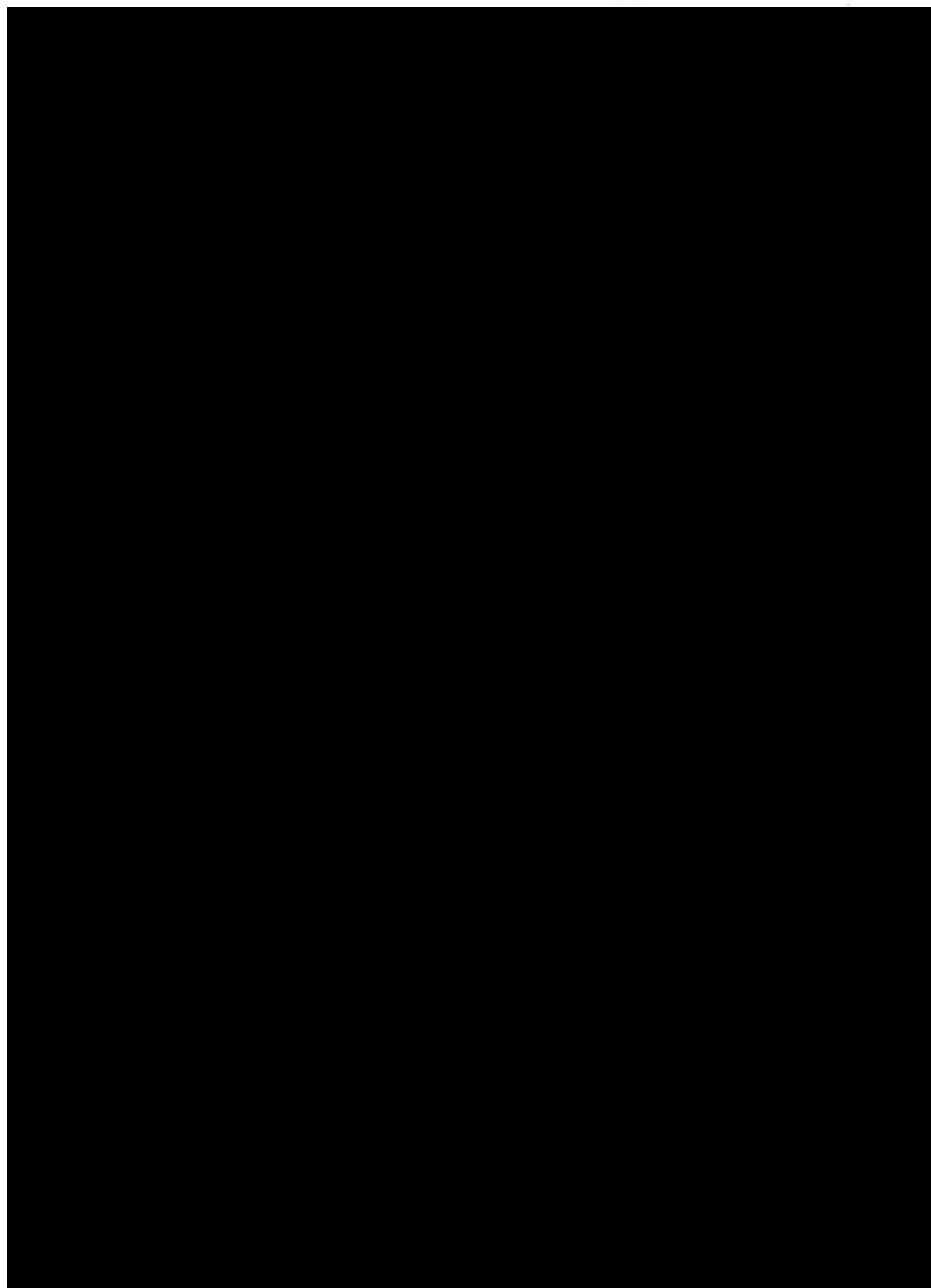


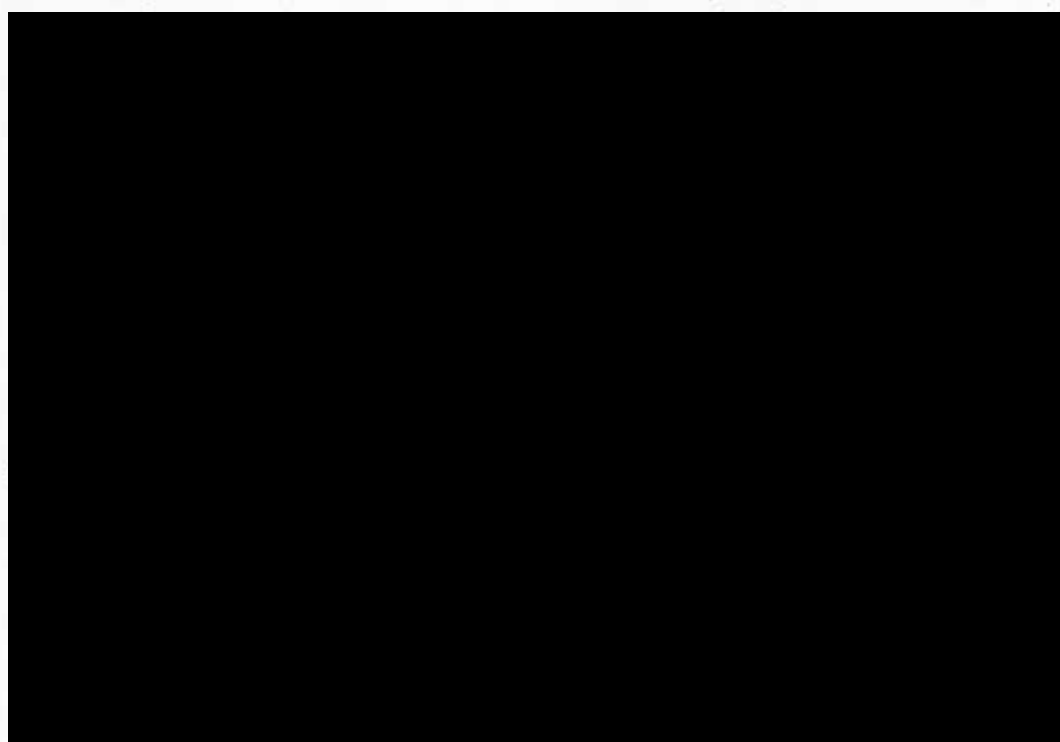
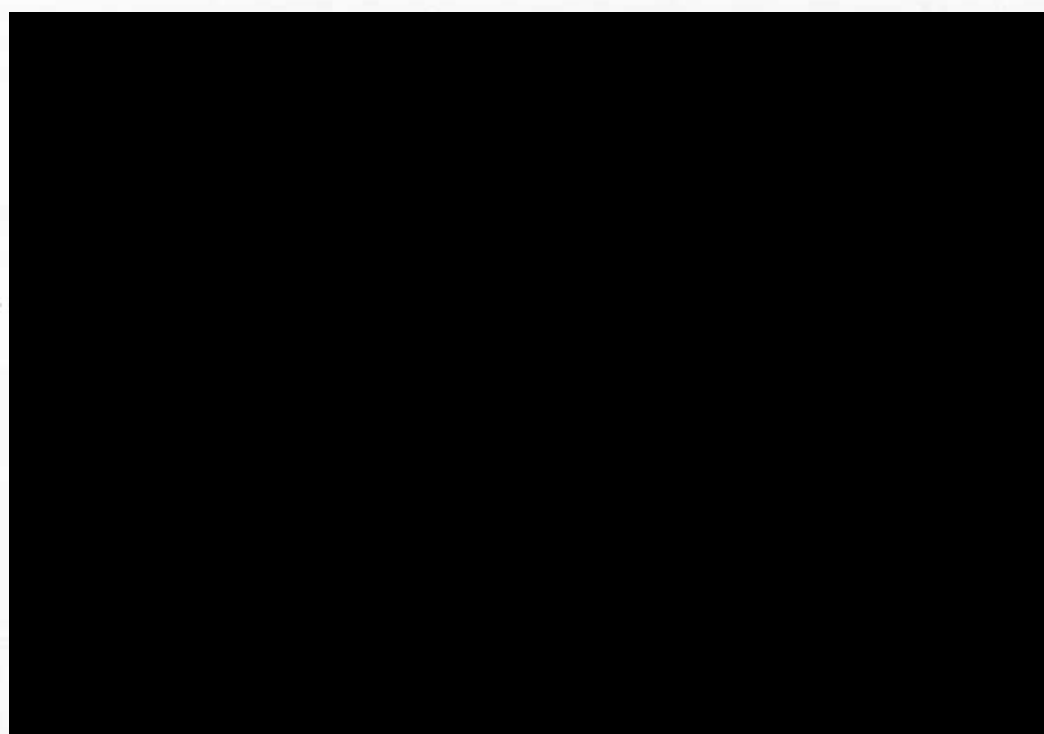


