



Department
for Environment
Food & Rural Affairs

Conditions of Contract Research & Development

Trading Platform Contract - Solent Nutrient Trading Pilot Project

Project 33528

ecm: 62988

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Contents

SECTION 1 - FORM OF CONTRACT	3
SECTION 2 - TERMS AND CONDITIONS	5
A. GENERAL PROVISIONS.....	8
B. THE SERVICES.....	21
C. PAYMENT.....	25
D. STATUTORY OBLIGATIONS	28
E. PROTECTION OF INFORMATION.....	32
F. CONTROL OF THE CONTRACT.....	45
G. LIABILITIES	52
H. DEFAULT, DISRUPTION AND TERMINATION	57
I. DISPUTES AND LAW.....	63
SCHEDULE 1 - SPECIFICATION.....	66
SCHEDULE 2 - PRICING	102
SCHEDULE 3 - CHANGE CONTROL	105
SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION.....	106
SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS.....	107
SCHEDULE 6 - NON-DISCLOSURE AGREEMENT	109
SCHEDULE 7 - CONTRACTOR AND THIRD-PARTY SOFTWARE	114
SCHEDULE 8 - SECURITY REQUIREMENTS, POLICY AND PLAN	116
SCHEDULE 9 - CO-FUNDING – Not Applicable	124
SCHEDULE 10 - DATA SHARING AGREEMENT.....	125

SECTION 1 - FORM OF CONTRACT

PARTIES:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “Authority”);

AND

- (2) WESSEX WATER LIMITED (trading as “EnTrade”) registered in England and Wales under number 02366633 whose registered office is at Claverton Down Road, Claverton Down, Bath BA2 7WW (the “Contractor”)

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

WHEREAS

- a) Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.
- b) The Authority will enter into the Contract on the basis that it requires the Services for the Initial Contract Period.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

1.1 The “Contract” comprises the following:

Section 1: Form of Contract

Section 2: Terms and Conditions

Schedule 1: Specification

Schedule 2: Prices

Schedule 3: Change Control

Schedule 4: Commercially Sensitive Information

Schedule 5: Processing, Personal Data and Data Subjects

Schedule 6: Non-Disclosure Agreement

Schedule 7: Contractor and Third-Party Software

Schedule 8: Security Requirements, Policy and Plan

Schedule 9: Co-Funder Provision (**Not Applicable**)

Schedule 10: Data Sharing Agreement

- 1.2 Execution of the Contract is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract is formed on the date on which both Parties communicate acceptance of its terms on the Authority's electronic contract management system ("Bravo").
- 1.3 The Contract starts on **04th October 2021** (the "Commencement Date") and ends on **30th September 2022** (the "End Date") unless it is terminated early or extended in accordance with the Contract.
- 1.4 The Party may extend the term of the Contract by agreement in writing including in relation to any variation required to this Contract (including without limitation the Services and the Price) ("Extension").

SECTION 2 - TERMS AND CONDITIONS

Contents

- A1 Definitions and Interpretation
- A2 The Authority's Obligations
- A3 Contractor's Status
- A4 Notices and Communications
- A5 Mistakes in Information
- A6 Conflicts of Interest

- B1 Specification
- B2 Samples **(Not Applicable)**
- B3 Delivery **(Not Applicable)**
- B4 Risk and Ownership **(Not Applicable)**
- B5 Non-Delivery **(Not Applicable)**
- B6 Labelling and Packaging **(Not Applicable)**
- B7 Training **(Not Applicable)**
- B8 Provision and Removal of Equipment **(Not Applicable)**
- B9 Goods Delivery **(Not Applicable)**
- B10 Service Delivery
- B11 Key Personnel
- B12 Contractor's Staff
- B13 Inspection of Premises **(Not Applicable)**
- B14 Licence to Occupy Premises **(Not Applicable)**
- B15 Property **(Not Applicable)**

- B16 Biological Materials **(Not Applicable)**
- B17 Offers of Employment
- B18 Employment Provisions

- C1 Price
- C2 Payment and VAT
- C3 Recovery of Sums Due
- C4 Price

- D1 Prevention of Fraud and Bribery
- D2 Discrimination
- D3 Rights of Third Parties
- D4 Health and Safety
- D5 Environmental Requirements

- E1 Authority Data
- E2 Data Protection
- E3 Official Secrets Acts and Finance Act 1989
- E4 Confidential Information
- E5 Freedom of Information
- E6 Publicity, Media and Official Enquiries
- E7 Security
- E8 Intellectual Property Rights
- E9 Commercial Exploitation **(Not Used)**
- E10 Audit

E11 Tax Compliance

F1 Failure to meet requirements

F2 Monitoring Contract Performance

F3 Reporting

F4 Remedies for inadequate performance

F5 Transfer and Sub-Contracting

F6 Waiver

F7 Variation

F8 Severability

F9 Remedies Cumulative

F10 Entire Agreement

F11 Counterparts

G1 Liability, Indemnity and Insurance

G2 Warranties and Representations

G3 Force Majeure

H1 Termination on Insolvency and Change of Control

H2 Termination on Default

H3 Termination on Notice

H4 Other Termination Grounds

H5 Consequences of Expiry or Termination

H6 Disruption

H7 Recovery upon Termination

H8 Retendering and Handover (**Not Used**)

H9 Exit Management

H10 Exit Procedures (**Not Used**)

H11 Knowledge Retention (**Not Used**)

I1 Governing Law and Jurisdiction

I2 Dispute Resolution

A GENERAL PROVISIONS

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“Approval” and “Approved” means the prior written consent of the Authority.

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“Authority Data” means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract but not, for the avoidance of doubt, any Contractor IPR; or
- (b) any Personal Data for which the Authority is the Controller.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

“Bravo” has the meaning given in paragraph 1.2 of the Form of Contract.

“Catchment Market” means a marketplace where Nature-based Projects and the Environmental Services they deliver are bought and sold pursuant to the Contract.

“Catchment Market Instruments and Collateral” means the Catchment Market Rules, market design, market settlement mechanism, trading platform and credit registry required to support the operation of the Catchment Market.

“Catchment Market Rules” means the rules developed by the Contractor for the operation of catchment markets.

“CCN” means a change control notice in the form set out in Schedule 3.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor IPR and
- (c) the Contractor’s business and investment plans which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including without limitation information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract” has the meaning given in paragraph 1.1 of the Form of Contract.

“Contract Period” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension the end date of the Extension
or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“Contractor Background IPR” means any and all Intellectual Property Rights that are:

- (a) owned by, whether solely or jointly with others, or controlled by or licensed to the Contractor prior to the Commencement Date including (without limitation) (i) methodologies for calculating Environmental Services from Nature-based Projects, (ii) Catchment Market Instruments and Collateral and (iii) trade marks including the EnTrade and Wessex Water logos;
- (b) developed or acquired by the Contractor independently of the provision of the Services under this Contract after the Commencement Date;

or derived from, adapted or otherwise based on such Intellectual Property Rights.

“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 set out in Schedule 7.

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

“Contractor IPR” means the Contractor’s Intellectual Property Rights including (but not limited to) the Contractor Background IPR, the Contractor Software, the Contractor System.

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through

the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.

“Controller” has the meaning given in the GDPR.

“Copyright” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body” is an emanation of the foregoing.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the GDPR, the UK GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

“Data Subject” has the meaning given in the GDPR.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Database Rights” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals

within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA 2018” means the Data Protection Act 2018.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“End Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Environmental Services” means the biodiversity, water quality, flood mitigation, carbon sequestration and other outcomes delivered by Nature-based Projects.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including without limitation acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

“Form of Contract” means Section 1 of the Contract.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679).

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs;

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Contractor System.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the End Date.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“Key Personnel” mean those persons named in the Specification as key personnel.

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

“LED” means Law Enforcement Directive (Directive (EU) 2016/680).

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority or the Contractor would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, B16, D1, E1, E2, E3, E4, E7, E8 or E11.

“Month” means calendar month.

“Nature-based Projects” means a habitat creation, restoration or improvement project that also delivers wider environmental benefits, including but not limited to one or more of the Environmental Services.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Personal Data” has the meaning given in the Data Protection Legislation.

“Personal Data Breach” has the meaning given in the Data Protection Legislation.

“Premises” means the location where the Services are to be supplied as set out in the Specification.

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Processor” has the meaning given in the Data Protection Legislation.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i. induce that person to perform improperly a relevant function or activity; or
 - ii. reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii. under legislation or common law concerning fraudulent acts; or
 - iii. the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Project Year” means each period of 12 months during the Contract Period beginning with the Commencement Date.

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Schedule 8.

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

“Purchase Order” means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the

Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

“Relevant Conviction” means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any goods and/or services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Results” means (a) the final report and evaluation of the nutrient trading pilot in the Solent; and (b) analysis of market bids from landowners and developers from the nutrient trading pilot in the Solent.

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Security Policy Framework” means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

“Services” means the services set out in Schedule 1 (including any modified or alternative services).

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, students, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “Sub-Contractor” shall be construed accordingly.

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

“TFEU” means the Treaty on the Functioning of the European Union.

“Third Party IP Claim” has the meaning given to it in clause E8.7 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7.

“Treaties” means the Treaty on European Union and the TFEU.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“TUPE Information” means the information set out in clause B17.1.

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa.
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (h) references to the Contract are references to the Contract as amended from time to time; and
- (i) if there are no Co-funders, references to the Co-funders shall have no meaning or effect.

A2 The Authority’s Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

A3 Contractor’s Status

A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name

of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

A4 Notices and Communications

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.

A4.2 If it is not returned as undelivered a notice served:

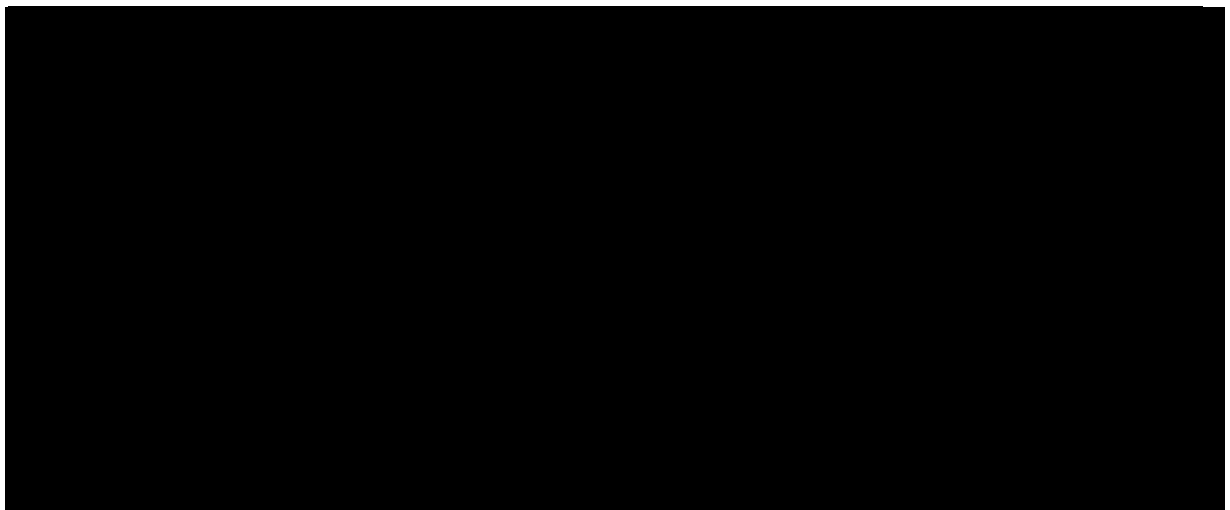
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

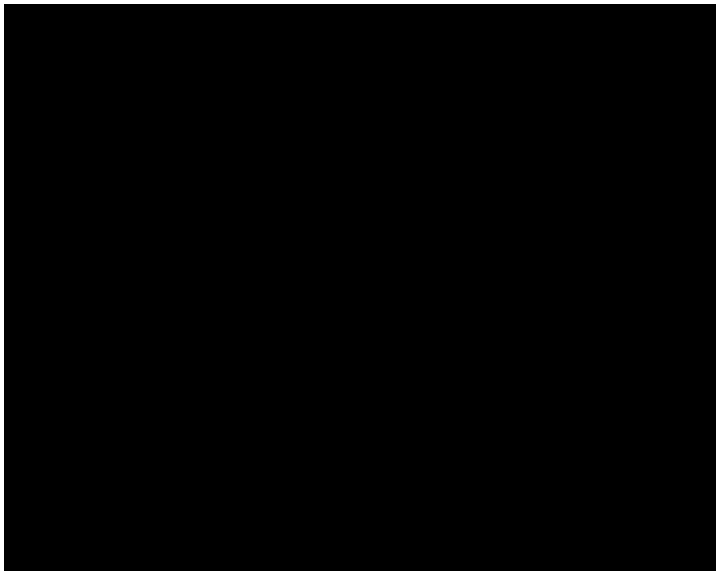
A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a)



(b)



A5 Mistakes in Information

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B. THE SERVICES

B1 Specification

B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

B2 Samples (Not Applicable)

B3 Delivery (Not Applicable)

B4 Risk and Ownership (Not Applicable)

B5 Non-Delivery (Not Applicable)

B6 Labelling and Packaging (Not Applicable)

B7 Training (Not Applicable)

B8 Provision and Removal of Equipment (Not Applicable)

B9 Goods Delivery (Not Applicable)

B10 Service Delivery

B10.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B10.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

B10.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

- (a) accept the installation; or
- (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

B10.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

B10.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B10.6 During the Contract Period, the Contractor shall:

- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

B11 Key Personnel

B11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.

B11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B11.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B11.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B11.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

B12 Contractor's Staff

B12.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission into the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B12.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B12.2 shall be final.

B12.4 Not Used.

B13 Inspection of Premises (Not Applicable)

B14 Licence to Occupy Premises (Not Applicable)

B15 Property (Not Applicable)

B16 Biological Materials (Not applicable)

B17 Offers of Employment

B17.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

B18 Employment Provisions

B18.1 If the Authority notifies the Contractor that it intends to retender any Services, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff engaged in the relevant Services who may be subject to TUPE (as set out in Regulation 11(2) of TUPE), in an anonymised format.

- B18.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Contractor shall give the Authority updated TUPE Information.
- B18.3 Each time the Contractor supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- B18.4 The Authority may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B18.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Authority, the Crown and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B18.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.

B18.7 This clause B18 applies during the Contract Period and indefinitely thereafter.

B18.8 During the 3 months immediately prior to the end of the Contract Period, the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed) in relation to any persons engaged in the provision of the Services who may be subject to TUPE:

- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

C PAYMENT

C1 Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

C2 Payment and VAT

C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.

C2.2 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra

charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.

C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

C2.5 Valid Invoices shall include:

(a) the Contractor's full name, address and title of the Contract;

(b) not used;

(c) the Purchase Order number

(d) to (l) not used

C2.6 Not used.

C2.7 Not used.

C2.8 Not used.

C2.9 Not used.

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 Not used.

C2.12 Not used.

C2.13 Not used.

C2.14 Not used.

C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the

Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

Accounts-Payable.def@sscl.gse.gov.uk (the Authority's preferred option); or
SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ.

C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

C2.20 The Contractor shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.

C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract.

C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless

the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price

- C4.1 Subject to Schedule 2 and clause F7 (Variation), the Price shall apply for the Initial Contract Period or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- D1.2 The Contractor shall not during the Contract Period:

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

- D1.3 The Contractor shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:

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

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D2 Discrimination

D2.1 The Contractor shall:

- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;

- iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

- D3.1 The provisions of clause B18.5 and E8.3 confer benefits on persons named in such provisions (together “Third Party Provisions”) other than the Parties (each person a “Third Party Beneficiary”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (“CRTPA”).
- D3.2 Subject to clause D3.1, a person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- D3.3 No Third-Party Beneficiary may enforce or take steps to enforce any Third-Party Provision without Approval.
- D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third-Party Beneficiary.

D4 Health and Safety

- D4.1 The Contractor shall perform its obligations under the Contract in accordance with:
 - (a) all applicable Law regarding health and safety; and
 - (b) the Authority’s health and safety policy while at the Authority’s Premises.
- D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority’s Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

D5 Environmental Requirements

- D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority’s environmental, sustainable and ethical procurement policies (“Environmental Policies”) which require the Authority through its procurement and management of suppliers to:

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;
- (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
- (e) reduce fuel emissions wherever possible;
- (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and
- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
- (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the

Authority, comply with any relevant “Best Practice” and “Class Leader” standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under the Contract.

D5.7 The Contractor shall:

- (a) identify any risks from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

D6 Timber and Wood Derived Products (Not Applicable)

E PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.5 Not used
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework
- E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
- (b) Not used.

E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E2 Data Protection

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 by the Authority and may not be determined by the Contractor.

E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to

reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 5);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the UK GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

- (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 Subject to clause E2.6 the Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with its obligations under this Contract, it:

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

E2.6 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- (a) the Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

- E2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines that the processing is not occasional;
 - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.9 The Contractor shall allow for audits of its Personal Data processing activity by the Authority or the Authority's designated auditor.
- E2.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- E2.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- E2.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E2.14 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E2.16 Where the Parties include two or more Joint Controllers as identified in Schedule 5, in accordance with the UK GDPR Article 26 those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 10 in replacement of Clauses E2.1 to E2.14 for the Personal Data in respect of which they are Joint Controllers.

E3 Official Secrets Acts and Finance Act 1989

E3.1 The Contractor shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

E4 Confidential Information

E4.1 Subject to clause E5, except to the extent set out in this clause E4 each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract and provided always such persons are under a duty to keep such information confidential and that a confidential undertaking is provided where appropriate.

E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract including from time to time agreed changes to the Contract provided always that any information which is Confidential Information belonging to either Party is redacted including (without limitation) and for the avoidance of doubt, the Contractor's Commercially Sensitive Information) to the general public.

E4.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 5 and, if applicable, incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.4 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. Each Party shall ensure that its staff, professional advisors and consultants are aware of its confidentiality obligations under the Contract.

E4.5 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to

know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.6 Each Party shall not, and shall procure that its staff, professional advisors and consultants do not, use any of the other Party's Confidential Information received otherwise than for the purposes of this Contract.

E4.7 Clause E4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR (subject to clause E5);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
- (d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.9 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.11 If either Party does not comply with clauses E4.1 to E4.6 the other Party may terminate the Contract immediately on notice.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its reasonable endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:
- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority reasonably requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and

- (c) not respond directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 In determining whether any information is exempt from disclosure, the Authority shall consult with the Contractor and shall take its reasonable concerns into consideration but the Authority shall determine (in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement) whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E6 Publicity, Media and Official Enquiries

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 The Contractor shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E6.3 Not used.

E6.4 Nothing in the Contract shall permit or require the Contractor or the Co-funders to make any disclosure of information which would jeopardise any commercial exploitation of the Results. Notwithstanding the provision of this clause E6.4, nothing in this agreement shall restrict or prevent the commercial exploitation of the Contractor IPR by the Contractor either during or after the Contract Period.

E6.5 Not used.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Authority shall give the Contractor upon request copies of its written security procedures.

E7.3 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third-Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
 - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E8 Intellectual Property Rights

E8.1A All right, title and interest in and to the Contractor IPR shall be and shall remain the sole property of the Contractor or its third party subcontractors/licensors. The Contractor grants the Authority a non-exclusive, non-transferable, royalty-free licence to use the Contractor IPR solely to the extent required by the Authority for the purpose of the receipt of the Services by the Contractor during the Contract Period pursuant to the Contract. Notwithstanding any other provisions of this Contract, the Authority acknowledges and agrees that the Authority is not granted any other right to the Contractor IPR and shall not copy, modify, create derivative works, sublicense, transfer, sell or otherwise use or dispose of the Contractor IPR.

E8.1B All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2A The Contractor hereby assigns:

- a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the Results. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the

date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights in the Results;

- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the Results prepared in accordance with clauses E8.1 (a) and (b),

and shall execute all documents and do all acts as are necessary to execute these assignments.

E8.2B Where the Authority acquires, by operation of law or otherwise, any right, title and interest to any Contractor IPR, such Intellectual Property Rights shall be assigned by the Authority to the Contractor on request.

E8.3 The Contractor shall:

- (a) not used;
- (b) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (c) during and after the Contract Period, subject to clauses E8.4, E8.6 and E8.7 indemnify and keep indemnified the Authority from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of clause E8.3(b), except to the extent that any such claim results directly from:
 - i) the Authority's Default under the Contract; or
 - ii) the use of the Authority Data pursuant to the Contract.

E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right as a result of a breach by the Contractor of clause E8.3(b).

E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights as a result of a breach by the Contractor of clause E8.3(b) ("Third Party IP Claim"), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and

- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3 (c) i) and ii).

