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Contract (Short Form – Services)

Contract for the provision of Urgent and Emergency Care (UEC) Survey 2024 Scoping Project

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THIS CONTRACT is dated 10th March 2023

PARTIES

- (1) **CARE QUALITY COMMISSION** of Citygate, Gallowgate, Newcastle Upon Tyne, NE1 4PA (**“Authority”**);

and

- (2) **PICKER INSTITUTE EUROPE** a registered private limited company with company number 03908160 whose registered office is at Suite 6, Fountain House 1200 Parkway Court, John Smith Drive, Oxford, England, OX4 2JY (**“Contractor”**),
(Together the **“Parties”**).

Background

1. The Authority is the independent health and social care regulator in England that monitors, inspects and regulates health and social care services to ensure they meet fundamental standards of quality and safety. It ensures health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve.
2. In order to contract for the provision of Urgent and Emergency Care (UEC) Survey 2024 Scoping Services (the **“Services”**), the Contractor has been appointed by the Authority to provide the Services.
3. Therefore the Parties have agreed to enter into this Contract for the provision of the Services defined in the Specification.

1 Interpretation

1.1 In these terms and conditions:

“Approval”	means the written consent of the Authority;
“Authority”	means the Care Quality Commission;
“Authority Data”	means: <ul style="list-style-type: none">(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:<ul style="list-style-type: none">(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; or(b) any Personal Data for which the Authority is the Data Controller;
“Authority System”	means any relevant CQC ICT system;
“Anti-Slavery and Human Trafficking Laws”	means all applicable anti-slavery and human trafficking laws, statutes, regulations, policies and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
“Breach of Security”	means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor system, or any ICT (as defined in Schedule 5 (Security Requirements) or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">(a) Government Department;() Non-Departmental Public Body or Assembly Sponsored

Public Body (advisory, executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency;

“Change Control Notice (“CCN”)” means a change control notice in the form set out in Schedule 6;

“Commencement Date” means 16 January 2023;

“Contract” means the contract consisting of these terms and conditions, any attached Schedules, the Specification, and the Tender Response between the Authority the Contractor;

“Confidential Information” means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

“Contractor” means the person named as Contractor who was awarded this Contract;

“Contractor’s Background Intellectual Property” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in getup and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, vested in the Contractor prior to the Commencement Date;

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software (as defined in Schedule 5 (Security Requirements), the Contractor Equipment (as defined in Schedule 5 (Security Requirements) and related cabling (but excluding the Authority

System);

**“Controller,
Processor, Data
Subject, Personal
Data, Personal Data
Breach and Data
Protection Officer”**

take the meaning given in the UK GDPR;

**“Data Protection
Legislation**

means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;

“Data Loss Event”

means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**“Data Protection
Impact Assessment”**

means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;

**“Data Subject
Request”**

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

“DPA”

means the Data Protection Act 2018 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;

“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;

“Expiry Date”

means 4 May 2023;

“FOIA”	means the Freedom of Information Act 2000;
“Good Practice”	Industry 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;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Specification or Contract otherwise notified as such by the Authority to the Contractor in writing;
“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 Contractor is bound to comply;
“Law Enforcement Processing”	means processing under Part 3 of the DPA 2018;
“Loss”	means any losses, costs, price, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, price, fines, damages, destruction, adverse judgments, orders or other sanctions and the term “Losses” shall be construed accordingly;
“Party”	means the Contractor or the Authority (as appropriate) and “Parties” shall mean both of them;
“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 3 for the full and proper performance by the Contractor of its obligations under the Contract;
“Pricing Schedule”	means Schedule 3 containing details of the Price;

“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;
“Prohibited Act”	<p>means:</p> <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none">i) induce that person to perform improperly a relevant function or activity; orii) 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:<ul style="list-style-type: none">i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;ii) under legislation or common law concerning fraudulent acts; oriii) the defrauding, attempting to defraud or conspiring to defraud the Authority; <p>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;</p>
“Protective Measures”	means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience

of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 4 (Processing, Personal Data and Data Subjects);

“Purchase Order Number”

means the Authority’s unique number relating to the supply of the Services by the Contractor to the Authority in accordance with the terms of the Contract;

“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;

“Replacement Contractor”

means any third party supplier appointed by the Authority to supply any 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”

has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

“Schedule”

means a schedule attached to, and forming part of, the Contract;

“Security Plan”

means the Contractor’s security plan prepared pursuant to paragraph 3 of Schedule 5 (Security Requirements and Plan), an outline of which is set out in an Appendix to Schedule 5;

“Security Framework”

Policy means the HMG Security Policy Framework (<https://www.gov.uk/government/publications/security-policy-framework>)

“Services”

means the services to be supplied by the Contractor to the Authority under the Contract as set out in Schedule 1;

“Specification”

means the specification for the Services (including as to quantity, description and quality) appended hereto in Schedule 1;

“Staff”

means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Contract;

“Staff Vetting Procedures”	means vetting procedures that accord with Good Industry Practice or, where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Sub–Contractor”	means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “Sub-Contract” shall be construed accordingly;
“Sub-processor”	means any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
“Supplier Code of Conduct”	means the HM Government Supplier Code of Conduct v2 dated February 2019 ;
“Term”	means the period from the Commencement Date to the Expiry Date or as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract;
“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;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“UK GDPR”	means the UK General Data Protection Regulation;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Variation”	means a variation to the Specification, the Price or any of the terms and conditions of the Contract;
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Contract;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2 Priority of documents

2.1 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- a) these terms and conditions;
- b) Schedule 1 (Specification);
- c) Schedule 2 (Price);
- d) the remaining Schedules; and
- e) any other document referred to in these terms and conditions

3 Supply of Services

3.1 In consideration of the Authority's agreement to pay the Price, the Contractor shall supply the Services to the Authority for the Term subject to and in accordance with this Contract.

3.2 In supplying the Services, the Contractor shall:

3.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority's instructions;

3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Contractor's industry, profession or trade;

3.2.3 use Staff who are suitably skilled, experienced and possess the required qualifications to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;

- 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- 3.2.5 comply with all applicable Laws; and
- 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Authority may by written notice to the Contractor at any time request a Variation to the scope of the Services. If the Contractor agrees to any Variation to the scope of the Services, the Price shall be subject to fair and reasonable adjustment to be agreed in writing between the Authority and the Contractor.
- 3.4 Any Variation will not take effect unless recorded in a Change Control Notice in the form set out in Schedule 6 and approved in writing by the Authority.

4 Term

- 4.1 The Contract shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Authority may extend the Contract for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

5 Price, Payment and Recovery of Sums Due

- 5.1 The Price for the Services shall be as appended hereto in Schedule 2 and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Contractor shall invoice the Authority as specified in Schedule 2. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Contractor, the Authority shall pay the Contractor the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under the Contract, withhold or reduce payments in the event of unsatisfactory performance.

- 5.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.5 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.6 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.
- 5.7 If any sum of money is recoverable from or payable by the Contractor under the Contract (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Contractor under the Contract or under any other agreement or contract with the Authority. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.8.1 Provisions having the same effect as clauses 5.2 to 5.6 of the Contract and
- 5.8.2 Provisions requiring the counterparty to that subcontract to include in any sub-contract which it awards provisions having the same effect as clauses 5.2 to 5.6 of this Contract.
- 5.8.3 In this clause 5.8 'sub-contract' means a contract between two or more Contractors, 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 this Contract.

6 Premises and equipment

- 6.1 If necessary, the Authority shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Contract (whichever is the earlier) the Contractor shall vacate the Authority's premises,

remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Contractor or any Staff, other than fair wear and tear.

- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Authority shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Authority's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Authority for the purposes of the Contract shall remain the property of the Authority and shall be used by the Contractor and the Staff only for the purpose of carrying out the Contract. Such equipment shall be returned promptly to the Authority on expiry or termination of the Contract.
- 6.7 The Contractor shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Authority shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.
- 6.8 Any Premises/land made available from time to time to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such Premises/land as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 6.9 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- 6.10 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the

Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

- 6.11 All the Contractor's equipment shall remain at the sole risk and responsibility of the Contractor, except that the Authority shall be liable for loss of or damage to any of the Contractor's property located on Authority's premises which is due to the negligent act or omission of the Authority.

