

## **ENVIRONMENT AGENCY'S CONDITIONS OF CONTRACT**

The Authorities Conditions of Contract that are applicable to this contract, and are provided below.

# **Contract for the Provision of Operation and Management of the UK Eutrophication and Acidification network (2021-2026)**

**July 2021**

**Contract Ref: ECM\_61817**

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# SECTION 1

## FORM OF CONTRACT

### **PARTIES:**

(1) The Environment Agency, Horizon House, Deanery Road, Bristol, BS1 5AH (the “Authority”); AND

(2) UK Centre for Ecology and Hydrology (Company Number: 11314957) Maclean Building, Benson Lane, Crowmarsh Gifford, Wallingford, Oxfordshire, UK OX10 8BB (the “**Consortium**”)

(3) Ricardo Energy & Environment, Gemini Building, Harwell, Didcot, OX11 0QR (the “**Consortium**”)

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

### **NOW IT IS HEREBY AGREED as follows:**

#### **1. TERMS OF CONTRACT**

1.1 The “**Contract**” comprises the following:

Section 1: Form of Contract

Section 2: Terms and Conditions

Schedule 1: Specification

Schedule 2: Prices

Schedule 3: Change Control

Schedule 4: Commercially Sensitive Information

Schedule 5: Non-Disclosure Agreement

Schedule 6: Consortium and Third-Party Software

Schedule 7: Security Requirements, Policy and Plan

Schedule 8: Performance Management Framework

Schedule 9: Consortiums Solution

1.2 In the event of any conflict between the provisions of the clauses of this Contract, the provisions of the Schedules or any Appendices, the following order of precedence shall apply

(a) Section 1 (Form of the Contract);

(b) Section 2 (Terms and Conditions) of this Contract;

(c) The Specification as set out in Schedule 1(The Specification);

(d) Appendices 1-27

1.3 The Contract starts 1<sup>st</sup> August 2021 (the “**Commencement Date**”) and ends on 31st July 2024 (the “**End Date**”) unless terminated or extended in accordance with the Contract.

1.4 The Authority may extend the term of the Contract for an optional 24 months in annual increments.

AS WITNESS whereof the hands of the duly authorised representatives of the Parties the day and year first herein written.

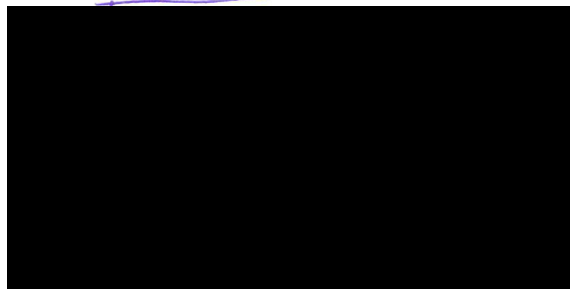
Signed for an on behalf of Authority

Signature

Name

Position

Date

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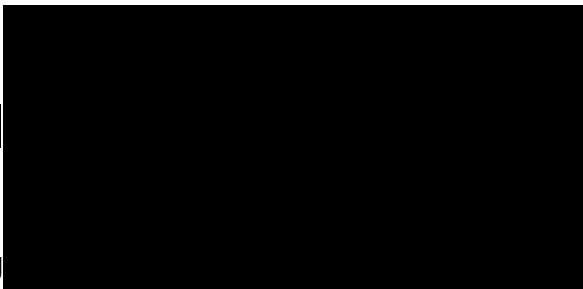
Signed for an on behalf of CONSORTIUM (UK CEH)

Signature

Name

Position R

Date 22 J

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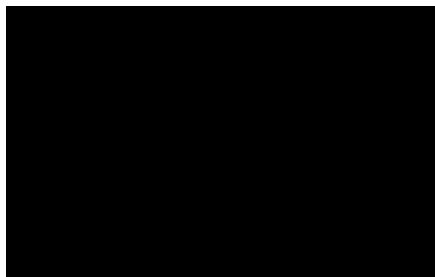
Signed for an on behalf of CONSORTIUM (Ricardo Energy & Environment)

Signature

Name

Position

Date

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# Contents

SECTION 1 .....	3
FORM OF CONTRACT .....	3
SECTION 2 .....	6
TERMS AND CONDITIONS .....	6
A. GENERAL PROVISIONS .....	7
B. THE SERVICES .....	19
C. PAYMENT .....	26
D. STATUTORY OBLIGATIONS .....	30
E. PROTECTION OF INFORMATION .....	34
F. CONTROL OF THE CONTRACT .....	46
G. LIABILITIES .....	53
H. DEFAULT, DISRUPTION AND TERMINATION .....	58
I. DISPUTES AND LAW .....	67
SCHEDULE 1 - SPECIFICATION	
SCHEDULE 2 - PRICING	
SCHEDULE 3 - CHANGE CONTROL	
SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION	
SCHEDULE 5 - NON DISCLOSURE AGREEMENT	
SCHEDULE 6 - CONSORTIUM AND THIRD PARTY SOFTWARE	
SCHEDULE 7 - SECURITY REQUIREMENTS, POLICY AND PLAN	
SCHEDULE 8 – PERFORMANCE MANAGEMENT FRAMEWORK	

# **SECTION 2**

## **TERMS AND CONDITIONS**

### **CONTENTS**

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Consortium Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Provision and Removal of Equipment
B3	Service Delivery
B4	Key Personnel
B5	Consortiums Staff
B6	Inspection of Premises
B7	Licence to Occupy Premises
B8	Property



B9	Offers of Employment
B10	Employment Provisions
C1	Price
C2	Payment and VAT
C3	Recovery of Sums Due
C4	Price during Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Health and Safety
D5	Environmental Requirements
E1	Authority Data
E2	Data Protection Act
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity, Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights
E9	Audit
E10	Tax Compliance

F1	Failure to meet requirements
F2	Monitoring Contract Performance
F3	Remedies for inadequate performance
F4	Transfer and Sub-Contracting
F5	Waiver
F6	Variation
F7	Severability
F8	Remedies Cumulative
F9	Entire Agreement
F10	Counterparts
G1	Liability, Indemnity and Insurance
G2	Warranties and Representations
G3	Force Majeure
H1	Termination on Insolvency and Change of Control
H2	Termination on Default
H3	Termination on Notice
H4	Termination under the Regulations
H5	Consequences of Expiry or Termination
H6	Disruption
H7	Recovery upon Termination
H8	Retendering and Handover
H9	Exit Management
H10	Exit Procedures
H11	Knowledge Retention

- I1        Governing Law and Jurisdiction
- I2        Dispute Resolution

## A GENERAL PROVISIONS

### A1    Definitions and Interpretation

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

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

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

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

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

**“Authority Data”** means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Consortium by or on behalf of the Authority; or (ii) which the Consortium are 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 Premises”** means any premises owned, occupied or controlled by the Authority or any other public body which are made available for use by the Consortium or its Sub-Contractors for provision of the Services.

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

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

**“BPSS”** means the HMG Baseline Personnel Security Standard for Government employees.

**“Bravo”** is the Government e-tendering system

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

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

**“Commercially Sensitive Information”** means the information listed in Schedule 4:

- (a) which is provided by the Consortium to the Authority in confidence for the period set out in Schedule 4; and/or
- (b) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be

considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

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

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

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

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

**“Consortium’s Software”** means software which is proprietary to the Consortium, including software which is or will be used by the Consortium for the purposes of providing the Services and which is set out in Schedule 6.

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

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

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

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

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

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

**“Defra”** means the Department for Environment, Food and Rural Affairs

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“GDPR”** means: (i) the General Data Protection Regulation (Regulation (EU) 2016/679) or GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) (“LED”) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 (“DPA 1998”) and/or the Data Protection Act 2018 (“DPA 2018”) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

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

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

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

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

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

**“Force Majeure Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Consortium or the Staff or any other failure in the Consortium’s supply chain.

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

**“General Anti-Abuse Rule”** means:

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

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

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

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



**“HMRC”** means HM Revenue & Customs.

**“ICT Environment”** means the Authority System and the Consortium’s System.

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

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

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

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

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

**“Law”** means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Consortium are bound to comply.

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

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

**“Month”** means calendar month.

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

(a) any tax return of the Consortium’s submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

- i) a relevant Tax Authority successfully challenging the Consortium’s under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- ii) the failure of an avoidance scheme which the Consortium was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

- (b) any tax return of the Consortium submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

**“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 Consortium by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Consortium of its obligations under the Contract.

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:

- i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - ii) under legislation or common law concerning fraudulent acts;  
or
  - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

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

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Consortium would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

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

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

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

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

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

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

**“Replacement Consortium”** 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”** means a request for information under the FOIA or the EIR.

**“Results”** means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- a) prepared by or for the Consortium for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Consortium, the Staff or any Sub-Contractor in relation to the provision of the Services.

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

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

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

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

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

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

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

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

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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Consortium to provide the Services including the software and which is specified as such in Schedule 6.

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

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

**“TUPE Information”** means the information set out in clause B10.1.

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

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

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

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

*In the Contract, unless the context implies otherwise:*

- (a) the singular includes the plural and vice versa;

- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority’s Obligations**

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



### **A3 Consortium Status**

- A3.1 The Consortium shall be an independent consortium and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Consortium shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Consortium is acting as the agent or employee of the Authority.

### **A4 Notices and Communications**

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- A4.2 If it is not returned as undelivered a notice served:
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
  - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

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

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

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

(a) For the Authority:

Contact Name: National Monitoring – Contracts, Monitoring Survey Team and [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

(b) For the Consortium:

Contact Name: Research Contracts Team and [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

and

Contact Name: [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

A5 Mistakes in Information

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

## **A6 Conflicts of Interest**

- A6.1 The Consortium shall take appropriate steps to ensure that neither the Consortium 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 Consortium and the duties owed to the Authority under the provisions of the Contract. The Consortium will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Consortium to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consortium and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

# **B. THE SERVICES**

## **B1 Specification**

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

B1.2 The Consortium shall provide the services under the Contract to the Environment Agency and to Defra as an authorised service recipient.

## **B2 Provision and Removal of Equipment**

B2.1 The Consortium shall provide all the Equipment and resource necessary for the supply of the Services.

B2.2 The Consortium shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.

B2.3 All Equipment brought onto the Premises shall be at the Consortium's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Consortium is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Consortium shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Consortium.

B2.5 If the cost of any Equipment is reimbursed to the Consortium such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Consortium will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

B2.6 The Consortium shall maintain all Equipment in a safe, serviceable and clean condition.

- B2.7 The Consortium shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, the Consortium shall remove the Equipment together with any other materials used by the Consortium to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Consortium shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Consortium or staff.

### **B3 Delivery**

- B3.1 The Consortium shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Consortium shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Consortium shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Consortium shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Consortium shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Consortium shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Consortium:
- (a) accept the installation; or

- (b) reject the installation and inform the Consortium why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

B3.4 If the Authority rejects the installation pursuant to clause B10.3(b), the Consortium shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

B3.5 The installation shall be complete when the Consortium receives a notice issued by the Authority in accordance with clause B10.3(a). Notwithstanding acceptance of any installation in accordance with clause B10.3(a), the Consortium shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B3.6 During the Contract Period, the Consortium shall:

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

## **B4 Key Personnel**

B4.1 The Consortium acknowledges that the Key Personnel are essential to the proper provision of the Services.

- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Consortium to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.
- B4.5 The Authority may, by notice to the Consortium, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Consortium shall comply with any such request immediately.

## **B5 Consortium's Staff**

- B5.1 The Authority may, by notice to the Consortium, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.
- B5.2 At the Authority's written request, the Consortium shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned

with the Contract and giving such other particulars as the Authority may reasonably request.

- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Consortium has failed to comply with clause B5.2 shall be final.
- B5.4 The Consortium shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **B6 Inspection of Premises**

- B6.1 Save as the Authority may otherwise direct, the Consortium is deemed to have inspected the Premises before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Licence to Occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Consortium by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Consortium solely for the purpose of performing its obligations under the Contract. The Consortium shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B7.2 The Consortium shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Consortium shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B7.3 Should the Consortium require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by



the Authority at the Consortium's expense. The Authority shall undertake approved modification work without undue delay.