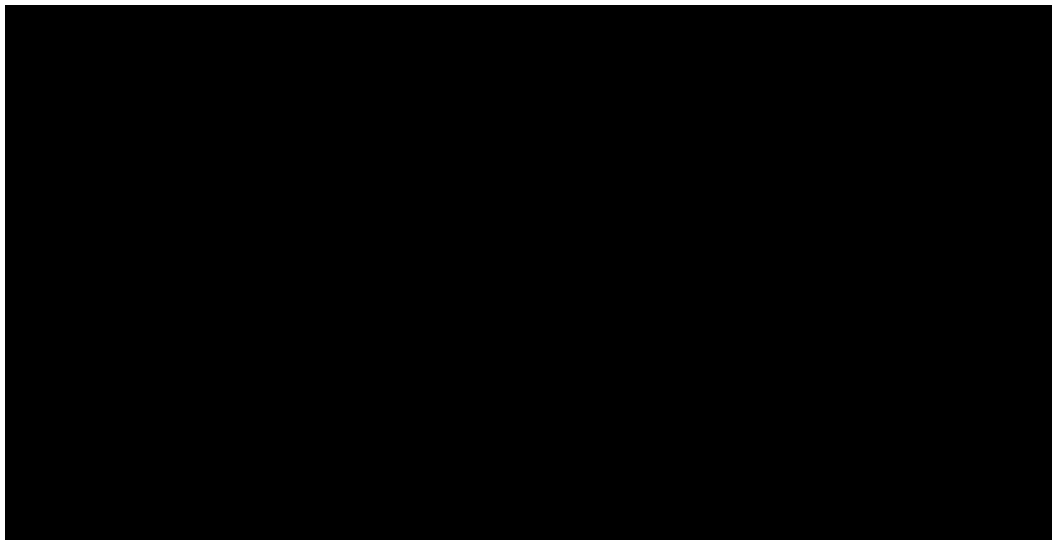




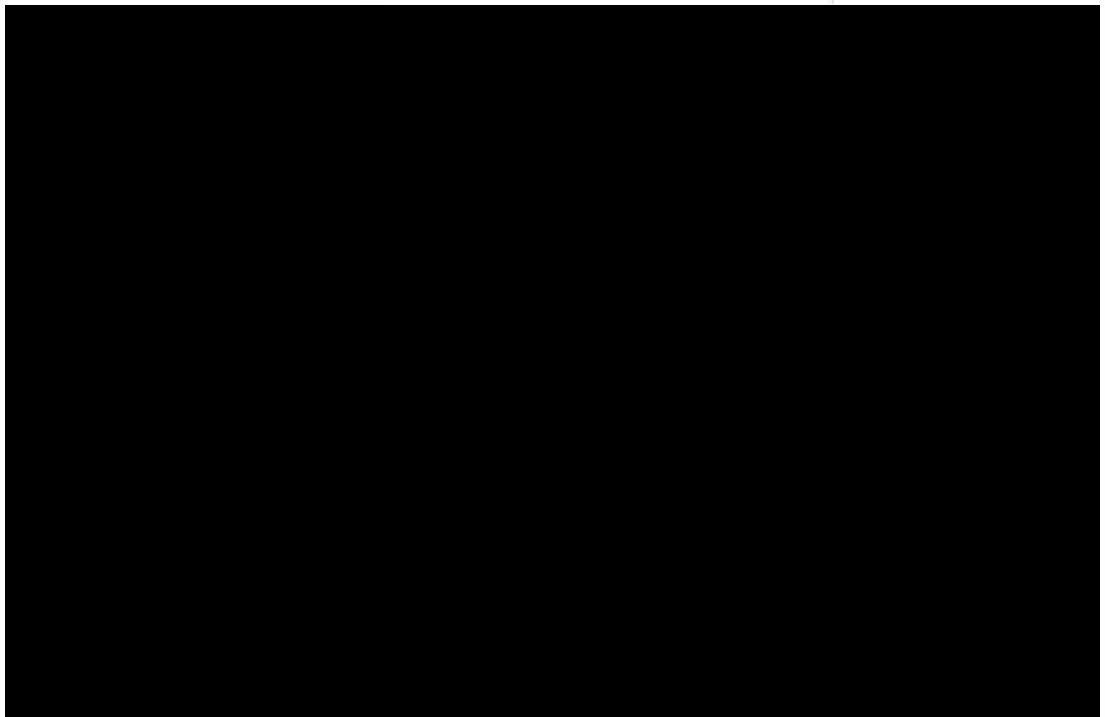




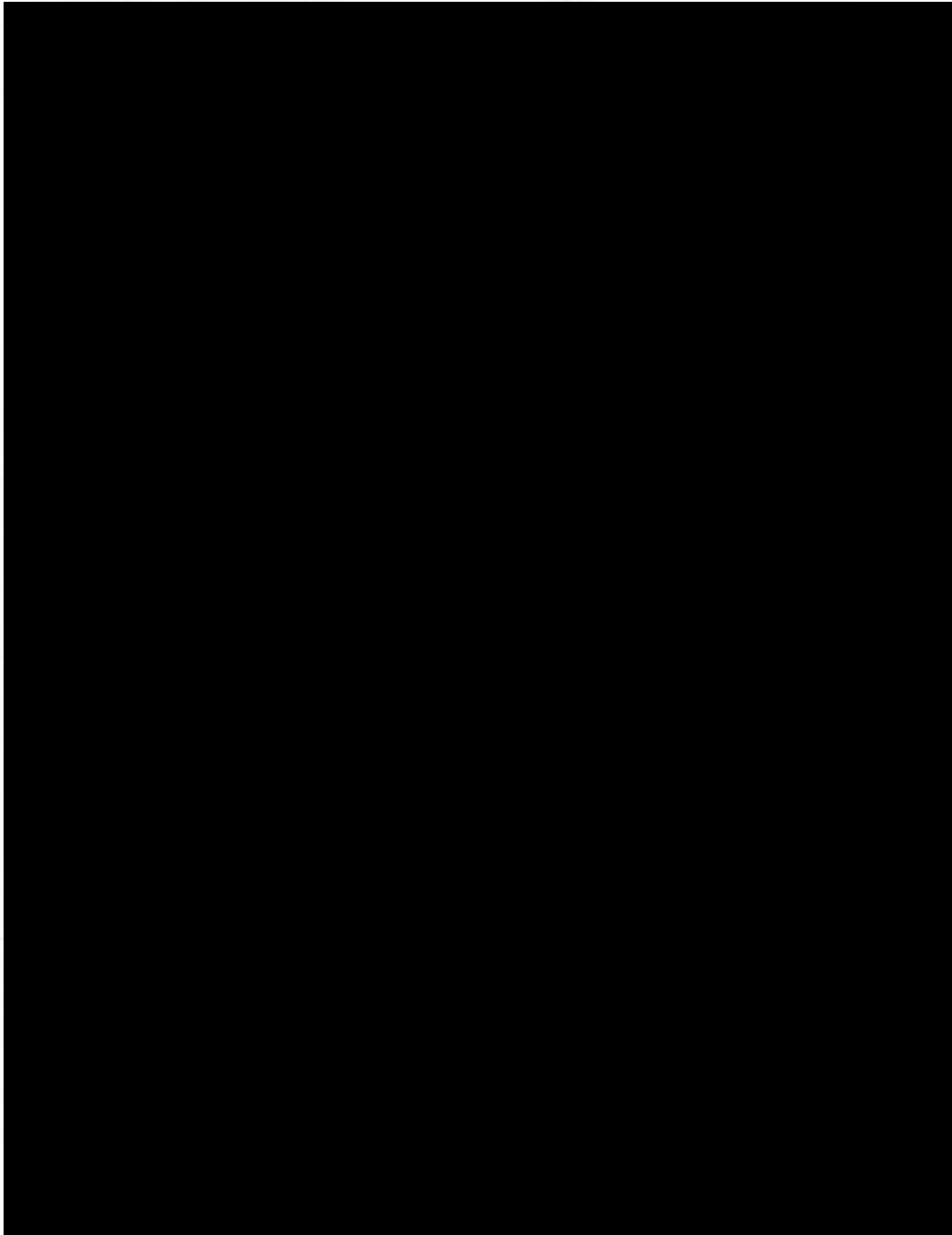


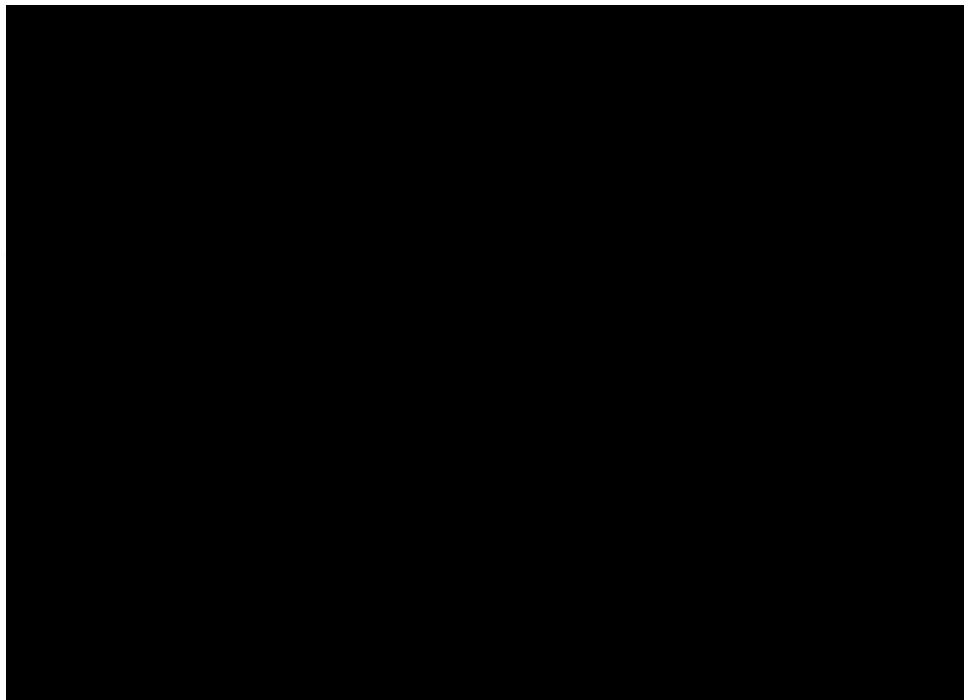
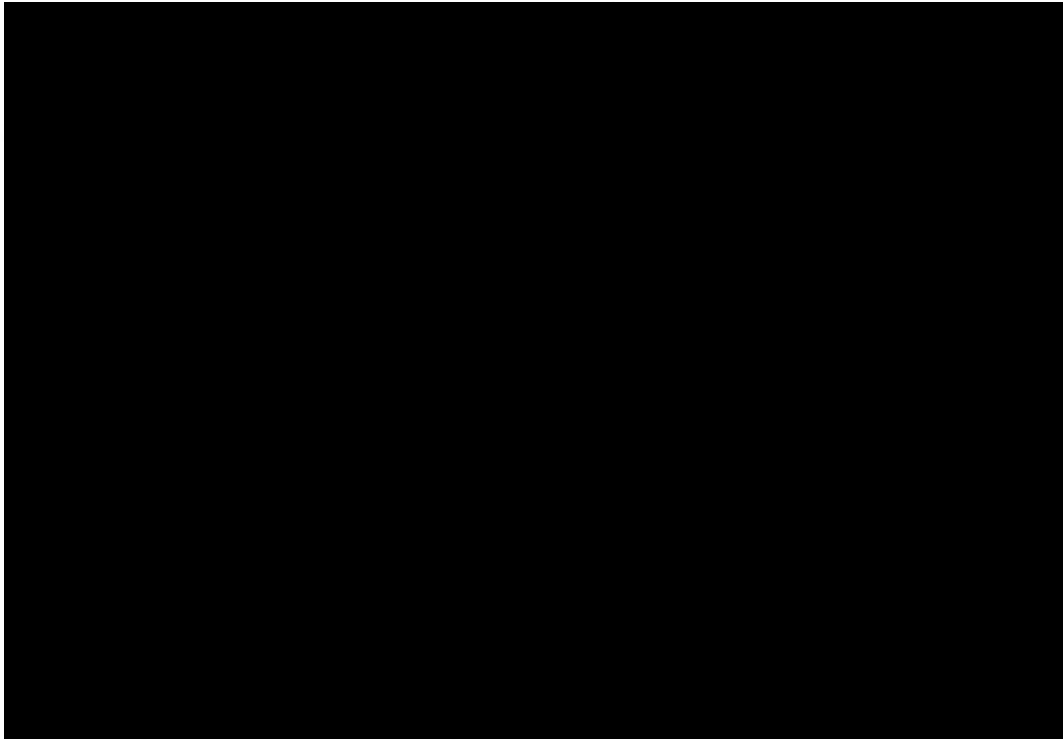


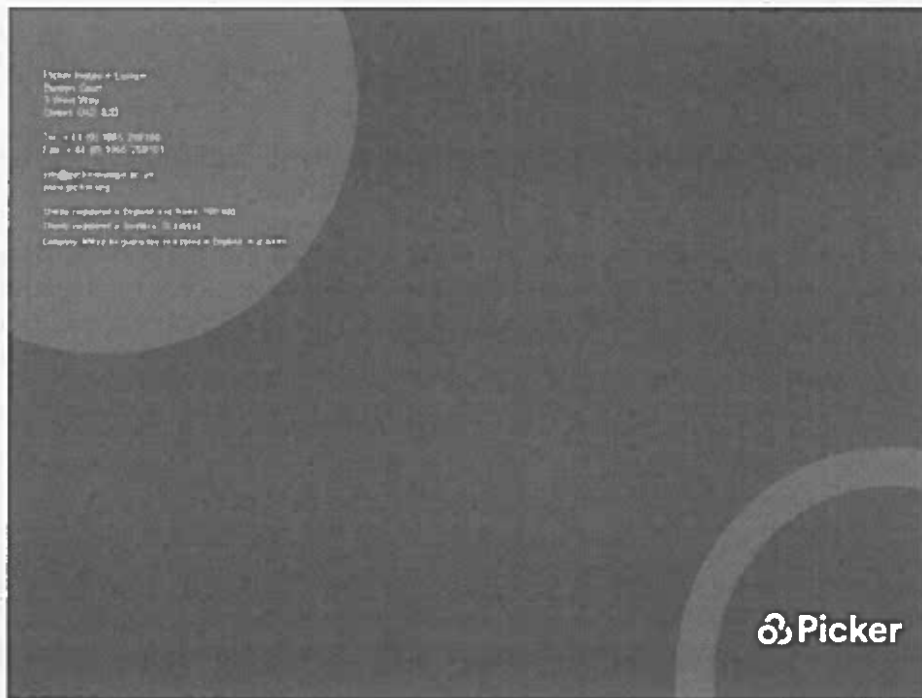
 **Picker**



Security and confidentiality







SCHEDULE 3 - PRICING

Milestone Payments

At the start of any package of work a timetable detailing payment for that package will be agreed between the Authority and the Contractor. It is expected that proportional payments will be made at three points in each package: completion of development and review, completion of analysis and report development, and completion of the work package.