7 Staff and Key Personnel

- 7.1 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Contractor:
- 7.1.1 refuse admission to the relevant person(s) to the Authority's premises;
 - 7.1.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,
- and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures; and if requested, comply with the Authority's Staff Vetting Procedures as supplied from time to time;
 - 7.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with the Contract;
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority; and
 - 7.2.4 shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/Contractor-code-of-conduct>).
 - 7.2.5 ensure that it does not engage in any act or omission that would contravene Anti-Slavery and Human Trafficking Laws.
- 7.3 Any 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, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority (not to be unreasonably withheld). Such replacements

shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

- 7.5 At the Authority's written request, the Contractor shall provide a list of names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 7.6 The Contractor's Staff, engaged within the boundaries of the Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 7.7 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check as per the Staff Vetting Procedures.

8 Assignment and sub-contracting

- 8.1 The Contractor shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.2 If the Contractor enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 8.3 If the Authority has consented to the placing of Sub-Contracts, the Contractor shall:
 - (a) impose obligations on its Sub-Contractor on the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
 - (b) provide a copy at no charge to the Authority, of any Sub-Contract, on receipt of a request for such by the Authority.
- 8.4 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Contract.

9 Intellectual Property Rights

- 9.1 Save for the Contractor's Background Intellectual Property, all intellectual property rights in any materials provided by the Authority to the Contractor for the purposes of this Contract shall remain the property of the Authority but the Authority hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.
- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Authority. If, and to the extent, that any intellectual property rights in such materials vest in the Contractor by operation of law, the Contractor hereby assigns to the Authority by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Authority:
- 9.3.1 A royalty-free, non-exclusive licence to use the Contractor's Background Intellectual Property until termination or expiry of the Contract, or until publication of any project report on the Authority's website, whichever is later; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- a) any intellectual property rights created or developed pursuant to the Contract and any intellectual property rights arising as a result of the provision of Services
 - b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor its Staff, agents or Sub-contractors.

- 9.5 The Authority shall promptly notify the Contractor of any infringement claim made against it relating to any Services and, subject to any statutory obligation requiring the Authority to respond, shall permit the Contractor to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. The Authority shall give the Contractor such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

10 Governance and Records

10.1 The Contractor shall:

10.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.

- 10.2 The Contractor shall keep and maintain until 6 years after the end of the Contract, 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 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 as may be reasonably requested by the Authority in connection with the Contract.

11 Confidentiality, Transparency and Publicity

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.

- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Contract provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Contractor's confidentiality obligations under the Contract; and

11.2.6 where the receiving Party is the Authority:

- a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
 - b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- or

11.2.7 in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 11.

11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information and the Contractor hereby gives its consent for the Authority to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Contract agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

11.4 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the Authority.

12 Freedom of Information

12.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall and procure that any Sub-contractor shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

12.2 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Contract, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 Protection of Data

13.1 The Parties acknowledge that for the purposes of Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 4 (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

13.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe Data Protection Legislation.

13.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

13.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

13.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

13.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

13.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

13.4.1 process that Personal Data only in accordance with Schedule 4 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

13.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Data Loss Event;
- c) state of technological development; and
- d) cost of implementing any measures;

13.4.3 ensure that:

- a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 4 (Processing, Personal Data and Data Subjects));

b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

13.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;

b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;

c) the Data Subject has enforceable rights and effective legal remedies;

d) the Processor complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

13.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

13.5 Subject to clause 13.6, the Processor shall notify the Controller immediately if it:

13.5.1 receives a Data Subject Request (or purported Data Subject Request);

13.5.2 receives a request to rectify, block or erase any Personal Data;

- 13.5.3 receives any other request, complaint or communication relating to either Party's obligations under Data Protection Legislation;
 - 13.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 13.5.5 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
 - 13.5.6 becomes aware of a Data Loss Event.
- 13.6 The Processor's obligation to notify under clause 13.5 shall include the provision of further information to the Controller, as details become available.
- 13.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:
- 13.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 13.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in Data Protection Legislation;
 - 13.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 13.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 13.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 13.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 13.8.1 the Controller determines that the processing is not occasional;
 - 13.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

13.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

13.10 Each Party shall designate its own data protection officer if required by Data Protection Legislation.

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

13.11.1 notify the Controller in writing of the intended Sub-processor and processing;

13.11.2 obtain the written consent of the Controller;

13.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and

13.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

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

13.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may upon giving the Processor not less than 30 working days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

13A Security

13A.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.

13A.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with Schedule 5 (Security Requirements and Plan).

13A.3 The Contractor shall comply, and shall procure compliance of its Staff, with Schedule 5 (Security Requirements and Plan).

13A.4 The Authority shall notify the Contractor of any changes or proposed changes to Schedule 5 (Security Requirements and Plan). Any changes shall be agreed in accordance with the procedure in clause 20.3.

13A.5 Until and/or unless a change to the Price is agreed by the Authority, the Contractor shall continue to perform the Services in accordance with its existing obligations.

13A.6 The Contractor shall be liable for and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Authority).

14 Liability and Insurance

14.1 The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority 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.

14.2 Subject always to clauses 14.3, 14.4 and 14.5:

14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the estimated yearly Price paid or payable to the Contractor under this Contract; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.4 in no event shall the Contractor be liable to the Authority for any:

- a) loss of profits;
- b) loss of business;
- c) loss of revenue;
- d) loss of or damage to goodwill;
- e) loss of savings (whether anticipated or otherwise); and/or
- f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clauses 9.4 and 18.4 shall be unlimited.

14.5 The Contractor's liability for all Losses suffered or incurred by the Authority arising from the Contractor's Default resulting in the destruction, corruption, degradation or damage to Authority Data or Personal Data or any copy of such Authority Data or Personal Data shall in no event exceed the value of one hundred per cent (100%) of the Contract Value paid or payable by the Authority to the Contractor in the year in which the liability arises (such Contract Value to be subject to clarification).

14.6 The Contractor shall hold:

- a) Employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
- b) Public liability with the minimum cover per claim of five million pounds (£5,000,000);
- c) Professional indemnity with the minimum cover per claim one million pounds (£1 000,000),

or any sum as required by Law unless otherwise agreed with the Authority in writing. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

15 Force Majeure

15.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Contractor. Each Party shall promptly notify the other Party in writing, using the most expeditious method of delivery, when such circumstances cause a delay or failure in performance, an estimate of the length of time delay or failure shall continue and when such circumstances cease to cause delay or failure in performance. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Contract by written notice to the other Party.

15.2 Any failure by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent or Sub-contractor shall be regarded as due to Force Majeure only if that agent, Sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Contractor.

16 Termination

16.1 The Authority may terminate the Contract at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Contract which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13, 17, 18.4 and 20.11;
or

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction.

16.3 The Contractor shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.

16.4 The Contractor may terminate the Contract by written notice to the Authority if the Authority has not paid any undisputed amounts within 90 days of them falling due.

16.5 If the Authority terminates the Contract under this clause, 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.

16.6 Termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 13A, 14, 16.7, 17.4, 18.4, 19 and 20.8 or any other provision of the Contract that either expressly or by implication has effect after termination.

16.7 Upon termination or expiry of the Contract, the Contractor shall:

16.7.1 give all reasonable assistance to the Authority and any incoming Contractor of the Services to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in Schedule 8 – Exit Management Strategy; and

16.7.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

17 Compliance

17.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.

17.2 The Contractor shall:

17.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and

17.2.2 notify the Authority immediately of any incident occurring in the performance of its obligations under the Contract on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Contract in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Authority's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

18 Prevention of Fraud, Corruption and Bribery

18.1 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:

18.1.1 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

18.1.2 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.

18.2 The Contractor shall not during the Term:

18.2.1 commit a Prohibited Act; and/or

18.2.2 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.

18.3 The Contractor shall, during the Term 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 shall notify the Authority immediately if it has reason to suspect that any breach of clauses 18.1 and/or 18.2 has occurred or is occurring or is likely to occur.