E8.7 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.5 and G2.1(g)) use its reasonable endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority and if the Contractor is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E8.9A The Authority hereby grants the Contractor a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Data, including the right to grant sub-licences to its subcontractors for the purpose of meeting, and to the extent necessary to meet, its obligations under the Contract.

E8.9B Not used.

E9 Commercial Exploitation - Not Used

E10 Audit

E10.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives

such access to those records and processes as may be requested by the Authority in connection with the Contract.

E10.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E10.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E10.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E11 Tax Compliance

E11.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

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

E11.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim

arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1 Failure to meet Requirements

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F1.2 to F1.6 Not used.

F2 Monitoring of Contract Performance

F2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "Review Date"), the Authority shall carry out a review of the performance of the Contractor ("Checkpoint Review"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.

F2.4 The Authority may produce a report (a "Checkpoint Review Report") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.

F2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Checkpoint Review Report.

- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

F3 Reporting

- F3.1 Unless otherwise authorised in writing by the Authority, the Contractor shall submit an annual report (the "Annual Report") for each Project Year to the Authority in accordance with this clause F3.
- F3.2 The Contractor shall provide one hard copy of the Annual Report and one copy on either computer readable disk or e-mail in the format specified by or agreed with the Authority, no later than 4 weeks after the end of each Project Year, or, for work lasting one year or less, no later than 4 weeks after completion of the Services.
- F3.3 The Annual Report shall:
- (a) not used
 - (b) not used
 - (c) not used
 - (d) list the milestones for the relevant Project Year as set out in the Specification, indicating which milestones have been met and whether the remaining milestones appear realistic (subject to clause F4);
 - (e) not used
 - (f) not used
- F3.4 Unless Approved, the Contractor shall submit by the completion date of the Services a final report (the "Final Report") consisting of 2 hard copies and one electronic copy on either computer readable disk or by e-mail in a format specified by the Authority. The Final Report shall include the following:
- (a) the Services' code and title as set out in the Specification; the name of the Contractor; the total costs; and the Commencement Date and date of completion of the Services;

(b) not used.

(c) not used.

F3.5 Not used.

F3.6 Notwithstanding clause E6 (Publicity, Media and Official Enquiries) but subject to clause E.4, the Authority may publish the Final Report on a website provided always that any information which is Confidential Information belonging to the Contractor is redacted including (without limitation) and for the avoidance of doubt, the Contractor's Commercially Sensitive Information.

F3.7 The Authority reserves the right to reject any Annual Report or Final Report submitted by the Contractor which is not, in the reasonable opinion of the Authority, satisfactory, either in form or content, having regard to the provisions of this Schedule. If an Annual Report or Final Report is rejected by the Authority, the Contractor shall remedy any deficiencies identified by the Authority and submit a revised version at no additional cost to the Authority or the Co-funders.

F3.8 not used

F3.9 The Contractor shall, subject to reasonable notice, attend all meetings specified in the Contract or otherwise arranged by the Authority for the purpose of discussion of the Services.

F4 Remedies for inadequate performance

F4.1 not used

F4.2 not used

F4.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F4.4 If the Contractor has been notified of a failure in accordance with clause F4.3 the Authority may:

(a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

- (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F4.5 If the Contractor has been notified of a failure in accordance with clause F4.3, it shall:

- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F4.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F4.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F4.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F5 Transfer and Sub-Contracting

F5.1 Except where clauses F5.5 and F5.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F5.2 The Contractor is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F5.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E10 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

F5.4 If the Authority has consented to the award of a Sub-Contract the Contractor shall ensure that:

- (a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
- (b) the Sub-Contractor includes a provision having the same effect as set out in clause F5.4 (a) in any Sub-Contract which it awards; and
- (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.

F5.5 If the Authority believes there are:

- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Contractor shall replace or not appoint the Sub-Contractor; or
- (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.

F5.6 Notwithstanding clause F5.1, the Contractor may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F5.6 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F5.7 and F5.8.

F5.7 If the Contractor assigns the right to receive the Price under clause F5.6, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F5.8 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

F5.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

F5.10 Subject to clause F5.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;

- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F5.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F5.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F5.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F5.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause F5 both such bodies being referred to as the "Transferee"):

- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F5.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F5.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F6 Waiver

F6.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any

right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F6.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4.2 (Notices).

F6.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F7 Variation

F7.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 7.

F7.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price or any other term of the Contract is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F7.3 Not used.

F7.4 No Variation will take effect unless and until recorded in a validly executed CCN. Execution of a CCN shall be made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

F7.5 A CCN takes effect on the date both Parties communicate acceptance of the CCN via Bravo and, on the date it communicates its acceptance of the CCN in this way, the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

F7.6 The provisions of clauses F7.4 and F7.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

F8 Severability

F8.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such

provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F9 Remedies Cumulative

F9.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F10 Entire Agreement

F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F11 Counterparts

F11.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clauses D1 or E4; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the

Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract

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G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.5 Subject to clause G1.3, the Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a direct result of a Default by the Contractor:

- (a) any reasonable additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any reasonable wasted expenditure or charges;
- (c) not used;
- (d) any reasonable compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any reasonable costs incurred by the Authority in defending any proceedings which result in such fine or penalty

provided always the Authority has used all reasonable endeavours to mitigate such expenditure, costs and charges.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information.

- G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - (b) in entering the Contract it has not committed any fraud;

- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
 - (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 Where, as a result of a Force Majeure Event:
 - (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:

- i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“Change of Control”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction.

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;

- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1 Either Party may terminate the Contract with immediate effect by notice if the other Party commits a Default and:

- (a) has not remedied the Default within 25 Working Days, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails

to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Termination on Notice

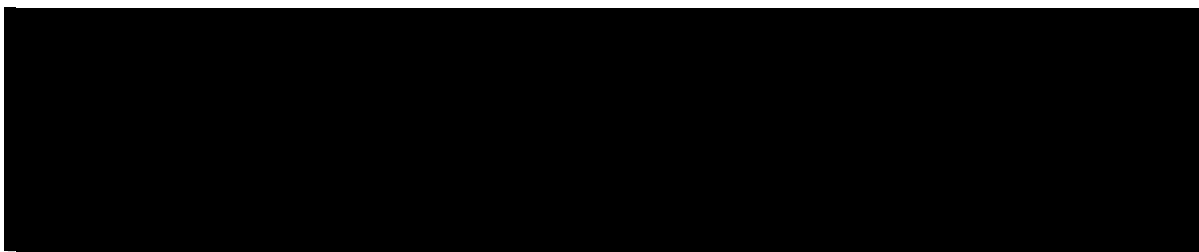
H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.

H4 Other Termination Grounds

H4.1 Not used.

H5 Consequences of Expiry or Termination

H5.1



H5.2 If Contract is terminated under clauses H2 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual

Property Rights), E10 (Audit), F10 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
 - (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) not used;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately

understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H7.2 Not used.

H8. Not used.

H9 Exit Management

H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor.

H10 Exit Procedures (Not Used)

H11 Knowledge Retention (Not used)

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the

Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;

- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 - SPECIFICATION

This Schedule includes a copy of the Authority's ITT and the Contractor's submission in response thereof. For the avoidance of doubt, in the event of any conflict or inconsistency between the Authority's ITT and the Contractor's submission, the Contractor's submission shall prevail.

Authority Requirements as set out in the ITT:

This Section sets out the Authority's requirements.

Term	Definition
EA	Environment Agency
FC	Forestry Commission
MHCLG	Ministry for Housing Communities and Local Government
LPA	Local Planning Authority
NE	Natural England
LPAs	Local Planning Authorities
SOF	Shared Outcomes Fund

Background

Defra, working with agencies and MHCLG, is delivering an innovative nutrient trading pilot project in the Solent area over two years (2020-2022).

The Solent is home to a range of nationally and internationally important habitats and bird species for which it has been designated. However, many of these sites are in unfavourable condition due to excess nutrients (particularly nitrogen) in the water from a range of sources, including agriculture and wastewater. NE has advised local planning authorities that demonstrating 'nutrient neutrality' (i.e. zero net impact on nitrogen pollution of the protected sites for 80+ years) is a way of allowing development to proceed, while ensuring it does not further damage the condition of the protected site features. This can be achieved through various means, including by securing proportionate nitrogen reduction elsewhere in the catchment by taking land out of intensive agricultural use and

creating habitat for wildlife. NE has published a [‘nutrient neutral’ method and calculator](#)¹ and actively advises local authorities and developers.

There is an estimated backlog of at least 5,500 houses (at least partly due to nitrogen pollution) across the Solent catchment awaiting planning permission; a lack of offsite mitigation has meant some developments have struggled to demonstrate ‘nutrient neutrality’.

The Authority is piloting a nutrient trading process to enable developers and local planning authorities in need of nitrogen pollution mitigation solutions to connect via an online platform with farmers and land managers able to provide such solutions. For example, farmers who are willing to take some of their land out of intensive agricultural production and commit it to woodland or wetland for at least 80 years. The pilot, funded through Government’s Shared Outcomes Fund, will test the feasibility and cost effectiveness of this approach, using a trading process, and explore how multiple benefits for people and nature can be maximised. This approach will bring together relevant local actors - house builders, developers, local authorities, landowners (including farmers and wildlife organisations) - and statutory bodies (NE and EA).

If successful, the pilot will unlock housing delivery whilst delivering wider environmental benefits; the Authority would then look to roll out the approach to other parts of England.

The Solent Nutrient Trading Pilot project commenced in late 2020 and runs through to September 2022). It consists of four key work packages:

Stakeholder engagement (including a recently completed rapid user research phase, see summary of results in Annex E) – to understand user needs and inform the design of the trading process

Water quality modelling and opportunity mapping – to better understand pollution sources and pathways and opportunities to deliver wider benefits (e.g. natural flood risk management). Phase one of this ongoing work will be completed before successful contractor is in place.

Development and implementation of online nutrient trading platform and associated trading process/rules and governance – drawing on evidence from the two work packages above - the contract The Authority are procuring here.

Monitoring and evaluation – contractor should be in place.

These workstreams are interconnected and findings from workstreams 1, 2 and 4 will be shared with the selected contractor. The selected contractor will be expected to make the most of the data and insights generated from the other workstreams to inform an effective and appropriately targeted approach.

If this pilot is successful, The Authority will look to continue implementation of the trading approach in the Solent area and also consider roll out of the approach to other parts of England facing similar challenges. The Authority would like to explore the potential for the private sector to take a lead role in taking this forward.

¹ www.push.gov.uk/2020/06/11/natural-england-published-nutrient-calculator-and-updated-guidance-on-achieving-nutrient-neutral-housing-development/

Project Aim

The objective of the project is to pilot a trading process², supported by an online trading platform, for long term (80 years+) land use changes for nitrogen pollution mitigation in 2021/22 in the Solent area. The Authority is seeking a suitable/experienced supplier to work closely with partners and other contractors to develop and pilot this market-based approach.

The Authority expects that pilot and nutrient trading process will:

- enable developers in need of nitrogen mitigation solutions to connect via an online platform with land managers able to provide such solutions
- test the feasibility and costs of establishing a catchment market for nitrogen mitigation credits (and potentially others types of environmental credits) from nature-based mitigation, including the willingness of land owners to commit to provide long term mitigation solutions at a competitive price (relative to other potential mitigation solutions), using a trading process i.e. a proof of concept and 'price discovery' exercise – can Authority develop a competitive private market in nitrogen mitigation credits in the Solent area, facilitating 'nutrient neutral' development and thus unblocking housing delivery whilst avoiding further harm to internationally important protected sites?
- explore how multiple wider benefits for people and nature can be delivered by these projects e.g. for flood risk, biodiversity, public access to nature and/or carbon sequestration

The Authority is keen to work with the successful contractor to explore the scope to trade biodiversity net gain units (generated as a co-benefit of commitments agreed at nitrogen mitigation sites) alongside the nitrogen mitigation credits.

Further details of what commodities the Authority anticipate being traded in the market, who will participate with what responsibilities, and the market process are included in Annex A.

The Specific Objectives for the Trading Process

To increase the supply of credits from long-term (80+ year) land-use changes that offset increases in nitrogen entering the Solent due to new building developments, thereby unlocking 'nutrient neutral' housing delivery.

Provide competitively priced credits to developers/LPAs while ensuring landowners are reasonably compensated.

Small developers should not be disadvantaged.

The mechanism should be flexible enough to allow other benefits (e.g. biodiversity, carbon sequestration), to also be traded now or later (noting the advantage of this in terms of maximising surplus and thus exchanges between sellers and buyers and benefits for all market participants).

The trading process should be auditable and transparent.

² Reverse auction or similar trading process that can establish efficient prices for nature-based nitrogen mitigation projects so that impacts of mitigation costs on development viability are minimised.

The trading process should be designed in a way that it encourages the participation of land owners and developers/LPAs e.g. it should be relatively easy to understand and perceived as 'fair' to all participants.

The trading process and platform should be designed to facilitate application to other geographical contexts.

Within the constraints imposed by other objectives, the market will seek to maximise the 'surplus' generated by the exchanges facilitated by that market so as to maximise market exchanges and benefits for all.

Project Tasks and Deliverables

Specific deliverables outlined below will be required from the successful Tenderer during the course of this project.

The Authority envisages that the tasks outlined below will be delivered as separate activities, but with the potential for elements of the different tasks to be undertaken in parallel.

Below are detailed the key, deliverables and milestones within the project. Although the Authority is happy to consider proposed innovations by Tenderers on this:

Task 1: Develop, agree and deliver a detailed marketing/promotion plan for the pilot project and undertake stakeholder engagement (including dissemination of guidance to different user groups) in accordance with this plan, building on the rapid user research already completed (see summary of findings attached separately) and complementing ongoing follow-on engagement activities being undertaken by NE and Defra (details of this to be shared with selected contractor). This work will need to be coordinated with the NE engagement lead, under the oversight of the project steering group.

The approach must bring together relevant local stakeholders - house builders, developers, local authorities, landowners (including farmers and wildlife organisations) - regulatory and statutory bodies (NE, EA and FC).

NE will provide ongoing support, including by encouraging farmers to engage in the process and advising farmers unfamiliar with the land use changes required how to optimise their offer e.g. in terms of location, type of measure or how it is implemented.

The aims of task 1 are to: ensure the design of the trading process and online platform is fully informed by an understanding of user needs and requirements; effectively prepare users for participation in the pilot; and drive support for and participation in the pilot from all three user groups.

Deliverable 1: Marketing/promotion plan; market/promotion engagement activities; guidance/FAQs for different user groups (building on early draft products shared with users by NE). [completed by September 2021]

Desired Outcomes: Built trust of key stakeholders; engendered widespread interest in participating in or learning from the pilot project; learnt stakeholder preferences/needs for the design of the process and online platform.

Task 2: Develop and agree a detailed plan for how the pilot nutrient trading process using the online platform (Task 3) will be implemented, using as a guide the details in Annexes A-C, the specific objectives for the trading process (above) and the attached paper from Exeter University.

The approach should also be informed by separate water quality modelling and opportunity mapping work currently underway (Defra will share details with selected contractor; iteration will be required, and a timeline agreed for sharing information/products between projects). Where possible the Authority would encourage nitrogen mitigation sites that also deliver wider ecosystem service benefits for flood risk, biodiversity, public access to nature and/or carbon sequestration. A linked project will deliver opportunity mapping and scoring of such benefits for land use changes in different locations. The contractor should periodically use the most recent data from this project, in combination with data on nitrogen pollution 'hotspots' from water quality modelling, to focus engagement with land owners on particular locations – thereby seeking to maximise pollution mitigation and wider environmental benefits.

This plan should set out the end to end process, demonstrating how the selected contractor will act as the market operator (with support/oversight from NE and Defra). It should include (non-exhaustive list):

marketing and promotion activities (task 1)

bid/offer development support to users so that bids and offers can be successfully collected and verified – potentially starting with a formal EOI stage for potential buyers and sellers.

data and inputs required and when (e.g. GIS shapefile for auction Area(s); mapping of areas within this target area that are appropriate for nitrogen mitigation measures, including highest priority areas and locations where wider benefits would be maximised³; method, including NE

support/verification, for calculating nitrogen mitigation; mitigation measures specification sheets; upper price limit per unit of pollution mitigation;

standardised contract with farmer; FAQs

developing, testing and applying key trading rules e.g. an appropriate winner-determination rule and pricing rule (see Exeter paper for detailed advice)

developing and testing the trading process format and moderation of bidding process (to be agreed with Defra e.g. when will the market round open and how long will it open for; one-shot format or ability for suppliers to amend bids, etc)

managing payment transfers from buyers and agreeing contracting

arrangements with LPAs/Defra (to ensure mitigation benefits are secured for 80 years or more)

monitoring outcomes and reporting, including disseminating feedback on market outcomes to stakeholders

other documents to be provided (e.g. Contract Terms & Conditions; Privacy Notice of Authority running auction (GDPR); Data sharing agreement)

dispute resolution?

³ To be generated through linked mapping and modelling work being led by EA.

Deliverable 2: Detailed plan for pilot implementation, including clear mapping of end to end process. [by October 2021]

Desired Outcome: Roles and requirements for implementing the pilot are clear.

Task 3: Building on Task 2, adapt an existing online trading platform to deliver the functionality required for this project in a user-friendly format (Annex A sets out further information on design principles/expectations).

The Authority understands there are existing trading platforms that could be adapted to meet the needs of the Solent, thus minimising cost and time to develop and launch.

Deliverable 3: Fully functional online platform that supports delivery of the trading process in accordance with the plan developed in Task 2. [by October 2021]

Desired Outcome: Online platform is ready for testing

Task 4: Develop, test with users and finalise/agree guidance/FAQs and support for different users on engaging in the pilot project and how the platform works, building on the early draft guidance products that NE has already shared with stakeholders. The successful contractor, acting as the broker/auction operator, is expected to work closely with NE's engagement lead and build on the engagement in Task 1. For example, guidance should clearly explain how people can get involved and provide steers regarding key parameters such as types of nitrogen mitigation measure preferred (including solutions that can demonstrate wider benefits and potentially also generate BNG units), assessment criteria, minimum requirements to participate, spatial locations to be prioritised and upper price limit per unit of mitigation provided.

Deliverable 4: Guidance for different user groups. [by October 2021]

Desired Outcome: Different user groups are clear about how the pilot project will work, anticipated mitigation options and how to get involved.

Task 5: Test and iterate the trading platform and wider process, including through dummy runs of whole trading process, working closely with NE as the ultimate arbiter of appropriate nitrogen mitigation solutions.

The Authority will encourage significant user testing with selected representatives of key user groups e.g. farmers, LPAs, developers.

Deliverable 5: Refined process and platform functionality. [by November 2021]

Desired Outcome: Online platform is ready to pilot trading process

Task 6: Deliver the pilot trading process for long term nitrogen mitigation measures (80+ years), working closely with NE, LPAs and wider stakeholders, that attracts land owners willing to provide such measures and developers seeking offsite mitigation, demonstrating the functionality of the online platform and wider trading process/rules, testing the appetite

of users to participate and discovering the price land owners are willing to offer to provide this service.

Deliverable 6: Implementation of trading process for long term nitrogen mitigation in the Solent area; nitrogen mitigation sites/measures agreed and funded providing credits to developers. [by March/April 2022]

Desired Outcomes: Concept tested; price discovery completed; nitrogen mitigation secured on multiple sites through appropriate legal agreements, unlocking delivery of identified development schemes.

Task 7: Deliver and agree a high quality final report presenting an overview of the process used, the data captured through the platform and a comprehensive assessment of the outcomes of the pilot, lessons learned and next steps - including clear recommendations for ongoing implementation in the Solent area, and for wider roll out in other parts of England facing similar challenges (e.g. ongoing need for marketing and knowledge exchange). How could the private sector take this up in the longer term and what would be the role of government?

Deliverable 7: Final report; input to wider work on monitoring and evaluation. [August 2022]

Desired Outcomes: Full evaluation of the pilot project, including lessons learned and recommendations/next steps for roll out of this approach if the pilot proves successful.