Where a commissioned work package relates to the collection of feedback the Authority and the Contractor will agree payment points based on: completion of scoping and development; completion of field work or data collection; and completion of agreed outputs.

Payments will be conditional on the achievement of those milestones set out above and the achievement of the key performance indicators set out in Schedule 1, Section 11.

The exact payment value and date of milestones will be agreed between the Authority and the Contractor at the time of commissioning any work package.

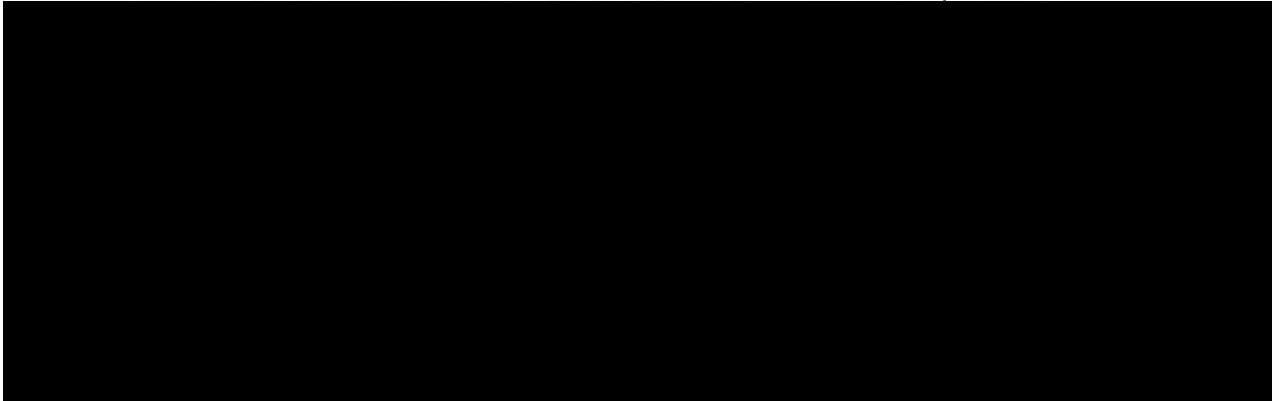
Day Rate Card (For Information Purposes)

Tenderers are requested to complete the Day Rate Card Table below, detailing the Day Rates for a range of roles which are anticipated to have involvement in the delivery of work packages under the contract.

The information provided in the Day Rate Card Table will be cross-referenced with each pricing table to ensure clarity, and will also be applicable to any additional services that are required beyond the defined work packages, i.e.:

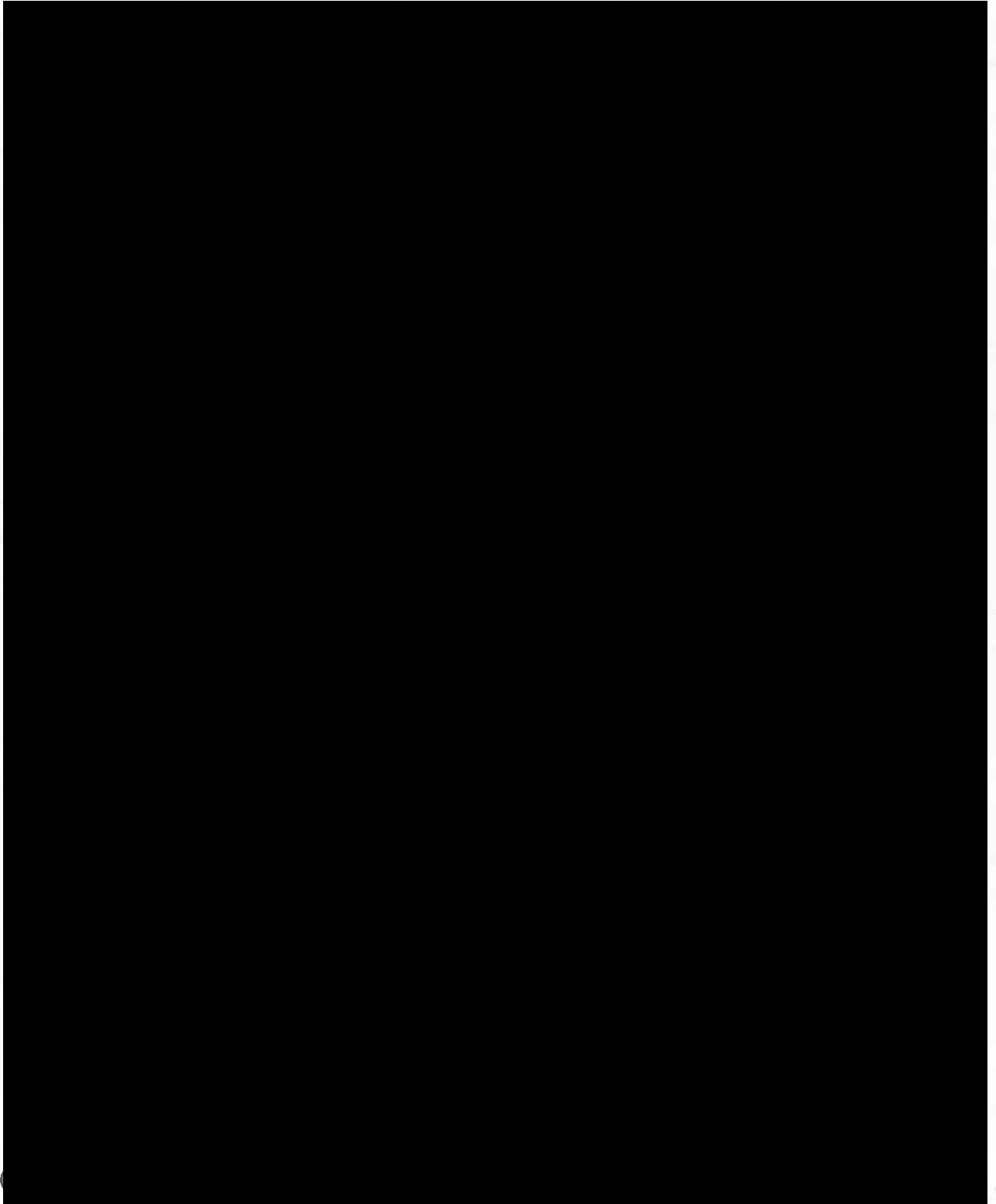
□ **Feedback.** The distribution, collection, analysis and reporting of questionnaires designed to collect non-survey feedback for CQC or other commissioners.

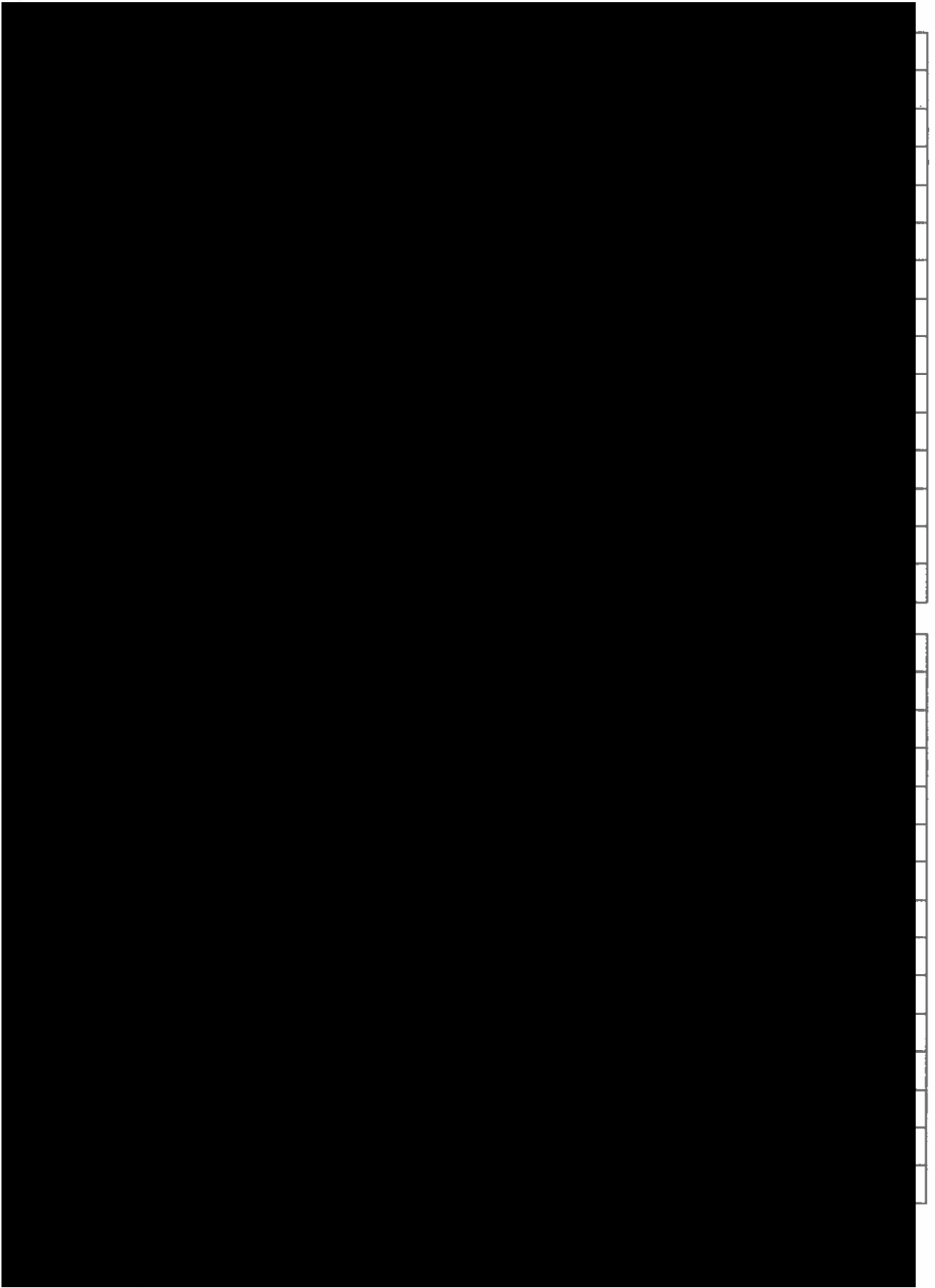
□ **Advice and thought leadership.** Specific advice and support on the methods, processes and tools for collecting feedback from people who use services separate from the NHS Patient Survey Programme. This would include advice on the collection of feedback using web and other tools, general survey and questionnaire methods or similar processes.



Part 02: Pricing Tables - Please outline the key activities and associated costs for each case study using the templates below.