18.4 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the Authority) the Authority may:

18.4.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract; or

18.4.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

19 Dispute Resolution

19.1 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 an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement

between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within 20 Working Days of the agreement to refer to a Mediator, either Party shall apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

19.4 If the Parties fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, or such longer period as may be agreed by the Parties, either Party may refer the dispute to Court.

19.5 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the dispute.

20 General

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

20.3 Subject to Clause 3.4, the Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.

20.4 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:

20.4.1 allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;

20.4.2 terminate the Contract with immediate effect, except where the Contractor has already provided all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirement of the Specification, and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 19.

20.5 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or

understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

20.6 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

20.7 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

20.8 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20.9 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

20.10 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 disclose to the Authority full particulars of any such conflict of interest which may arise.

20.11 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or potential conflict between the pecuniary or personal interest of the Contractor and the duties owed to the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

20.12 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 Fraud or fraudulent misrepresentation.

21 Notices

21.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

21.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 21.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

21.3 For the purposes of clause 21.2, the address of each Party shall be:

21.3.1 For the Authority:

Contact Name: [REDACTED]

Address: Citygate, Gallowgate, Newcastle Upon Tyne, NE1 4PA

Email: [REDACTED]

21.3.2 For the Contractor:

Contact Name: [REDACTED]

Email: [REDACTED]

Address: Picker Institute Europe, Suite 6, Fountain House, 1200 Parkway Court, John Smith Drive, Oxford OX4 2JY

21.4 Either Party may change its address for service by serving a notice in accordance with this clause.

21.5 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

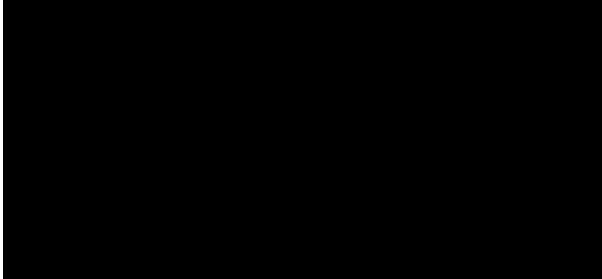
22 Governing Law and Jurisdiction

22.1 The validity, construction and performance of the Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

IN WITNESS of which this Contract has been duly executed by the parties on the date first above written.

SIGNED for and on behalf of **CARE QUALITY COMMISSION**

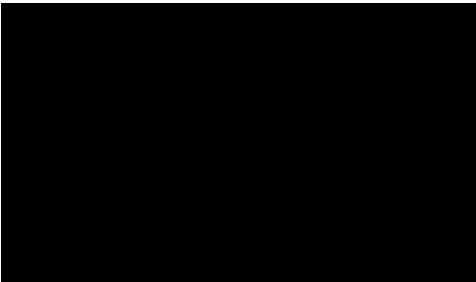
Authorised Signatory:



Date Signed: 10/03/2023

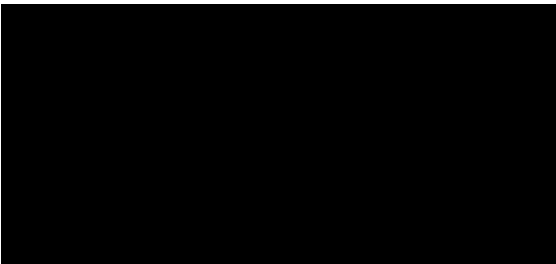
SIGNED for and on behalf of **PICKER INSTITUTE EUROPE**

Authorised Signatory 1:



Date Signed: 06/03/2023

Authorised Signatory 2:



Date Signed: 6/3/23

SCHEDULE 1 –SPECIFICATION

Project Brief	
Survey Title	Urgent and Emergency Care (UEC) Survey 2024 Scoping Project
Survey Lead	
Date Completed	23/12/2022
Purpose	
<p>This document sets out requirements for a scoping exercise for the 2024 UEC Survey to inform the Survey Coordination Centre's development of a proposal, costs, timetable and agreement of project requirements. The project will determine the options for implementing a new approach to services or providers included in the 2024 Urgent and Emergency Care Survey.</p>	
Background	
<p>Currently the UEC Survey provides CQC inspection of NHS acute trusts in England; for performance assessment and quality with data for use in regulation, monitoring and while also providing external stakeholders with data improvement purposes.</p> <p>The current 2022 Survey covers Type 1 and Type 3 services managed by Trusts.</p> <p>The survey has a number of questions used in indicator sets, including use by CQC within monitoring tools and DHSC in Domain its 4 (Ensuring patients have a positive experience care) of the Outcomes Framework. NHS of England and NHS trusts themselves are also key users of data.</p>	

Changing Landscape of UEC Services

In 2016, a [survey programme consultation](#) indicated an interest in developing a survey with a systemwide approach assessing patient experience across a range of providers of UEC services. At this stage, the scope of the survey expanded from Type 1 A&E departments only, to also include Type 3 (Urgent Treatment Centres).

Urgent and emergency care continues to evolve, thus, consideration is being given to what extent the UEC Survey could or should now evolve further alongside those services. Where Type 3 services are included in the survey, the current eligibility criteria for participation is limited to services being wholly run by Trusts and not in partnership with an external organization. However, many Type 3 services are outsourced to external organizations or community partnerships. Furthermore, Type 3 services are only eligible for inclusion if the trust also participates in the Type 1 arm. This, alongside the exclusion of other services providing UEC means we have a partial snapshot of the state of UEC provision at any given time. We are keen to explore whether this could, or should be expanded, and to understand the needs of key stakeholders and data users if the survey scope were to change in 2024.

Access to Samples

The feasibility of sampling patients across different UEC service types would need to be considered as part of this exercise and will impact on the options taken forward for a 2024 survey. We expect there to be **no suitable alternative** to drawing a system wide sample across UEC services that would permit a pathway type/ tracking survey, but this should be explored briefly at a high level.

It is expected that drawing of samples from other provider types to provide a snapshot of UEC provision at a given point in time would be complex, but this should be thoroughly explored to provide an indication of feasibility for a 2024 survey (or for trialling alongside a 2024 survey).

For context, the 2021 Adult Inpatient Survey undertook a parallel run of a sampling exercise attempting to draw a centralised sample via NHS Digital. Data quality was high but time to draw the sample was excessive.

Sampling Month

Following a successful UEC mixed-mode pilot survey in 2022 (attached), the survey will transition to a mixed-mode method (also known as 'online first') for the 2024 survey. Stakeholder feedback sought previously suggests surveying during 'winter pressures' would be most useful, and we have previously consulted with data users to ensure this is appropriate. We anticipate sampling for 2024 to take place during February 2024 as a minimum.

Requirements

PURPOSE

The project will assess options for revising the scope of the Urgent and Emergency Care Survey, and desirability and feasibility of doing this. It will be important to consider the current and likely future shape of UEC service provision and stakeholders needs for patient experience data of different services. The output of the scoping will inform development of the 2024 survey and might potentially suggest further development work to incrementally expand survey scope in the future. Please also include consideration for consultation on change to data collection scope as part of National Statistics badging.

Overarching questions are:

- What should the 2024 survey look like
- What is feasible (in 2024 or the near future)

We envisage the following specific questions will need to be addressed as a minimum to achieve this purpose (though this list is not exhaustive):

Current UEC Service Provision

- Mapping the range of services that currently address urgent and emergency care needs – including types of providers providing care and services provided, current methods of large-scale collection of patient feedback and patient types.
- How does urgent and emergency care currently work within integrated care systems and what are immediate/ longer term plans for how this will evolve.

How are services being monitored, evaluated, or improved?

- What models of care, policies, guidelines are in place for how UEC services should operate?
- What are the patient experience data needs for different system partners, providers of services?
- How is current UEC survey data being used? For what purposes, stakeholder priorities? How survey data sits alongside other sources of UEC patient feedback.

Feasibility of Accessing Samples for Survey

- Availability of patient records
- Barriers to patient participation
- Motivators and barriers to provider participation

Potential for Synergy

- Can a future UEC survey fill in any gaps within the NHS Patient Survey Programme (NPSP), for example children and young people's experience of UEC services.