Reporting Requirements

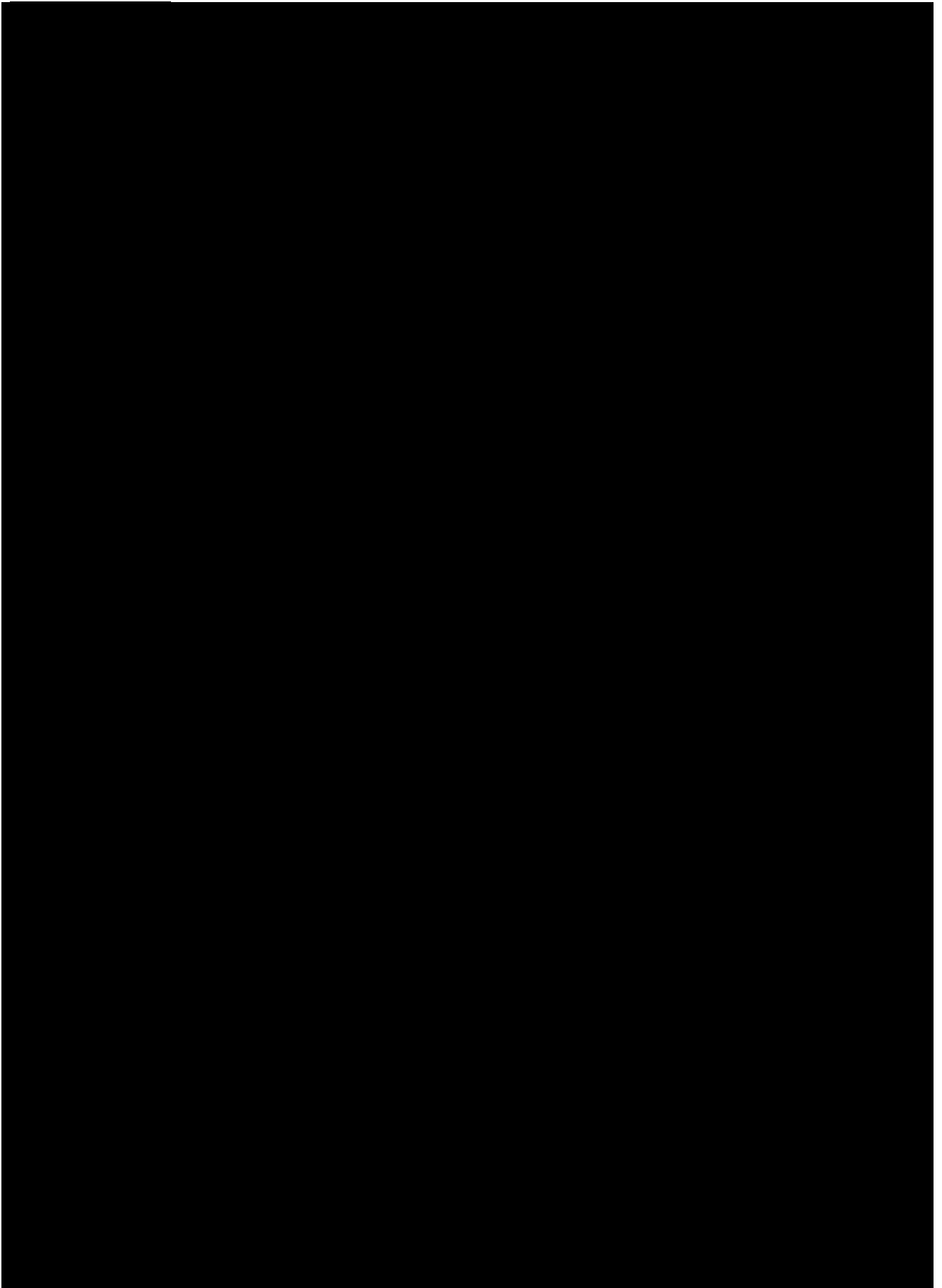
The successful contractor will work closely with the project governance structure within Defra. This will include regular meetings with the Authority to share information, update on progress and review/sign off deliverables. More formally, findings and progress updates will be reported at monthly intervals and shared with the Authority.

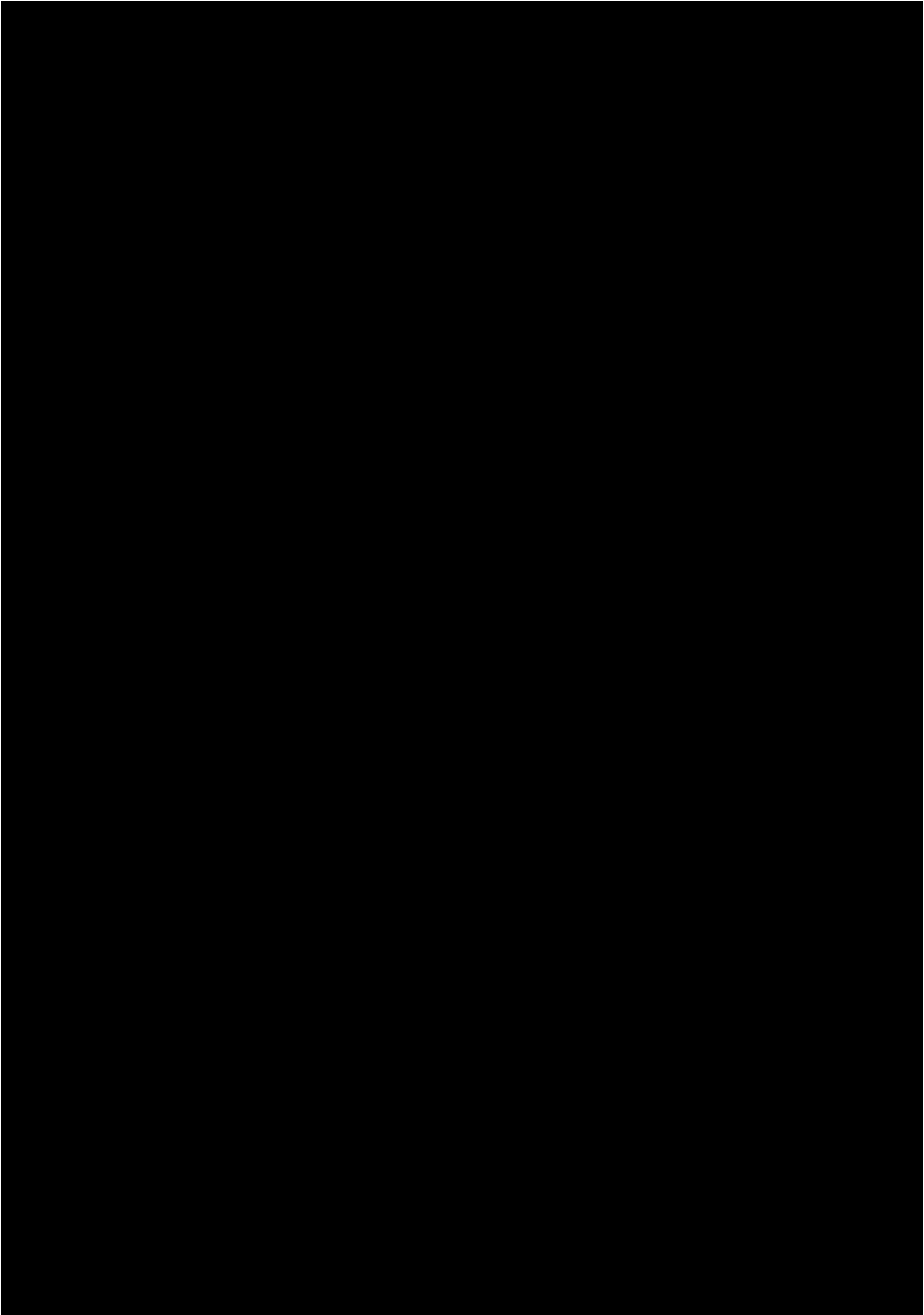
The final report (deliverable 7) must make clear recommendations on if and how the approach could be taken forward in the Solent and comment upon transferability to other contexts. This will include lessons learned and how benefits realisation beyond the pilot project timescales could be taken forward, including by developers, local authorities and landowners, to demonstrate the environmental benefits delivered by development.

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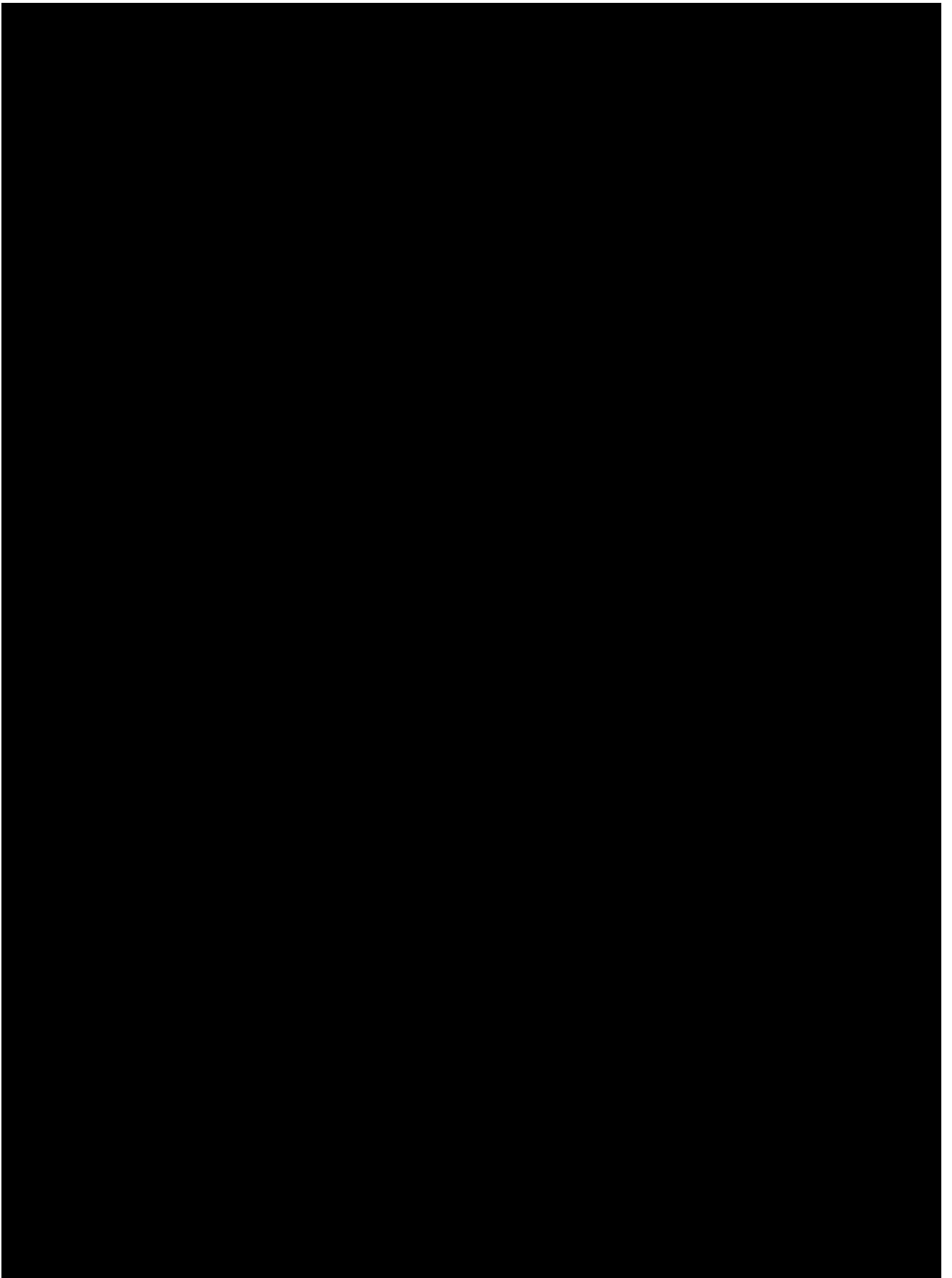
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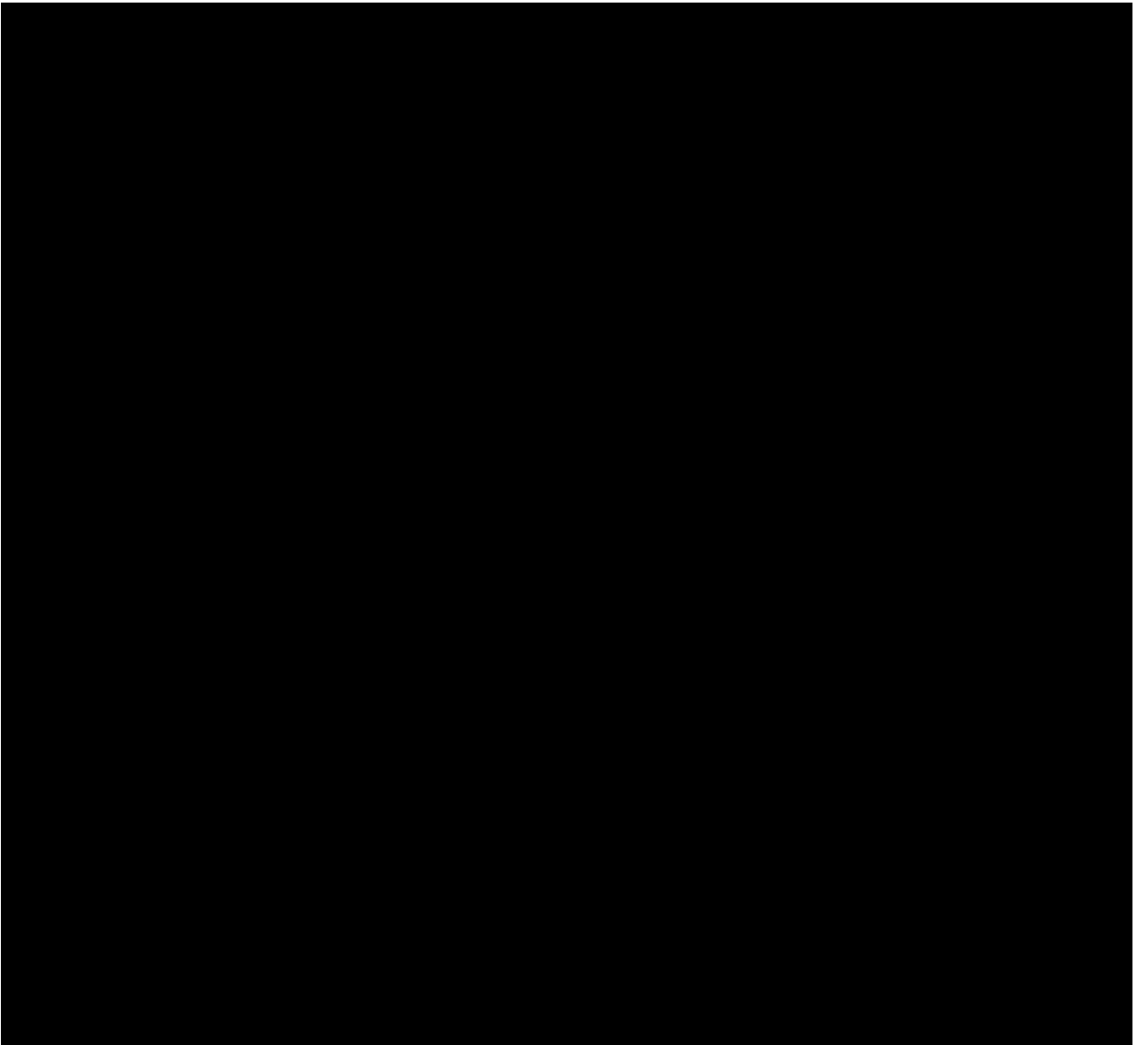
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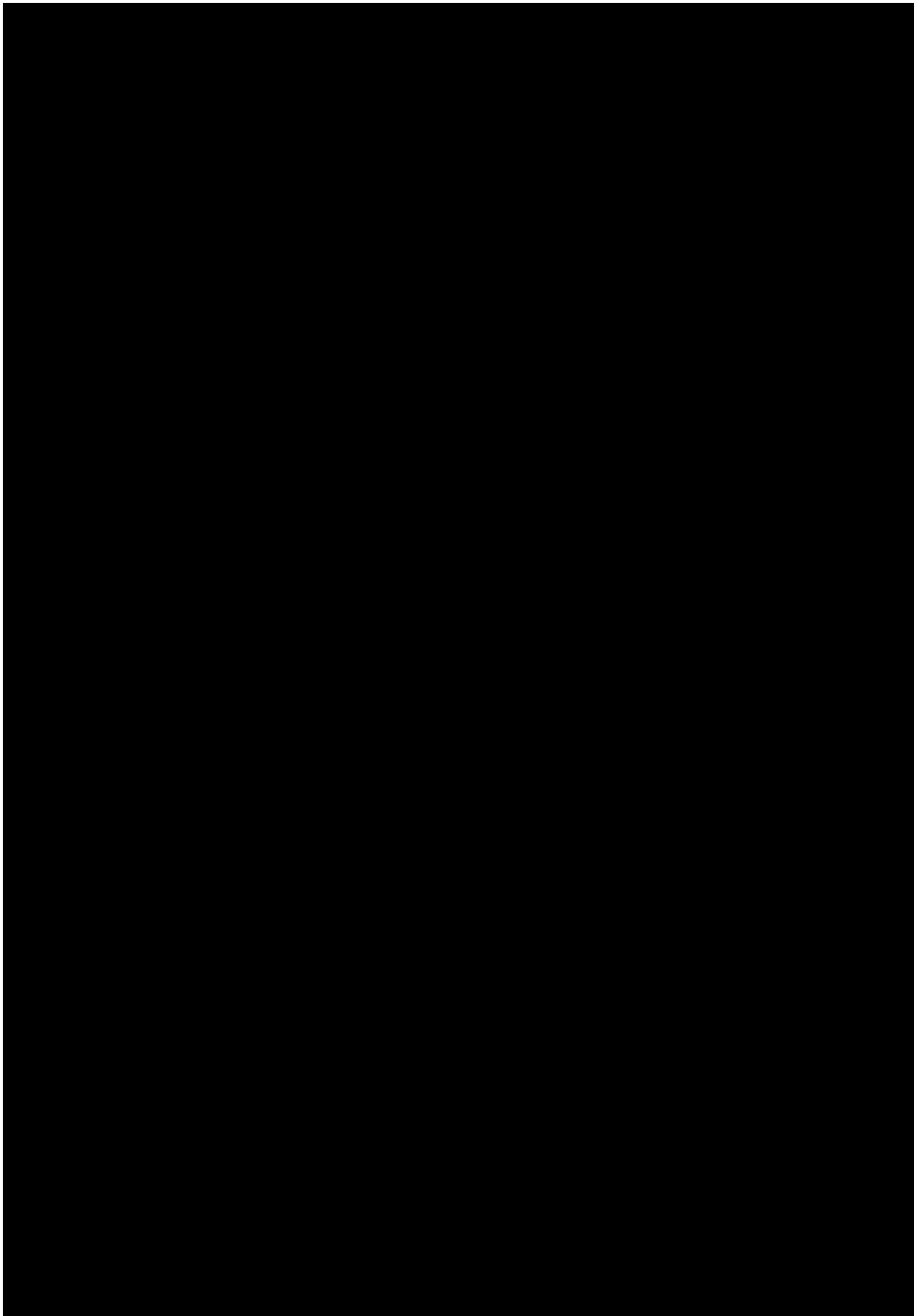