Please note: Tenderers must detail their prices as inclusive of VAT

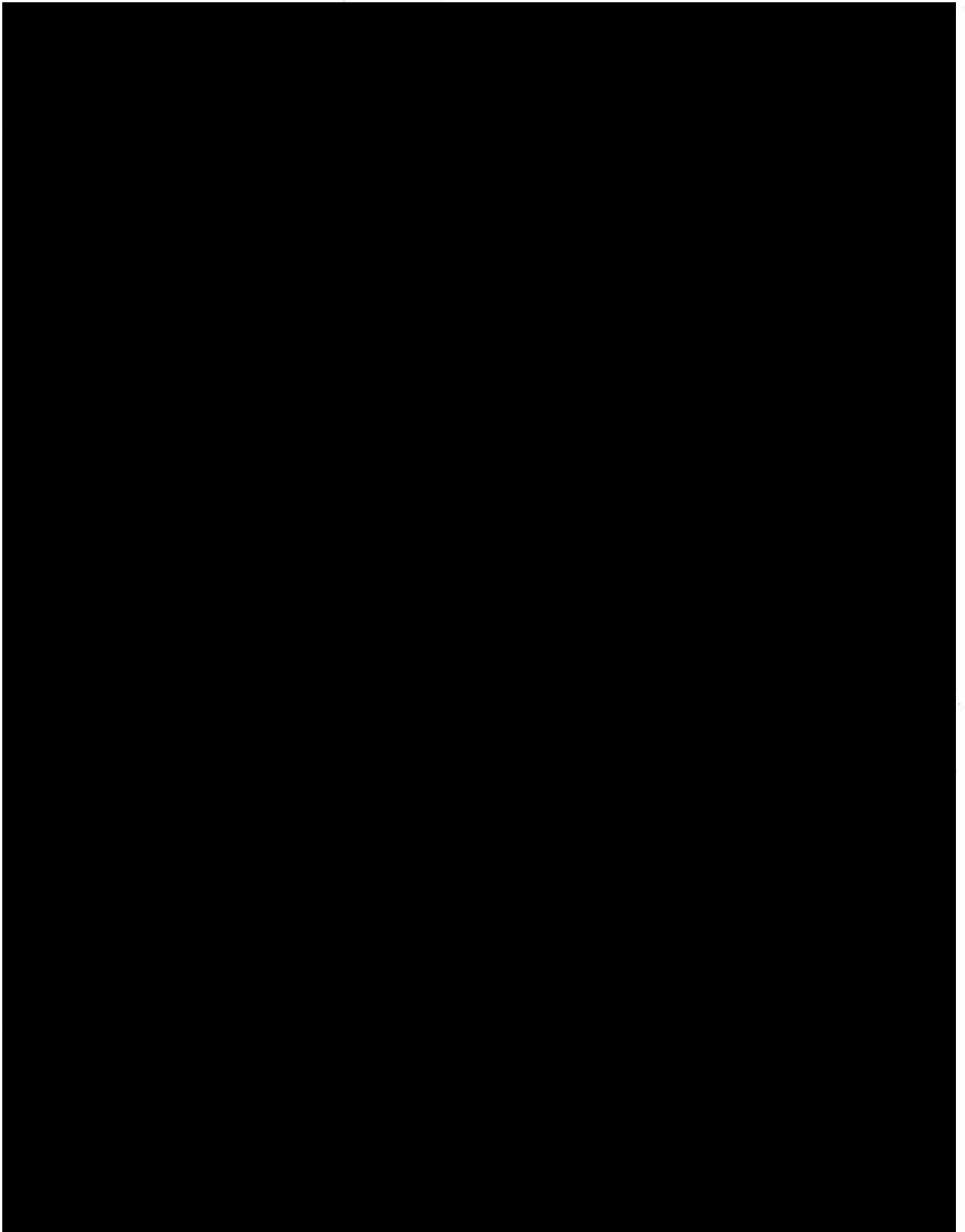


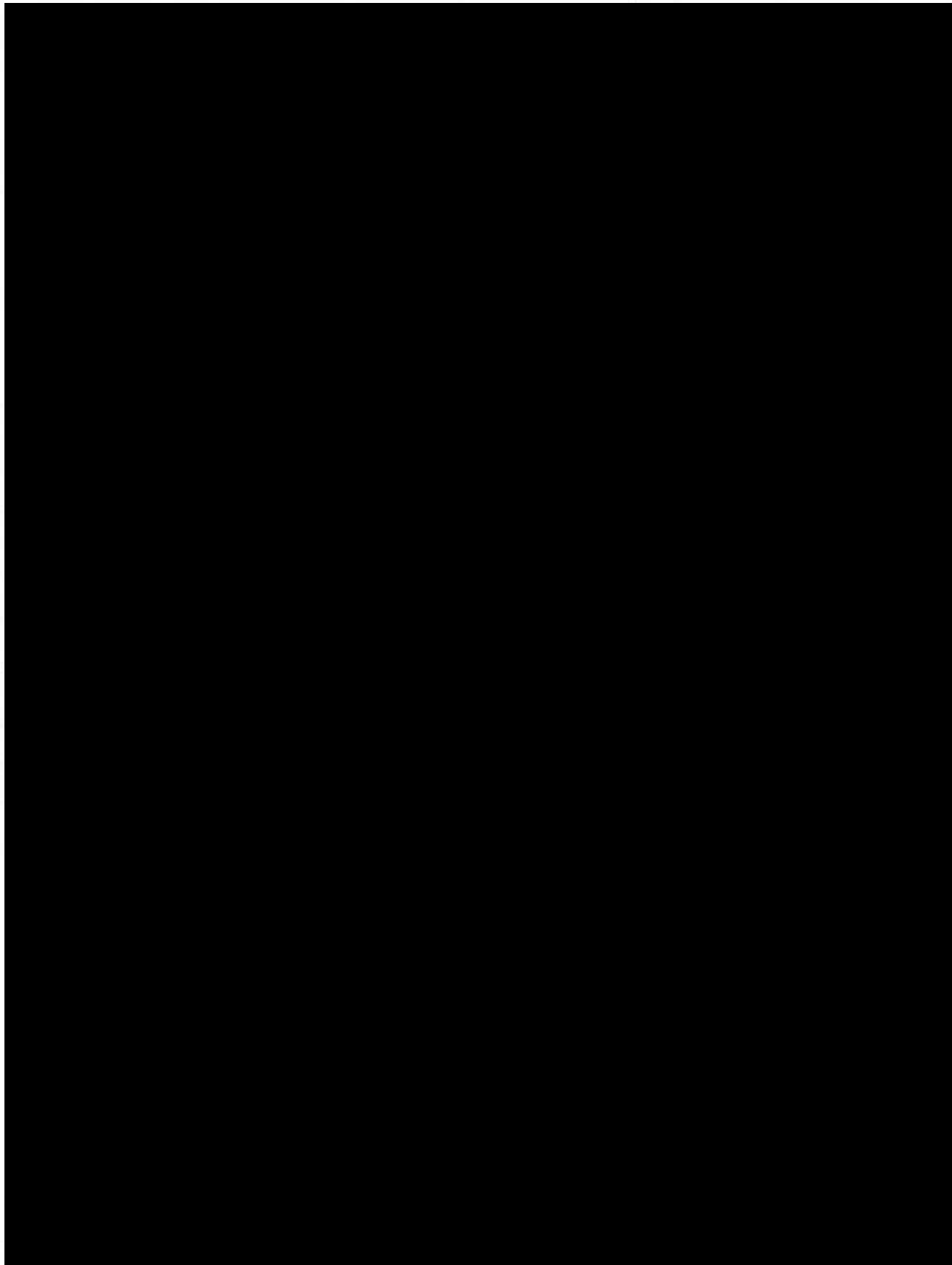




| TABLE 1 | |
|---|-------|
| Summary of the 1998-1999 and 2000-2001 School Years | |
| 1998-1999 | |
| Number of schools | 10 |
| Number of students | 1,000 |
| Number of teachers | 100 |
| Number of principals | 10 |
| Number of administrators | 10 |
| Number of parents | 1,000 |
| Number of community members | 100 |
| Number of business members | 10 |
| Number of religious members | 10 |
| Number of cultural members | 10 |
| Number of ethnic members | 10 |
| Number of social members | 10 |
| Number of political members | 10 |
| Number of environmental members | 10 |
| Number of health members | 10 |
| Number of education members | 10 |
| Number of other members | 10 |
| 2000-2001 | |
| Number of schools | 10 |
| Number of students | 1,000 |
| Number of teachers | 100 |
| Number of principals | 10 |
| Number of administrators | 10 |
| Number of parents | 1,000 |
| Number of community members | 100 |
| Number of business members | 10 |
| Number of religious members | 10 |
| Number of cultural members | 10 |
| Number of ethnic members | 10 |
| Number of social members | 10 |
| Number of political members | 10 |
| Number of environmental members | 10 |
| Number of health members | 10 |
| Number of education members | 10 |
| Number of other members | 10 |

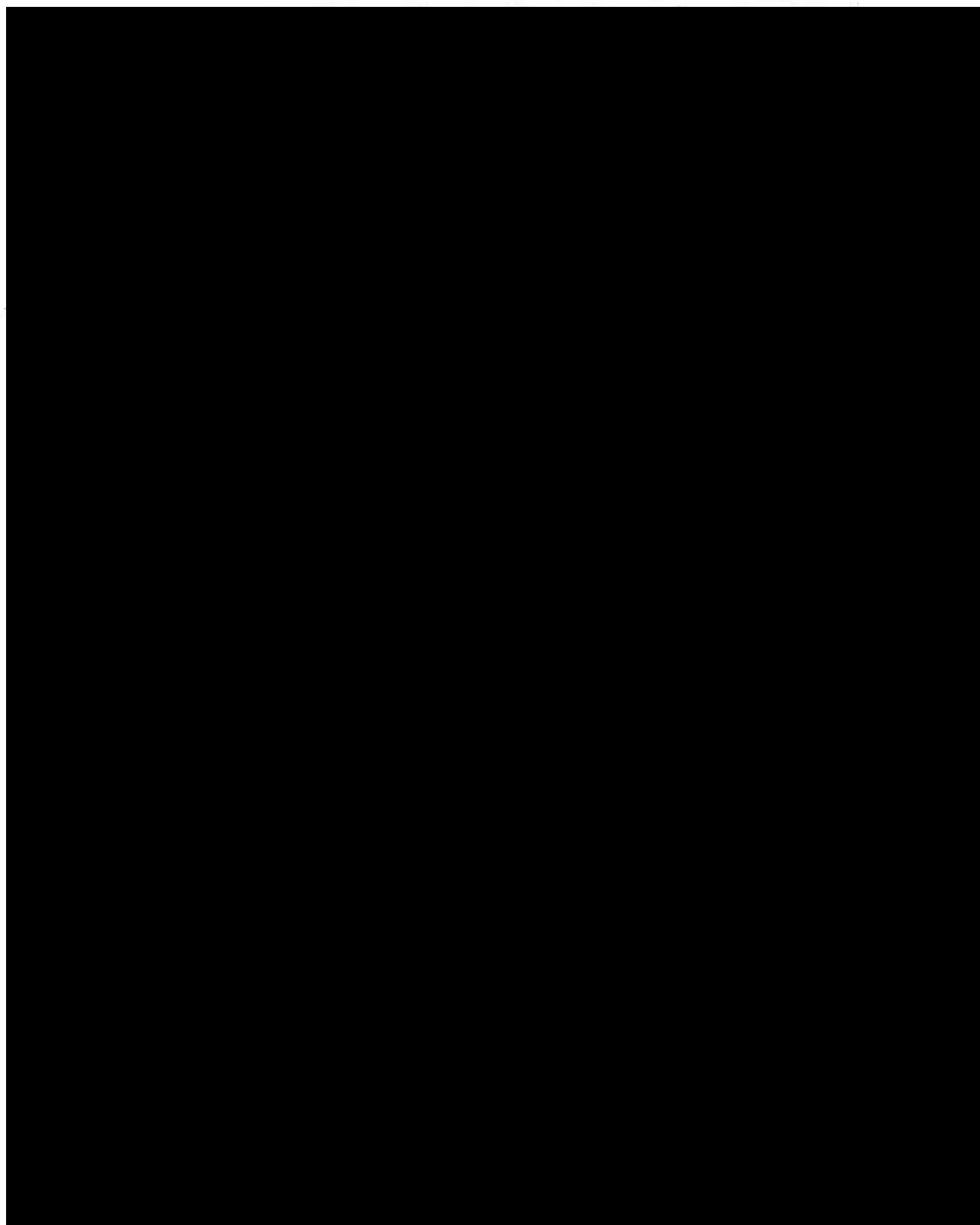
The table above provides a summary of the 1998-1999 and 2000-2001 school years. It lists the number of schools, students, teachers, principals, administrators, parents, community members, business members, religious members, cultural members, ethnic members, social members, political members, environmental members, health members, education members, and other members for each year. The data shows a consistent number of schools and students across both years, while the number of teachers, principals, and administrators remains relatively stable. The number of parents, community members, and other members shows a slight increase from 1998-1999 to 2000-2001. The number of business, religious, cultural, ethnic, social, political, environmental, and health members remains the same in both years.