ACTIVITIES

We envisage the project will have two broad phases: data collection comprising desk research and interviews/ focus groups, followed by survey options appraisal and recommendations for the 2024 survey.

Desk research should include the following as a minimum:

- Research UEC care models, policies, indicator frameworks, standards and guidance.
- Identify the range and providers UEC services, including current post COVID landscape and known plans for evolution

- Map UEC services to identify different service types and existing standards of service by type.
- Understand landscape of collection of patient feedback across UEC
- Identify known challenges and opportunities for a UEC survey to provide people's experience data
- Sample frame options

Stakeholder interviews

Map UEC stakeholders and organise and undertake interviews to understand who is currently using results from the UEC survey, how they are using the information and what they need from the survey for monitoring, evaluation, service improvement or other data needs in the future (including attribution/ granularity of data). Engage with stakeholders that can contribute thinking to the ideal shape and priorities for a survey going forward and the benefits this can bring to the system/ how it can facilitate needed improvements in UEC patient experience. CQC can assist with identifying stakeholders, in particular internal CQC colleagues.

Engage with stakeholders as to how patient surveys can help identify risks at providers, such as safety issues. This includes how the survey could identify a change happening that may suggest a future risk.

Preliminary list of potential stakeholders:

- CQC – UEC working group, Director of Secondary and Specialist Healthcare, National Professional Advisor, Policy team, Operational Insight, Inspection team, ICS regulatory team
- NHS England
- Department for Health and Social Care
- Providers providing UEC services
- Integrated Care Boards (ICBs)/ ICSs
- Other stakeholders representing all different types of UEC services identified.

Understanding UEC service delivery at trusts

Engage with trusts and other providers to understand how UEC services are delivered (i.e. use of triage etc) to understand variation in service delivery, if any, that may need to be considered for development of a UEC survey. Understand how services work together and how referral system is managed.

Understanding UEC services not currently eligible to participate in the survey

- Building on learning from UEC 2022 survey development, understand services that are not currently eligible to participate in the survey, in particular Type 3 services that are not wholly run by an NHS acute trust. This includes understanding appetite to take part in the UEC survey.
- Understand how current ineligible providers or services could participate in the survey, e.g. access to patient data, finances to pay for the survey.
- What monitoring and performance evaluation do they currently use and what informs those processes, i.e. what data or intelligence do they currently have.

Understanding UEC role in integrated care and ICSs

- Explore how the survey can support system level understanding of care and support Integrated Care Systems (ICSs) understand experiences of UEC. Also, for the survey to support CQC's monitoring of ICSs, as well as needs of other data users. This includes understanding how the system is supposed to work, how it is working and gaps and shortfalls.
- Undertake engagement with ICS stakeholders to understand what they need from the survey.

Deliverable 1: Produce a report on the findings of the desk research and stakeholder interviews.

Feasibility assessment for development of the UEC survey

- Provide recommendations on the feasibility and prioritisation of including new services in the UEC survey. This will depend on the findings and outcomes of the scoping work, and therefore the scale of development for the survey.

Recommendations

- Set out options for a 2024 survey that either meets user need immediately, or potentially delivers an interim solution with opportunity for testing and scope expansion during 2024 and beyond. Please refer to time available for delivering the 2024 survey e.g. sampling patients receiving care February 2024 at the latest.
- The report should evaluate options for inclusion of different services in 2024, including appropriateness and user need for surveying the patient journey through A&E services.
- Part of options appraisal will include a high level sense of the type of questionnaire content to be included (though this will be addressed in detail through the development

phase of the 2024 survey starting spring 2023)

Deliverable 2: final scoping report providing overview of findings, detailed options appraisal, recommendations and next steps.

Costs

Costs will be provided upfront by the CCEM with payments made by CQC at delivery milestone 1 and 2,

Timescales

Costs are required by 9th December and a timetable is required by 13th December 2022.

Scoping work should begin in January 2023.

Report to CQC any potential slippage in established timelines for agreement. The shared timetable must be updated to reflect changes to delivery dates.

Constraints


None known.

Governance and Reporting

Meetings

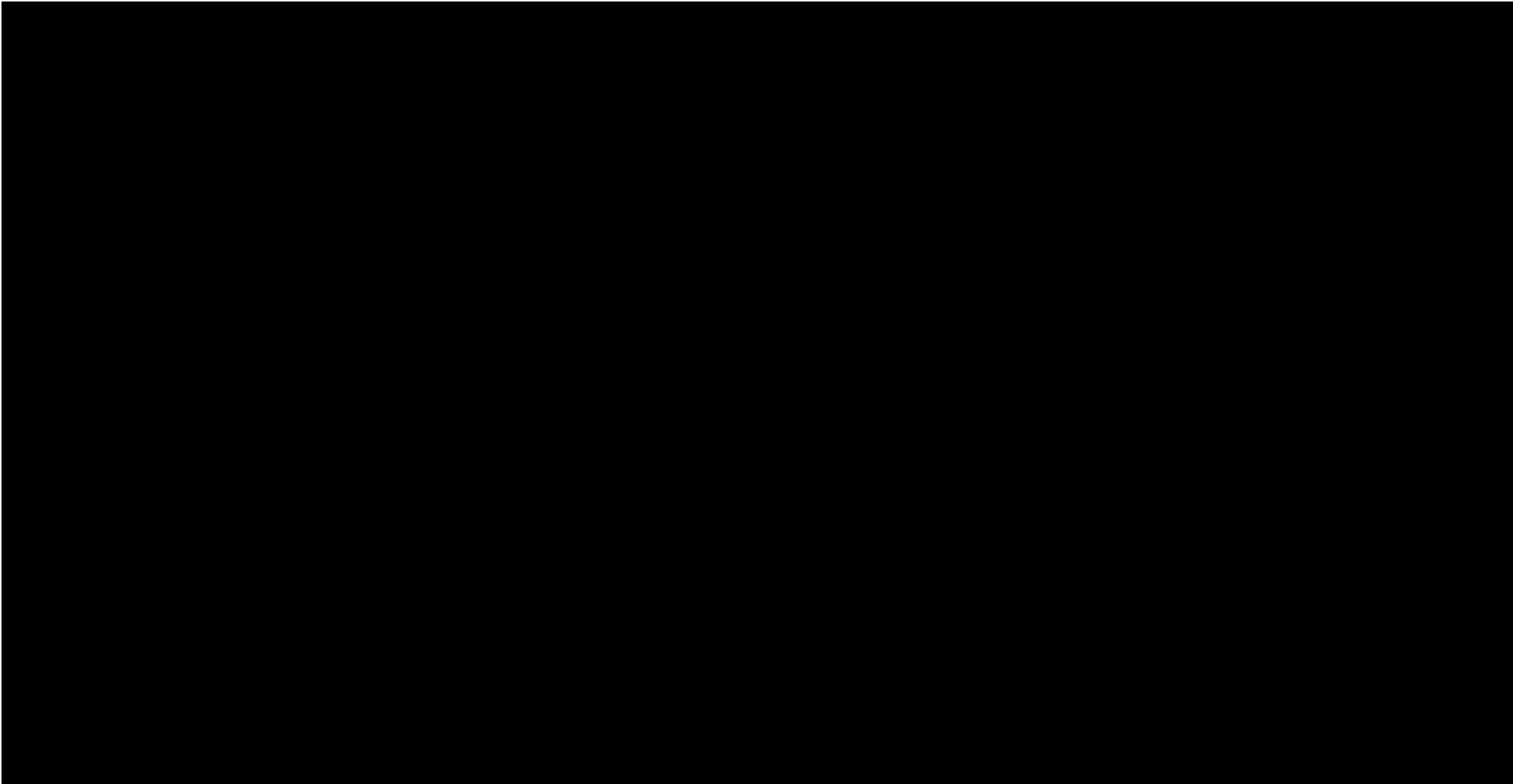
One meeting per fortnight, or to be determined as appropriate against timetable