- B7.4 The Consortium shall (and shall ensure that any Staff on the Authority's Premises shall) observe and 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 on the Authority's Premises as determined by the Authority.
- B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Consortium or its Staff and 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 the Premises owned or occupied by it in any manner it sees fit.

## **B8 Property**

All Property is and shall remain the property of the Authority and the Consortium irrevocably licenses the Authority and its agents to enter any Premises of the Consortium during normal business hours on reasonable notice to recover any such Property. The Consortium shall not in any circumstances have a lien or any other interest on the Property and the Consortium shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Consortium shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Consortium unless the Consortium notifies the Authority otherwise within 5 Working Days of receipt.
- B8.3 The Consortium shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

B8.4 The Consortium shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

B8.5 The Consortium shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Consortium shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter the Consortium shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Approval.

## **B10 Employment Provisions**

B10.1 Not later than 12 Months prior to the end of the Contract Period, the Consortium shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:

- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1

(a);

- (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
- (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Consortium shall give the Authority updated TUPE Information.

B10.3 Each time the Consortium supplies TUPE Information to the Authority it shall warrant its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Consortium.

B10.4 The Authority may use TUPE Information it receives from the Consortium for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Consortium shall provide the Replacement Consortium with such assistance as it shall reasonably request.

B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Consortium shall indemnify and keep indemnified the Authority and the Crown (both for themselves and any Replacement Consortium) against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Consortium may suffer or incur as a result of or in connection with:

- (a) the provision of TUPE Information;
- (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Consortium or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
- (c) any failure by the Consortium or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Consortium to comply with its duties under regulation 13 of TUPE;
- (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Consortium or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
- (e) any claim by any person who is transferred by the Consortium to the Authority and/or a Replacement Consortium whose name is not included in the list of Returning Employees.

B10.6 If the Consortium becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date TUPE Information.

B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.

B10.8 The Consortium undertakes to the Authority that, during the 12 Months prior to the end of the Contract Period the Consortium shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):

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

## **C PAYMENT**

### **C1 Price**

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

## C2 Payment and VAT

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

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

C2.3 The Consortium shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Consortium fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Consortium any additional VAT.

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

C2.5 Valid Invoices shall include:

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

(b) the Purchase Order number

**and, if requested by the Authority:**

(c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;

(d) the name of the individuals to whom the timesheet relates and hourly rates for each;

- (e) identification of which individuals are Consortium staff and which are Sub-Contractors;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) details of plant or materials operated and on standby;
- (j) separate identification of time spent travelling and/or meal or rest breaks; and
- (k) where appropriate, details of journeys made and distances travelled.

C2.6 The Authority shall not pay Consortium time spent on meal or rest breaks and the Consortium shall ensure that all workers take adequate meal or rest breaks.

C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.

C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12

hours and the Consortiums' s rates and Contract Price must include such breaks.

- C2.10 The Authority shall not pay the Consortiums' overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Consortium is awaiting licensing of the Premises on the Authority's instructions).
- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Consortium shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts.
- C2.15 The Consortium may claim expenses only if they are clearly identified, supported by original receipts and Approved.



- C2.16 If the Authority pays the Consortium prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Consortium. All payments made by the Authority to the Consortium shall be on an interim basis pending final resolution of an account with the Consortium in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Consortium within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

[apinvoices-env-u@gov.sscl.com](mailto:apinvoices-env-u@gov.sscl.com)

C2.19



- C2.20 The Consortium shall ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice.
- C2.21 The Consortium shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Consortiums' failure to account for or to pay any VAT relating to payments made to the Consortium under the Contract. Any amounts due under this

clause C2.21 shall be paid by the Consortium to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

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

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

### **C3 Recovery of Sums Due**

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

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

C3.3 The Consortium shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Consortium has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Consortium.

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

## **C4 Price during Extension**

- C4.1 Subject to Schedule 2 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## **D. STATUTORY OBLIGATIONS**

### **D1 Prevention of Fraud and Bribery**

- D1.1 The Consortium represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Consortium shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, consortiums', sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Consortium shall, during the Contract Period:

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

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

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

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

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

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

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

## **D2 Discrimination**

D2.1 The Consortium shall:

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

## **D3 Rights of Third Parties**

D3.1 For the purpose of this clause D3, “Rights” shall refer to the benefit of any of the following:

- (i) a right of the Environment Agency under the Contract;
- (ii) an obligation of the Consortium; or
- (iii) a warranty or other representation by the Consortium under the Contract.

D3.3 Subject to clauses D3.1 and D3.2:

D3.3.1 a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act; and

D3.3.2 any rights created under clause D3.1 may not be altered or extinguished by the parties without the consent of the third party beneficiaries.

## **D4 Health and Safety**

D4.1 The Consortium shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority’s health and safety policy while at the Authority’s Premises.

- D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Consortium shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **D5 Environmental Requirements**

- D5.1 The Consortium shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("**Environmental Policies**") which require the Authority through its procurement and management of suppliers:
- (a) conserve energy, water, wood, paper and other resources and reduce waste;
  - (b) phase out the use of ozone depleting substances;
  - (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
  - (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
  - (e) reduce fuel emissions wherever possible;
  - (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

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

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

unless given written permission by the Authority to do so.

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



- D5.4 If required by the Authority the Consortium shall provide the Authority with information about its compliance with its obligations under clause D5.3.
- D5.5 The Consortium shall ensure that its Staff are aware of the Authority's Environmental Policies.
- D5.6 The Consortium shall:
- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
  - (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## **E PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 For the purposes of clauses E1 and 2, the terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Process**” and “**Processing**” shall have the meanings prescribed in the DPA.
- E1.2 The Consortium shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

- E1.3 The Consortium shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Consortium of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.4 To the extent that Authority Data is held and/or Processed by the Consortium, the Consortium shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- E1.5 The Consortium shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- E1.6 The Consortium shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Consortium shall ensure that such back-ups are made available to the Authority immediately upon request.
- E1.7 The Consortium shall ensure that any system on which the Consortium holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.8 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Consortiums Default so as to be unusable, the Authority may:
- (a) require the Consortium (at the Consortiums expense) to restore or procure the restoration of Authority Data and the Consortium shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Consortium any reasonable expenses incurred in doing so.
- E1.9 If at any time the Consortium suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Consortium shall notify the Authority immediately and inform the Authority of the remedial action the Consortium proposes to take.

## E2 Data Protection Legislation

- E2.1 The Consortium shall (and shall ensure that all its Staff) comply with any the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy
- E2.2 Notwithstanding the general obligation in clause E2.1, if the Consortium is Processing Personal Data as a Data Processor for the Authority the Consortium shall:
- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority;
  - (b) comply with all applicable Laws;
  - (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Consortiums obligations under the Contract or as is required by Law or any Regulatory Body;
  - (d) Implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
- (f) not transfer the Personal Data to any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without Approval;
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
- (i) ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personal Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the  
Authority;
- (k) notify the Authority (within 5 Working Days) if it receives:
  - i) a request from a Data Subject to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Authority's obligations under the DPA;

- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - i) providing the Authority with full details of the complaint or request;
  - ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
  - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - iv) providing the Authority with any information requested by the Authority;
- (m) permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Consortiums data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Consortium is in full compliance with its obligations under the Contract;
- (n) provide a written description of the technical and organisational methods employed by the Consortium for Processing Personal Data (within the timescales required by the Authority); and
- (o) not Process Personal Data outside the European Economic Area without Approval and, if the Authority consents to a transfer, to comply with:
  - i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
  - ii) any reasonable instructions notified to it by the Authority.

E2.3 The Consortium shall comply at all times with the DPA and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E2.4 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

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

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

- E4.2 The Consortium hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.3 If required by the Authority, the Consortium shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 5. The Consortium shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.4 If requested by the Authority, the Consortium shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Consortium shall ensure that its Staff, professional advisors and consultants are aware of the Consortiums confidentiality obligations under the Contract.
- E4.5 The Consortium may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.6 The Consortium shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.7 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

- (e) it is independently developed without access to the other Party's Confidential Information.

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

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

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



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

## **E5 Freedom of Information**

E5.1 The Consortium acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E5.2 The Consortium shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **E6 Publicity, Media and Official Enquiries**

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

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

## E7 Security

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Consortium shall comply with all security requirements of the Authority while on the Authority's Premises and shall ensure that all Staff comply with such requirements.
- E7.2 The Authority shall give the Consortium upon request copies of its written security procedures.
- E7.3 The Consortium shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.4 Notwithstanding clause E7.3, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.5 Any cost arising out of the actions of the Parties taken in compliance with clause E7.4 shall be borne by the Parties as follows:
- (a) by the Consortium where the Malicious Software originates from the Consortium Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Consortium); and
  - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

## E8 Intellectual Property Rights

### E8.1 All Intellectual Property Rights in:

- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Consortium by or on behalf of the Authority (together with the Results, the "**IP Materials**") shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Consortium shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Consortium of its obligations under the Contract.

### E8.2 The Consortium hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials prepared in accordance with clauses E8.1(a) and (b). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Consortium; and
- (b) to Her Majesty the Queen, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials prepared in accordance with clauses E8.1 (a) and (b) and shall execute all documents and do all acts as are necessary to execute these assignments.

E8.3 The Consortium shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a nonexclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sublicense shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Consortium or to any other third party supplying goods and/or services to the Authority; and
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services and the Consortium shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown from and against

all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.3, except to the extent that any such claim results directly from:

- i) items or materials based upon designs supplied by the Authority;  
or
- ii) the use of data supplied by the Authority which is not required to be verified by the Consortium under any provision of the Contract.

E8.4 The Authority shall notify the Consortium in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Consortium to the Authority.

- E8.5 The Consortium shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Consortium) arising from the performance of the Consortiums obligations under the Contract (“**Third Party IP Claim**”), provided that the Consortium shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
  - (b) take due and proper account of the interests of the Authority; and
  - (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E8.6 The Authority shall at the request of the Consortium afford to the Consortium all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Consortium shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Consortium shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3(c) i and ii).
- E8.7 The Authority shall not, without the Consortiums consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E8.8 If any Third Party IP Claim is made or in the reasonable opinion of the Consortium is likely to be made, the Consortium shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.3(b) and G2.1(g)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Consortium is unable to comply with clauses E8.8(a) or (b) within 20 Working Days of receipt by the Authority of the Consortiums notification the Authority may terminate the Contract immediately by notice to the Consortium.

- E8.9 The Consortium grants to the Authority a royalty-free, irrevocable, worldwide, nonexclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Consortium owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **E9 Audit**

- E9.1 The Consortium shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Consortium shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

- E9.2 The Consortium agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Consortium in relation to the  
  
Services.
- E9.3 The Consortium shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Consortiums records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Consortium (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Consortium shall provide such explanations as are reasonably required for these purposes.

## E10 Tax Compliance

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Consortium shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Authority:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.



E10.2 If the Consortium or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Consortium shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Consortium or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1 Failure to meet Requirements**

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

### **F2 Monitoring of Contract Performance**

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

- F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Authority shall carry out a review of the performance of the Consortium ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Consortiums delivery of the Services; the Consortiums contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- F2.3 The Consortium shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Authority may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Consortiums obligations under this Contract.
- F2.5 The Authority shall give the Consortium a copy of the Checkpoint Review Report (if applicable). The Authority shall consider any Consortium comments and may produce a revised Checkpoint Review Report.
- F2.6 The Consortium shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Consortiums failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Consortiums failure to meet the Authority's expectations notified to the Consortium or of which the Consortium ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

### F3 Remedies for inadequate performance

- F3.1 If the Authority reasonably believes the Consortium has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Consortium has demonstrated to the Authority's reasonable satisfaction that the Consortium will be able to supply the Services in accordance with the Specification;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) withhold or reduce payments to the Consortium in such amount as the Authority reasonably deems appropriate in each particular case; and/or
- (a) terminate the Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Consortium for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Consortium for such part of the Services.
- F3.3 If the Authority reasonably believes the Consortium has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Consortium notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

- F3.4 If the Consortium has been notified of a failure in accordance with clause F3.3 the Authority may:
- (a) direct the Consortium to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
  - (b) withhold or reduce payments to the Consortium in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F3.5 If the Consortium has been notified of a failure in accordance with clause F3.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
  - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F3.6 If, having been notified of any failure, the Consortium fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Consortium.