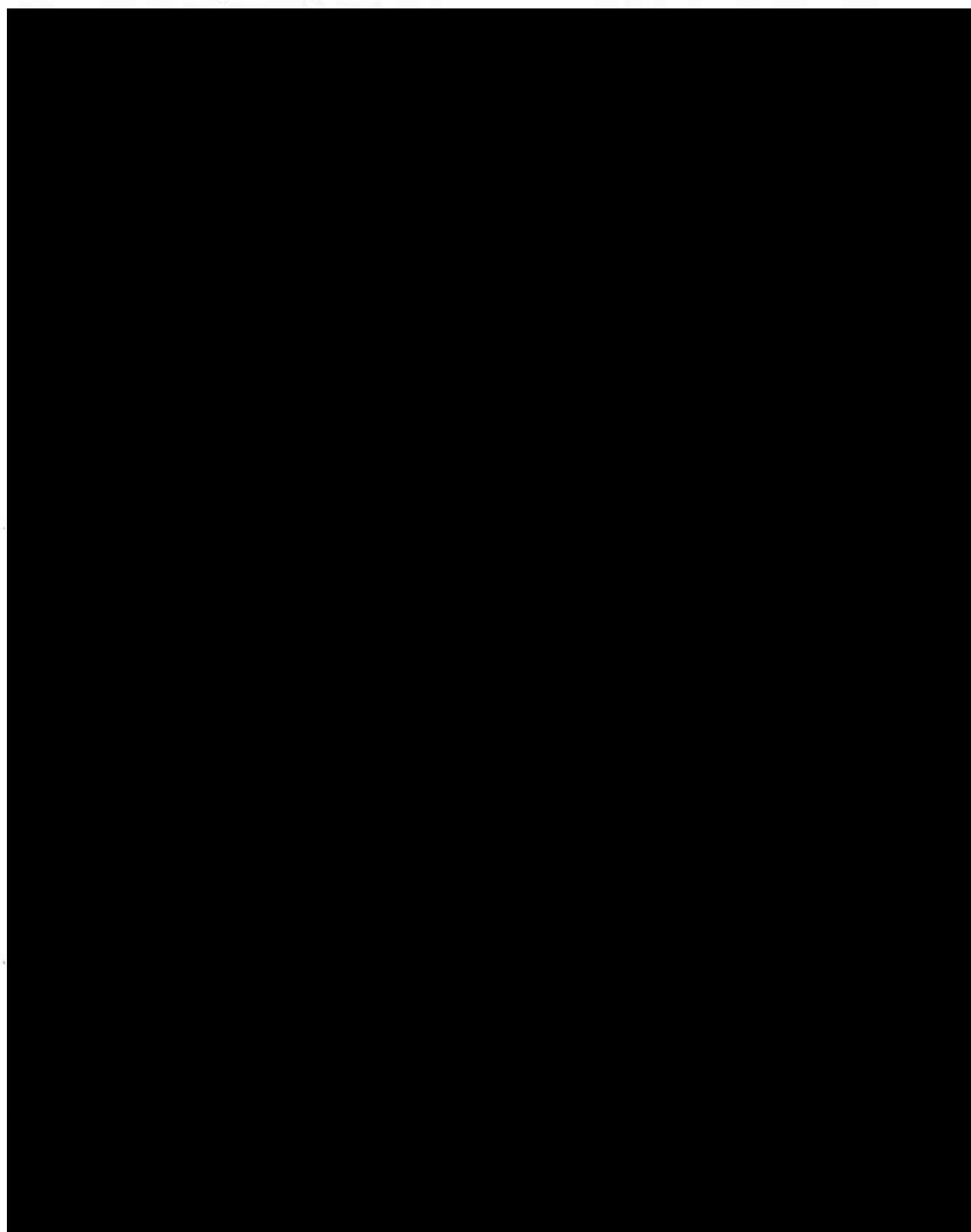


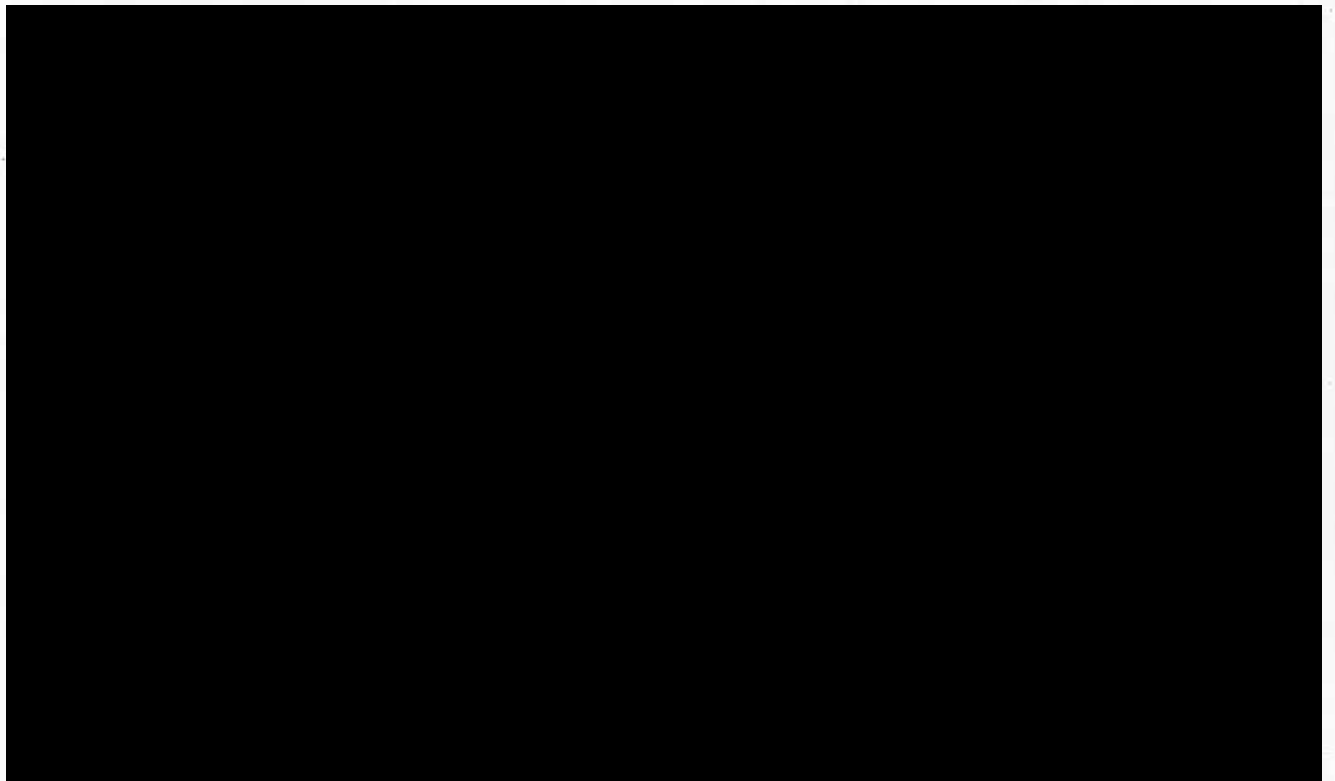






1. *Journal of Management Studies*, 1996, 33, 1, 1-14.







SCHEDULE 4 - CHANGE CONTROL

Contract Change Note

| | |
|--|--|
| Contract Change Note Number | |
| Contract Reference Number & Title | |
| Variation Title | |
| Number of Pages | |

WHEREAS the Contractor and the Authority entered into a Contract for the supply of _____ dated _____ (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

| | | |
|---|----------------------------------|---|
| Change Requestor / Originator | | |
| Summary of Change | | |
| Reason for Change | | |
| Revised Contract Price | Original Contract Value | £ |
| | Previous Contract Changes | £ |
| | Contract Change Note | £ |
| | New Contract Value | £ |
| Revised Payment Schedule | | |
| Revised Specification (See Annex ____ for Details) | | |
| Revised Contract Period | | |
| Change in Contract Manager(s) | | |
| Other Changes | | |

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect from the date on which both the Authority and the Contractor have communicated acceptance of its terms.

| | |
|---|--|
| SIGNED ON BEHALF OF THE AUTHORITY: | SIGNED ON BEHALF OF THE CONTRACTOR: |
| Signature: | Signature: |
| Name: | Name: |

| | |
|-----------|-----------|
| Position: | Position: |
| Date: | Date: |

SCHEDULE 5 - COMMERCIALLY SENSITIVE INFORMATION

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 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.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

| CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION | DATE | DURATION OF CONFIDENTIALITY |
|--|------------|-----------------------------|
| <p>The following information is designated as commercially sensitive from within all response documentation provided for this contract</p> <ul style="list-style-type: none"> • Process flow diagrams • All images and the information contained within • All details of software, reporting outputs, reporting examples and the online reporting system • All details relating to physical hardware • All details relating to third parties and their interests (e.g. sub-contractors) <p>In addition, all information relating to Contractor staff within the Tender response documentation and supporting CVs provided for the Tender response is considered personal information.</p> | 25/05/2018 | Duration of the contract. |

SCHEDULE 6 - NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [] (the "Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor] (the "Disclosee").

(each a "Party" and together the "Parties").

WHEREAS:

- (a) The Contractor has contracted with the Care Quality Commission (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements,

price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

- b) "Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
 3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
 4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
 5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

CONFIDENTIALITY

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.

9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.
11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
 - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
 - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
 - 14.3 Disclosure authorised in writing by the Authority;
 - 14.4 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
 - 14.5 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.

16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

SIGNED by the Disclosee:

CONTRACTOR SOFTWARE

[illegible]

For the purposes of this Schedule 7, **"Third Party Software"** means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

| Third Party Software | Supplier | Purpose | No. of Licences | Restrictions | No. of copies | Other | To be deposited in escrow? |
|----------------------|----------|---------|-----------------|--------------|---------------|-------|----------------------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN

INTERPRETATION AND DEFINITION

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Breach of Security" means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

"Contractor Equipment" means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

"Contractor Software" means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 7.

"ICT" means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

"Protectively Marked" shall have the meaning as set out in the Security Policy Framework.

"Security Plan" means the Contractor's security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

"Software" means Specially Written Software, Contractor Software and Third Party Software.

"Specially Written Software" means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract.

"Third Party Software" means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

1. INTRODUCTION

This Schedule 8 covers:

- 1.1 principles of security for the Contractor System, derived from the Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan;

1.4 audit and testing of the Security Plan; and

1.5 breaches of security.

2. PRINCIPLES OF SECURITY

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.

2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:

2.2.1 is in accordance with Good Industry Practice and Law;

2.2.2 complies with Security Policy Framework; and

2.2.3 meets any specific security threats to the Contractor System.

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;

2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;

2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and

2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

2.3.7 processing and storage of authority data within the UK or by exception within the EEA. Any processing outside of the UK must be subject to specific approval by the Authority.

3. SECURITY PLAN

3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.

3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.

- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 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 Plan following its resubmission, the matter will be resolved in accordance with clause 12 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.
- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- 3.5.1 the provisions of this Schedule 8;
 - 3.5.2 the provisions of Schedule 1 relating to security;
 - 3.5.3 the Information Assurance Standards;
 - 3.5.4 the data protection compliance guidance produced by the Authority;
 - 3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
 - 3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
 - 3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.
- 3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

4. AMENDMENT AND REVISION

- 4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
 - 4.1.3 any new perceived or changed threats to the Contractor System;
 - 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
 - 4.1.5 a reasonable request by the Authority.
- 4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

5. AUDIT AND TESTING

- 5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test.

Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan 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 Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

6. BREACH OF SECURITY

- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
- 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
 - 6.2.2 prevent an equivalent breach in the future;
 - 6.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority;
 - 6.2.4 investigate the incident and produce a detailed report for the Authority within 5 working days of the discovery of the incident.
- 6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 4.
- 6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

7. CONTRACT EXIT – SECURITY REQUIREMENTS

- 7.1 In accordance with clause H7 of the Contract, on termination of the Contract, either via early termination or completion of the Contract then the Contractor will either

return all data to the Authority or provide a certificate of secure destruction using an industry and Authority approved method. Destruction or return of the data will be specified by the Authority at the time of termination of the Contract.

ANNEX 1 – BASELINE SECURITY REQUIREMENTS

1. HIGHER CLASSIFICATIONS

- 1.1 The Contractor shall not handle Authority Data and information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Contractor 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 the Authority or Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Contractor 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 Data will be subject to at all times.
- 3.2 The Contractor shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority Data are only carried out offshore within:
- 3.2.1 the European Economic Area (EEA);
 - 3.2.2 in the US if the Contractor and or any relevant Sub-Contractor have signed up to the US-EU Privacy Shield Register; or
 - 3.2.3 in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by

reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.

3.3 The Contractor shall:

3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;

3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Contractor ceasing to trade;

3.3.3 securely destroy all media that has held Authority Data 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 held by the Contractor 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 Contractor 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 Data.

5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) the Contractor 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 ICT Environment (to the extent that the ICT Environment is within the control of the Contractor).

6. PERSONNEL SECURITY

6.1 Contractor Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.

- 6.2 The Contractor shall agree on a case by case basis Contractor 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 Contractor shall prevent Contractor Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Contractor 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 Contractor or Sub-Contractors grants increased ICT privileges or access rights to Contractor Personnel, those Contractor 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 one (1) Working Day.

7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL

- 7.1 The Contractor shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) 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 ICT Environment that they require. The Contractor shall retain an audit record of accesses.

8. AUDIT AND MONITORING

- 8.1 The Contractor 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 Contractor 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 ICT Environment (to the extent that the ICT Environment is within the control of the Contractor). To the extent the design of 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 ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Contractor and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
- 8.3 The Contractor shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 months.

ANNEX 2 – SECURITY MANAGEMENT PLAN

Picker has a robust set of information security processes in place to protect data that we own, control, and process.

We hold UKAS accredited certification for our information security management system (ISO27001:2013) from SGS (certificate number GB10/80275). We have completed, published and met the standards for the NHS Data Security and Protection Toolkit 2018-19 assessment and received a 100% Satisfactory score on version 14.1 (2017-18) of the NHS Information Governance Toolkit (organisation reference 8HV74) and are registered under the Data Protection Act 2018 (Z4942556). All of our research is fully compliant with the Market Research Society's (MRS's) Code of Conduct, and we are registered as MRS Company Partners. We are fully compliant with the requirements of the General Data Protection Regulation (GDPR).

Picker operates an integrated quality system and is accredited by SGS United Kingdom Ltd. to ISO20252:2012, the international standard for organisations conducting market and social research (certificate number GB08/74322). SGS are an UKAS accredited organisation No. 0005 to EN 45012:1998 for management systems certification.

We have clear written policies on the management and use of confidential and identifiable data. Policies particularly relevant to this contract include:

- Secure storage of sensitive and/or confidential material in line with our published and publically available Data Processing and Protection policy.
- A retention period of six months for paper questionnaires and qualitative recordings, unless otherwise agreed. This data is securely destroyed after the retention period.
- Use of secure file transfer protocol (FTP) server and AES256 encryption with strong passwords to ensure safe receipt and transfer of sensitive and/or confidential data.
- Protection of internal IT systems with firewalls, regular penetration testing, and security auditing. Local file systems are accessible to staff only on site or via a secure virtual private network (VPN) with two factor authentication (2FA).
- Clear identification of sensitive and confidential materials in accordance with our integrated quality manual, which is available on request to CQC.

We recognise the importance of people to maintaining security. All of our staff receive mandatory training on compliance with the organisation's integrated quality manual on the General Data Protection Regulations (GDPR). Regular project audits are undertaken to test compliance with our documented integrated security manual, and a log of issues and improvement opportunities are maintained. These are regularly reviewed by our Quality Assurance Forum and the management team and improvements made where necessary.

SCHEDULE 9 - GUARANTEE

Guarantee

This Deed is made on

20[]

Between

- (1) [INSERT DETAILS] (Guarantor); and
- (2) Care Quality Commission at [] (CQC).

By an agreement (Contract) dated and made between (1)CQC and (2) [] (Contractor), the Contractor has agreed to provide the Services (as such term is defined under the Contract) in accordance with the terms and conditions of the Contract.

It is agreed

1 Guarantee

- 1.1 In consideration of CQC entering into the Contract with the Contractor, as the Guarantor hereby acknowledges, the Guarantor hereby unconditionally and irrevocably guarantees to CQC as sole and primary obligor:
 - (a) the due and punctual payment by the Contractor of all sums and liabilities payable or to be payable under or pursuant to the Contract to CQC as and when the same fall due (with the intention that any amount not recoverable for any reason from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity); and
 - (b) the due and punctual performance and observance by the Contractor of all other acts, covenants, warranties, duties, undertakings and obligations to be performed or observed by the Contractor under or pursuant to the Contract, and hereby undertakes to keep CQC fully and effectually indemnified against all losses, damages, costs, claims and expenses whatsoever and howsoever arising out of or in connection with any failure on the part of the Contractor to effect due and punctual payment of any sum and/or liability as aforesaid and/or to perform or observe all or any of the other acts, covenants, warranties, duties, undertakings and obligations as aforesaid for any reason whatsoever, including the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Contractor or the termination of the Contract or the employment of the Contractor under the Contract and undertakes to pay all sums covered by this indemnity on CQC's first written demand without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever provided always that the Guarantor's liability under or pursuant to this Deed shall not exceed the Contractor's liability under or pursuant to the Contract.
- 1.2 The obligations of the Guarantor under or pursuant to this Deed shall not be discharged except by performance or the procurement of performance by the Guarantor. The guarantee given by the Guarantor under this Deed shall be a

primary obligation of the Guarantor and accordingly CQC shall not be obliged before enforcing their rights under this Deed and the obligations of the Guarantor under or pursuant to this Deed shall not be subject to CQC taking any steps or action against the Contractor, including, without limitation, the granting of any time or indulgence to the Contractor, the taking of any legal proceedings or action or the obtaining of any judgment against the Contractor, the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Contractor or the pursuance or exhaustion of any other right or remedy against the Contractor.

- 1.3 The rights of CQC and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any extension of time, indulgence, forbearance or concession given to the Contractor, or any assertion of or failure to assert any right or remedy against the Contractor, or by any modification or variation of the provisions of the Contract, or by the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, reorganisation, amalgamation or incapacity of the Contractor or any change in the status, function, control or ownership of the Contractor, or by CQC holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by CQC varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed. Without prejudice to the generality of the foregoing nor shall the Guarantor be discharged or released (in whole or in part) from its obligations under this Deed by any of the following (notwithstanding, where relevant that any of the same may be without the consent of the Guarantor):

- (a) an assignment of the Contract or a novation of the Contract; and
- (b) any incapacity or lack of power, authority or legal personality of the Contractor.

- 1.4 The guarantee and indemnity contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to CQC by the Contractor under or pursuant to the Contract shall have been duly paid and all the Contractor's obligations under or pursuant to the Contract shall have been duly performed. If any payment received by CQC pursuant to this Deed or the Contract shall on the subsequent insolvency of the Contractor or of the Guarantor be avoided under any laws relating to insolvency, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the Contractor and the Guarantor shall indemnify CQC in respect thereof.

2 General provisions

- 2.1 This Deed is in addition to and not in substitution for any other security which CQC may at any time hold in relation to the Services and may be enforced without first having recourse to any such security.
- 2.2 Subject to the express provisions of this Deed, the rights and remedies of CQC under, or pursuant, to this Deed are cumulative, may be exercised as often as CQC considers appropriate and are in addition to its rights and remedies under general law.

- 2.3 The Guarantor agrees to be bound by decisions made pursuant to the dispute resolution procedure under the Contract.
- 2.4 Subject to clause 2.3, this Deed and any non-contractual obligations arising out of, or in connection with it, are governed by, and shall be construed in accordance with the laws of England and Wales.
- 2.5 The Courts of England and Wales shall have exclusive jurisdiction in respect of all matters relating to or arising out of this Deed and its performance (including in relation to any non-contractual obligations arising out of or in relation to this Deed).
- 2.6 If a provision of this Deed is or becomes illegal, invalid or unenforceable, such provision shall not affect the legality, validity or enforceability of any other provision of this Deed, and the parties shall negotiate in good faith and in a reasonable manner to agree the terms of a mutually acceptable and satisfactory alternative for that provision.
- 2.7 Notices hereunder shall be served on the Guarantor at its registered office.

Executed as a deed by the parties or their duly authorised representatives on the date of this Deed.

Executed as a deed by
[GUARANTOR]
acting by its duly authorised representative(s)

Executed as a deed by
Care Quality Commission
acting by its duly authorised representative(s)

SCHEDULE 10 - EXIT MANAGEMENT STRATEGY

Please note - as per Clause H9.2:

- (a) *Draft Exit Management Strategy to be provided by the Contractor within ninety (90) days of the Contract Commencement Date*
- (b) *Within ten (10) Business Days of provision of such Exit Management Strategy, the Parties shall meet and use all reasonable endeavours to agree the contents of the Exit Management Strategy, which must provide for the orderly transition of the provision of the Services from the Contractor to the Authority and/or any replacement contractor in the event of any termination (in whole or in part) or expiry of this Contract and allow for the Contractor to comply with its obligations under clause H6 and H7.*

SCHEDULE 11 – KEY PERFORMANCE INDICATORS

| No | Key Performance Indicator | Threshold |
|----|---|---|
| 1 | <p>Delivery of Survey and Feedback outputs</p> <p>The Contractor is required to deliver good quality survey outputs for each of the defined work packages, in line with CQC's guidance, instructions or commissioning notes for any work package.</p> | 100% Critical KPI |
| 2 | <p>Resource mobilisation in line with survey programme requirements profile</p> <p>The Contractor is required to ensure that there are sufficient personnel and other resources to deliver the work packages on time and to the quality standards required.</p> | 95% Critical KPI |
| 3 | <p>Attendance at Meetings</p> <p>The Contractor is required to attend all planned Operational Delivery (as outlined in Contractor Responsibilities), Performance Review and Annual Review meetings, unless otherwise agreed with the Authority.</p> | 97% Critical KPI |
| 4 | <p>Availability of Contractor</p> <p>The Contractor will be contactable to the Authority between the hours of 9am to 5pm Monday to Friday (excluding Bank Holidays)</p> <p>The Contractor is required to respond to all general queries within 24 hours.</p> <p>Simple queries should be resolved within 48 hours.</p> <p>Complex queries should be resolved within 5 days.</p> | <p>95% Critical KPI</p> <p>95% Non-critical KPI</p> <p>95% Non-critical KPI</p> <p>95% Non-critical KPI</p> |
| 5 | <p>Security Requirements</p> <p>Services will be delivered in accordance with information security, data protection, GDPR, any confidentiality requirements including those</p> | 100% Critical KPI |

| | | |
|---|---|----------------------|
| | agreed with the Confidential Advisory Group (CAG). The Co-ordination centre will advise CQC where any such breach occurs. | |
| 6 | <p>Delivery Timescales</p> <p>Services will be delivered in accordance with agreed timelines and any change is raised and agreed by a member of CQC's Survey Team.</p> | 95% Critical KPI |
| 7 | <p>Evaluation and learning</p> <p>Evaluation and learning will be completed at the end of each delivered package, and any identified improvements flagged along with an action plan for development.</p> | 95% Non-critical KPI |
| 8 | <p>Quality of Expertise</p> <p>The Contractor is to ensure that individuals providing support to the survey programme are those stated in the response or an equivalently qualified individual where the stated personnel have left.</p> | 100% Critical KPI |
| 9 | <p><u>Quality Assurance Framework</u></p> <p>The Contractor is required to deliver survey and feedback outputs in line with the approved quality standards. This must include that all work will be quality assured and suitable assurance provided to CQC identifying what checks are in place and how and when they have been undertaken and by who.</p> | 100% Critical KPI |

SCHEDULE 12 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

[To be provided by the Contractor within thirty (30) days of contract commencement, as per Clause D5]

SCHEDULE 13 – MOBILISATION PLAN – NOT USED

SCHEDULE 14 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Controller's Data Protection Officer are [REDACTED]
Quality Commission, 3rd Floor, Buckingham Palace Road, London SW1W 9SZ.