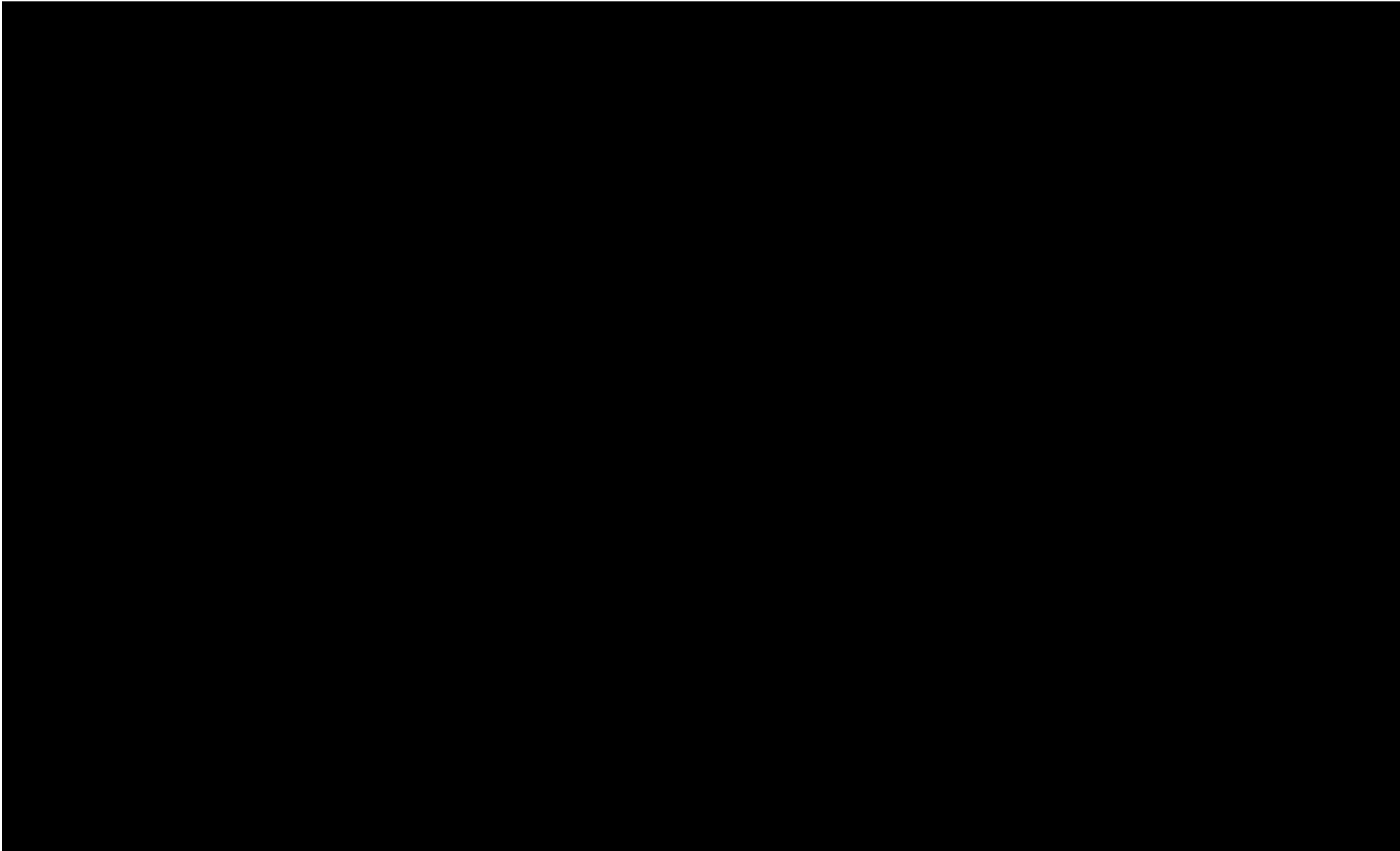
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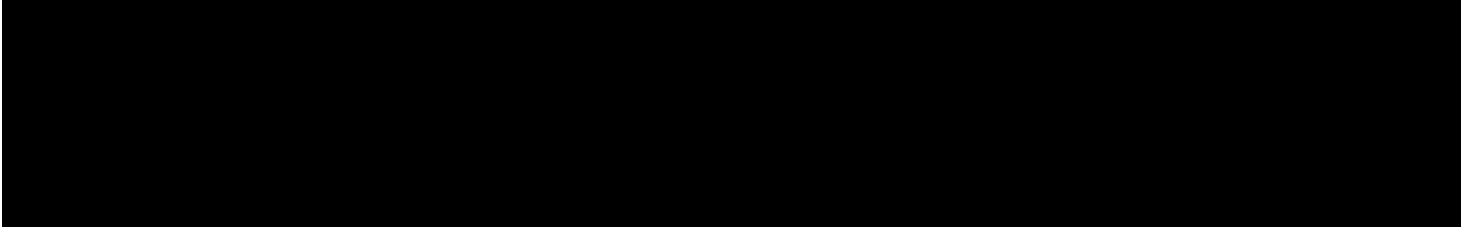
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Date: 28/11/2022