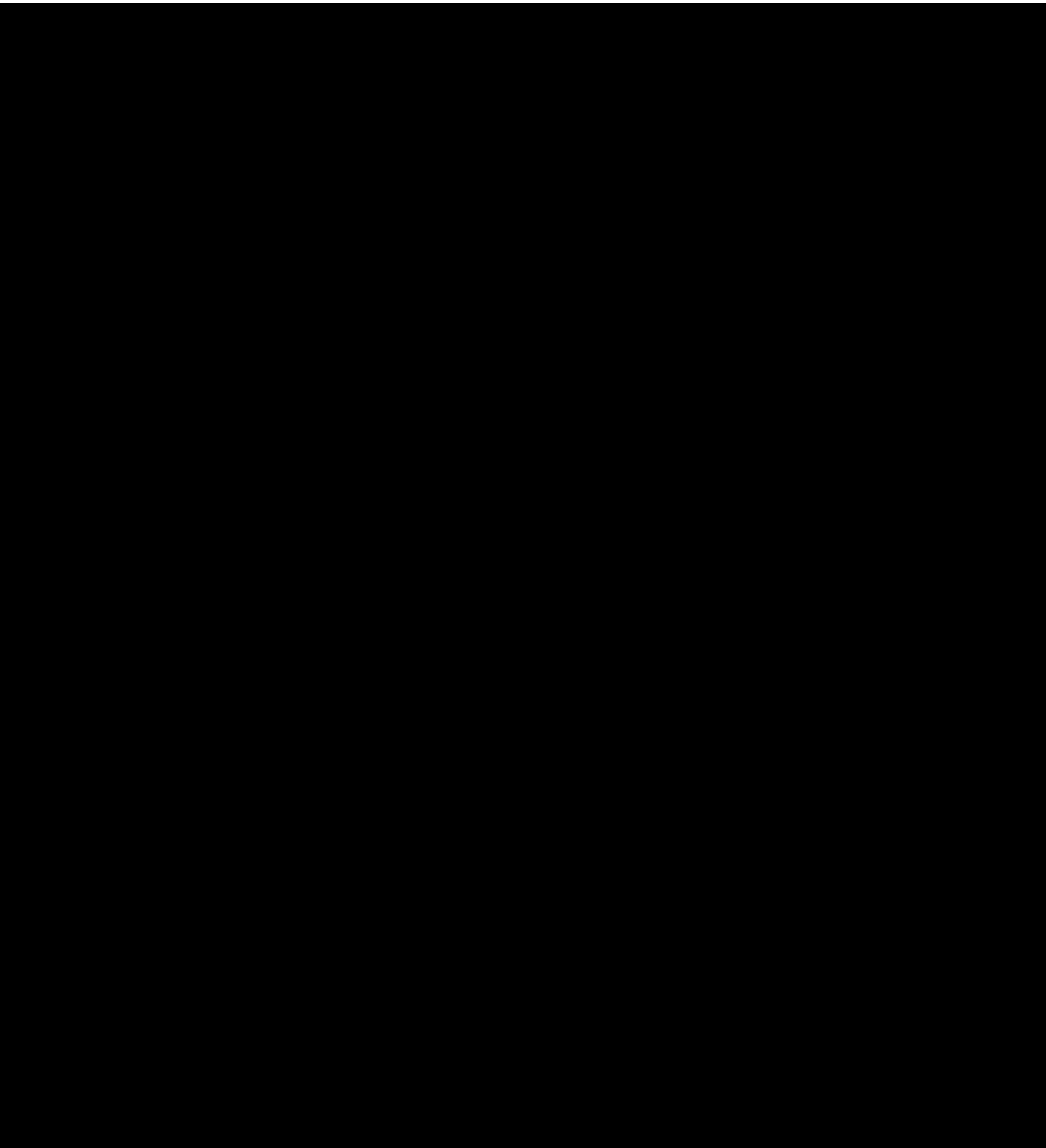




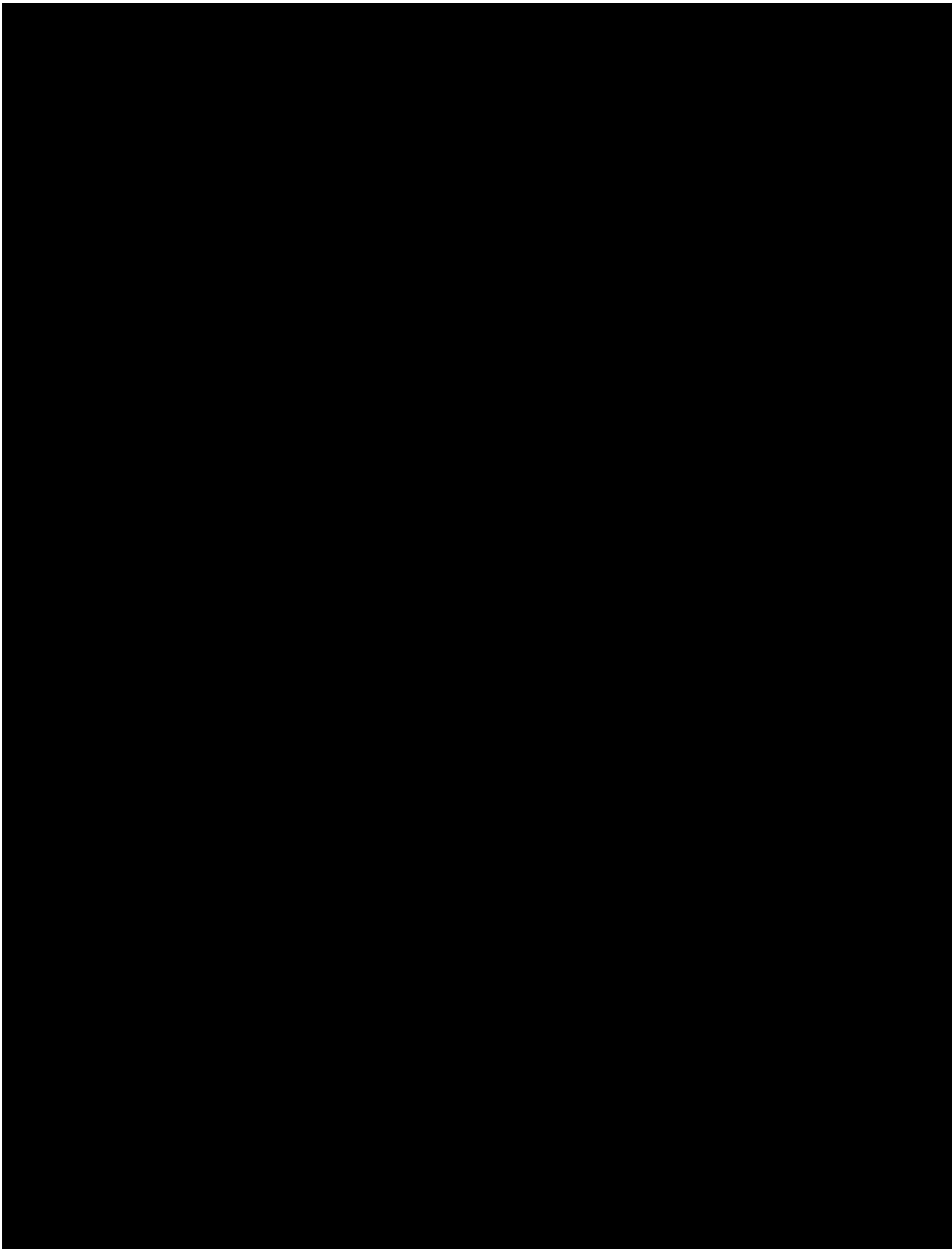








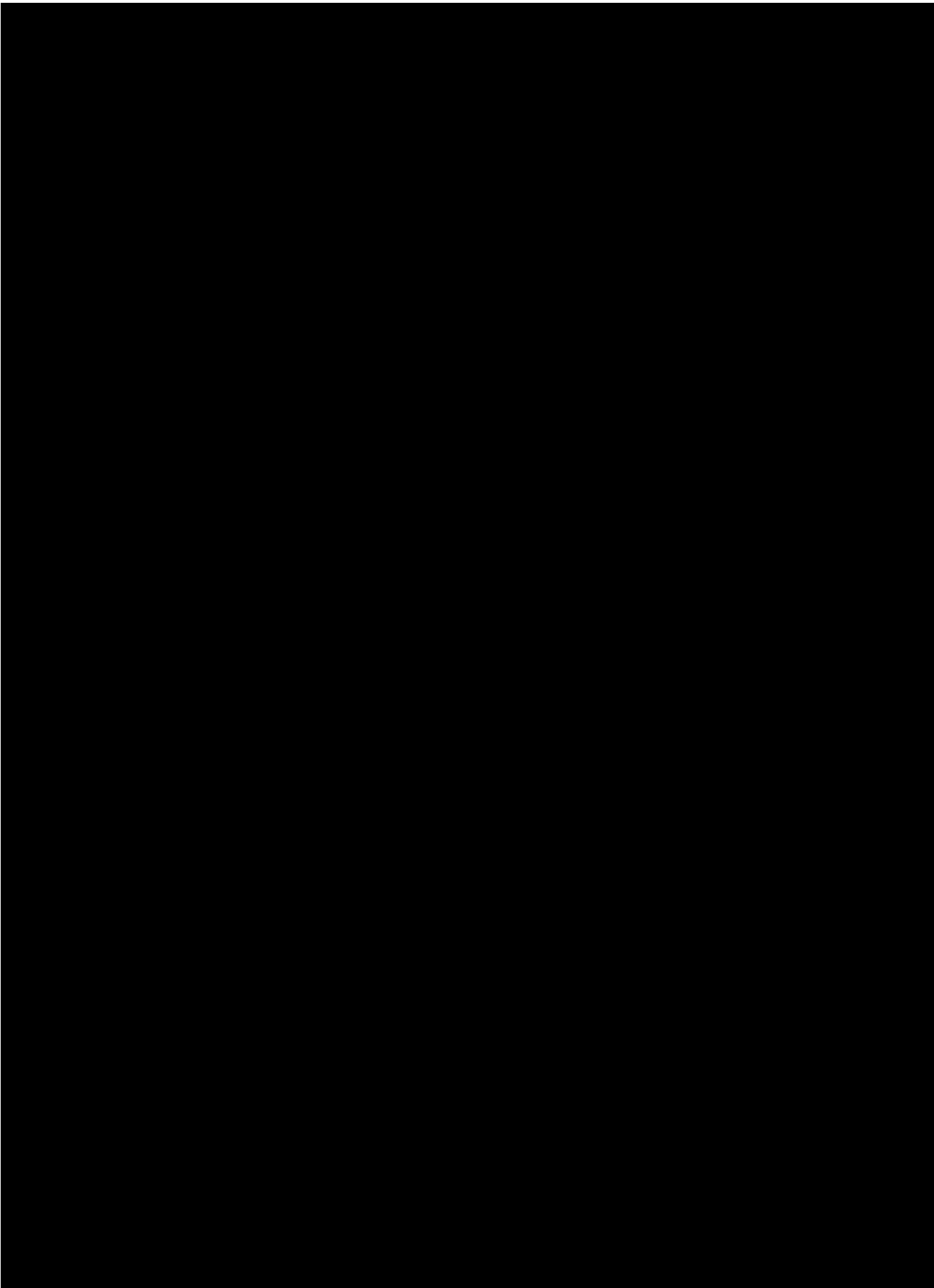


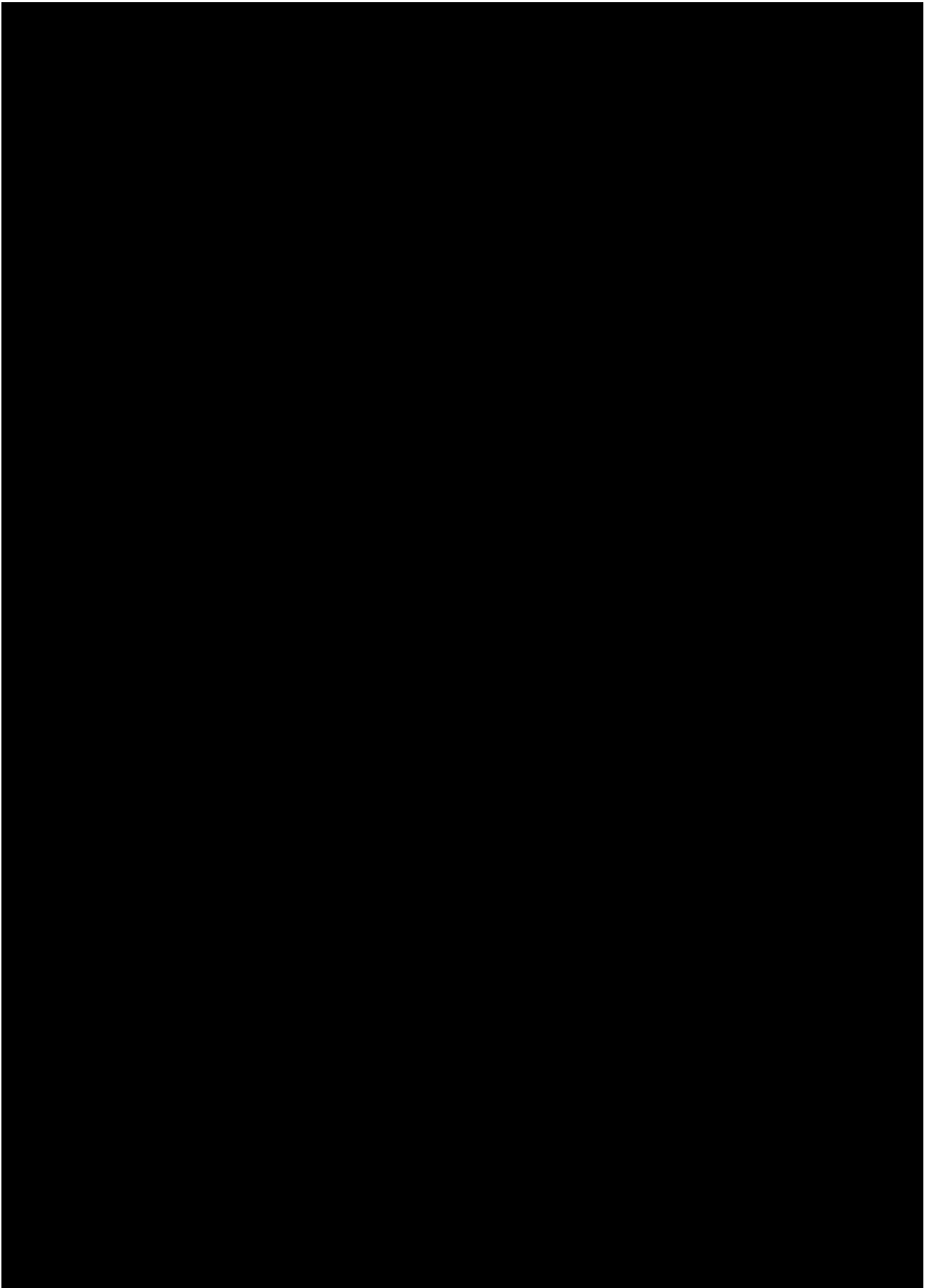


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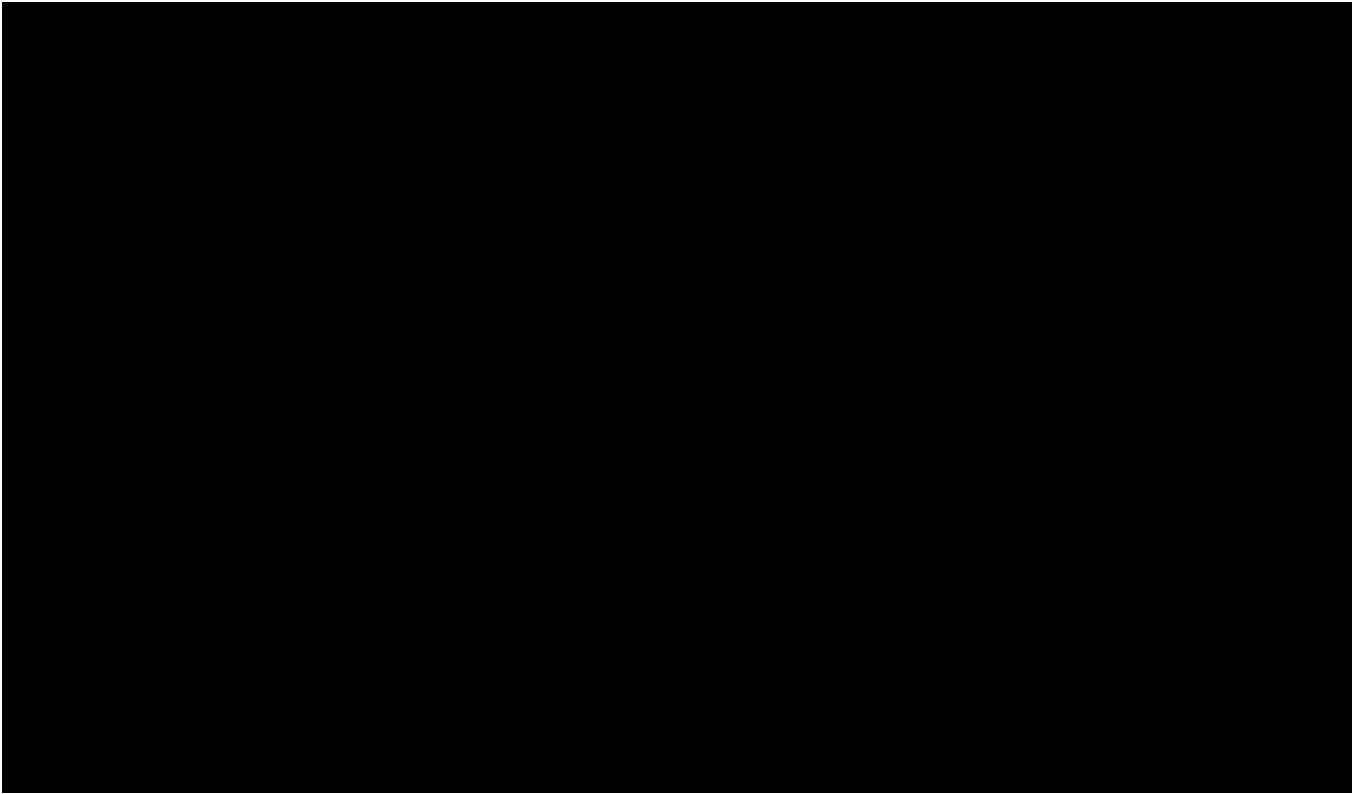
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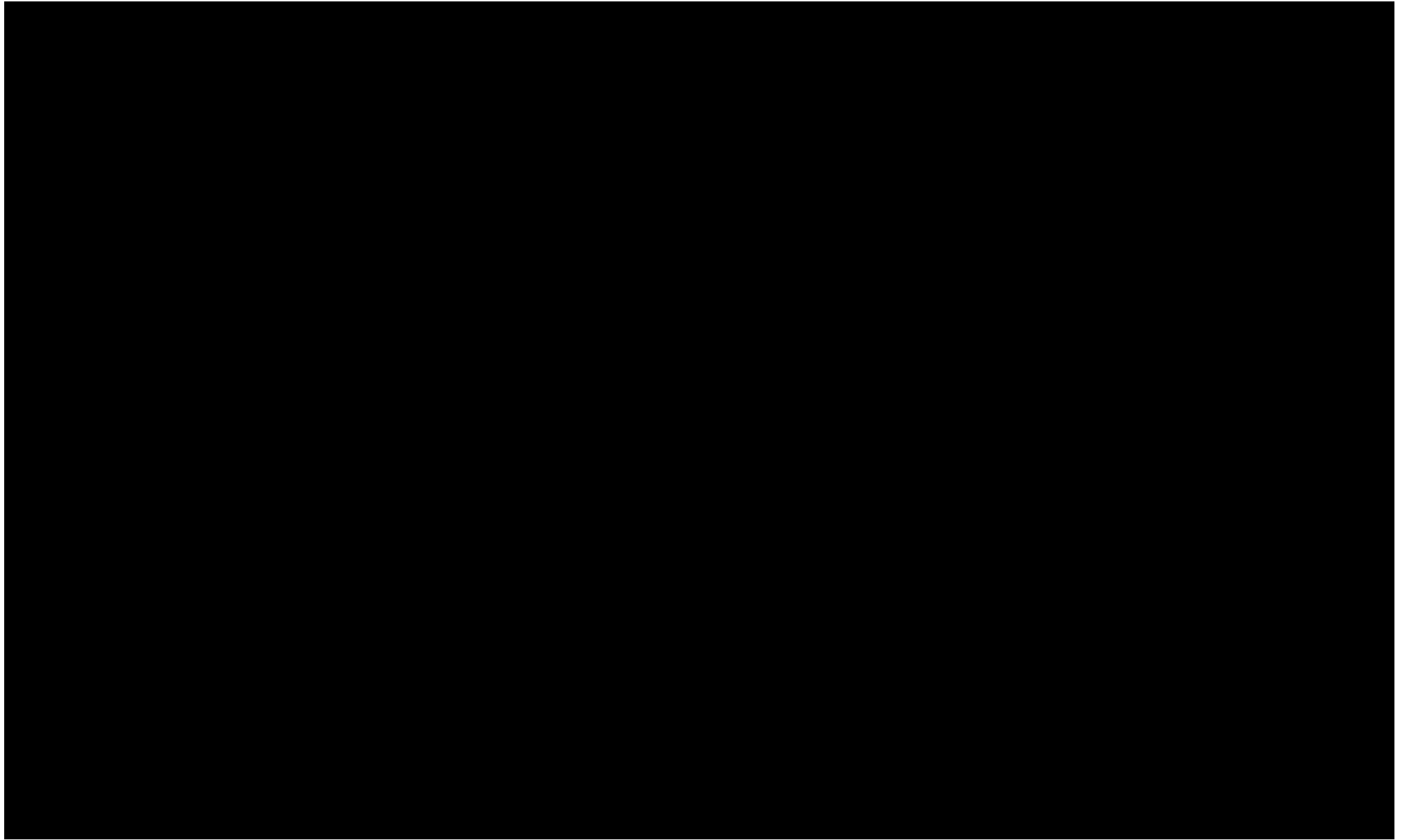