2. The contact details of the Processor's Data Protection Officer are:

| | |
|----------|--|
| Name: | [REDACTED] |
| Address: | Picker Institute Europe, Buxton Court, 3 West Way, Oxford, OX2 0JB |
| E-mail: | [REDACTED] |

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1 |
| Subject matter of the processing | The National Patient Experience Survey Programme. |
| Duration of the processing | <p>The period covers the sampling period, fieldwork and analysis stage which varies for each survey. For the existing surveys this is:</p> <p>1. Adult Inpatient Survey</p> <p>Main sampling: July</p> <p>Fieldwork: September - January</p> <p>Reporting: June</p> |

| | |
|---------------------------------------|---|
| | <p>2. Community Mental Health Survey</p> <p>Main sampling: September - November</p> <p>Fieldwork: February - June</p> <p>Reporting: November</p> <p>3. Maternity Survey</p> <p>Main sampling: February</p> <p>Fieldwork: April - August</p> <p>Reporting: January</p> <p>4. Children's Inpatient and day case Survey</p> <p>Main sampling: November - December</p> <p>Fieldwork: February - June</p> <p>Reporting: November</p> <p>5. Emergency Department Survey</p> <p>Main sampling: September</p> <p>Fieldwork: October - March</p> <p>Reporting: October</p> <p>An <u>Outline Programme</u> is published on our website.</p> |
| Nature and purposes of the processing | The nature of the processing includes collection, recording, organisation, structuring, storage, retrieval, consultation, |

| | |
|--|---|
| | <p>use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose of the processing is to assess people's experiences of their care.</p> |
| Type of personal data | <p>Demographic and care details described as in the sampling instructions. This includes name and address details</p> <p>Such data will also include any survey-specific information, for example date and location of births occurring in the <u>Maternity Survey's Sample</u>.</p> |
| Categories of Data Subject | Patients |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <p>Respondent level data set is retained indefinitely as part of the data archive and for trend analysis. Name and address details are destroyed by Approved Contractors and Trusts once they are no longer needed for the purposes of completing the survey, this varies by provider but is typically around six months from the end of fieldwork.</p> |

SCHEDULE 15 – EMPLOYMENT PROVISIONS

Staff Transfer

DEFINITIONS

In this Schedule, the following definitions shall apply:

"Contractor's Final Contractor Personnel List"

a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

"Contractor's Provisional Contractor Personnel List"

a list prepared and updated by the Contractor of all Contractor 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 such list will no longer be provided by the Contractor;

"Employee Liabilities"

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

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

| | |
|-------------------------------------|---|
| | <p>been payable by the <i>Contractor</i> or the <i>Sub-Contractor</i> if such payment should have been made prior to the <i>Service Transfer Date</i>;</p> <p>f) claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p> |
| "Former Contractor" | a Contractor supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the <i>Services</i> (or any part of the <i>Services</i>) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor); |
| "Notified Sub-contractor" | a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date; |
| "Replacement Sub-contractor" | a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will 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; |
| "Service Transfer" | any transfer of the <i>Services</i> (or any part of the <i>Services</i>), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor 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" | <p>in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <p>(a) their ages, dates of commencement of employment</p> |

or engagement, gender and place of work;

- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Transferring
Authority
Employees"**

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring
Former Contractor
Employees"**

in relation to a Former Contractor, those employees of the Former Contractor to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring
Contractor"**

those employees of the Contractor and/or the Contractor's Sub-contractors to whom the Employment Regulations will

Employees” apply on the Service Transfer Date.

INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF
SERVICES- NOT USED**

ANNEX TO PART A: PENSIONS- NOT USED

**PART B: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT
COMMENCEMENT OF SERVICES**

1 RELEVANT TRANSFERS

1.1 The Authority and the Contractor 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 Contractor Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor 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 Contractor and/or Notified Sub-contractor and each such Transferring Former Contractor Employee.

1.2 The Authority shall procure that each Former Contractor 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 Contractor 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 and national insurance contributions

2 FORMER CONTRACTOR INDEMNITIES

2.1 Subject to Paragraph 0, the Authority shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor 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 Contractor 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 Contractor 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 Contractor to the Contractor 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 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 Contractor 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 Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (f) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former 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 Contractor or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph **Error! Reference source not found.** shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor 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 Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Contractor 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 Contractor Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 10 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Contractor; and
 - (b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Contractor 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 0(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the Authority, the Contractor 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 0(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 Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Contractor indemnifies the Contractor 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 **Error! Reference source not found.** provided that the Contractor 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 0:
- (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 Contractor and/or any Sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 0(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Contractor, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 0 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 0, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 CONTRACTOR INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 0, the Contractor shall indemnify the Authority and/or the Former Contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor 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 Contractor Employees arising from or connected with any failure by the Contractor 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 Contractor 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 Contractor Employees to their material detriment on or after their transfer to the Contractor 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 Contractor 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 Contractor or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Contractor 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 Contractor 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
 - (ii) in relation to any employee who is not a Transferring Former Contractor 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 Contractor to the Contractor 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 Contractor 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 Contractor 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 Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor 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 Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Contractor or any Sub-contractor to comply with its obligations under Paragraph **Error! Reference source not found.** above.

- 3.2 The indemnities in Paragraph **Error! Reference source not found.** shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor 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 Contractor 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 and national insurance contributions).

4 INFORMATION

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Contractor, in writing such information as is necessary to enable the Authority and/or the Former Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 4.1 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph **Error! Reference source not found.** shall be agreed in accordance with the Change Control Procedure.

5 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part **PART B: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES**, where in this Part **PART B: TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES** the Authority accepts an obligation to procure that a Former Contractor 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 Contractor 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 Contractor does or does not act accordingly.

ANNEX TO PART B – NOT USED

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Contractor 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 Contractor.
- 1.2 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - (a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within 10 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 Contractor; and
 - (b) the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (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 Contractor), the Contractor 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 Contractor and/or the Sub-contractor may within 10 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 0 to 0 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 0, the Authority shall:
 - (a) indemnify the Contractor 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 0 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor 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 Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor 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 Contractor as appropriate nor dismissed by the Contractor 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 Contractor and/or the Sub-contractor (as appropriate) and the Contractor 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 Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor 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,in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Contractor 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 Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within 6 months of the Effective Date.

3 PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Contractor 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 Contractor 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 Contractor does or does not act accordingly.

CONFIDENTIAL

PART D: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Contractor 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 Agreement;
- (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 Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor 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 Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:

- (a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
- (b) the Staffing Information in relation to the Contractor's Final Contractor 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 Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.

1.4 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, 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 Contractor 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 Contractor's Provisional Contractor Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor 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 Contractor Personnel (including 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 Contractor 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 Contractor's Provisional Contractor 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 Contractor's Provisional Contractor 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 Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Contractor 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) a description of the nature of the work undertaken by each employee by location.

1.7 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor 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 Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 10 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor 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 Contractor 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 Agreement or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor 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 Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor 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 Contractor 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 and national insurance contributions 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 Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:

- (i) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor 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 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 Contractor 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 Contractor's Final Contractor 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 Contractor to the Authority and/or Replacement Contractor 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 Contractor 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 Contractor 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 Contractor or any Sub-contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor 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 Contractor 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 Contractor 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 Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Contractor'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 Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
- (b) the Contractor 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 Contractor 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 Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor 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 Replacement Contractor and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 0 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor 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 Contractor 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 Contractor and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Contractor 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 Contractor and/or Replacement Sub-contractor to the Contractor 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 Contractor or any Sub-contractor nor dismissed by the Replacement Contractor 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 Contractor Employee.

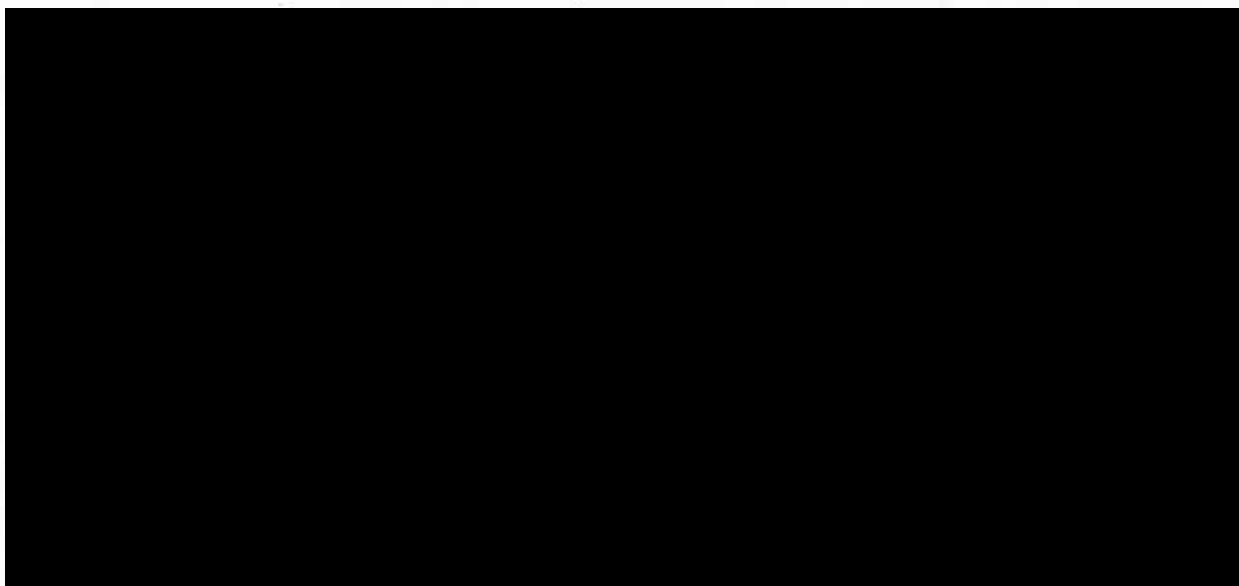
2.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor 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, commissions, payments of PAYE and national insurance contributions

- 2.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor 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 Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor 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 Contractor indemnifies the Contractor 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 Contractor and/or Replacement Sub-contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;
 - (b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List ; and/or
 - (ii) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor 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 Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor 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 Contractor's Final Contractor Personnel List who would have been a Transferring Contractor 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;