## **F4 Transfer and Sub-Contracting**

- F4.1 Except where clauses F4.6 and F4.7 both apply, the Consortium shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Consortium of any of its obligations or duties under the Contract.
- F4.2 The Consortium shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Consortium shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Consortium shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Consortium on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Authority has consented to the award of a Sub-Contract, the Consortium shall ensure that:
- (a) the Sub-Contract contains a right for the Consortium to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law;
  - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F4.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract shall, at the request of the Authority, be sent by the Consortium to the Authority immediately.
- F4.5 If the Authority believes there are:

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

F4.6 Notwithstanding clause F4.1, the Consortium may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Consortium (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.6 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F4.7 and F4.8.

F4.7 If the Consortium assigns the right to receive the Price under clause F4.6, the Consortium or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F4.8 The Consortium shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.

F4.9 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

- F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Consortium's obligations under the Contract.

- F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Consortium in respect of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Consortium.
- F4.13 The Authority may disclose to any Transferee any Confidential Information of the Consortium which relates to the performance of the Consortium's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Consortium's obligations under the Contract and for no other purpose and shall take all reasonable steps to

ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F5 Waiver**

- F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).
- F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F6 Variation**

- F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause 6.



- F6.2 The Authority may request a Variation by notifying the Consortium in writing of the Variation and giving the Consortium sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Consortium accepts the Variation it shall confirm it in writing.
- F6.3 If the Consortium is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- (a) allow the Consortium to fulfil its obligations under the Contract without the Variation to the Specification; or
  - (b) terminate the Contract immediately except where the Consortium has already delivered all or part of the Services or where the Consortium can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CNN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.
- F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Consortium is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Consortium in addition to the warranties and representations set out in clause G2.
- F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F8 Remedies Cumulative**

F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **F10 Counterparts**

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **G LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party limits its liability for:

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

G1.2 Subject to clauses G1.3 and G1.4, the Consortium shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Consortium of its obligations under the Contract or the presence of the Consortium or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Consortium, or any other loss which is caused directly by any act or omission of the Consortium.

G1.3 Subject to clause G1.1 the Consortium's aggregate liability in respect of the Contract shall not exceed two million pounds (£2,000,000).

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

G1.5 The Authority may recover from the Consortium the following losses incurred by the Authority to the extent they arise as a result of a Default by the Consortium:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Consortium for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Consortium and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

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

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

- G1.7 Unless otherwise specified by the Authority, the Consortium shall, with effect from the Commencement Date for such period as necessary to enable the Consortium to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Consortium, arising out of the Consortium's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consortium. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Consortium possesses a certificate of exemption from the Employers Liability (Compulsory Insurance) Act 1969 as amended. This certificate notes that the Consortium 'in respect of any liability of the kind mentioned in section 1(1) of the Employer's Liability (Compulsory Insurance) Act 1969 will, to any extent to which it is otherwise incapable of being satisfied by the aforementioned employer, be satisfied out of moneys provided by Parliament."
- Ricardo will be required to hold appropriate insurance to cover its risks under this contract.
- G1.9 The Consortium shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Consortium does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Consortium.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Consortium of any liabilities under the Contract.
- G1.12 The Consortium shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Consortium, which would entitle any insurer to refuse to pay any claim under any insurance policy in which

the Consortium is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

G2.1 The Consortium warrants and represents on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Consortium;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Consortium to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Consortium or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager,

administrator or similar officer in relation to any of the Consortium's assets or revenue;

- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Consortium shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Consortium has not been in existence for 3 years) prior to the date of the Contract:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

### G3 Force Majeure

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



G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
  - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
  - ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Consortium fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Consortium where the Consortium is a company and in respect of the Consortium:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

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

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any

composition scheme or arrangement with, or assignment for the benefit of, the Consortium's creditors;

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

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

- (a) being notified that a Change of Control has occurred; or

- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

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

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

any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

- (ii) a petition is presented for his bankruptcy; or
- (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction.

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

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

## H2 Termination on Default

- H2.1 The Authority may terminate the Contract with immediate effect by notice if the Consortium commits a Default and:
- (a) the Consortium has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
  - (b) the Default is not, in the opinion of the Authority, capable of remedy; or
  - (c) the Default is a Material Breach.

- H2.2 If, through any Default of the Consortium, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Consortium shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Authority fails to pay the Consortium undisputed sums of money when due, the Consortium shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Consortium may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

### **H3 Termination on Notice**

- H3.1 The Authority may terminate the Contract at any time by giving thirty (30) days notice to the Consortium.

### **H4 Termination under the Regulations**

- H4.1 The Authority may terminate the Contract on written notice to the Consortium if:
- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
  - (b) the Consortium was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been

excluded from the procurement procedure which resulted in its award of the Contract; or

(c) the Contract should not have been awarded to the Consortium in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

## **H5 Consequences of Expiry or Termination**

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Consortium the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Consortium (for Services supplied by the Consortium prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

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

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

(a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall



prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Consortium under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## H6 Disruption

- H6.1 The Consortium shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other consortium employed by the Authority.
- H6.2 The Consortium shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Consortium shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Consortium's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.

- H6.5 If the Consortium is unable to deliver the Services owing to disruption of the Authority's normal business, the Consortium may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Consortium as a direct result of such disruption.
- H7.1 On termination of the Contract for any reason, the Consortium shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Consortium in good working order;
  - (c) immediately vacate any Authority Premises occupied by the Consortium;
  - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Consortium and/or the completion of any work in progress; and
  - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Consortium to conduct due diligence.
- H7.2 If the Consortium does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Consortium grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Consortium or its permitted suppliers or Sub-Contractors where any such items may be held.

## H8 Retendering and Handover

- H8.1 Within 21 days of being requested by the Authority, the Consortium shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- H8.4 The Consortium shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Consortium is required to provide under clause H8.1.
- H8.5 The Consortium shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Consortium's Premises for the purposes of clause H7.5, the Authority shall give the Consortium 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Consortium's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Consortium shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- H8.8 Within 10 Working Days of being requested by the Authority, the Consortium shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 Upon termination the Consortium shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Consortium in accordance with the procedure set out in clause H10.

## **H10 Exit Procedures**

- H10.1 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 a third party to perform them, the Consortium shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H10.2 The following commercial approach shall apply to the transfer of the Services if the Consortium:

- (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

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- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Consortium's rates either set out in Schedule 2 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Consortium shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Consortium of the licences it wishes to be transferred, and the Consortium shall provide for the approval of the Authority a plan for licence transfer.

## **H11 Knowledge Retention**

H11.1 The Consortium shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Consortium 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 Consortium 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 Consortium shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

## **I DISPUTES AND LAW**

### **I1 Governing Law and Jurisdiction**

- 11.1 Subject to the provisions of clause 12 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Consortium in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

- 12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Consortium and the commercial director of the Authority.
- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Consortium does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Consortium and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

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

- I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:
- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Consortium requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
  - (b) if the Consortium intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Consortium requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
  - (c) the Consortium may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

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

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Consortium (the “**Arbitration Notice**”) stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;



- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

# SCHEDULE 1 - SPECIFICATION

The following additional abbreviations and acronyms are used in this Specification of Requirements and will be taken to have the following meaning throughout.

TERM	MEANING
<b>“AGA-Net”</b>	Acid Gases and Aerosol Network
<b>“AQ”</b>	means Air Quality
<b>“Asset Register”</b>	means a list of the fixed assets owned by an organisation containing pertinent details about each fixed asset to track their value and physical location.
<b>“CEN”</b>	Means Comité Européen de Normalisation
<b>“COSHH”</b>	means the Control of Substances Hazardous to Health
<b>“DA”</b>	means the Devolved Administrators
<b>“DEFRA”</b>	means the Secretary of State for the Department of Environment, Food and Rural Affairs
<b>“EC”</b>	means the European Commission
<b>“EMEP”</b>	means European Monitoring and Evaluation Programme
<b>“Equipment”</b>	means for the purposes of this Specification of Requirements ‘equipment’ refers to monitoring instruments.
<b>“ESU”</b>	means the Equipment Support Units
<b>“LSO”</b>	means the Local Site Operators
<b>“NAMN”</b>	National Ammonia Monitoring Network
<b>“Responsible Officer”</b>	means an officer nominated and responsible by the Environment Agency as the supervising contract manager for this contract

“NO2-Net”	Rural NO2 diffusion tube network
“Precip-Net”	Precipitation chemistry Network
“QAQC”	means the Quality Assurance / Quality Control Services
“Regulations”	means the Public Contracts Regulations 2015 (as amended)
“UK”	means the United Kingdom
“UK AIR”	means the UK Air Information Resource ( <a href="http://uk-air.defra.gov.uk">http://uk-air.defra.gov.uk</a> )
“UKAS”	means the United Kingdom Accreditation Service
“UKEAP”	UK Eutrophying and Acidifying Atmospheric Pollutant Networks
“UNECE”	Means the United Nations Economic Commission for Europe

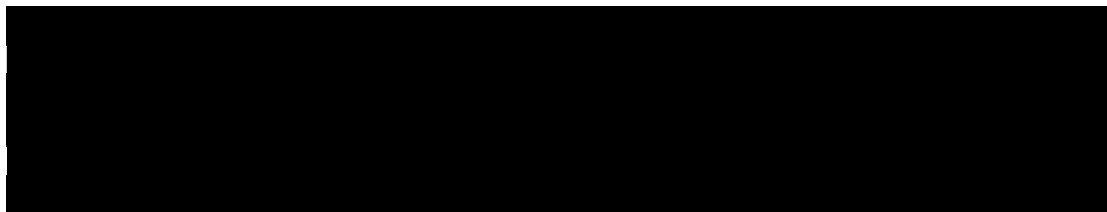
## 1. Background

1.1. Environment Agency on behalf of the Department for Environment, Food and Rural Affairs (Defra) and Devolved Administrations is seeking to procure a service provider / service provider to manage and operate the UK Eutrophying and Acidifying Atmospheric Pollutants (UKEAP) Network.

1.2. The UKEAP network consists of four rural air pollution monitoring networks and operation of two UK European Monitoring and Evaluation Programme (EMEP) Supersites. The four networks are the;

- **Precipitation Network (Precip-Net)** measuring rain composition across the UK;
- **National Ammonia Monitoring Network (NAMN)**, measuring ammonia concentrations across the UK;
- **Acid Gas and Aerosol Network (AGANet)**, measuring acid gas concentrations and inorganic aerosol (~PM<sub>4</sub>) composition; and
- **NO<sub>2</sub>-Net network**, measuring indicative NO<sub>2</sub> concentrations.

1.3.



[REDACTED]

[REDACTED]

[REDACTED]

### About the network

1.5.

[REDACTED]

1.6.

[REDACTED]

1.7.

[REDACTED]

1.8.

[REDACTED]

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<sup>1</sup> Available at <https://uk-air.defra.gov.uk/>

[REDACTED]

1.9.