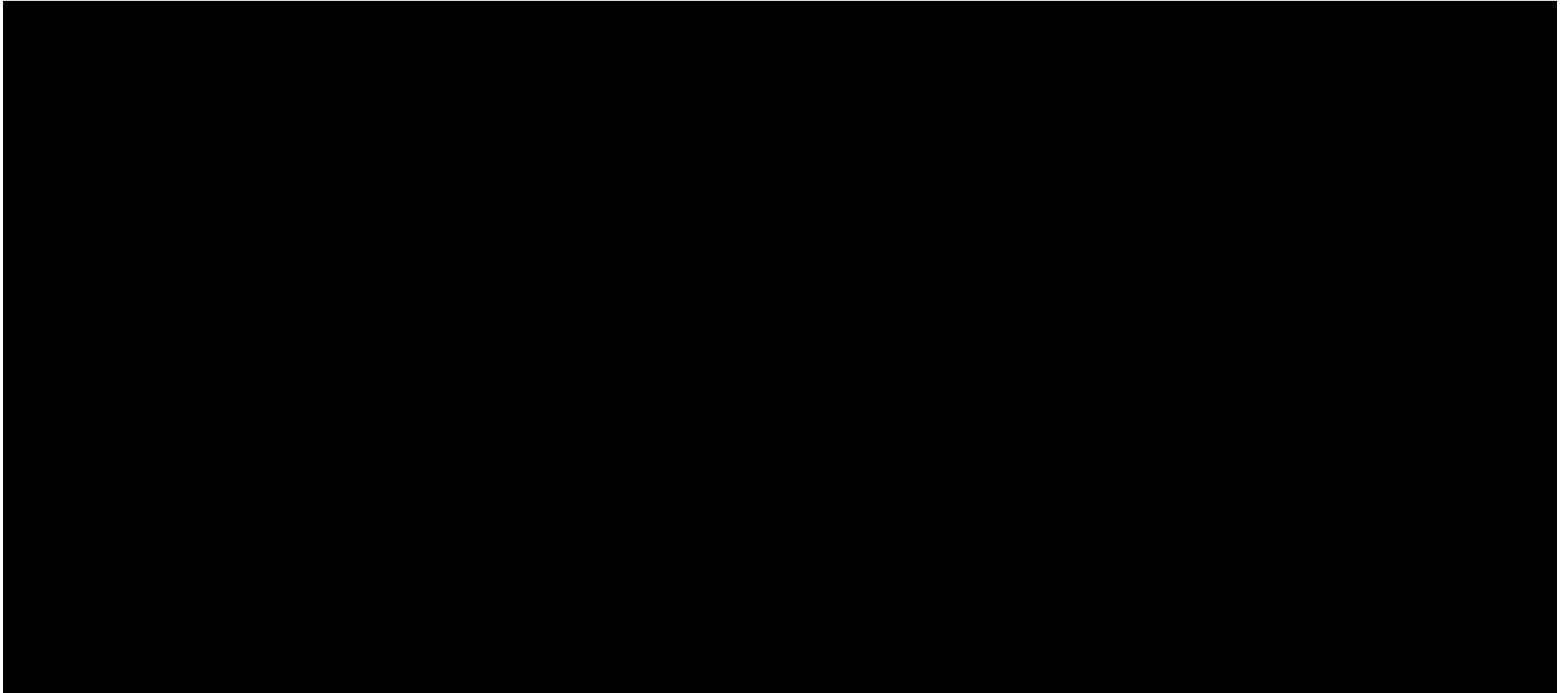


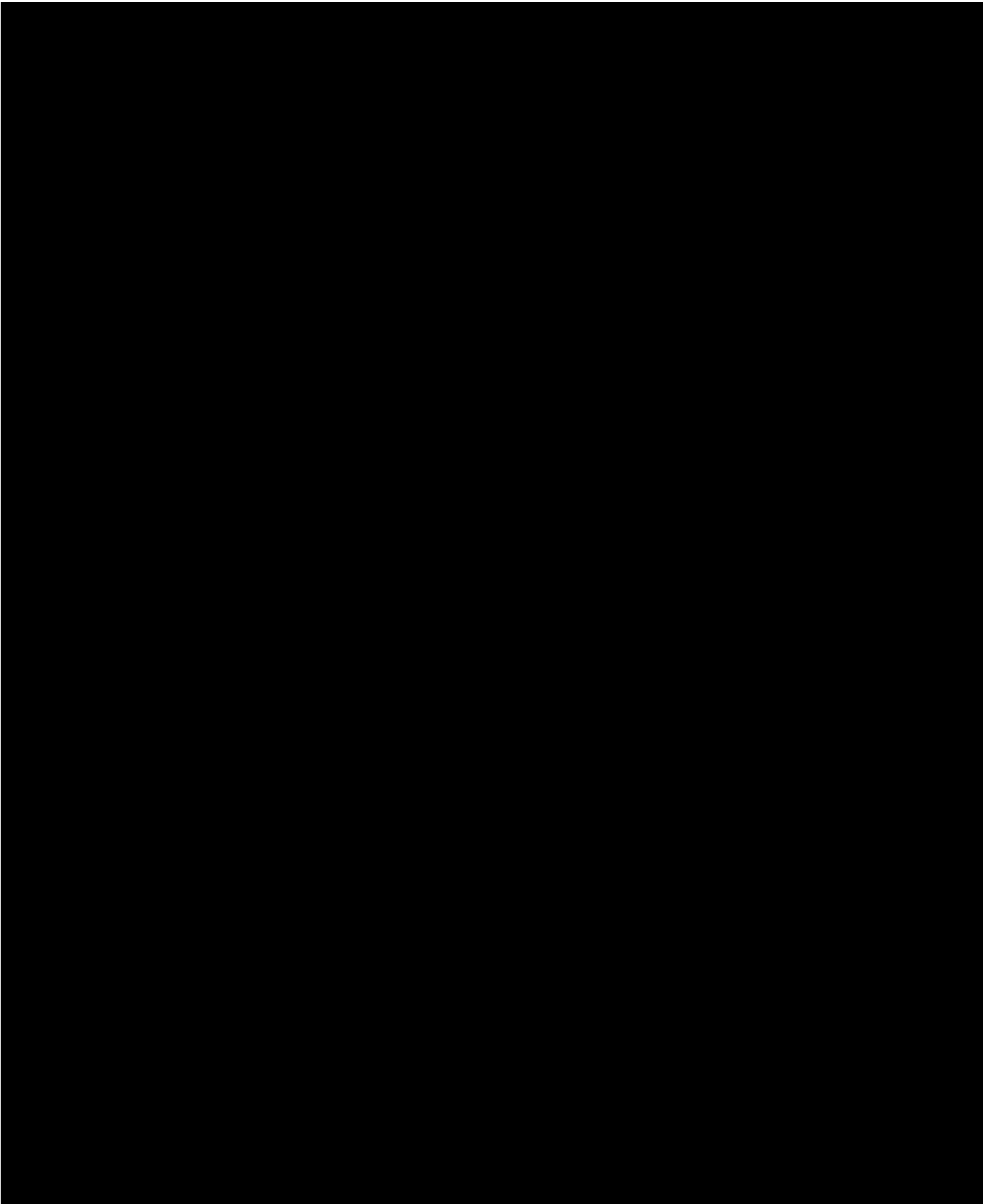
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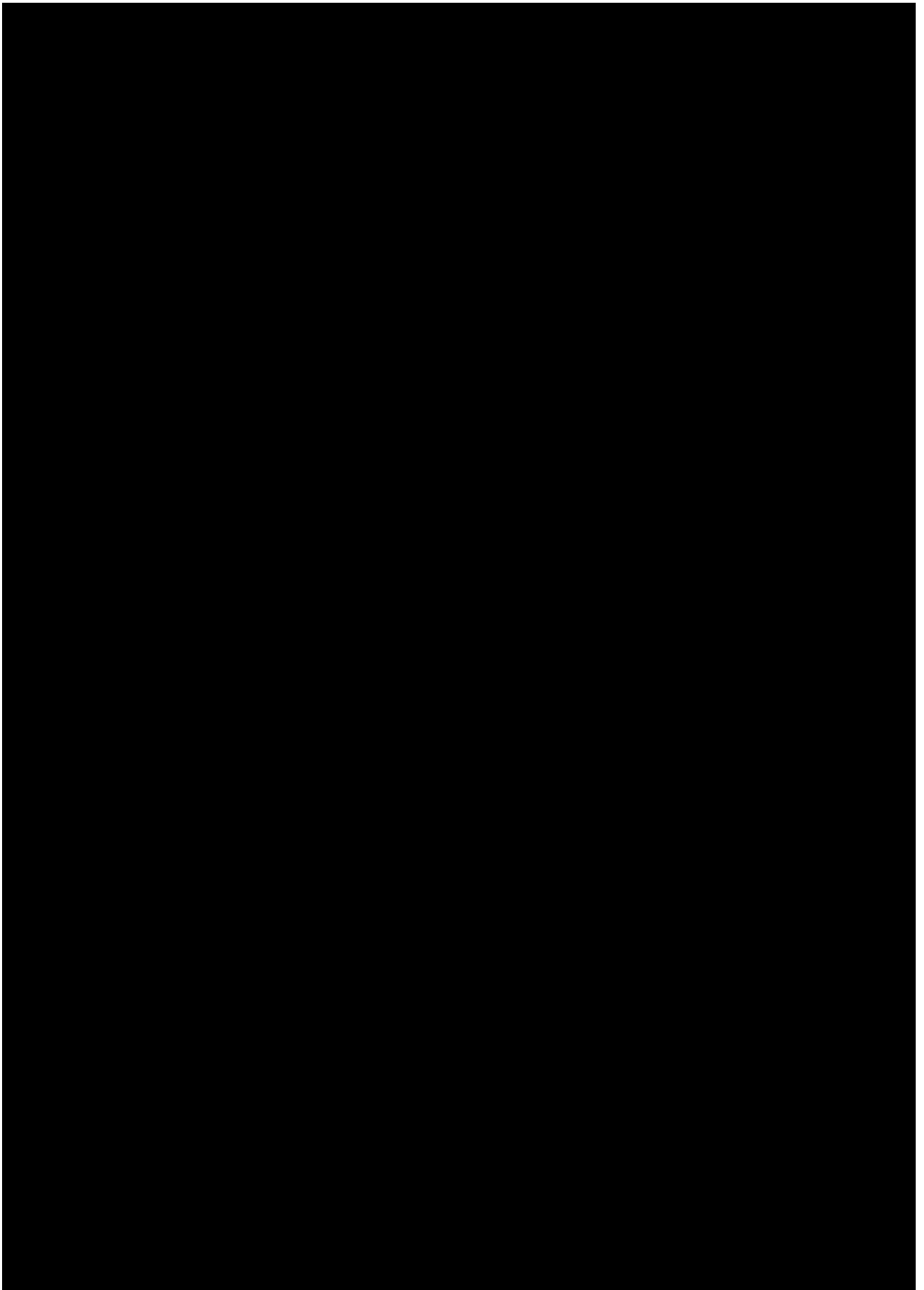
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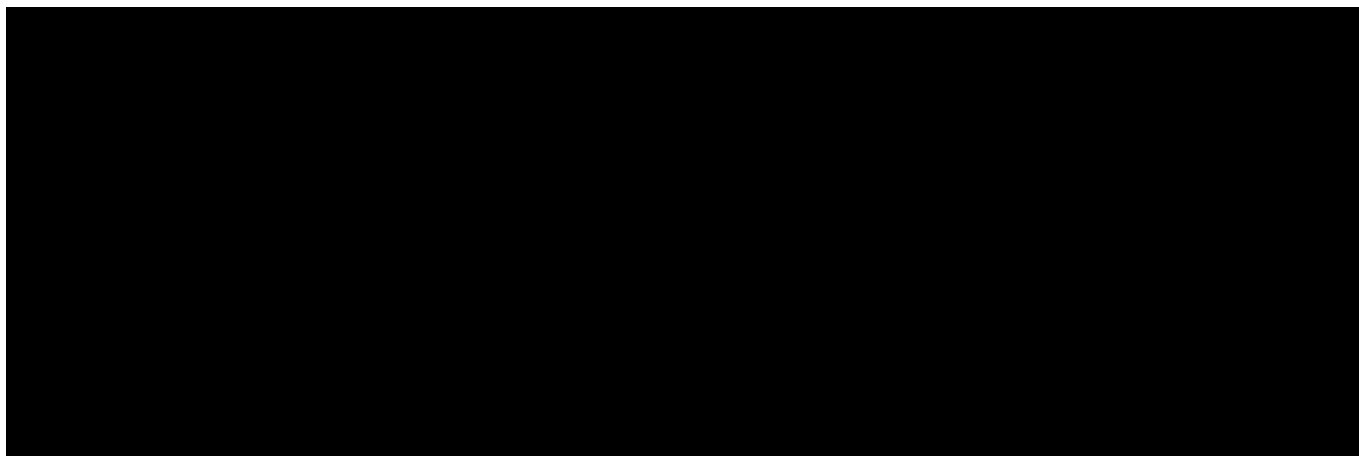
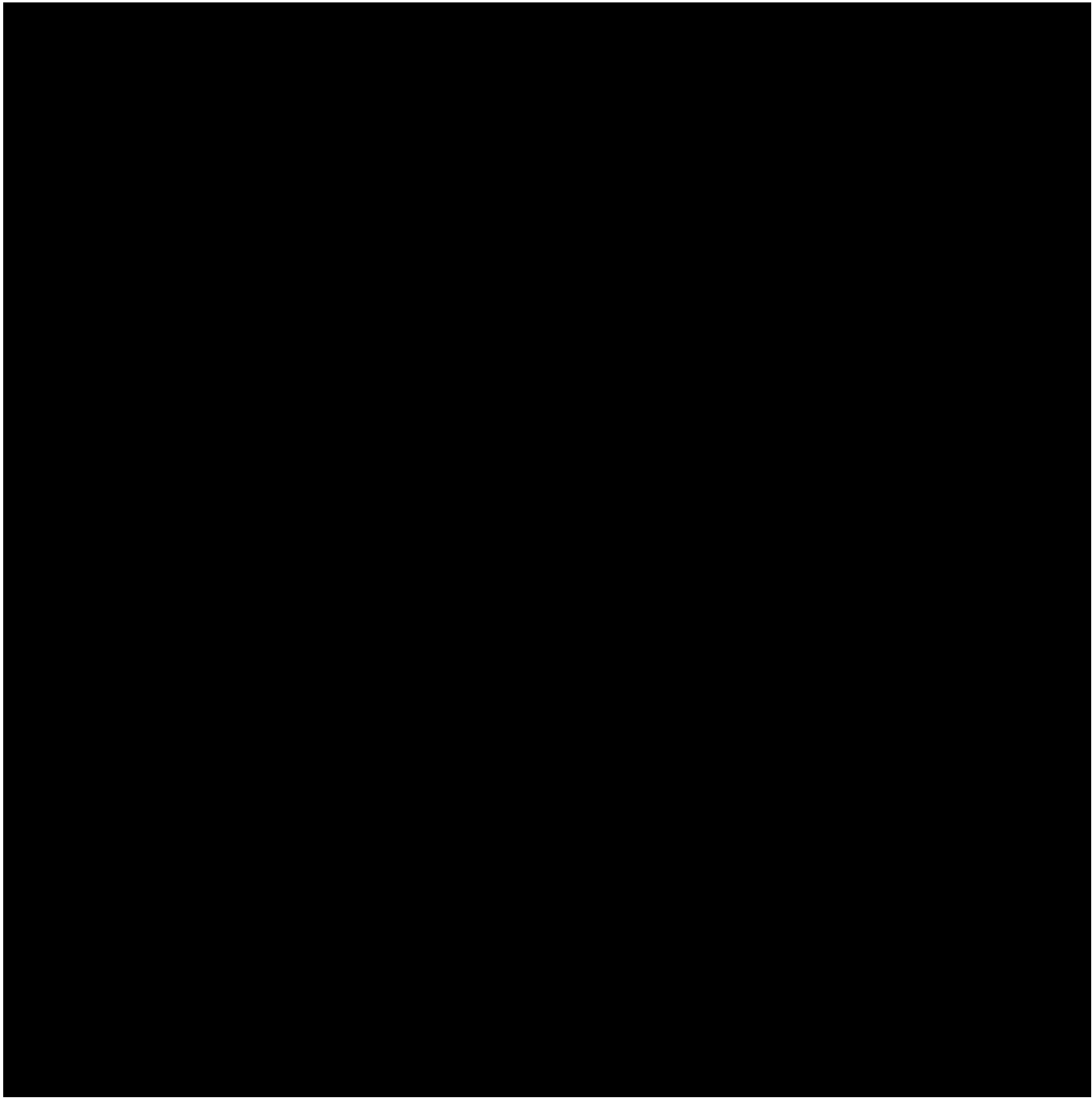