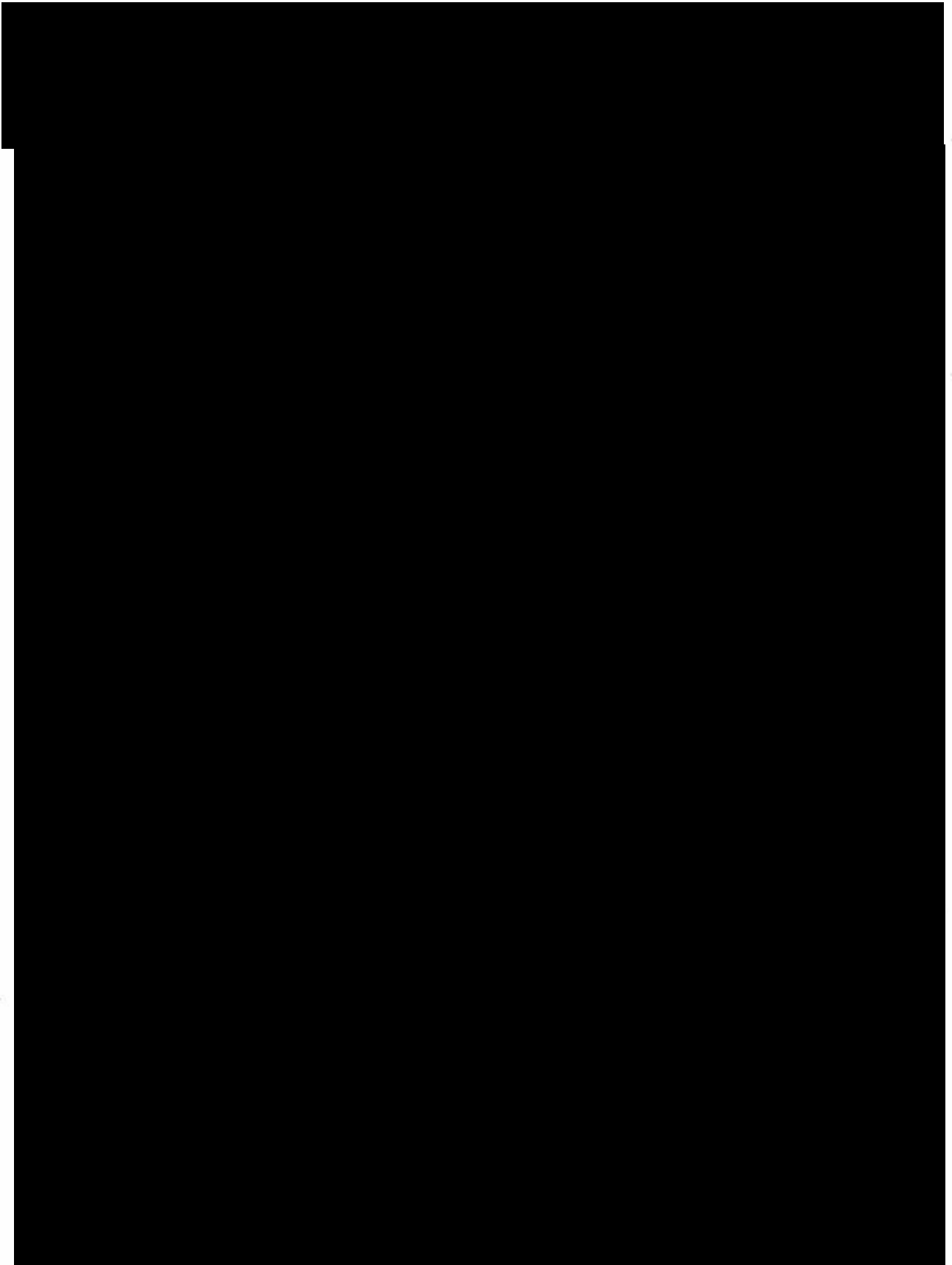
- (e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor 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 Contractor Employee identified in the Contractor's Final Contractor 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 Contractor Employee identified in the Contractor's Final Contractor 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 Contractor or Sub-contractor, to the Replacement Contractor 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;
- (g) a failure of the Replacement Contractor 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 Contractor Employees identified in the Contractor's Final Contractor 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 Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

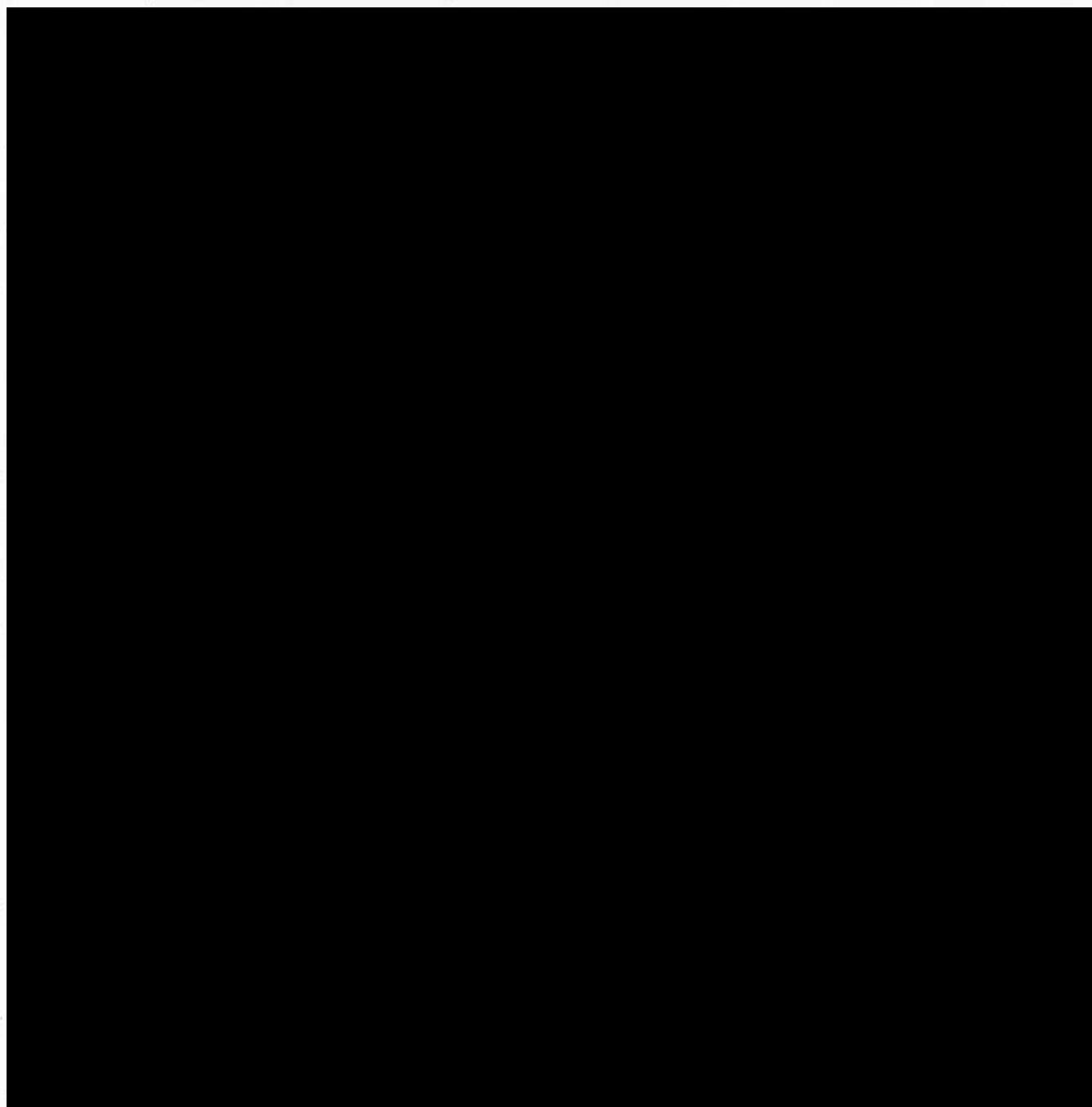
2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

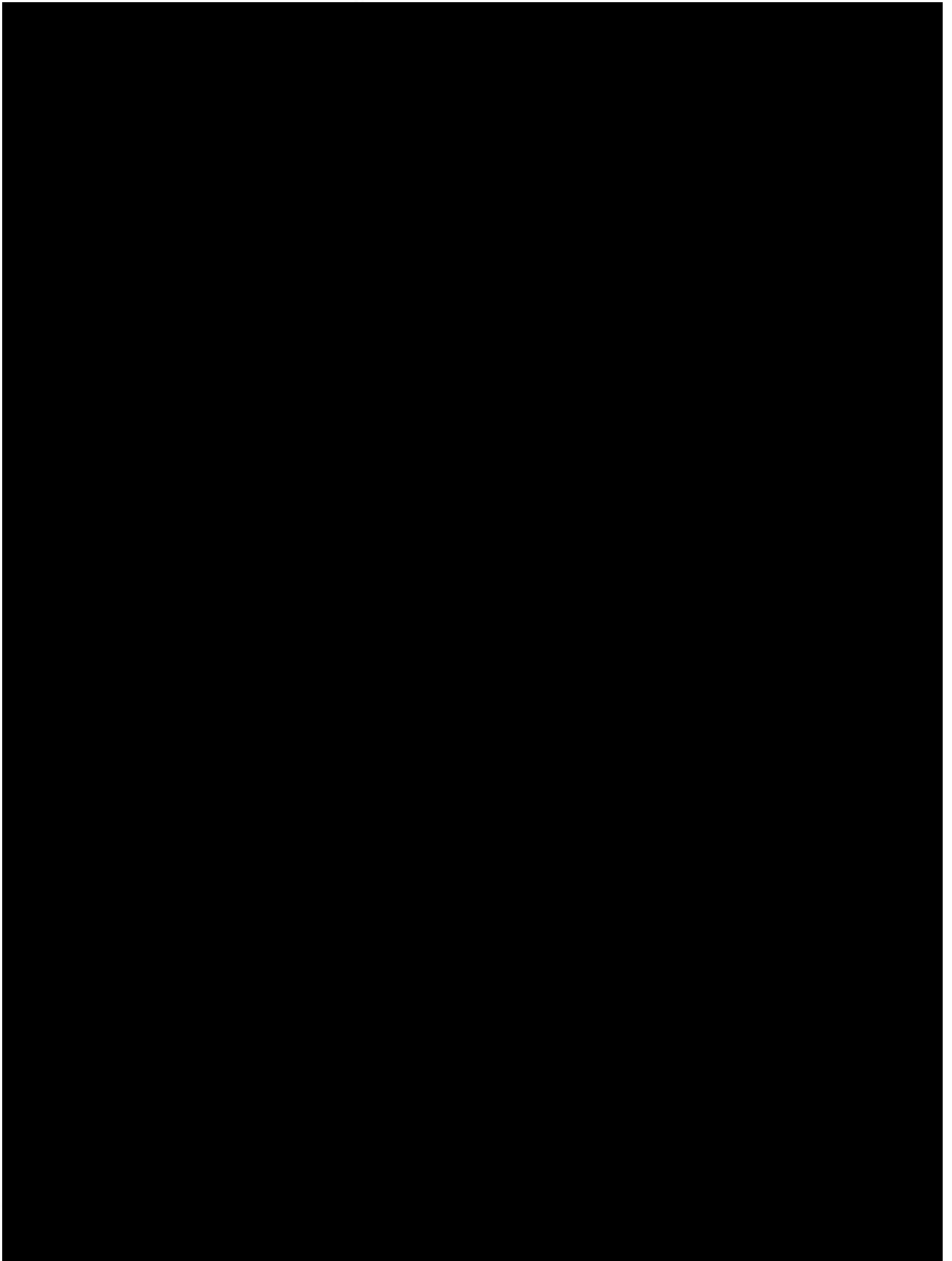
ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS



CONFIDENTIAL









CONFIDENTIAL