[REDACTED]

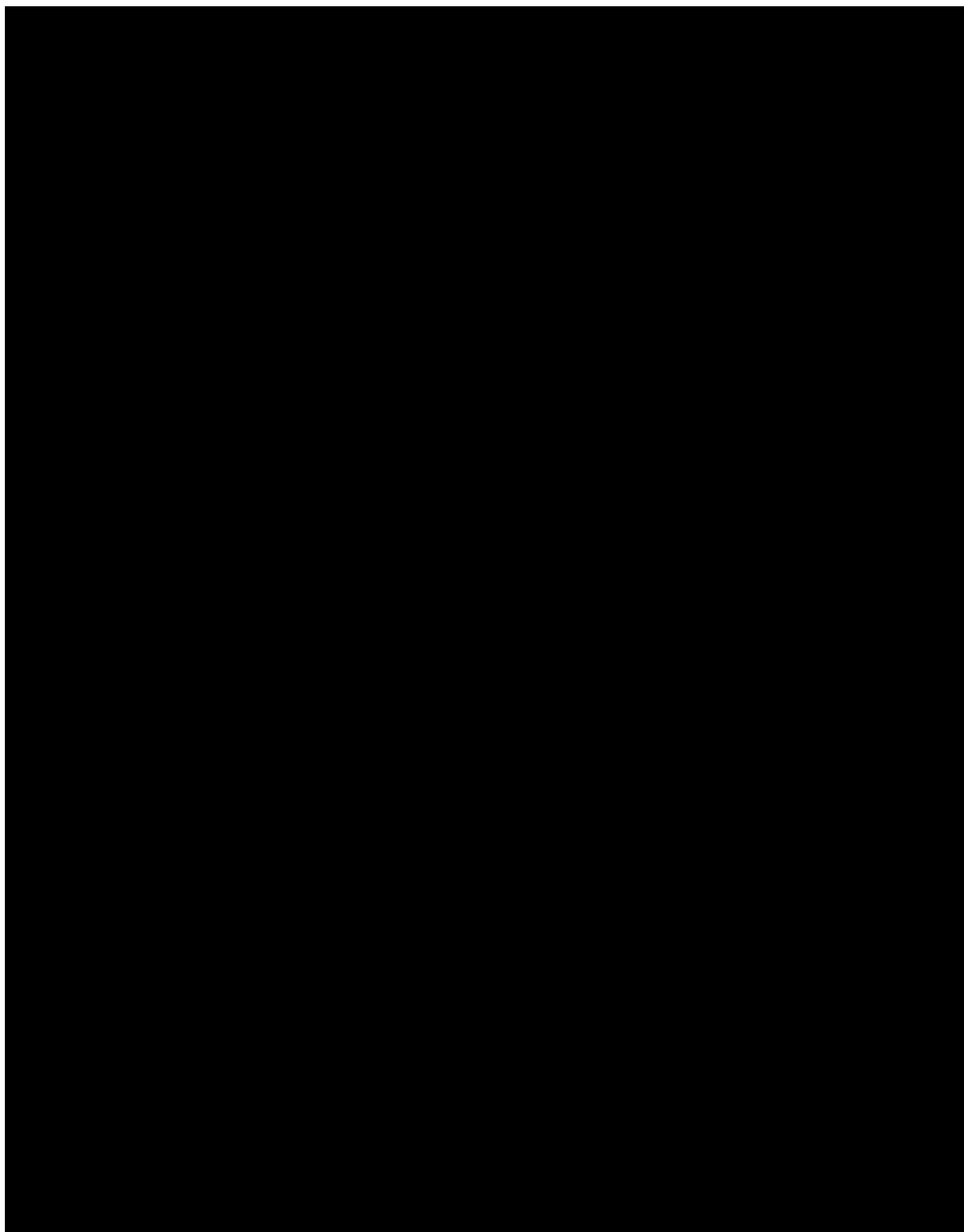
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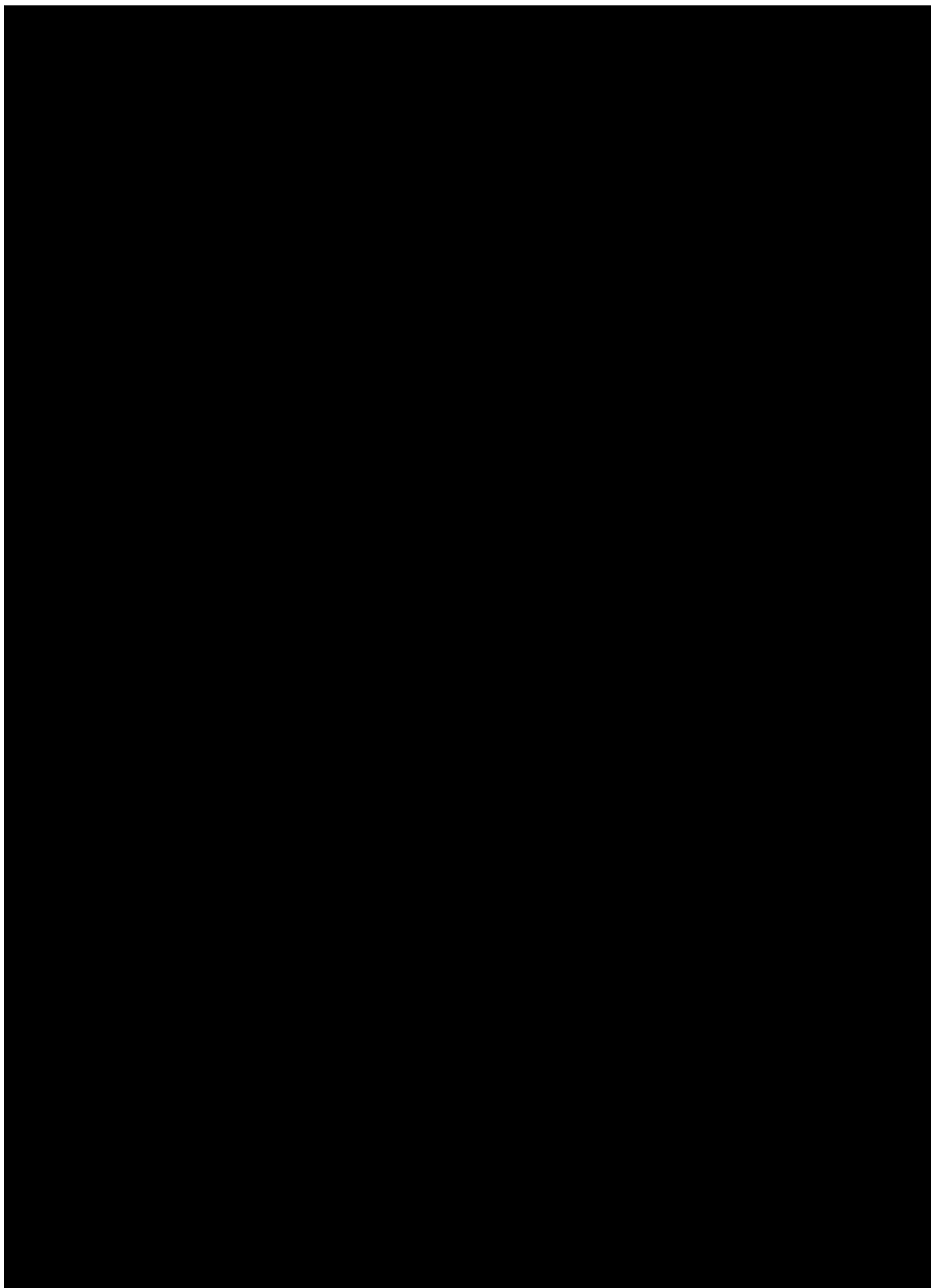
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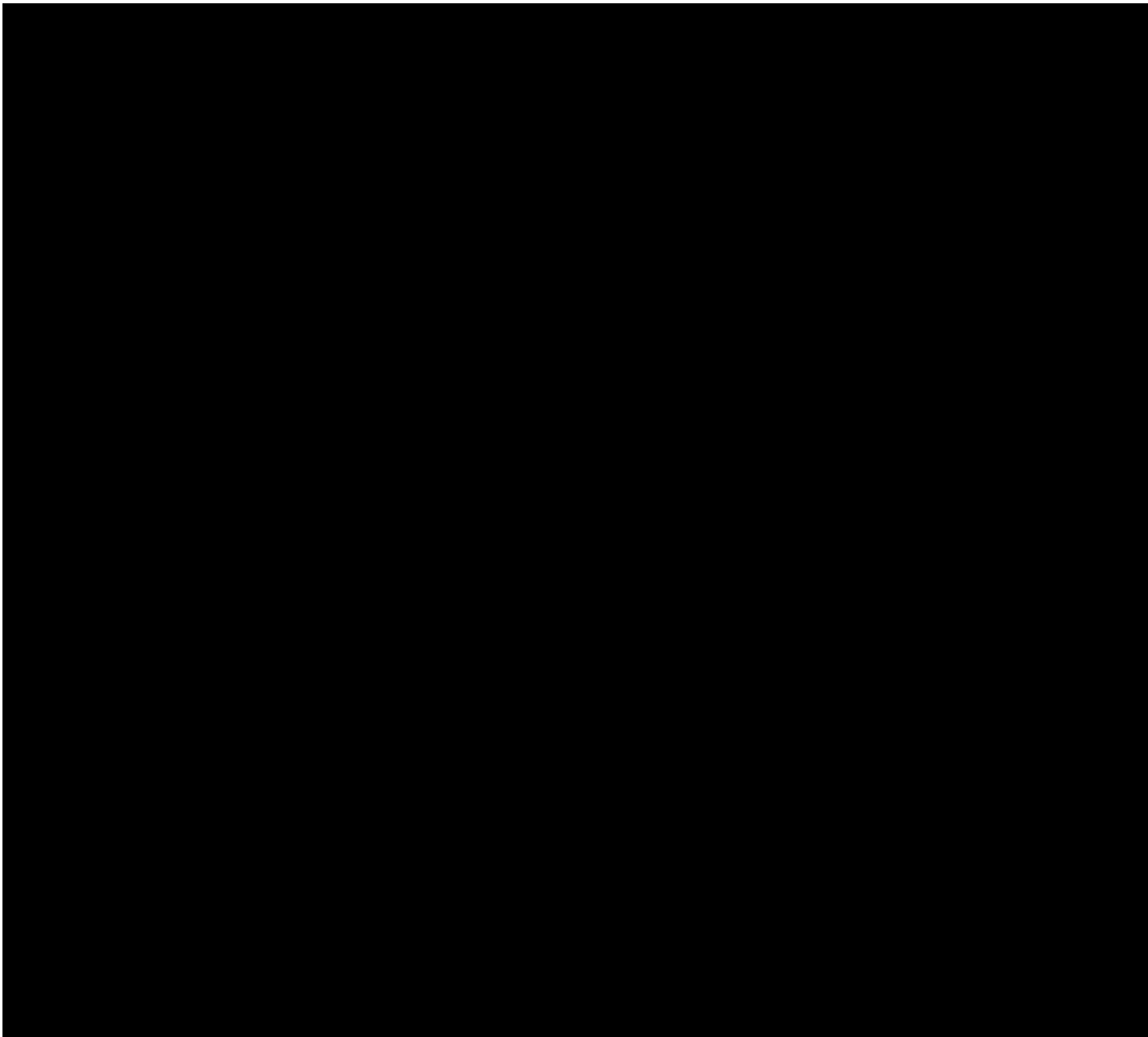
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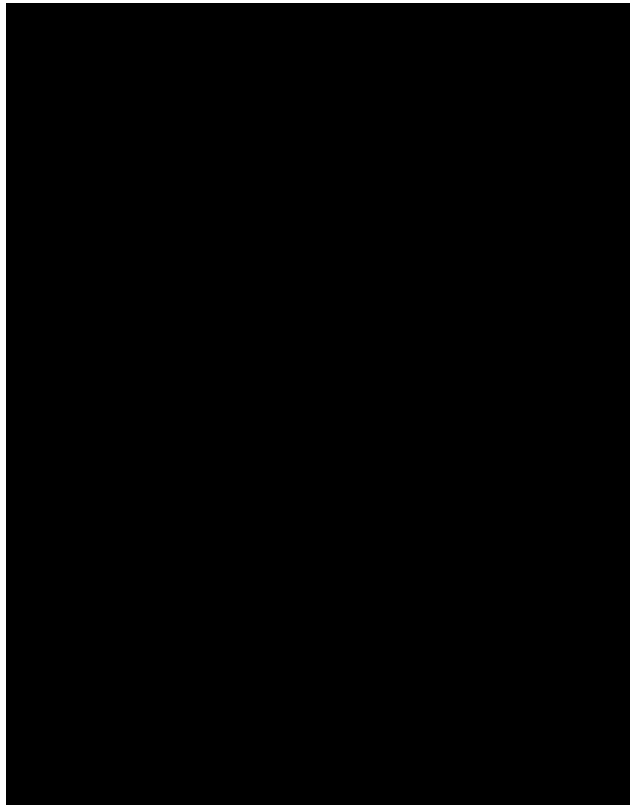