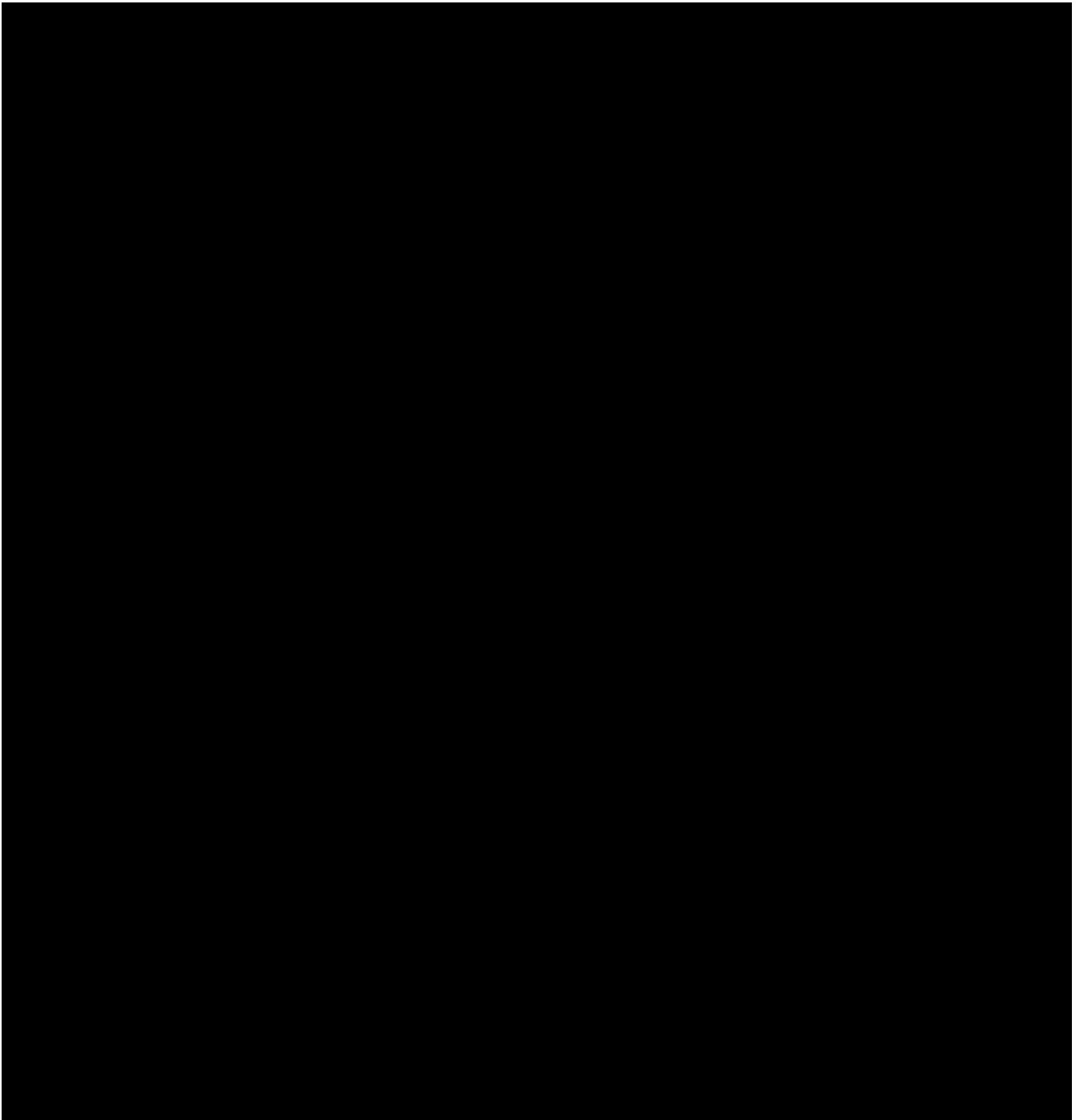


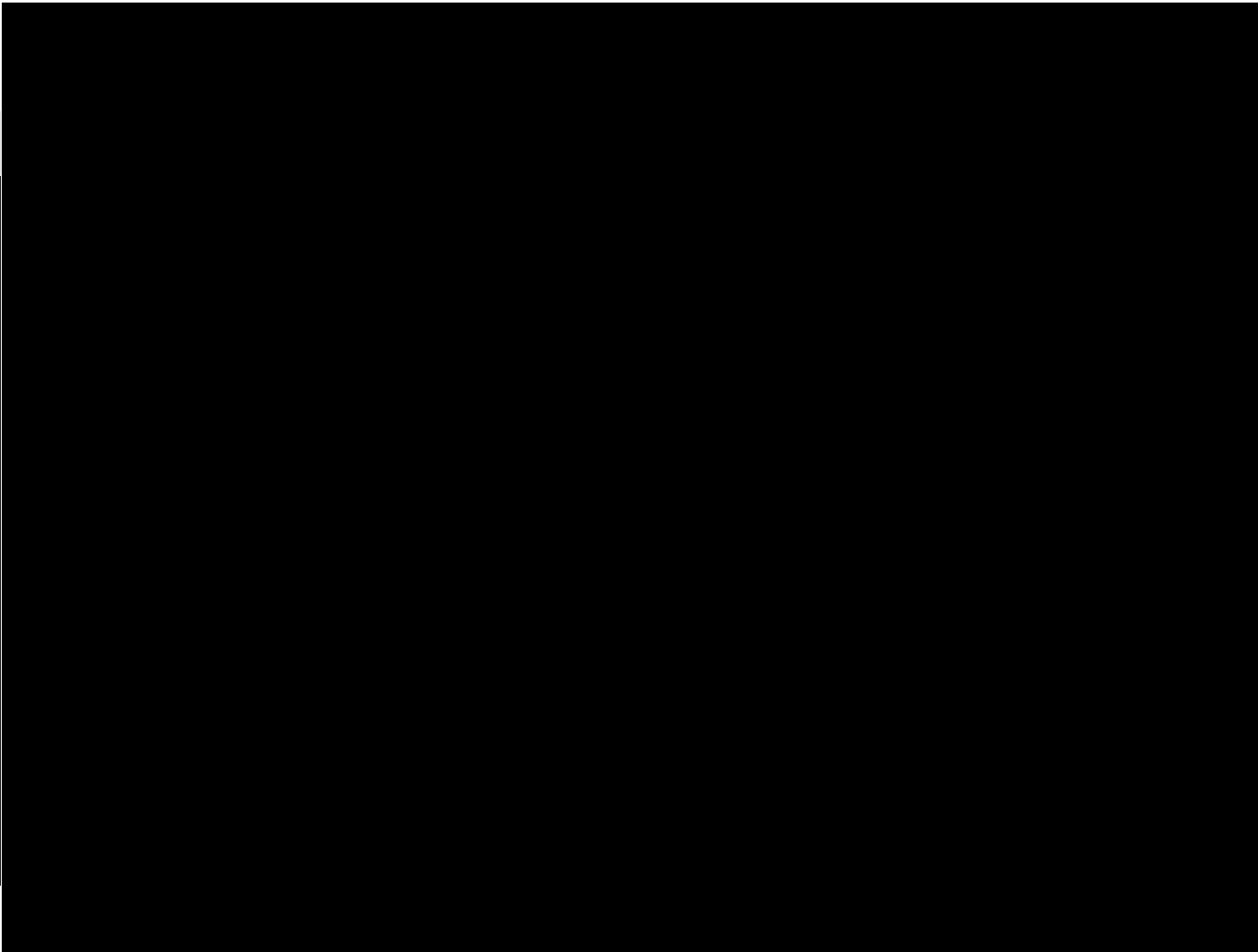


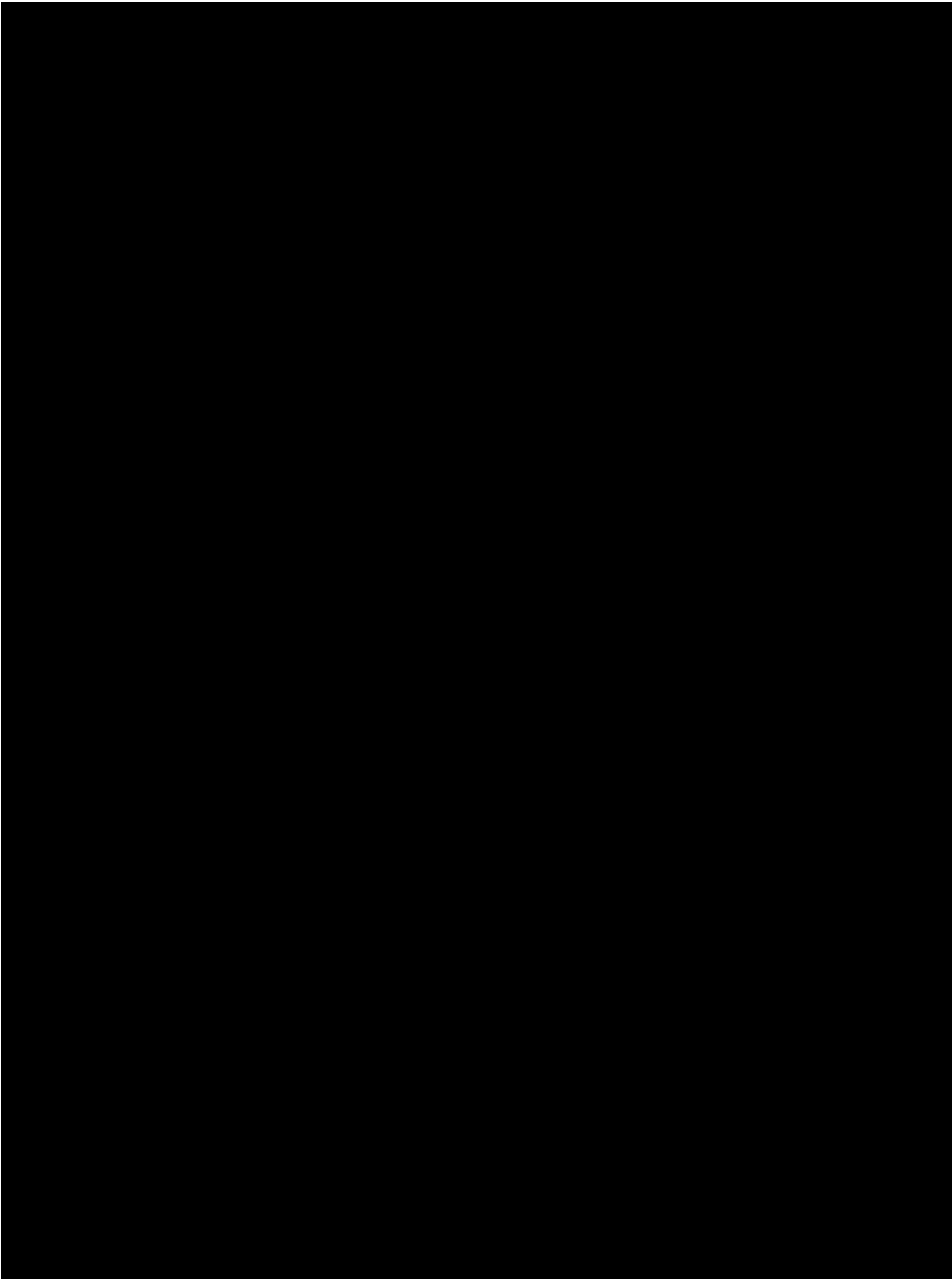








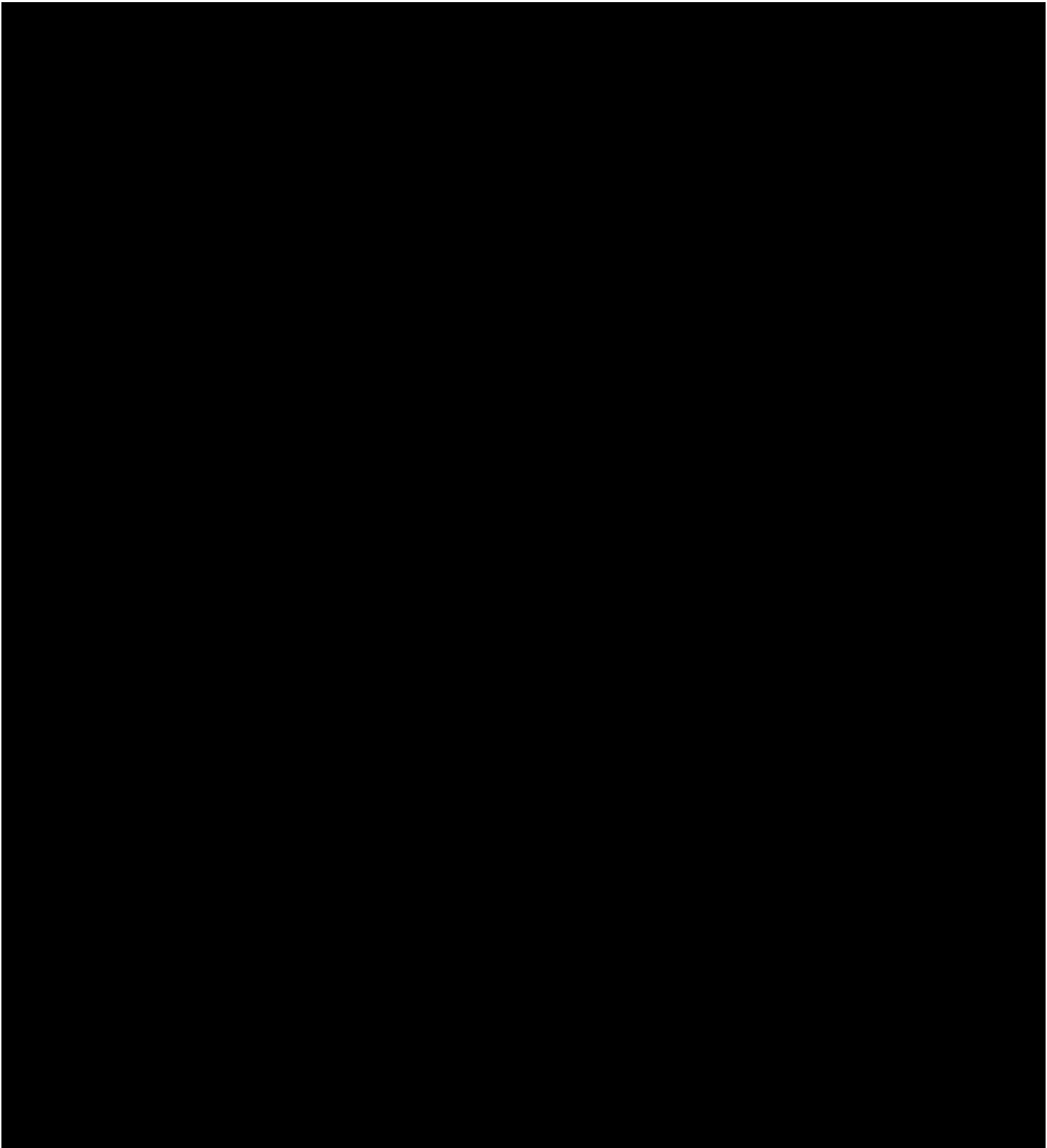


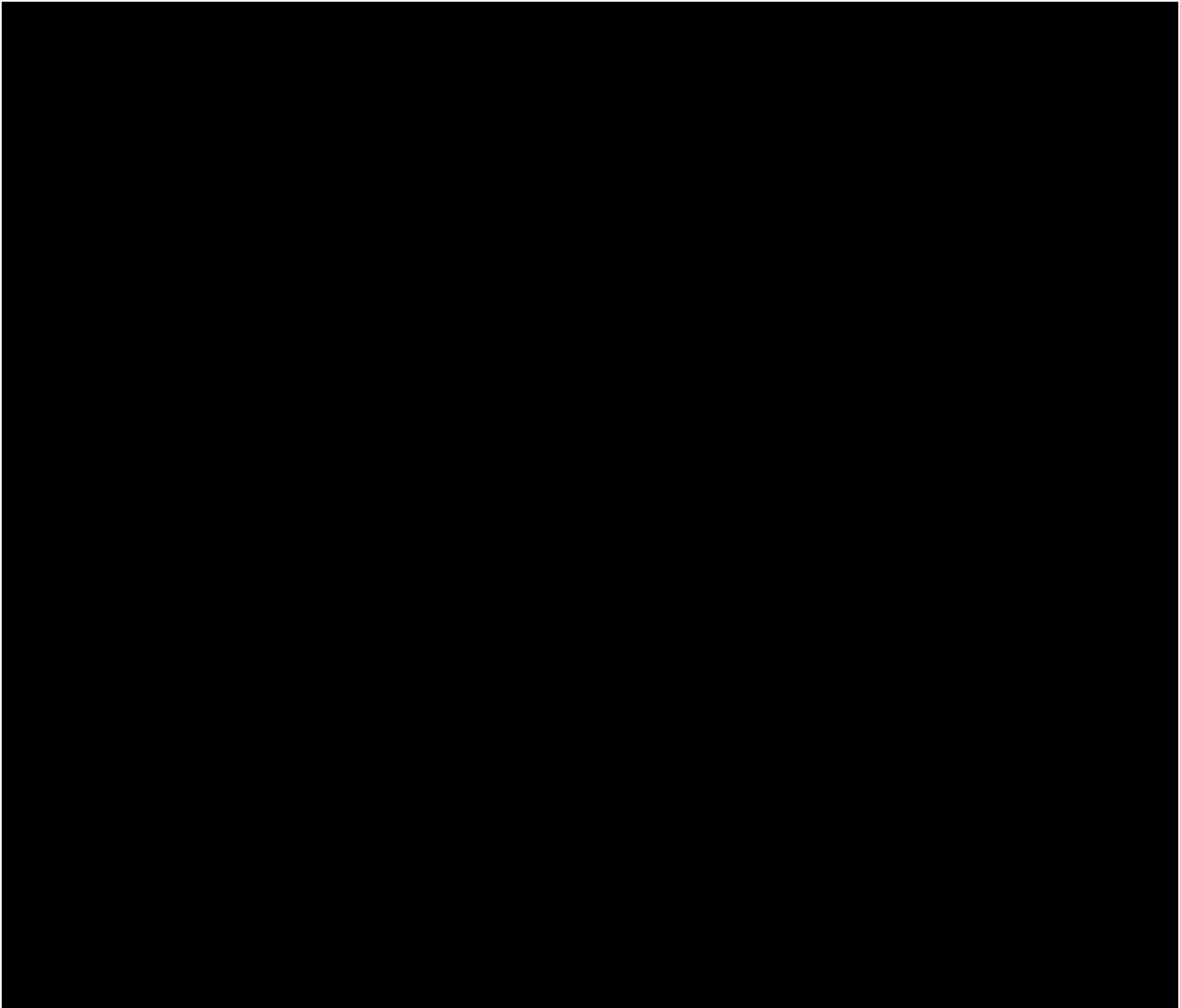


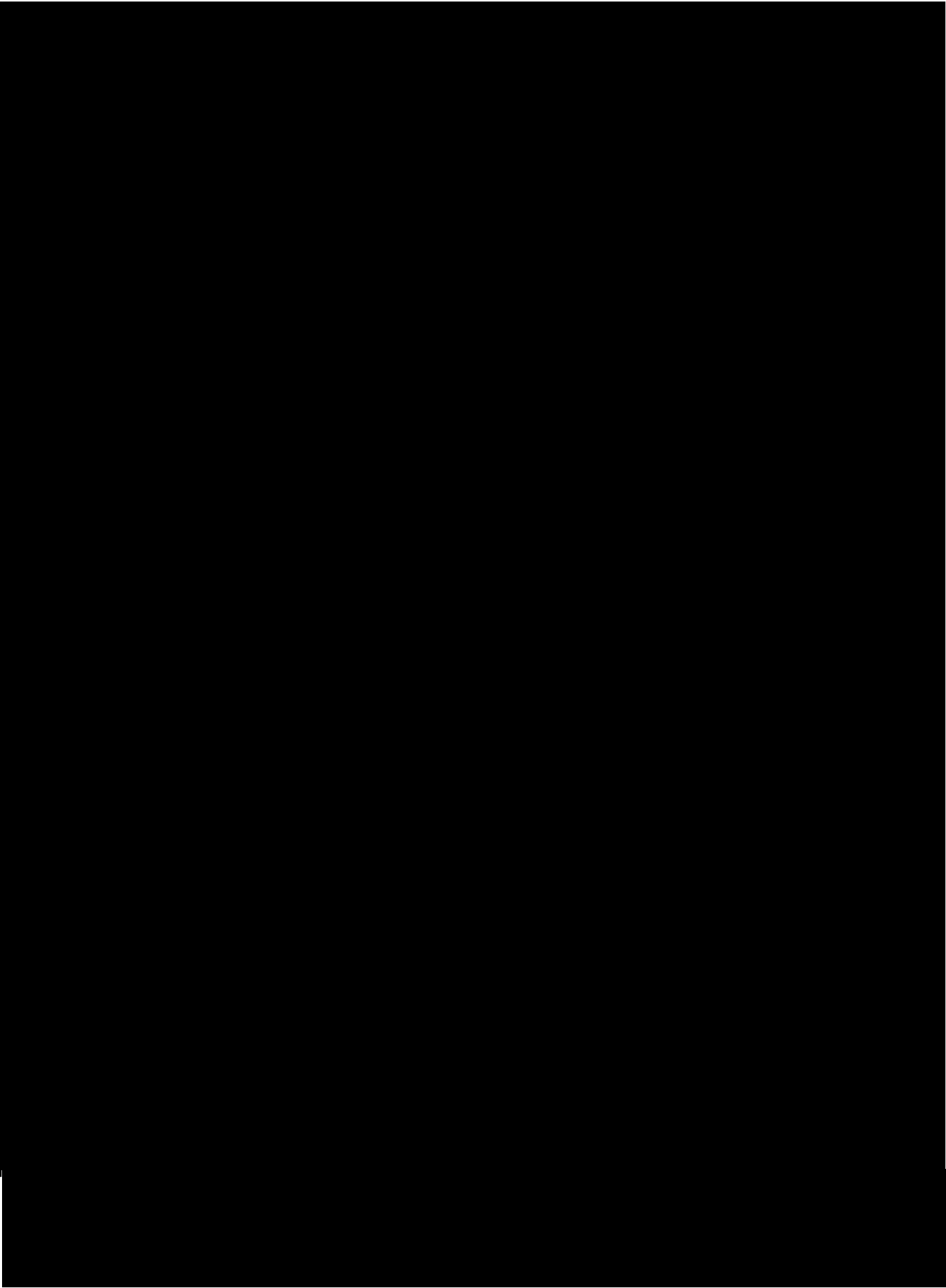
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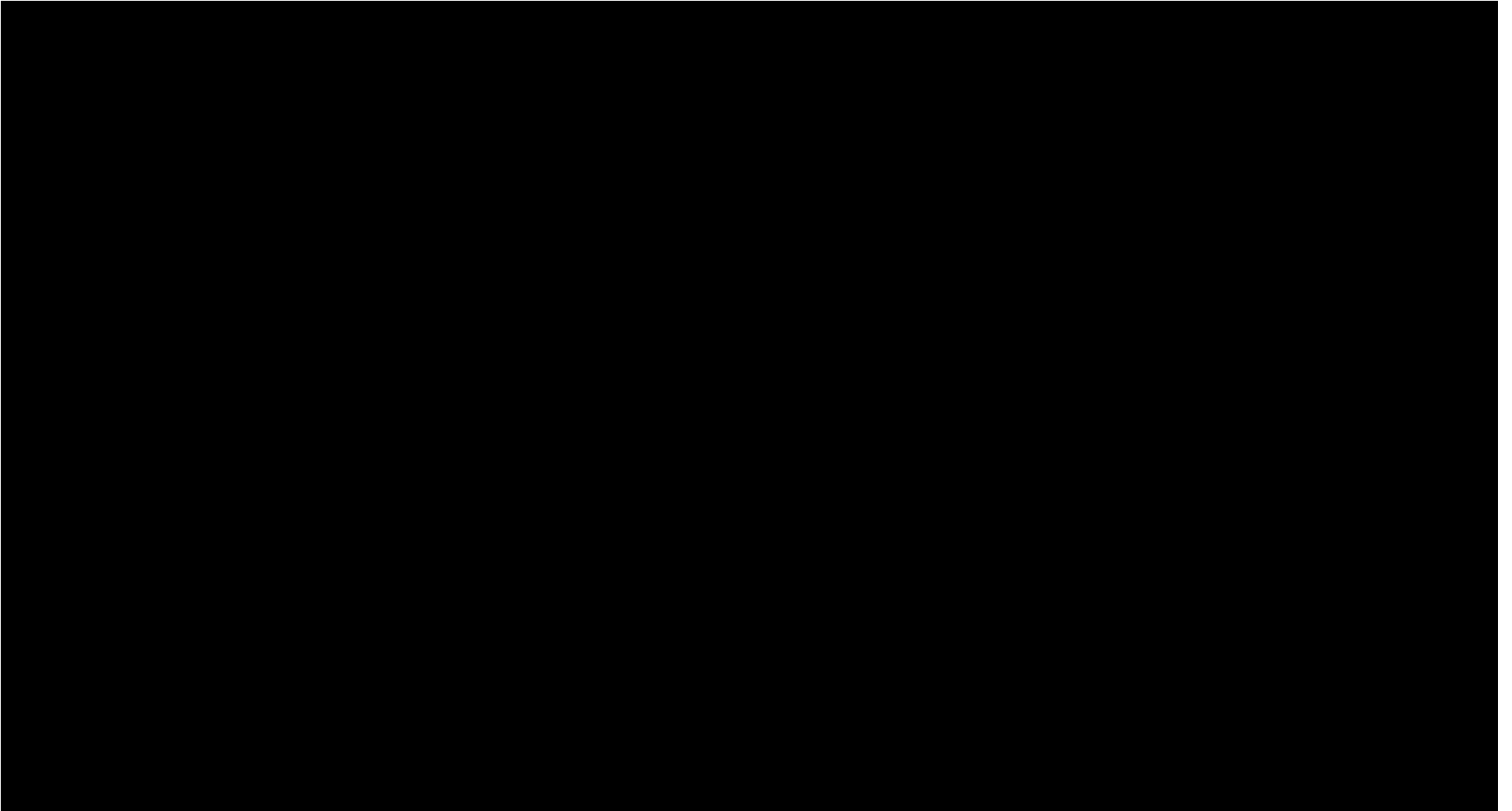
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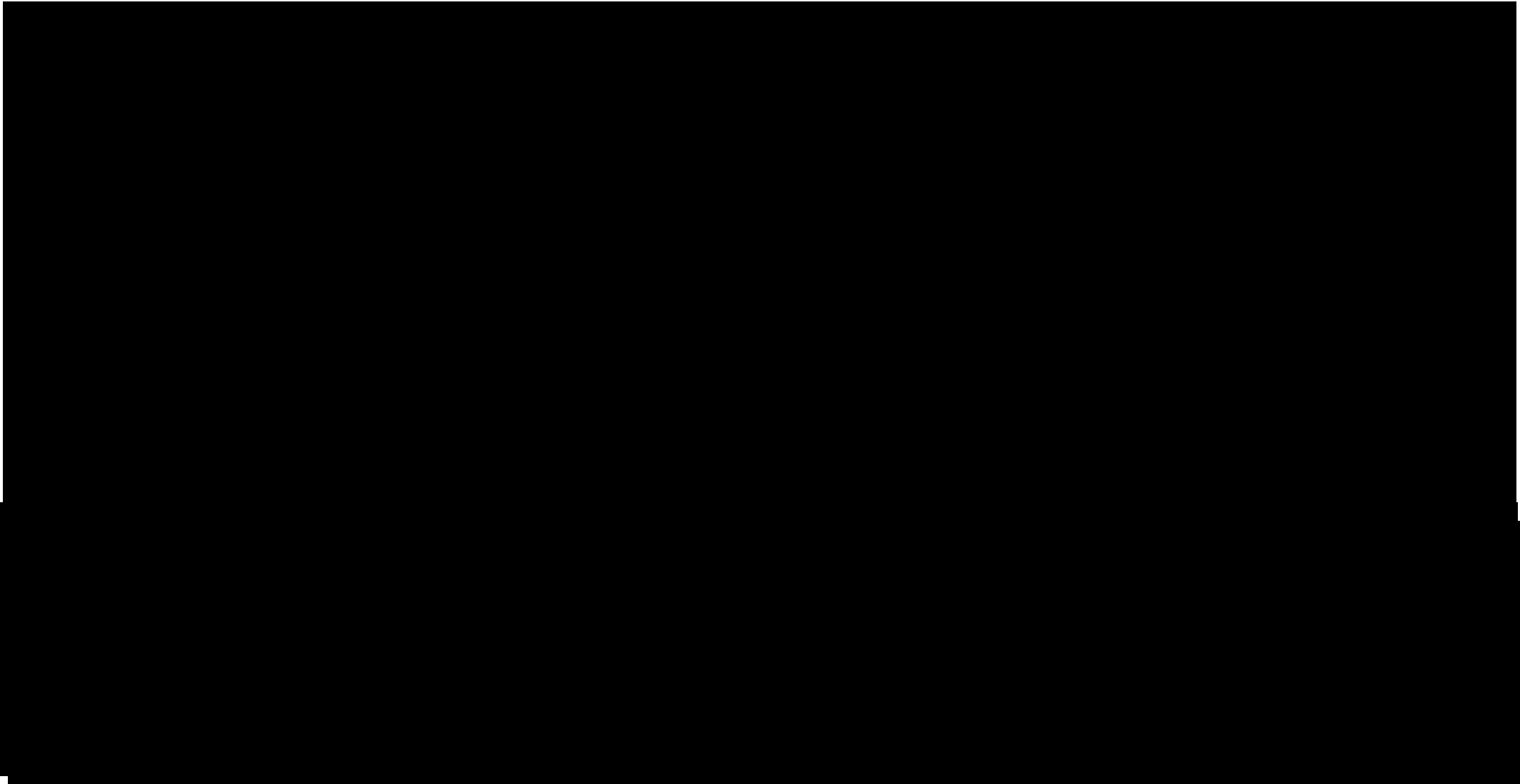
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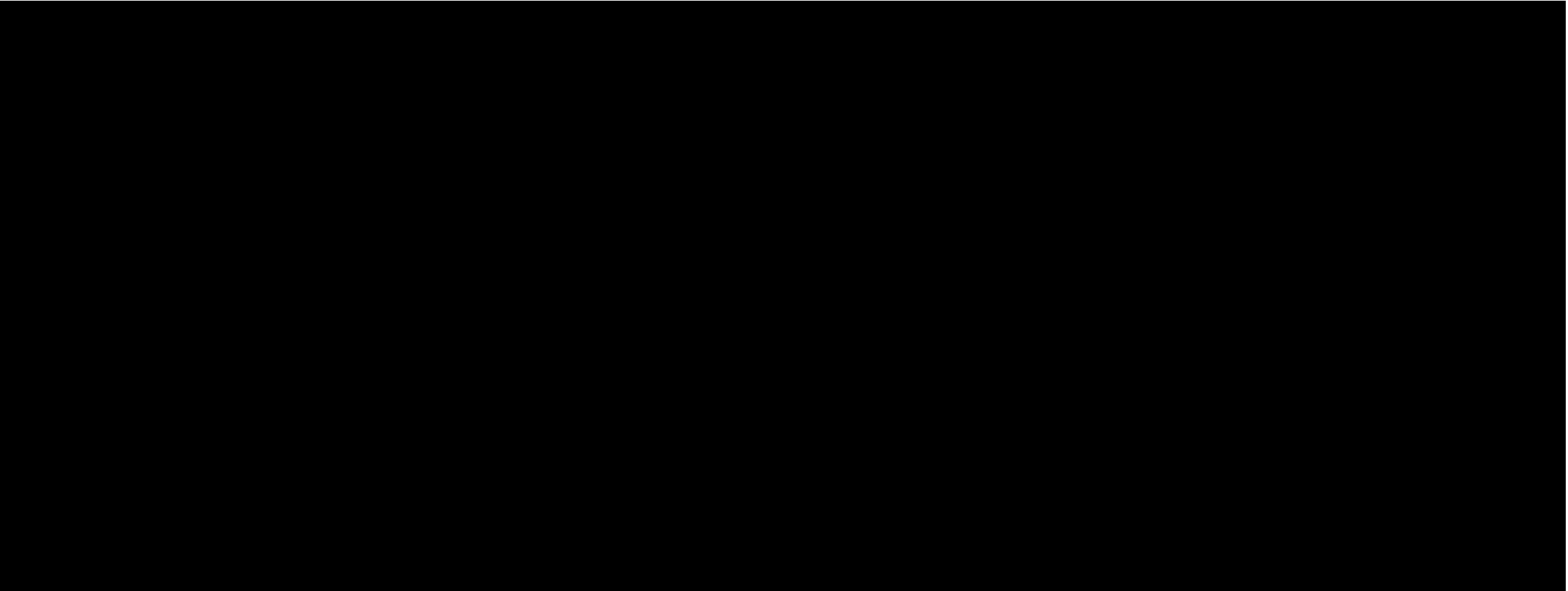






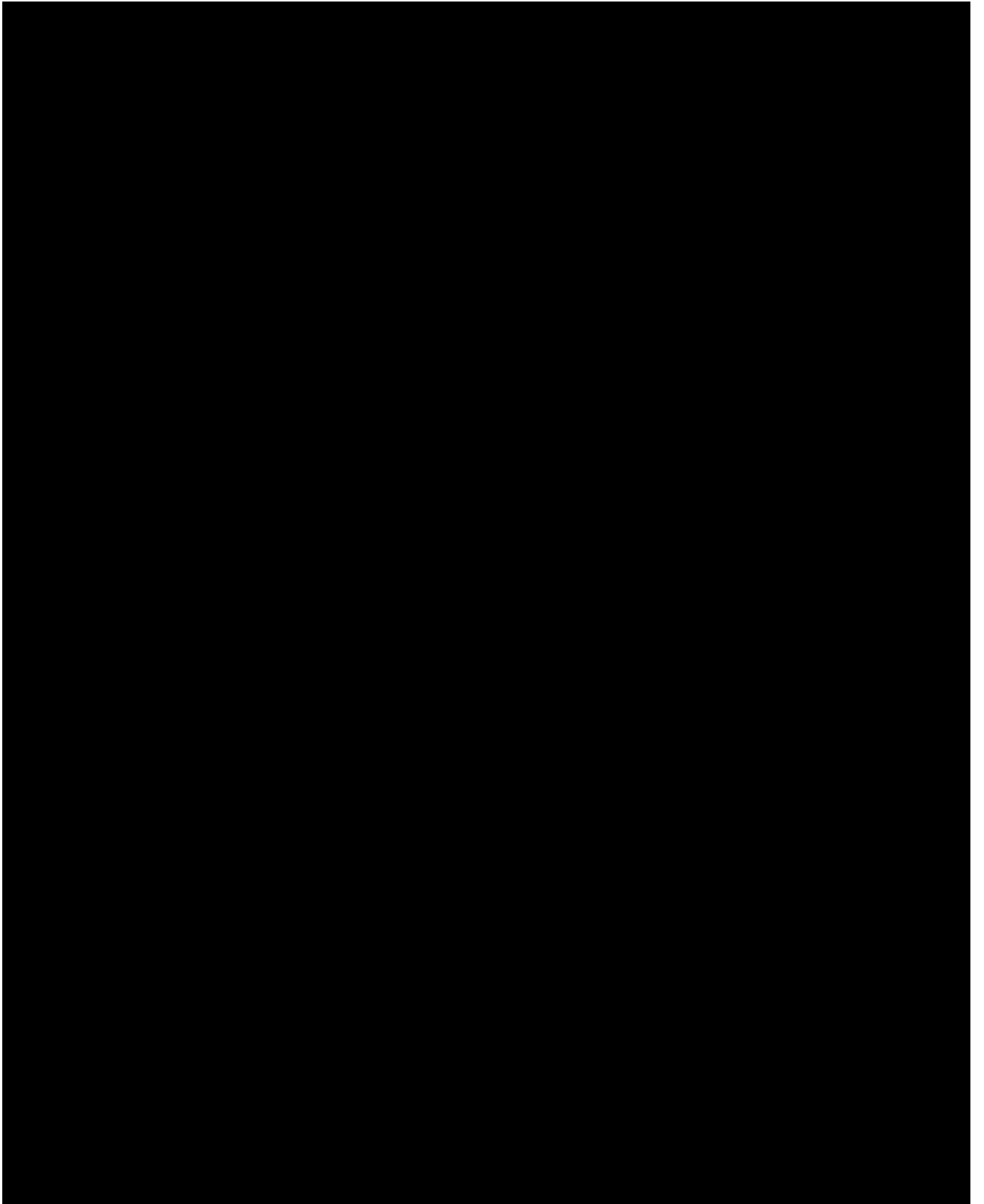


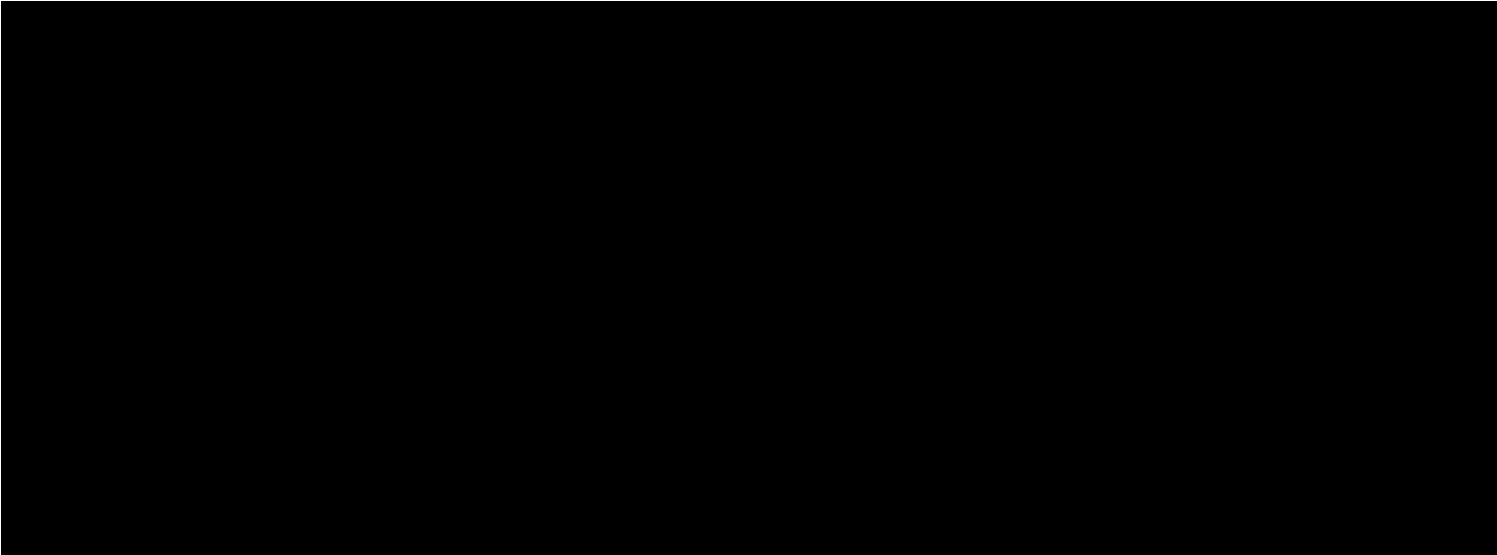




SCHEDULE 2 - PRICING

1. Subject to any variation of the project, the Authority shall pay to the Contractor no more than the fixed sum identified in Table 1: GBP £205, 638 as the Price excl VAT for the provision of the Services during the Initial Contract Period.
2. Subject to any variation of the project, the amount in paragraph 1 shall remain firm throughout the Initial Contract Period.
3. In the event that the Contract is varied, the amounts in Table 1 may be adjusted as agreed in writing, between the Authority and the Contractor.
4. All payments quoted are exclusive of VAT.
5. The payment will be in stages as follows:
 - 5.1. Upon completion of the Services and deliverables described in the Specification for each of the periods set out in Table 1 below, and upon delivery, the Contractor shall submit an invoice to the Authority for the amounts set out in Table 1 in respect of each such milestone.