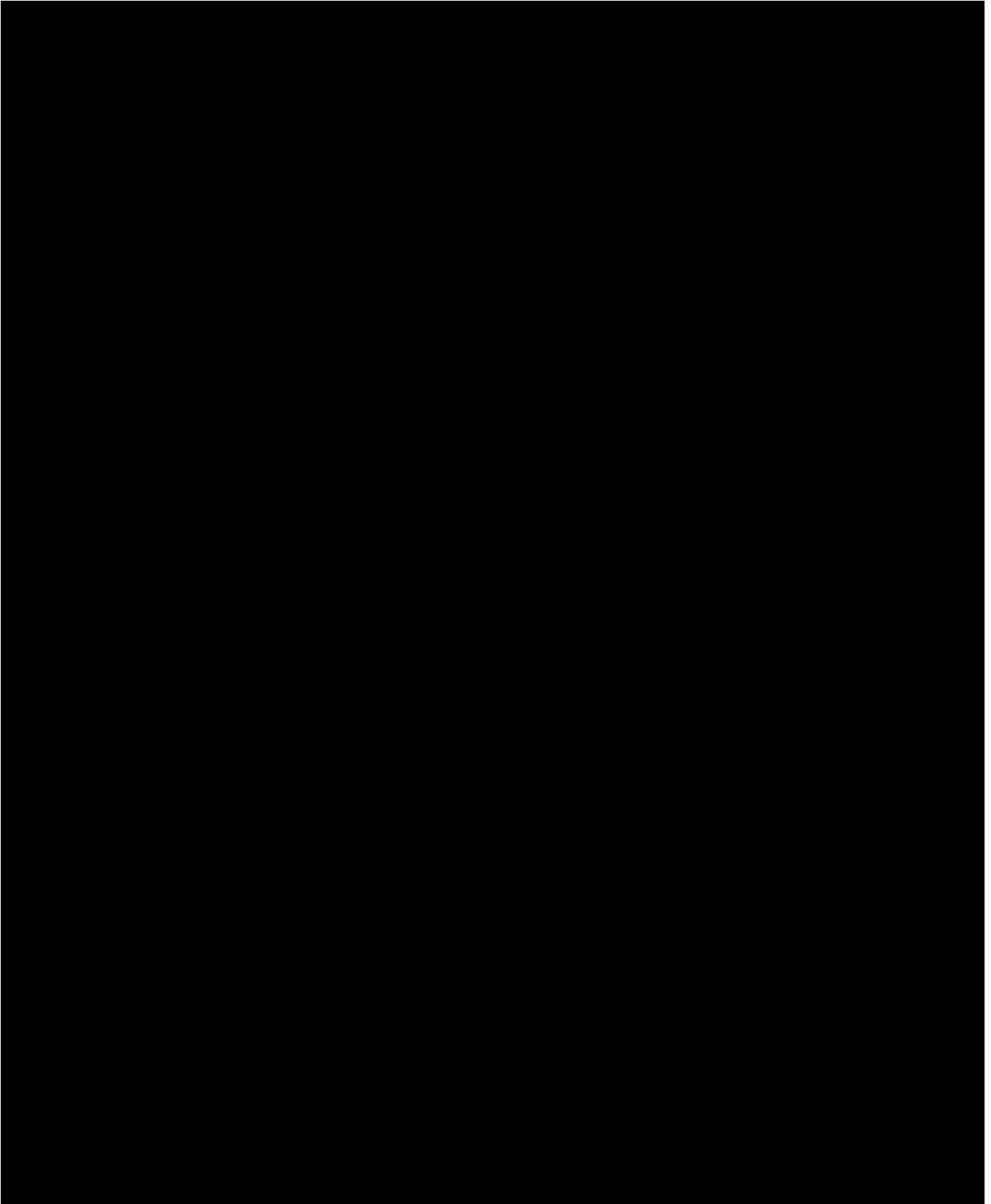
SCHEDULE 2 – PRICE

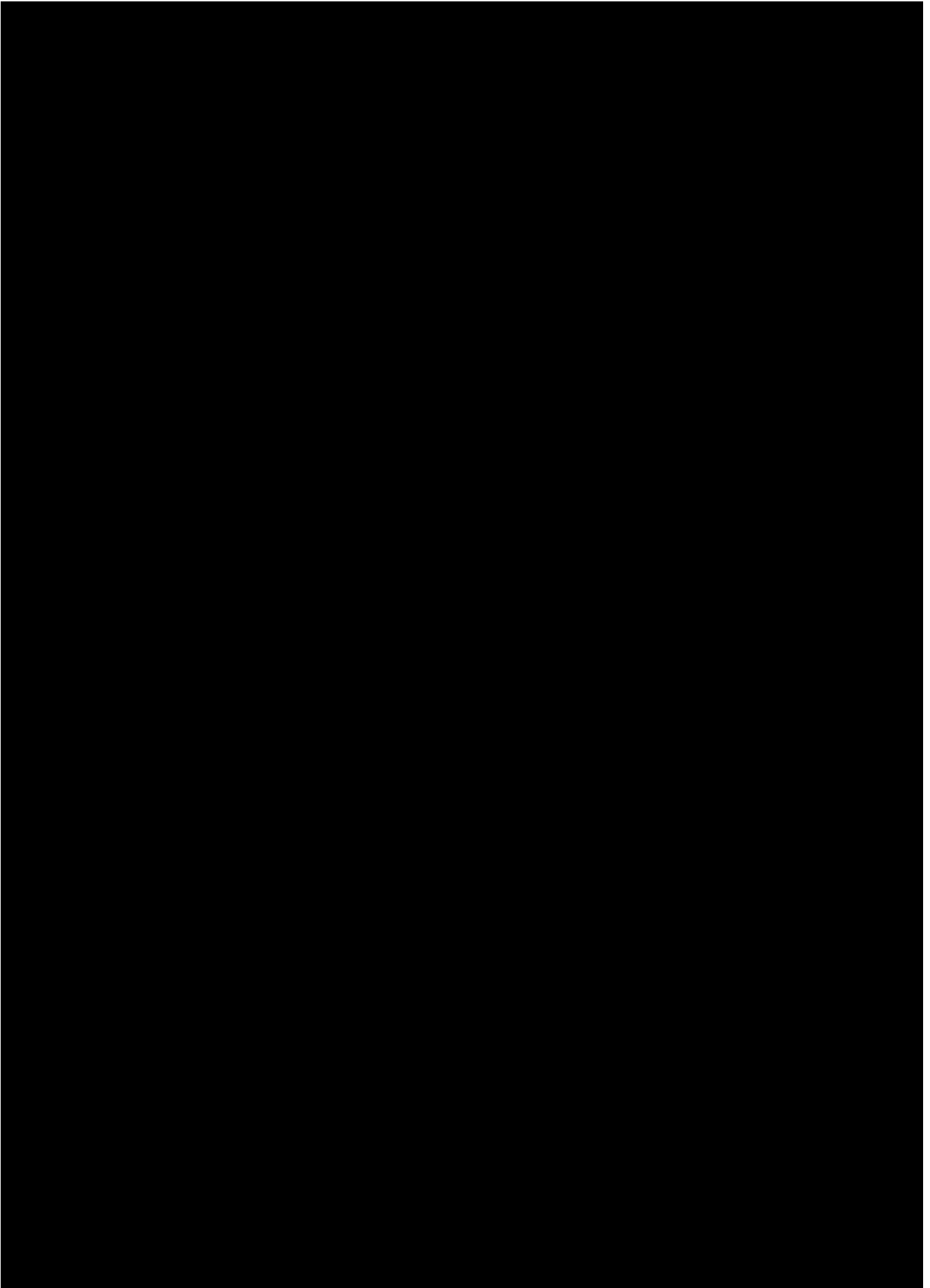


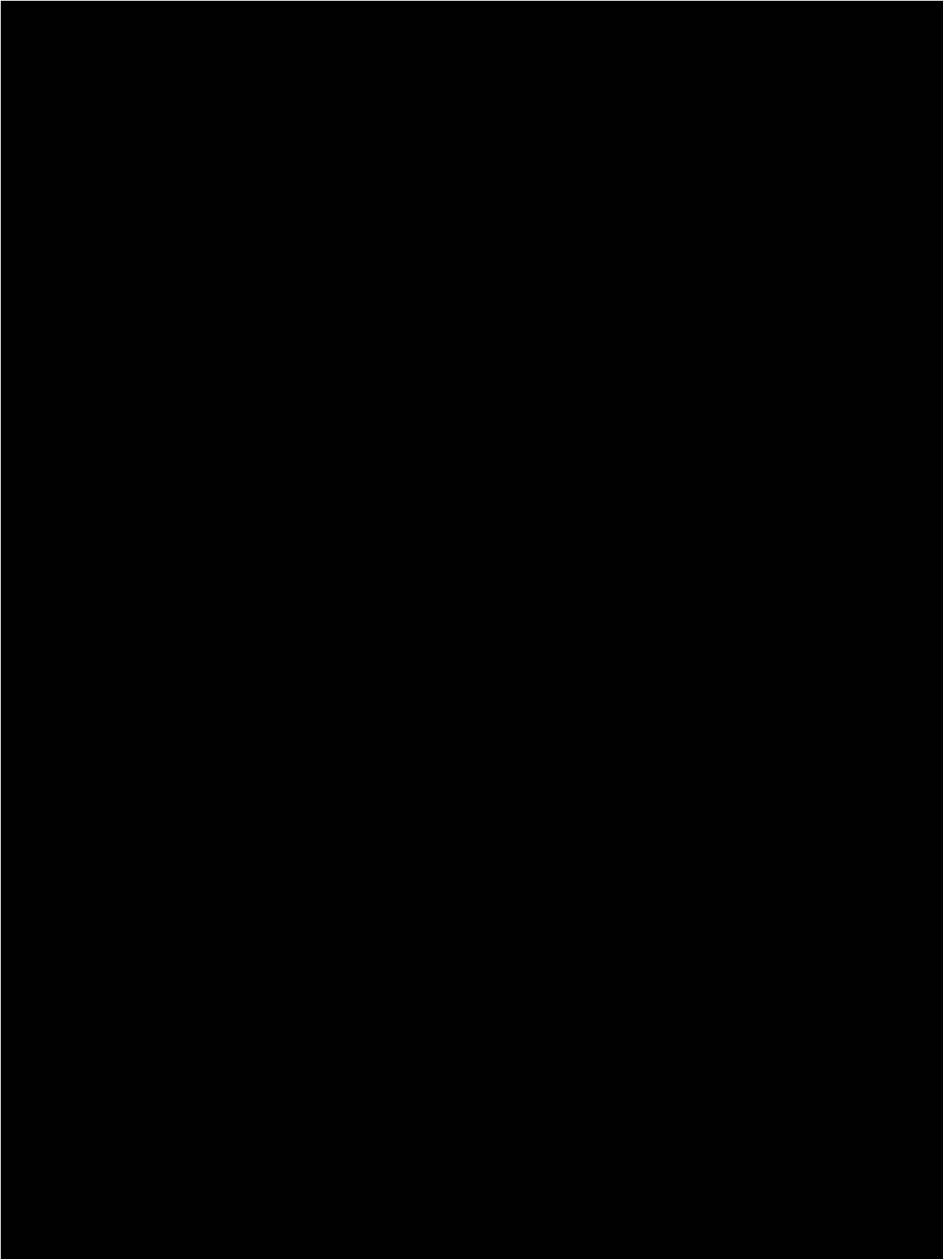


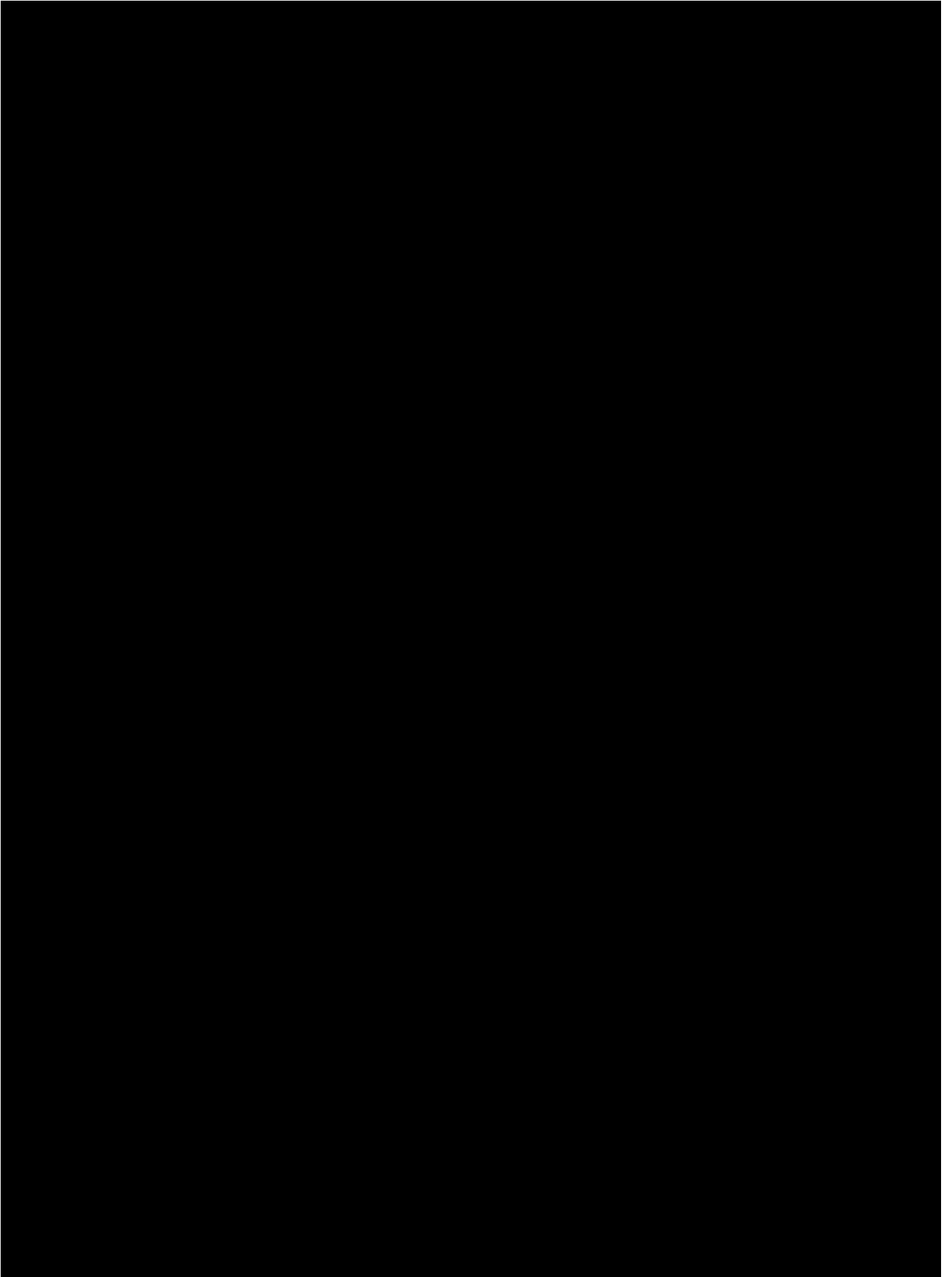


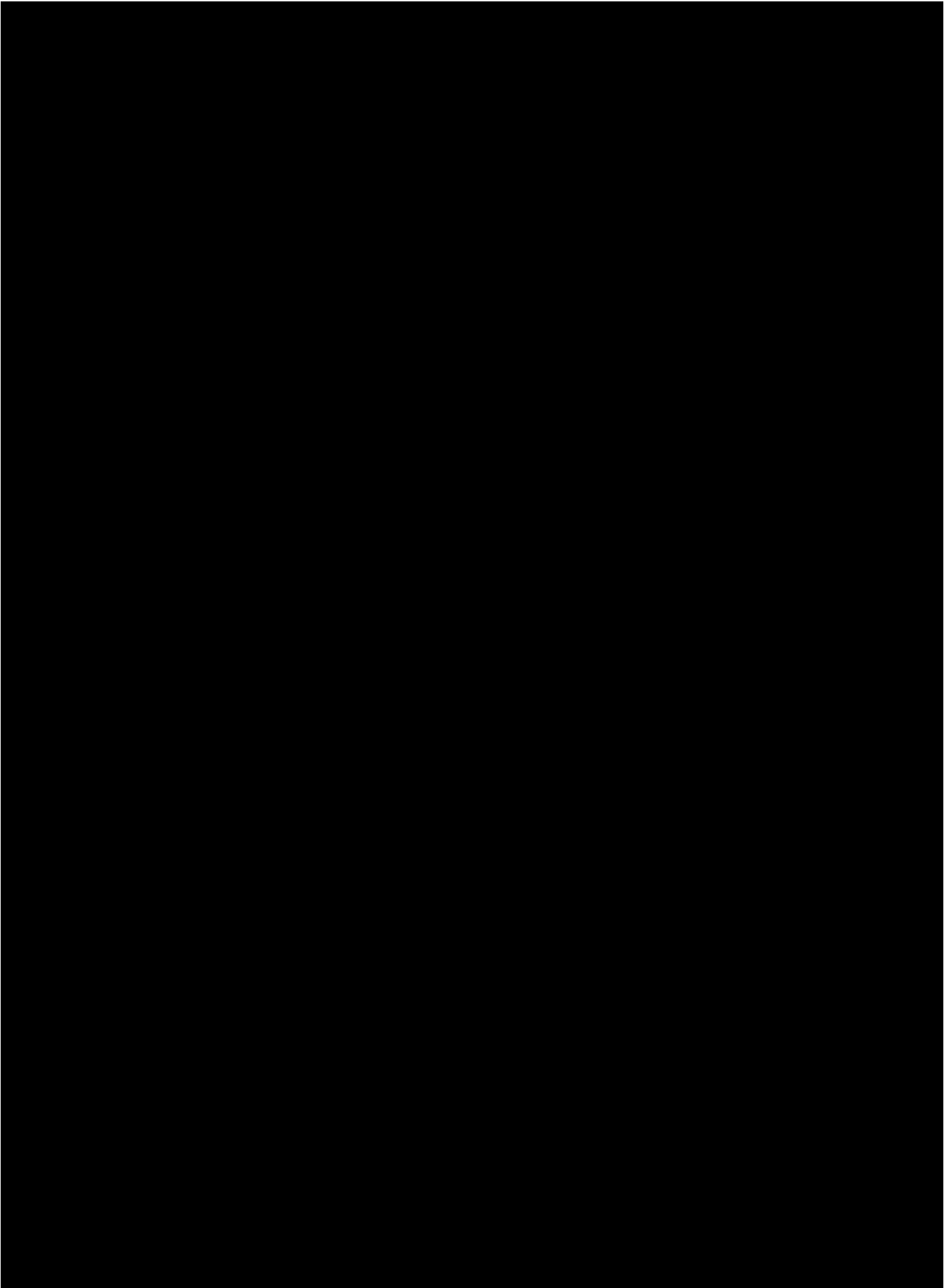
SCHEDULE 3 – CONTRACTOR’S RESPONSE

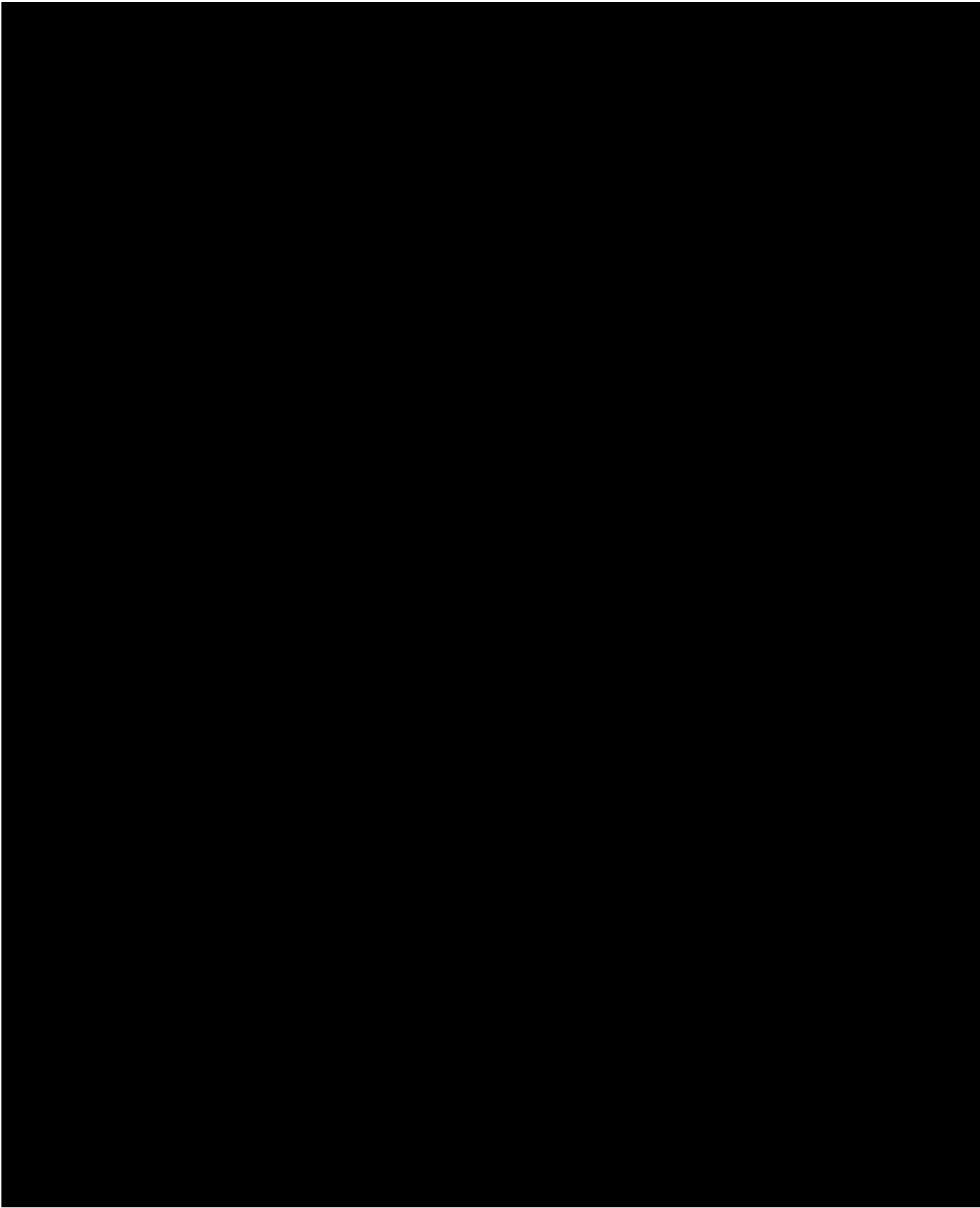












SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Personal Data Processing

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: [REDACTED]

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

Name:	[REDACTED]
Address:	[REDACTED]
E-mail:	[REDACTED]

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

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

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	Urgent and Emergency Care (UEC) Survey 2024 Scoping Project.
Duration of the processing	The duration of the Contract.
Nature and purposes of the processing	The nature of the processing includes collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.

	The purpose of the processing is to determine the options for implementing a new approach to services or providers included in the 2024 Urgent and Emergency Care Survey.
Type of Personal Data being Processed	Contact details for professional stakeholders for the scoping piece but personal data will be limited to these individual's work email/ contact details.
Categories of Data Subject	Key stakeholders and data users of Urgent and Emergency Care (UEC) and the Urgent and Emergency Care (UEC) Survey 2024.
International transfers and legal gateway	Any data sources that we will be analysing are in the public domain.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Respondent level data set is retained indefinitely as part of the data archive.</p> <p>Name and address details are destroyed by the Contractor once they are no longer needed for the purposes of completing the scoping, this is typically around six months from the end of fieldwork.</p>

Personal Data Security

- 1) The Contractor shall hold at least Cyber Essentials Plus certification and ISO 27001:2013 certification.
- 2) The Contractor shall perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.
- 3) If the provision of the Services requires the Contractor to Process Authority Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Contractor shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.