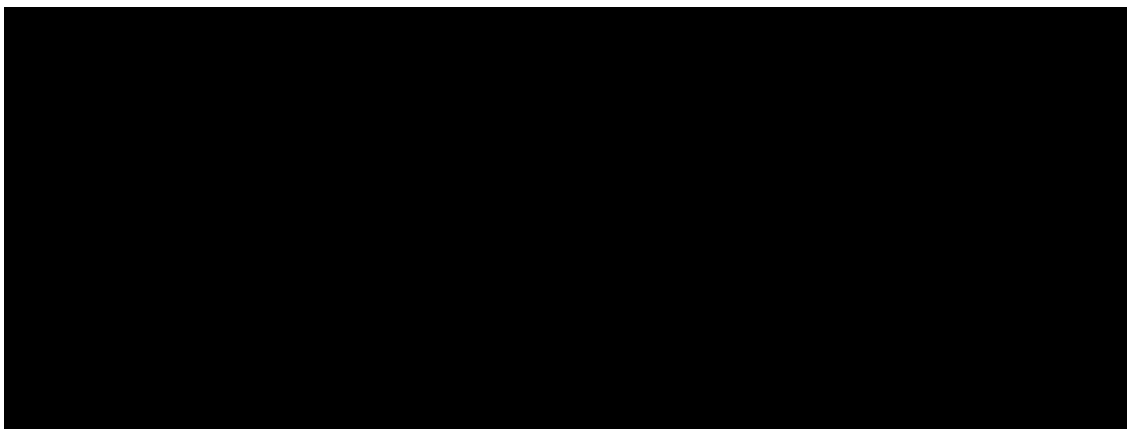
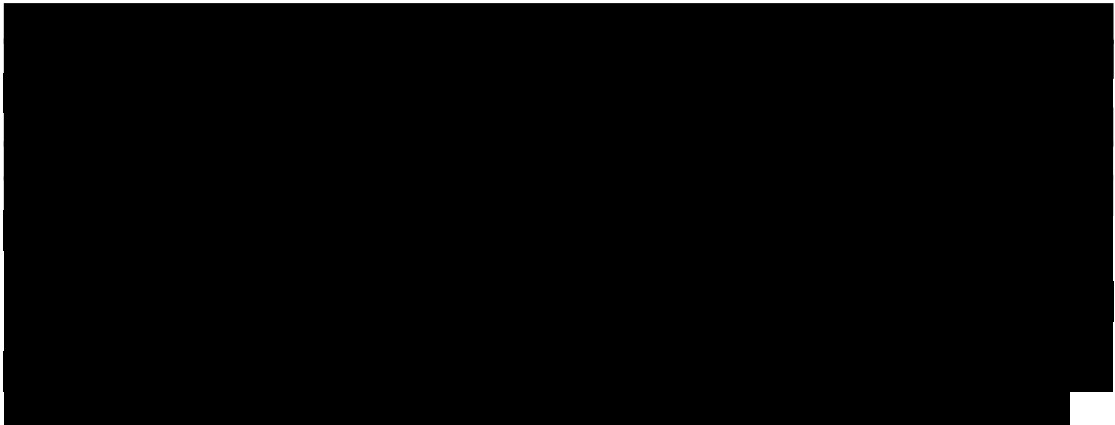
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## Precip-Net Bottle Collector



1.12.

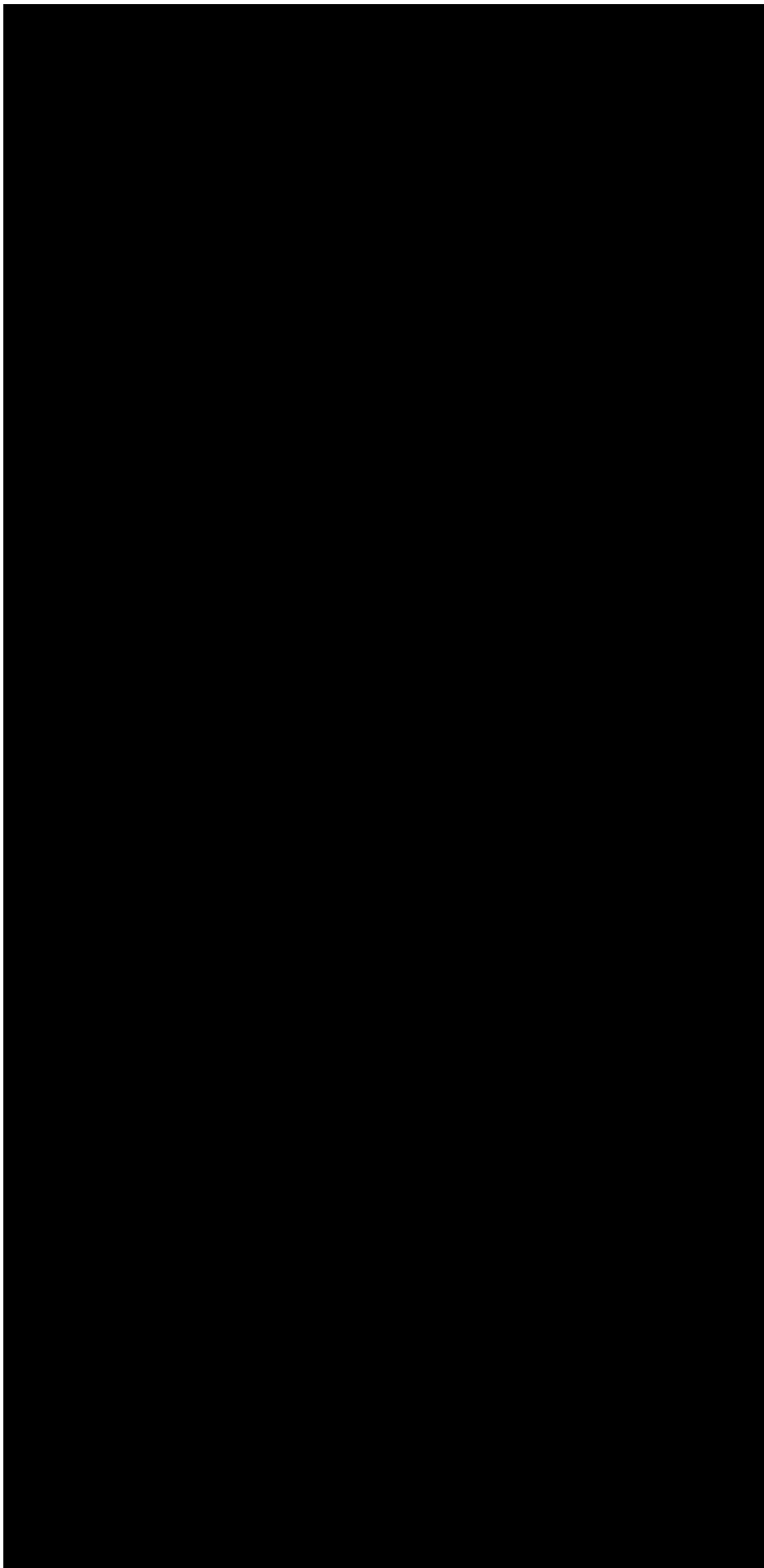


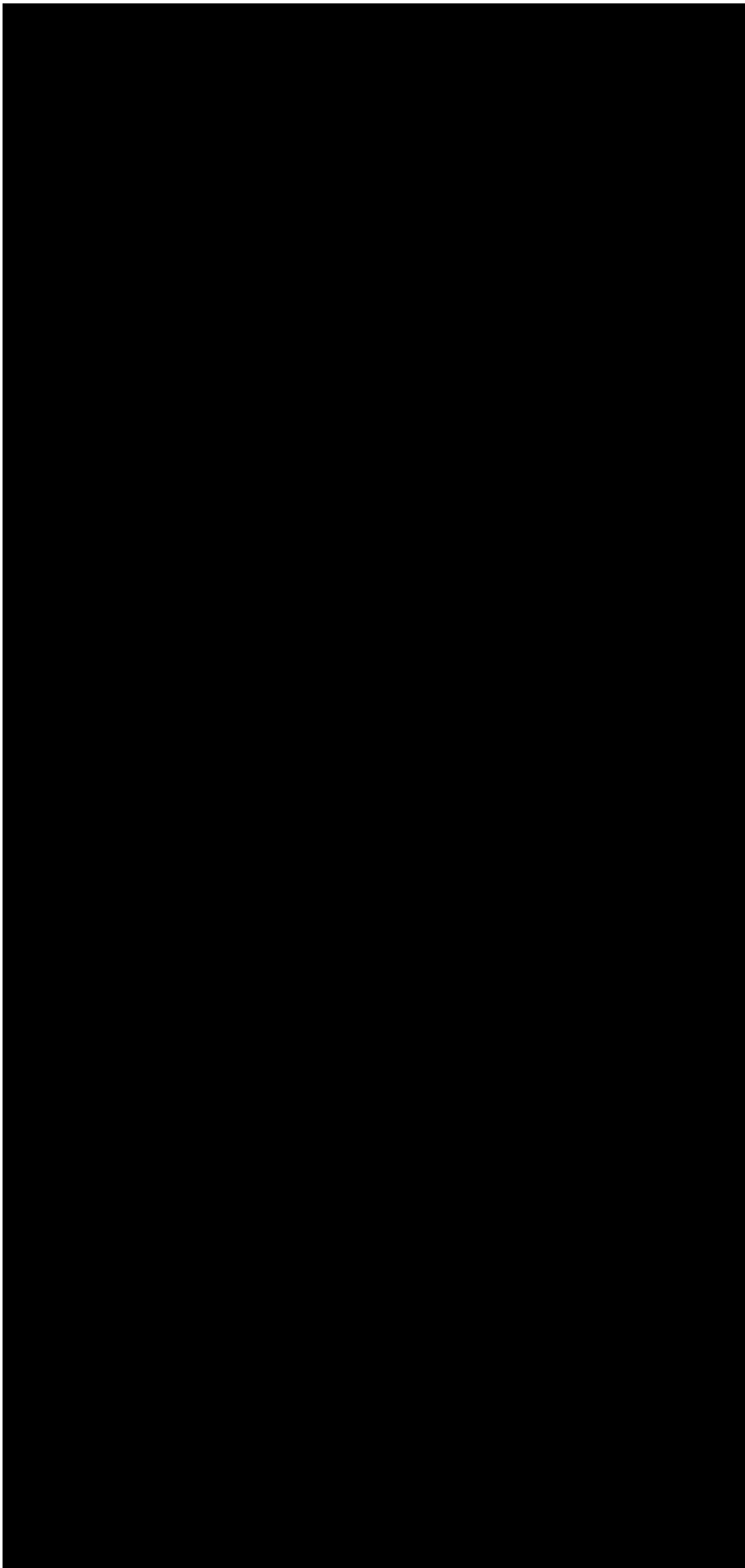
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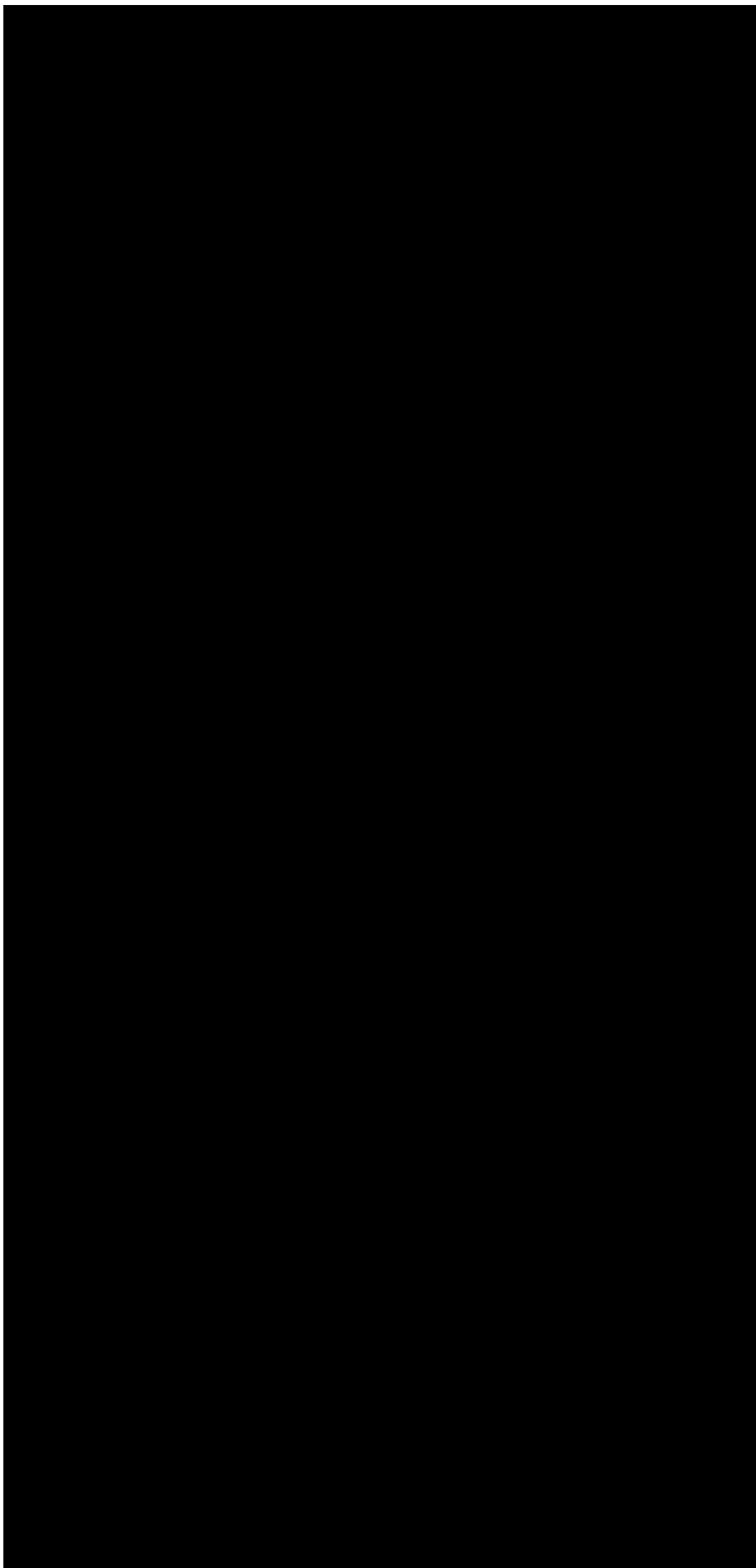
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1.15