 - 5.1. Any and all such invoices shall comply with the requirements in section C of the Contract and the Contractor shall provide all further reasonable information and/or evidence of completion as the Authority shall reasonably require to demonstrate the satisfactory completion of the agreed milestones
 - 5.2. The Authority shall pay to the Contractor within 30 days of receiving an invoice.
 - 5.3. The Contractor shall be responsible for the payment of any Sub-Contractors.





SCHEDULE 3 - CHANGE CONTROL

Contract Change Note ("CCN")

CCN Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (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:

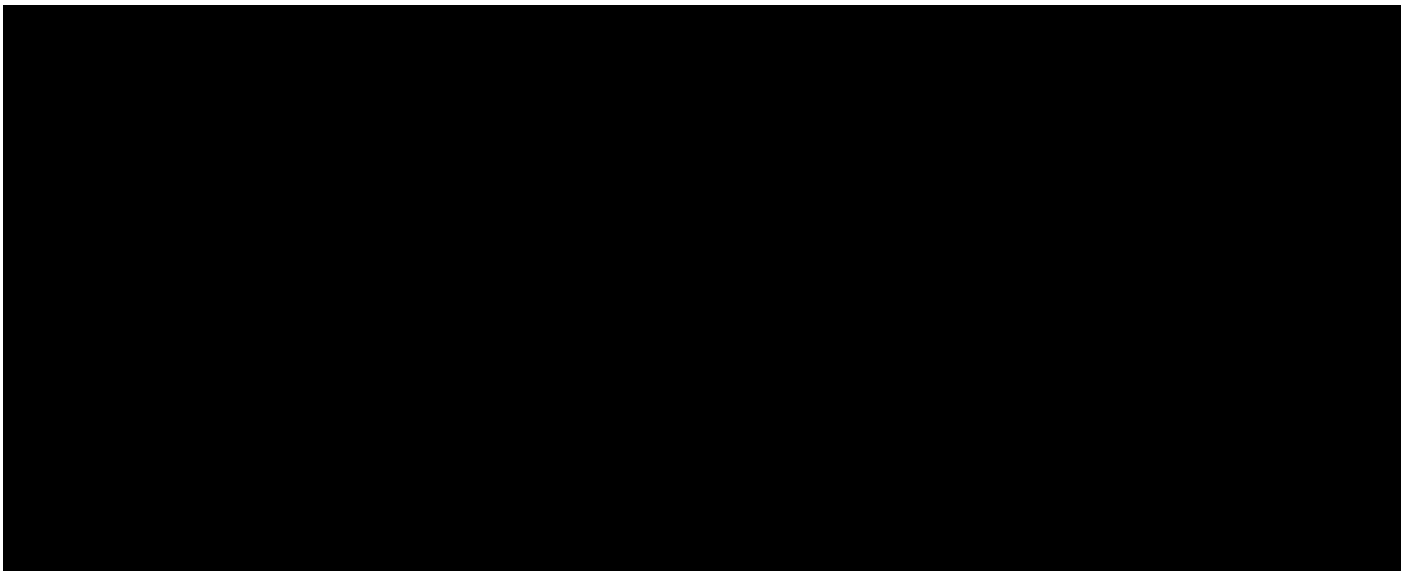
Change Requestor / Originator			
Summary of Change			
Reason for Change			
Revised Contract Price	Original Value	Contract	£
	Previous Changes	Contract	£
	Contract Note [x]	Change	£
	New Contract Value		£
Revised Payment Schedule			
Revised Specification (See Annexe [x] for Details)			
Revised Contract Period			
Change in Contract Manager(s)			
Other Changes			

2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]

- 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 and Regulation 12(5)(e) of the EIR to the Information listed below and any other exemptions or exceptions which may be applicable to protect the Contractor IPR and Confidential Information listed below.



SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

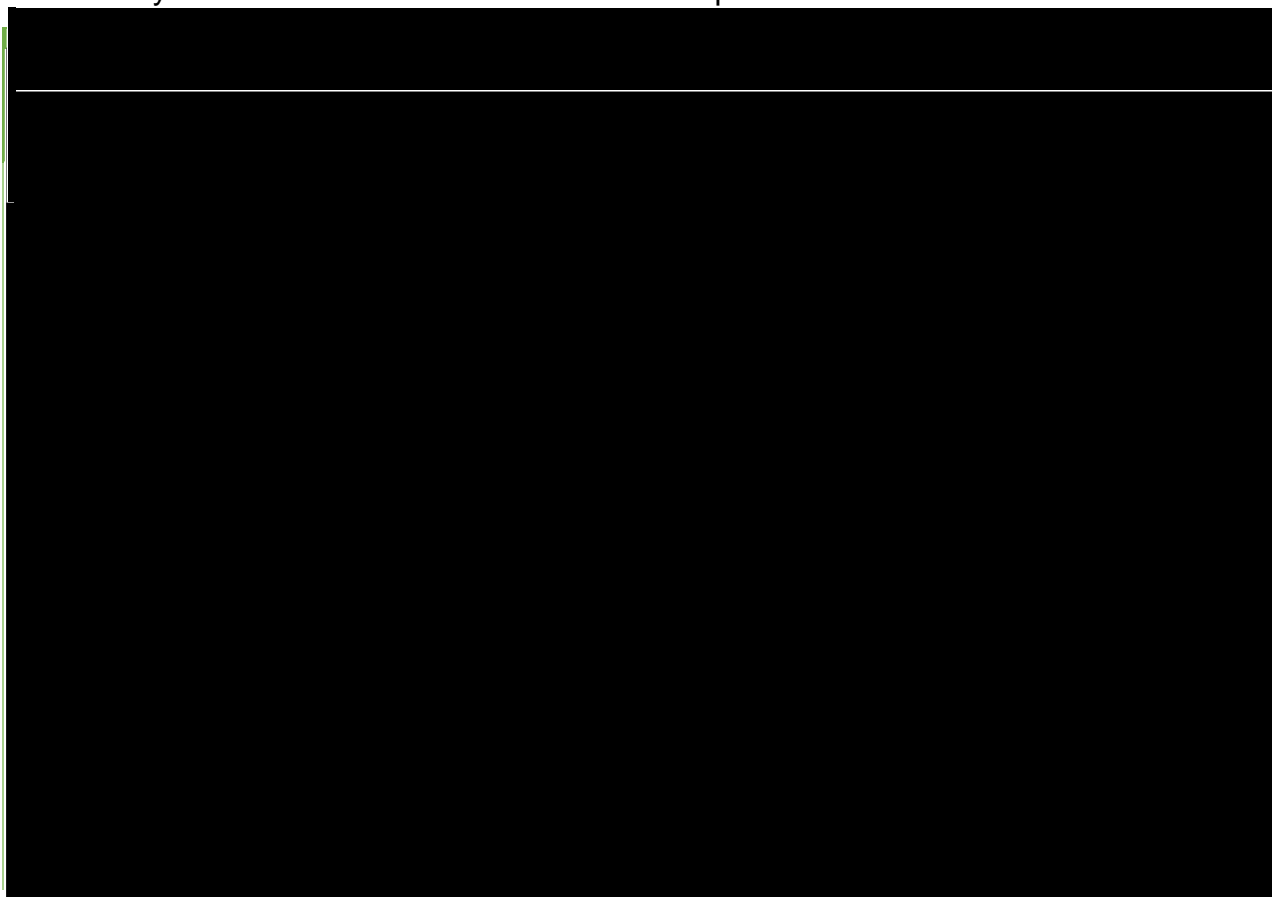
1. This Schedule shall be completed by the Authority, who may take account of the view of the Contractor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
2. The contact details of the Authority Data Protection Officer are:

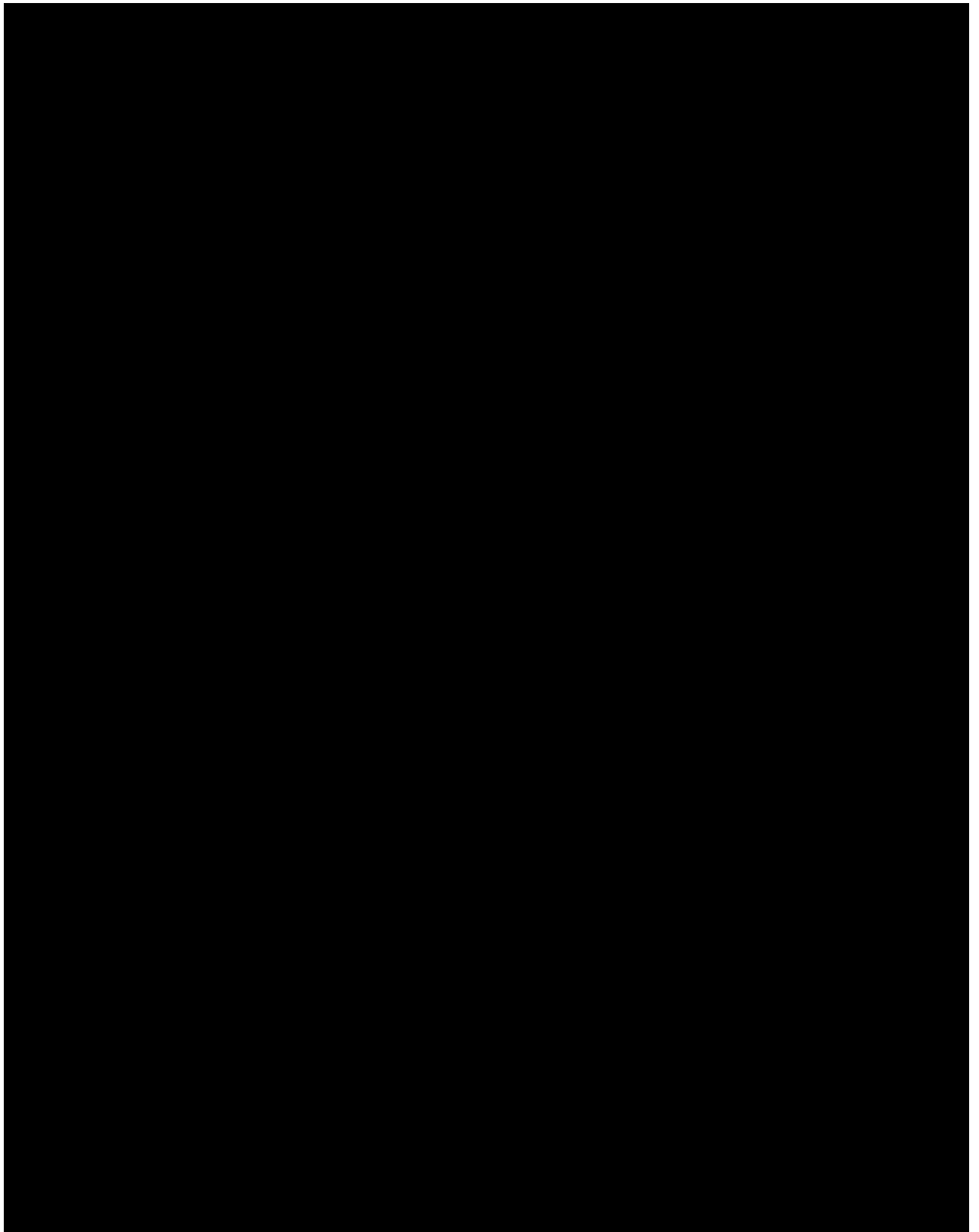
Dgc.gdpr@defra.gov.uk

Nobel House, 17 Smith Square, London. SW1P 3JR
3. The contact details of the Contractor Data Protection Officer are:

dpo@wessexwater.co.uk

Wessex Water Operations Centre, Claverton Down Road, Bath, BA2 7WW
4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
5. Any such further instructions shall be incorporated into this Schedule.





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 Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide goods and/or 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 certain goods and/or services to the Authority in support of or in connection with the goods and/or 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 within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679); 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 goods and/or 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 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;
- 14.4 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:

SCHEDULE 7 - CONTRACTOR AND THIRD-PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “**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 Goods and/or Services.

Contractor Software comprises:



THIRD PARTY SOFTWARE – Not Used.

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.

Third Party Software comprises:

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 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 Goods and/or 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.

“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 Goods and/or 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:
 - 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.

3. SECURITY PLAN

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply within two (2) months from signature of this Contract and during the Contract Period which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.
- 3.2 Not used.
- 3.3 Not used.
- 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.
- 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 Not used.

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 Not used
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 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.
- 6.3 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 3.

- 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.

APPENDIX 1- Not used

APPENDIX 2 - SECURITY POLICY: SECURITY POLICY FRAMEWORK

A copy of the Security Policy Framework may be found at:

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

SCHEDULE 9- CO-FUNDING – Not Applicable

SCHEDULE 10 – DATA SHARING AGREEMENT

This agreement is made the day of 2021

Between:

- (1) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London, SW1P 3JR (the “Authority”); and
- (2) WESSEX WATER LIMITED, (trading as “EnTrade”) a company registered in England and Wales under number 02366633 whose registered office is at Claverton Down Road, Claverton Down, Bath, BA2 7WW (the “Contractor”);

each a “party”, together “the parties”

Background:

- (A) The parties have entered into an agreement dated for the Solent nutrient trading pilot project (“the Contract”). The aims of the project are to engage farmers and land managers to commit to provide long-term mitigation solutions to nitrogen pollution through a nutrient trading process and develop an online trading platform to carry out such trading. The parties intend to gather, Process and share Personal Data to achieve the tasks and deliverables contained in the Contract,
- (B) The parties have agreed to share Personal Data (as defined below) for the Agreed Purposes on the terms set out in this Agreement.

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Agreed Purposes: the purpose for which the parties are entitled to use the Shared Personal Data, as set out in Annex 2;

Agreement: this data sharing agreement and the schedules thereto;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Commencement Date: the date of this Agreement;

Control: in relation to an entity that is not a natural person, the power of a person (or persons acting in concert) to secure directly or indirectly that the affairs of that entity are conducted in accordance with the wishes of that person (or persons);

Controller: has the meaning given to it in the Data Protection Legislation;

Data Protection Legislation: laws and regulations in any relevant jurisdiction that apply in relation to the Processing of Personal Data including (but not limited to) the GDPR, the UK GDPR, the Data Protection Act 2018 (“DPA 2018”) and any replacement legislation coming into effect from time to time together with any codes of practice or other guidance issued by a Regulatory Authority in any relevant jurisdiction;

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

Data Subject: has the meaning given to it in the Data Protection Legislation and refers to those data subjects to whom the Shared Personal Data relates;

Deletion Procedure: the deletion procedure agreed by the parties and set out at Annex 5 of this Agreement;

GDPR: the General Data Protection Regulation (EU) 2016/679;

Group Company: in relation to a party, any person Controlled by, Controlling or under common Control with that party;

Insolvency Event: if a party makes any voluntary arrangement with its creditors, enters administration or goes into liquidation; if a security holder takes possession or a receiver or administrative receiver is appointed; if anything analogous to the foregoing occurs in any jurisdiction; or if that party ceases to do business;

Permitted Recipient: a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment of the Agreed Purposes who has a legitimate need to receive and Process Personal Data for the Agreed Purposes;

Personal Data: has the meaning set out in the Data Protection Legislation;

Processing: has the meaning set out in the Data Protection Legislation;

Regulatory Authority: any competent data protection or privacy authority by which either Party is regulated;

Shared Personal Data: the Personal Data to be shared between the parties under this Agreement, as set out in Annex 1;

SPoC: has the meaning given to it in clause 2.2;

Subject Access Request: a request from a Data Subject to exercise his or her right of access to personal data under the Data Protection Legislation;

Third Country/Countries: all countries outside of the scope of the data protection laws of the European Economic Area (EEA), excluding countries that have been approved by the European Commission or a Regulatory Authority from time to time as having adequate data protection laws;

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 a "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;

1.2.2 any phrase introduced by the terms include, including, particularly or in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended or re-enacted from time to time;

1.2.4 unless otherwise provided the singular includes the plural and the masculine includes the feminine and vice versa;

1.2.5 the headings are inserted for convenience and do not affect the construction of this Agreement.

2 Purpose

2.1 This Agreement sets out the framework for the Processing and sharing of Personal Data between the parties as joint Controllers. It defines the principles and procedures that the parties shall adhere to and the

responsibilities the parties owe to each other in respect of the Shared Personal Data.

- 2.2 Each party shall nominate a single point of contact (SPoC). The SPoCs shall work together to reach agreement with regard to any issues arising from this Agreement and to actively improve the effectiveness of the Agreement going forward. The SPoC for each party is set out at Annex 3.

3 Compliance with Data Protection Legislation

- 3.1 Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.
- 3.2 Each party warrants that it has a valid registration with all relevant Regulatory Authorities as required by the Data Protection Legislation which, at the Commencement Date, covers the intended Processing and sharing of Personal Data pursuant to this Agreement, unless an exemption applies.

4 Shared Personal Data

- 4.1 The parties will provide to each other the Shared Personal Data at the times, frequencies and in the format set out as agreed between the parties.
- 4.2 Each party shall ensure that the Shared Personal Data is not irrelevant or excessive with regard to the Agreed Purposes.
- 4.3 Each party shall ensure that it Processes the Shared Personal Data fairly and lawfully during the term of this Agreement.
- 4.4 Each party shall inform the Data Subjects, on or before the date when that party commences Processing of their Personal Data, of the purposes for which it will Process their Personal Data and to provide all the information that it is obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be Processed by that party.

5 Data Subjects' rights

- 5.1 Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including but not limited to Subject Access Requests. Records kept should include, but shall not necessarily be limited to, the following:
 - 5.1.1 copies of the relevant request received;
 - 5.1.2 details of the data accessed and shared with the Data Subject, if any; and

- 5.1.3 notes of any meetings, correspondence or phone calls relating to the request.
- 5.2 Each party shall provide reasonable assistance to the other to enable the other party to comply with any requests received and to respond to queries or complaints from Data Subjects.

6 Data retention and deletion

- 6.1 Neither party shall retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 6.2 Notwithstanding clause 6.1, each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.
- 6.3 Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:
 - 6.3.1 on termination or expiry of this Agreement; or
 - 6.3.2 once Processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.
- 6.4 Following the deletion of the Shared Personal Data in accordance with clause 6.3, each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.

7 Transfers of Shared Personal Data to Third Countries

- 7.1 Neither party shall disclose or transfer the Shared Personal Data to any person located in a Third Country without the prior written consent of the other party.

8 Security of Shared Personal Data

- 8.1.1 Having regard to the state of technological development and the cost of implementing such measures, each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures in order to:
 - (a) prevent:
 - (i) unauthorised or unlawful Processing of the Shared Personal Data; and
 - (ii) the accidental loss or destruction of, or damage to, the Shared Personal Data; and

- (b) ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and
 - (ii) the nature of the Shared Personal Data to be protected.
- 8.1.2 Each party shall ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with the technical and organisational security measures implemented and with the Data Protection Legislation.
- 8.1.3 The level, content and regularity of training referred to in clause 8.1.2 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and Processing of the Shared Personal Data and to the nature of the Shared Personal Data handled by the relevant staff members.
- 8.1.4 Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.

9 Data Security Breaches and reporting procedures

- 9.1 Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party's SPoC as soon as possible and in any event within 24 hours after becoming aware of the breach. The SPoCs shall work together to consider the action required in order to resolve the issue in accordance with the applicable Data Protection Legislation.
- 9.2 Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.

10 Use of sub-contractors

- 10.1 The parties agree that those subcontractors set out in Annex 4 are authorised to process the Shared Personal Data as required to carry out the Agreed Purposes.

11 Review of Agreement

- 11.1 The parties shall review the effectiveness of this data sharing initiative and Agreement every [6] months and upon the addition and removal of a party, having consideration to the aims and purposes set out in this Agreement and

to the Agreed Purposes. The parties shall continue, amend or terminate this Agreement depending on the outcome of this review.

- 11.2 The review of the effectiveness of the data sharing initiative and Agreement will involve at least the following:
 - 11.2.1 assessing whether the purposes for which the Shared Personal Data is being Processed still align with the Agreed Purposes;
 - 11.2.2 assessing whether the Shared Personal Data is still as listed in Annex1 to this Agreement or whether the scope of the Shared Personal Data needs to be amended;
 - 11.2.3 assessing whether the legal frameworks governing data quality, retention and data subjects' rights are being complied with; and
 - 11.2.4 assessing whether Data Security Breaches involving the Shared Personal Data have been handled in accordance with this Agreement and the applicable Data Protection Legislation.

12 Market Research and Marketing

- 12.1 The Shared Personal Data will be used solely for the purposes of market research and promotion of the aims and ideals of the parties, compiling reports of stakeholder and interested parties' views and feedback on proposals.
- 12.2 The parties shall ensure that effective procedures are in place to gather those consents necessary to Process such information and allow the Data Subjects to opt-out from having their Shared Personal Data used for such purposes and shall provide the Personal Data of those Data Subjects exercising such an opt-out to allow the suppression of such Personal Data from being used for such purposes.

13 Resolution of disputes with Data Subjects or Regulatory Authorities

- 13.1 In the event of a dispute or claim brought by a Data Subject or a relevant Regulatory Authority concerning the Processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
- 13.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or Regulatory Authority. If they do participate in the proceedings, the parties may elect to do so remotely. The parties also agree to consider participating in any other

arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

- 13.3 Each party shall abide by a decision of a competent court of the UK or of the UK Regulatory Authority which is final and against which no further appeal is possible.

14 Warranties and indemnity

- 14.1 Each party warrants and undertakes that it will:

- 14.1.1 Process the Shared Personal Data in compliance with all applicable Data Protection Legislation;
- 14.1.2 make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement;
- 14.1.3 respond within a reasonable time and as far as reasonably possible to enquiries from any relevant Regulatory Authority in relation to the Shared Personal Data;
- 14.1.4 respond to Subject Access Requests and any other requests by Data Subjects to exercise their rights under the Data Protection Legislation in accordance with the Data Protection Legislation;
- 14.1.5 where applicable, maintain registration with all relevant Regulatory Authorities to enable the parties to Process all Shared Personal Data for the Agreed Purposes;
- 14.1.6 take all appropriate steps to ensure compliance with the security measures set out at clause 8 above; and
- 14.1.7 not disclose or transfer Shared Personal Data to a Third Country without the prior written consent of the Contractor.
- 14.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 14.3 The Authority undertakes to indemnify the Contractor and hold the Contractor harmless from any costs, charge, damages, expense or loss incurred or suffered by the Contractor as a result of their breach by the Authority of any of the provisions of this Agreement.

15 Limitation of liability

- 15.1 Neither party excludes or limits liability to the other party for:

- 15.1.1 fraud or fraudulent misrepresentation;
- 15.1.2 death or personal injury caused by negligence; or
- 15.1.3 any matter for which it would be unlawful for the parties to exclude or limit liability.
- 15.2 Subject to clause 15.1, the Contractor shall not in any circumstances be liable to the Authority whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - 15.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - 15.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 15.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 15.3 Subject to clause 15.1, the Contractor shall in no circumstances be liable to the Authority whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any sum in excess of £50,000 in aggregate.

16 Force majeure

- 16.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

17 Allocation of cost

- 17.1 Each party shall perform its obligations under this Agreement at its own cost.

18 Termination

- 18.1 one party shall be entitled to terminate this Agreement in the event that the other party:
 - 18.1.1 commits a material breach of any of the terms of this Agreement, which breach is irremediable or, if remediable, has not been remedied within 30

days of receipt by the party in breach of a notice in writing from the non-breaching party requiring the party in breach to remedy it; or

18.1.2 suffers an Insolvency Event.

18.2 Either party shall be entitled to terminate this Agreement on giving the other party 30 days' written notice to terminate.

19 Third party rights

19.1 Other than as expressly set out in this Agreement, a person who is not a party to this Agreement is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms, the parties may rescind or vary this Agreement without the consent of that person.

20 Rights and remedies

20.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21 Notice

21.1 Any notice given to a party under or in connection with this Agreement shall be in writing, addressed to that party's SPoC and shall be delivered by hand or pre-paid first-class post or other next working day delivery service at the address for the SPoC notified in Annex 3.

21.2 Any notice shall be deemed to have been received:

21.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

21.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting or at the time recorded by the delivery service.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22 Variation

22.1 No variation of this Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of each of the parties.

23 Waiver

- 23.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24 Severance

- 24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 24.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25 Changes to Data Protection Legislation

- 25.1 If the Data Protection Legislation applicable to either party changes in a way such that this Agreement is no longer adequate for the purposes of governing lawful data sharing, the parties agree that the SPoCs will negotiate in good faith to review the Agreement in light of the changes and to make any amendments required to enable this Agreement to be adequate for those purposes.

26 No partnership or agency

- 26.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27 Further assurance

- 27.1 Each party shall from time to time (both during the continuance of this Agreement and after its termination) do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.

28 Entire agreement

- 28.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and the terms of this Agreement shall supersede any previous agreements.

29 Governing law and jurisdiction

- 29.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.

In witness whereof this Agreement has been signed by the parties or their duly authorised representatives on the date written at the beginning of this Agreement.

Signed by)

For and on behalf of the Secretary of State for the)
Environment, Food and Rural Affairs

)

Signed by)

For and on behalf of Wessex Water Limited)

)





Annex 3

Single Points of Contact

SPoC for the Secretary of State for the Environment, Food and Rural Affairs:

Name: Data Protection Officer

Address: Nobel House, 17 Smith Square, London. SW1P 3JR

Email address: Dgc.gdpr@defra.gov.uk

Telephone number:

SPoC for Wessex Water Limited:

[REDACTED]

Address: Wessex Water Operations Centre, Claverton Down Road, Bath BA2 7WW

[REDACTED]