- 4) The Contractor shall ensure that any Authority Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.

- 5) The Contractor shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.
- 6) The Contractor shall at their own cost and expense, procure a CHECK or CREST Certified Supplier to perform an ITHC or Penetration Test prior to any live Authority data being transferred into their systems. The ITHC scope must be agreed with the Authority to ensure it covers all the relevant parts of the system that processes, stores or hosts Authority data.
- 7) The Contractor shall ensure that any Authority Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 8) The Contractor's Staff may be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Contractor maybe required to implement additional security vetting for some roles.
- 9) The Contractor must operate an appropriate access control regime to ensure that users and administrators of the Service are uniquely identified. The Contractor must retain records of access to the physical sites and to the Service.
- 10) The Contractor must be able to demonstrate they can supply a copy of all data on request or at termination of the Service and must be able to securely erase or destroy all data and media that the Authority data has been stored and processed on.
- 11) The Contractor shall collect audit records which relate to security events in delivery of the Service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data. The retention periods for audit records and event logs must be agreed with the Authority and documented.
- 12) The Contractor shall not, and shall procure that none of its Sub-contractors, process Authority Data outside the EEA without the prior written consent of the Authority and the Contractor shall not change where it or any of its Sub-contractors process Authority Data without the Authority's prior written consent which may be subject to conditions.
- 13) The Contractor shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.
- 14) The Contractor shall design the service in accordance with:

- **NCSC "Security Design Principles for Digital Services";**
- **NCSC "Bulk Data Principles";** and
- **NSCS "Cloud Security Principles".**