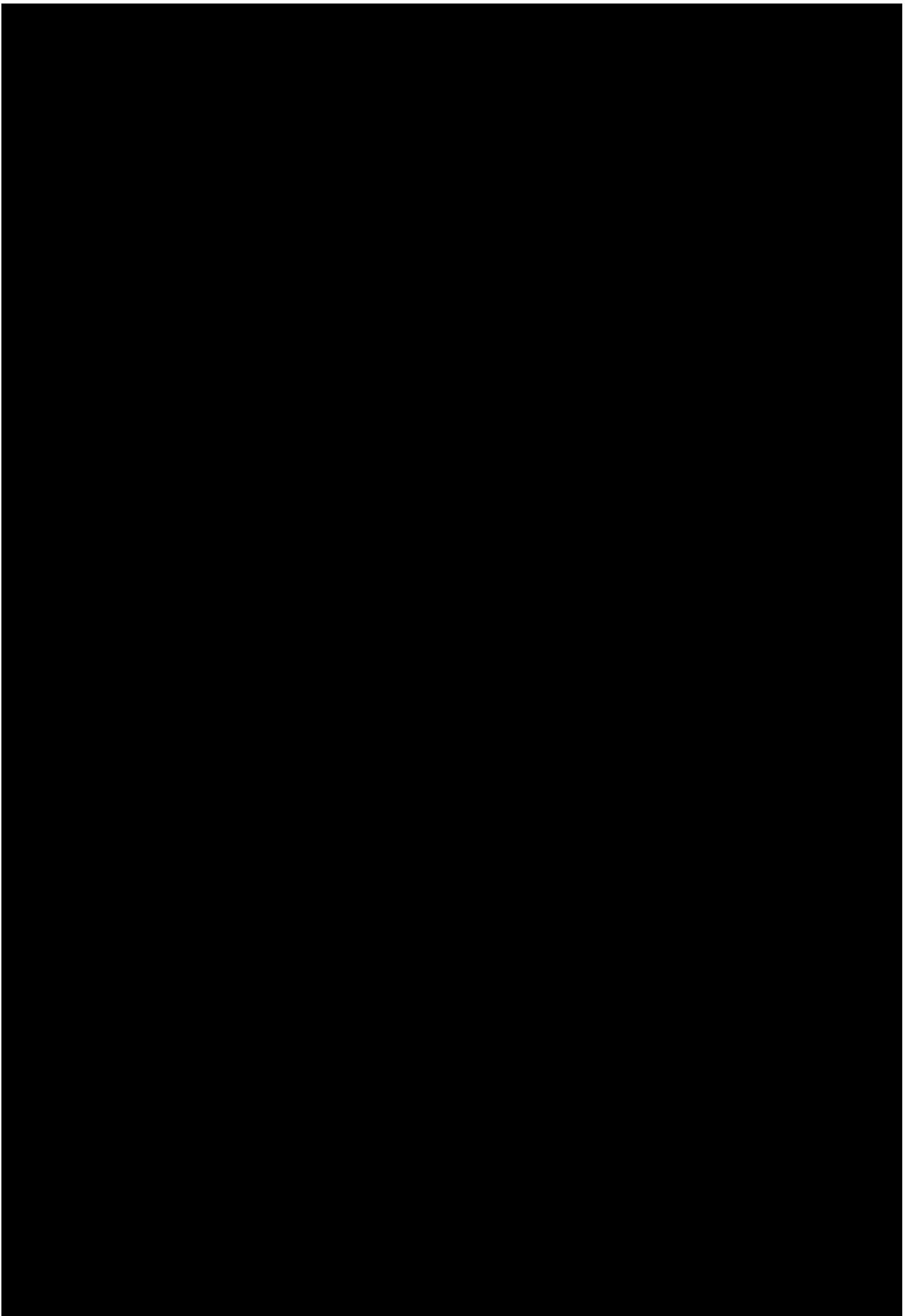
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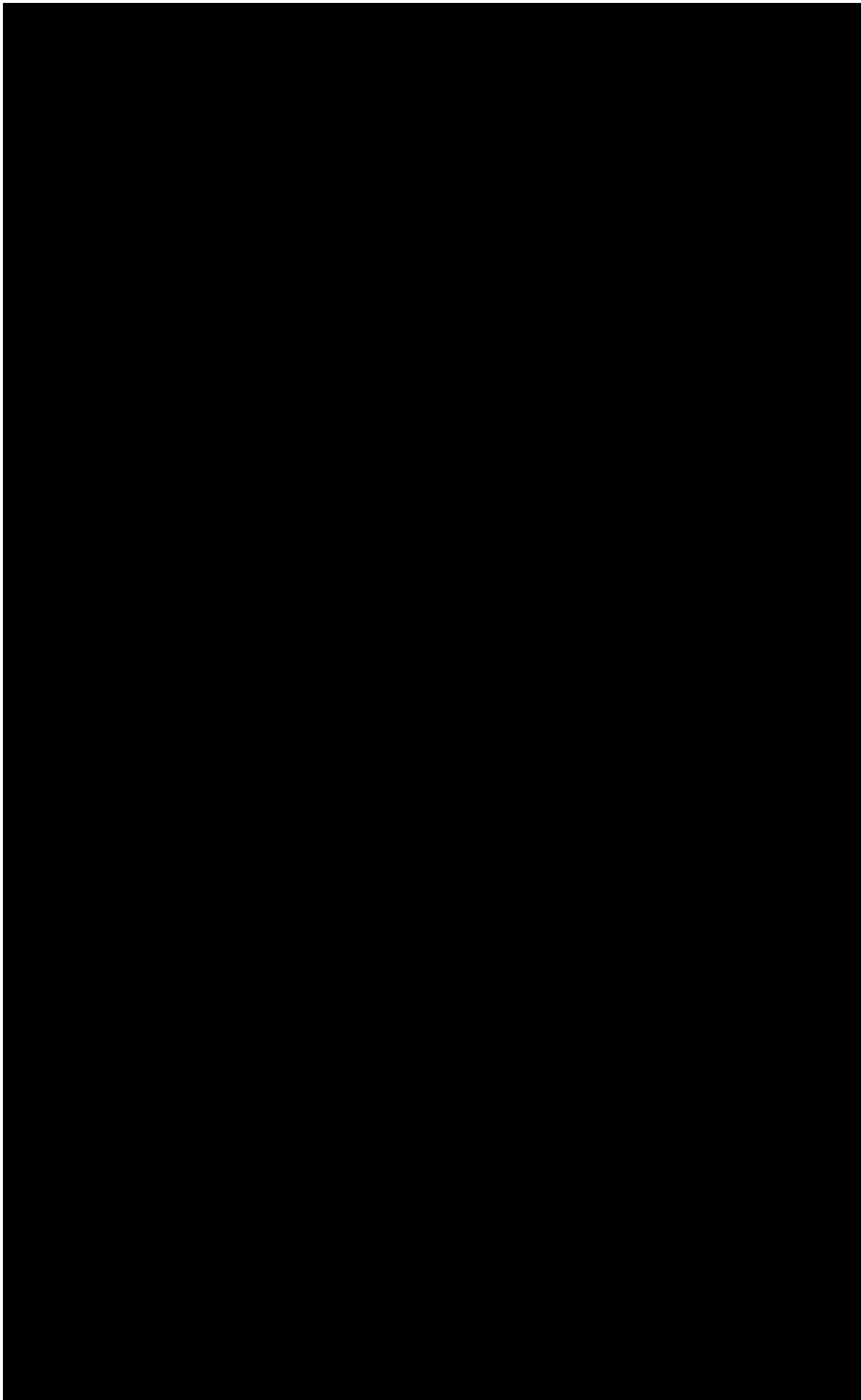


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2. [REDACTED]

██████████

[REDACTED]

[REDACTED]

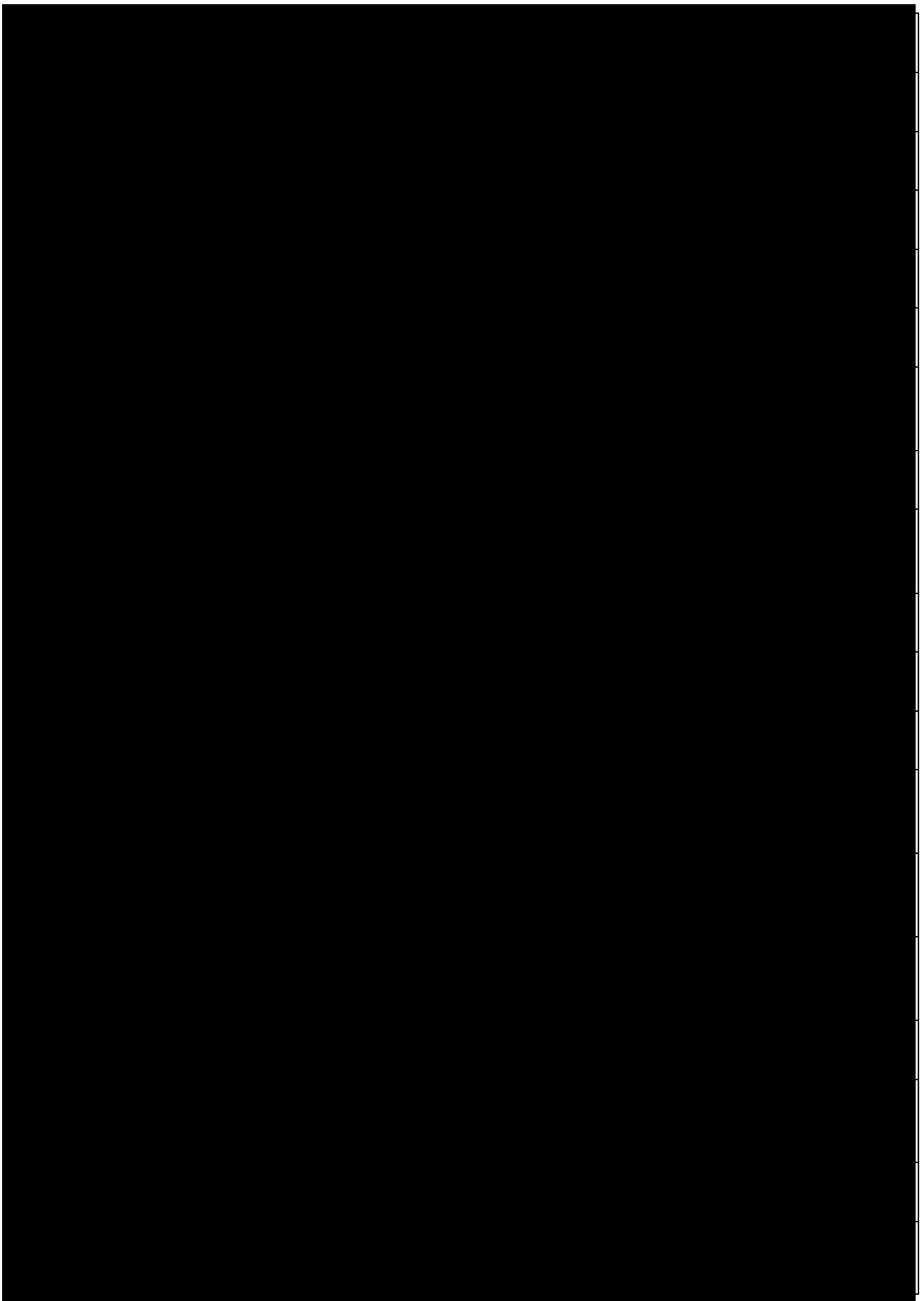
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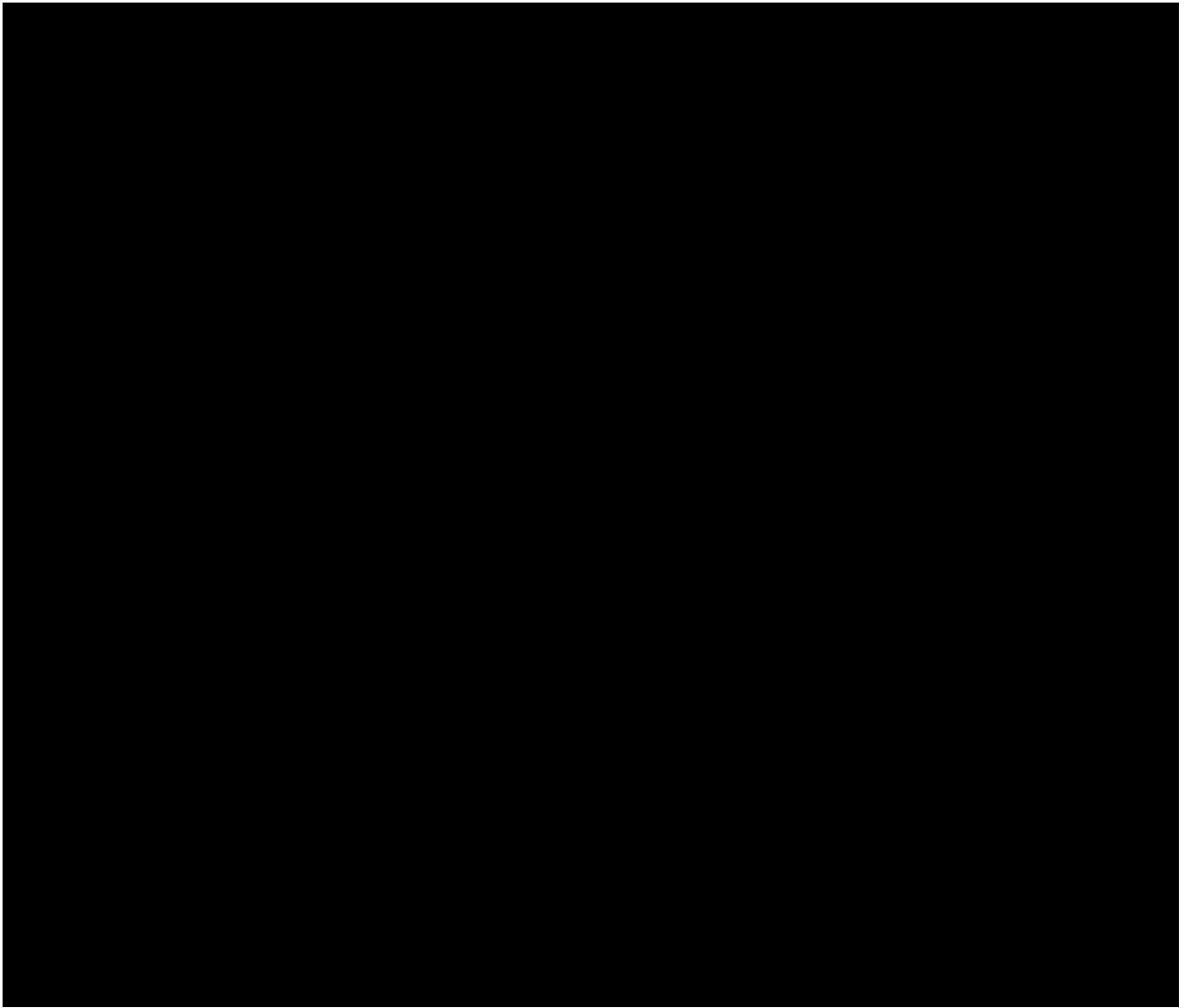
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Bar Index	Relative Length (approximate)
1	100%
2	85%
3	45%
4	95%
5	75%
6	80%
7	65%
8	100%
9	70%
10	100%

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]





### 3. UKEAP Work Schedule

[Redacted]

- [Redacted]
- [Redacted]

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

3.5. [REDACTED]

[REDACTED]



[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]

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[REDACTED]

[REDACTED]

3.15.

[REDACTED]

[REDACTED]

[REDACTED]

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[Redacted]

[Redacted]

3.17.

[Redacted]

[Redacted]

3.18.

[Redacted]

[Redacted]

- [REDACTED]
- [REDACTED]
- [REDACTED]

3.19. [REDACTED]

[REDACTED]

3.20. [REDACTED]

3.21. [REDACTED]

3.22. [REDACTED]

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3.23.

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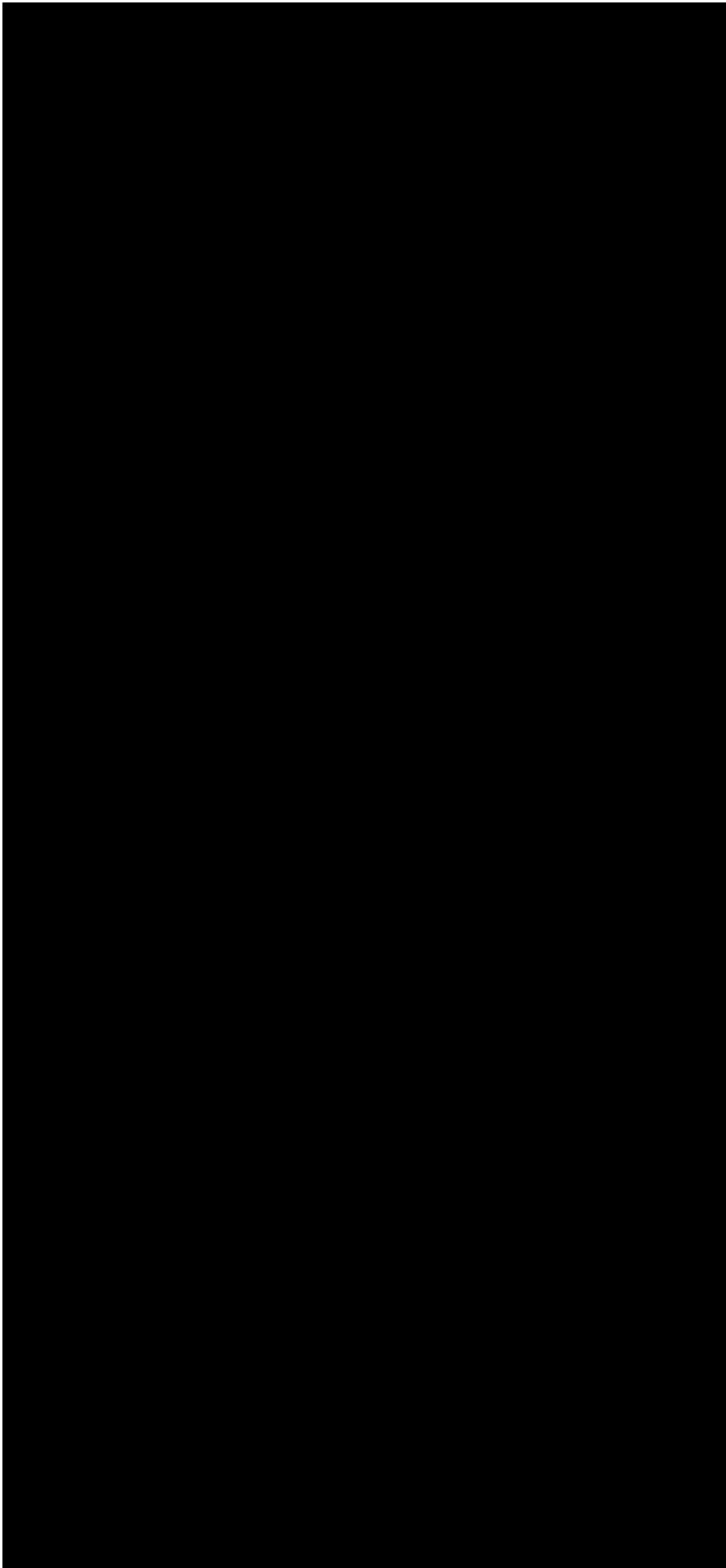
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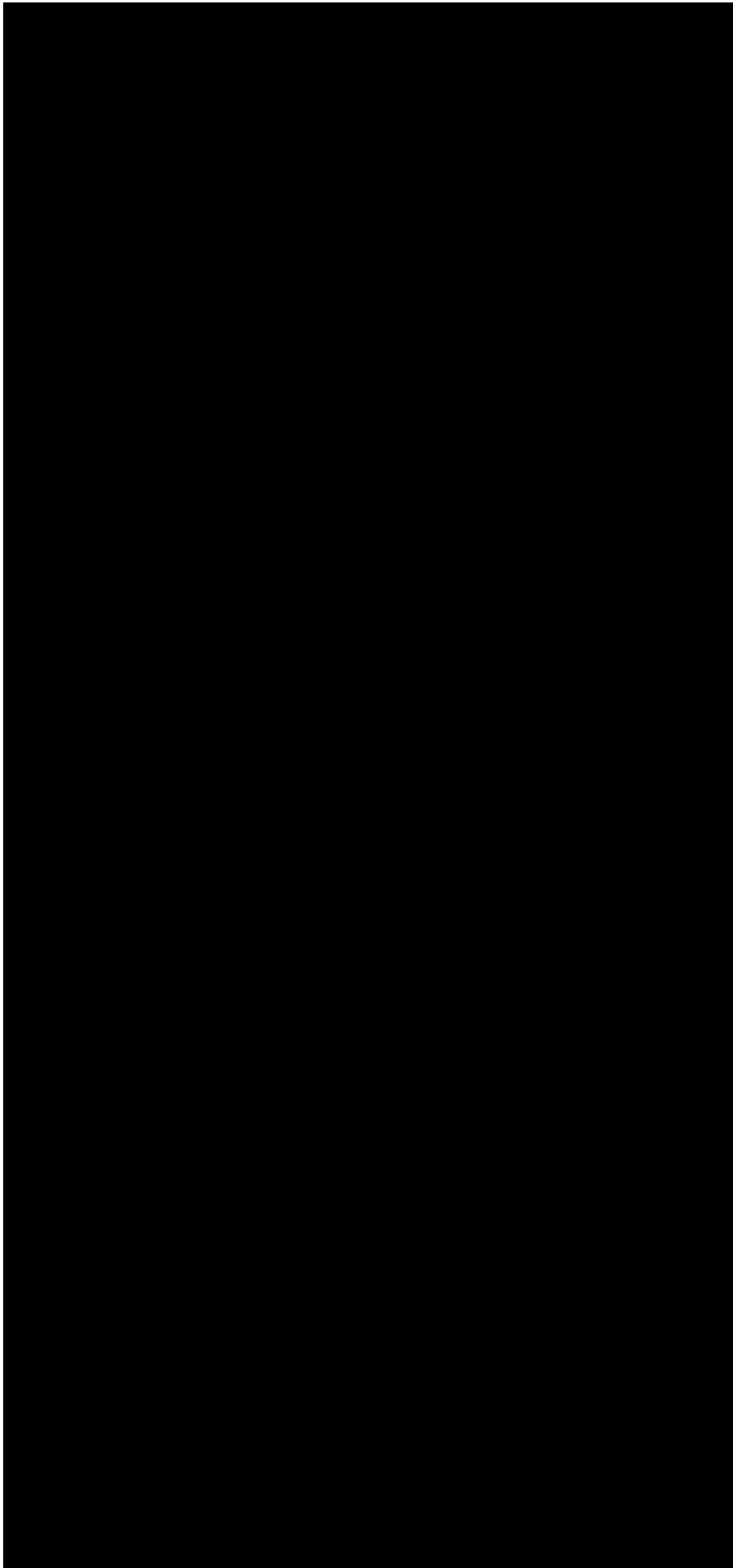
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3.25.