SCHEDULE 5 – SECURITY REQUIREMENTS AND PLAN

NOT USED

SCHEDULE 6 – CHANGE CONTROL

Contract Change Note

Contract Change Note Number Contract Reference Number & Title Variation Title Number of Pages	
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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 Contract Value	£
	Previous Contract Changes	£
	DN: Enter all CCN's here so that total value is shown for Audit purposes	
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
DN: Any change to Specification should be added as an Annex to the CCN		
Revised Term		
Change in Contract Manager(s)		
Other Changes		

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

SIGNED for and on behalf of **CARE QUALITY COMMISSION**

SIGNED for and on behalf of **PICKER INSTITUTE EUROPE**

SCHEDULE 7 – THIRD PARTY SOFTWARE

NOT USED

SCHEDULE 8 – EXIT MANAGEMENT STRATEGY

1. The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of the provision of the Services to a replacement contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.
2. The Contractor shall:
 - a. 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
 - b. liaise with the Authority and/or any replacement contractor, and provide reasonable assistance and advice concerning the provision of the Services and their transfer to the Authority or to such replacement contractor,and in all instances, shall be in accordance with timescales reasonably stipulated by the Authority.
3. Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging any replacement contractor to perform them, the Contractor shall co-operate fully with the Authority and any replacement contractor and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
4. When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
5. Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.
6. The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority.

The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

7. The following commercial approach shall apply to the transfer of the Services if the Contractor:
 - a. does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
 - b. reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price and shall ensure there is no double recovery in the event that the Contractor is the replacement contractor.