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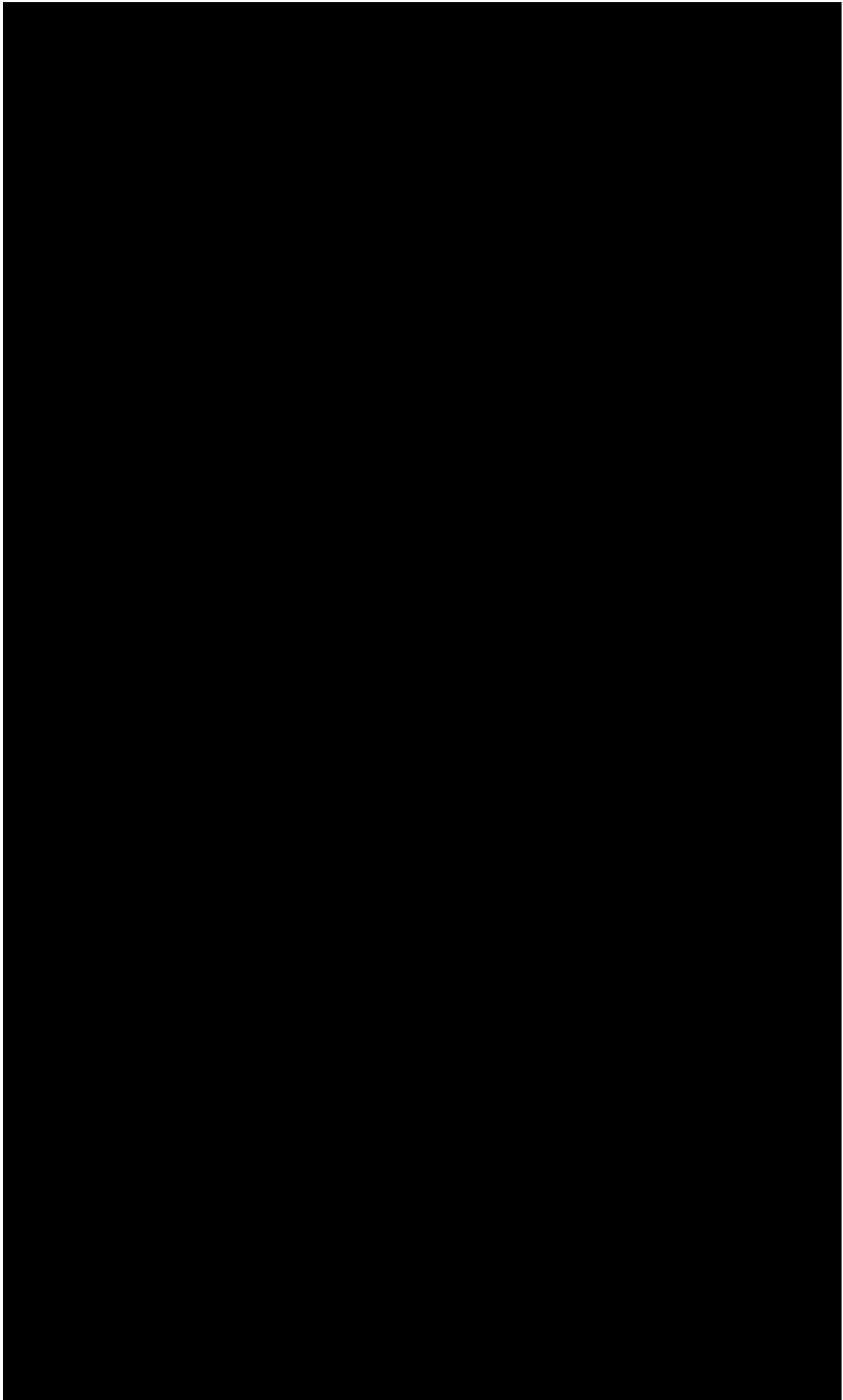
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#### 4.1. [REDACTED]

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4.3. [Redacted]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

5.1.

[REDACTED]

5.2.

[REDACTED]

5.3.

[REDACTED]

5.4.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.7.

[REDACTED]

[REDACTED]

for the UKEAP Work

[REDACTED]

6.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2. [REDACTED]

[REDACTED]

6.3. [REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

*Telephone conferences*

6.6.

[Redacted]

[Redacted]

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7. [Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

#### Appendix 4 - Sustainability Reporting Requirements

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

8.14.

[REDACTED]

- [REDACTED]
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8.16.

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9.1.

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9.3.

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[REDACTED]

9.5.

[REDACTED]

9.6.

[REDACTED]

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Age Group	Percentage of Respondents
18-29	85%
30-49	78%
50-64	82%
65+	65%

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\_\_\_\_\_

(i)

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■

[REDACTED]

[REDACTED]

9.11.

[REDACTED]

## Appendix 10 – Planned Preventative Maintenance checklist

9.12.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.15.

[REDACTED]

[REDACTED]

[REDACTED]
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[REDACTED]

9.17.

[REDACTED]



[REDACTED]

[REDACTED]

9.18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

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9.21.

[Redacted]

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9.23.

[REDACTED]

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i

10.2.



10.6. [REDACTED]

10.7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10.9. [REDACTED]

[REDACTED]

[REDACTED]

10.11. [REDACTED]

- [REDACTED]
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- [REDACTED]
- [REDACTED]

10.12. [REDACTED]  
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10.14. [REDACTED]  
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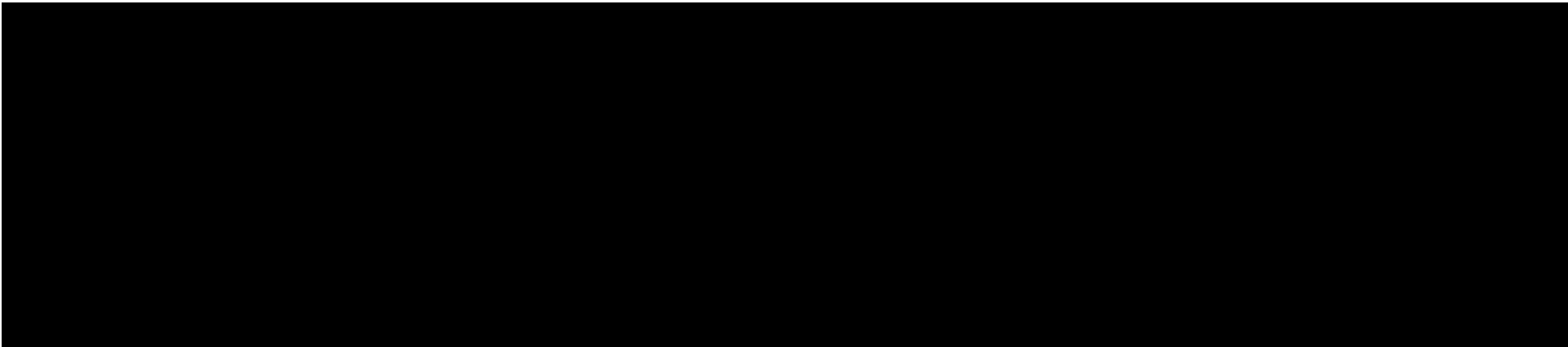
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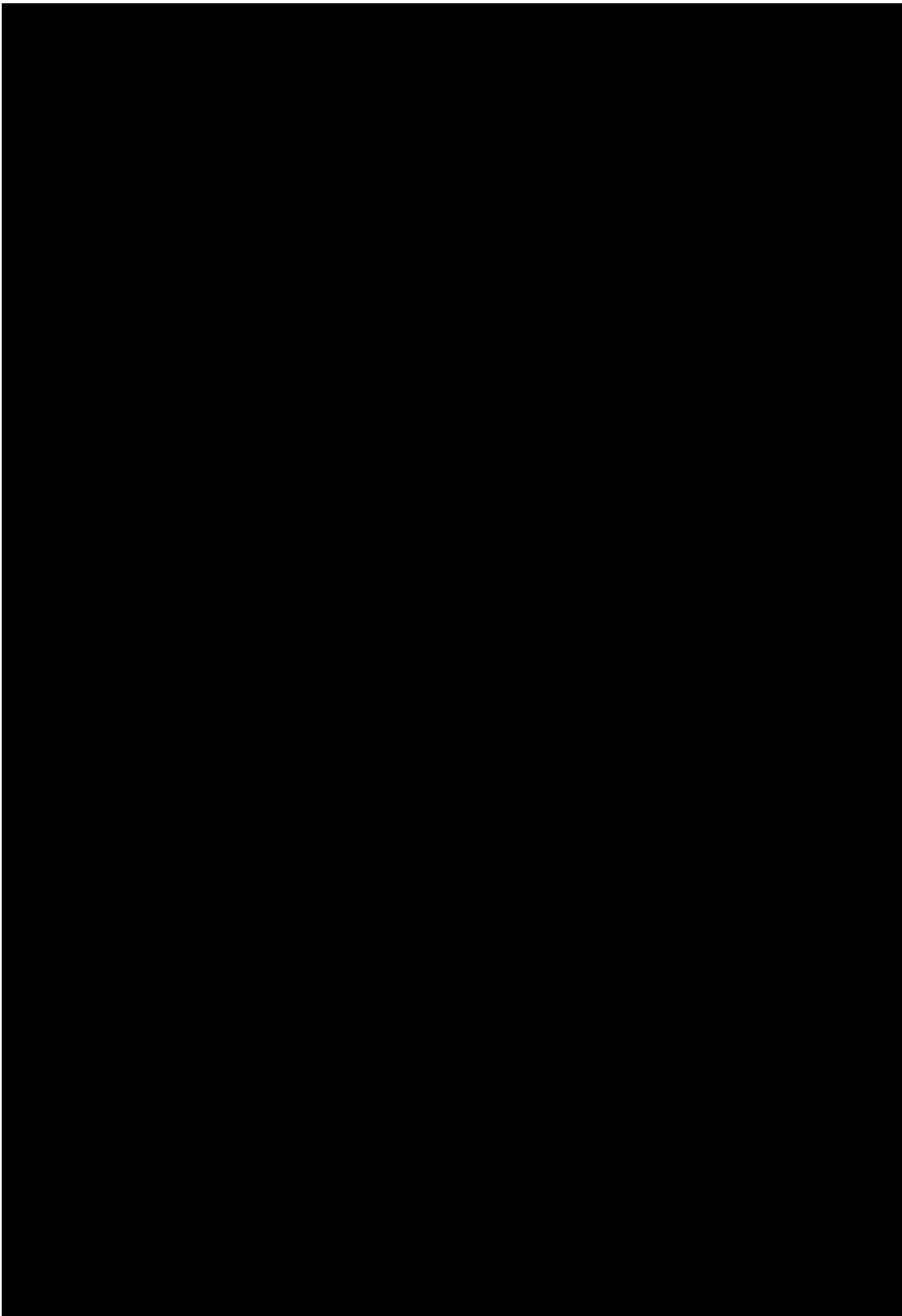
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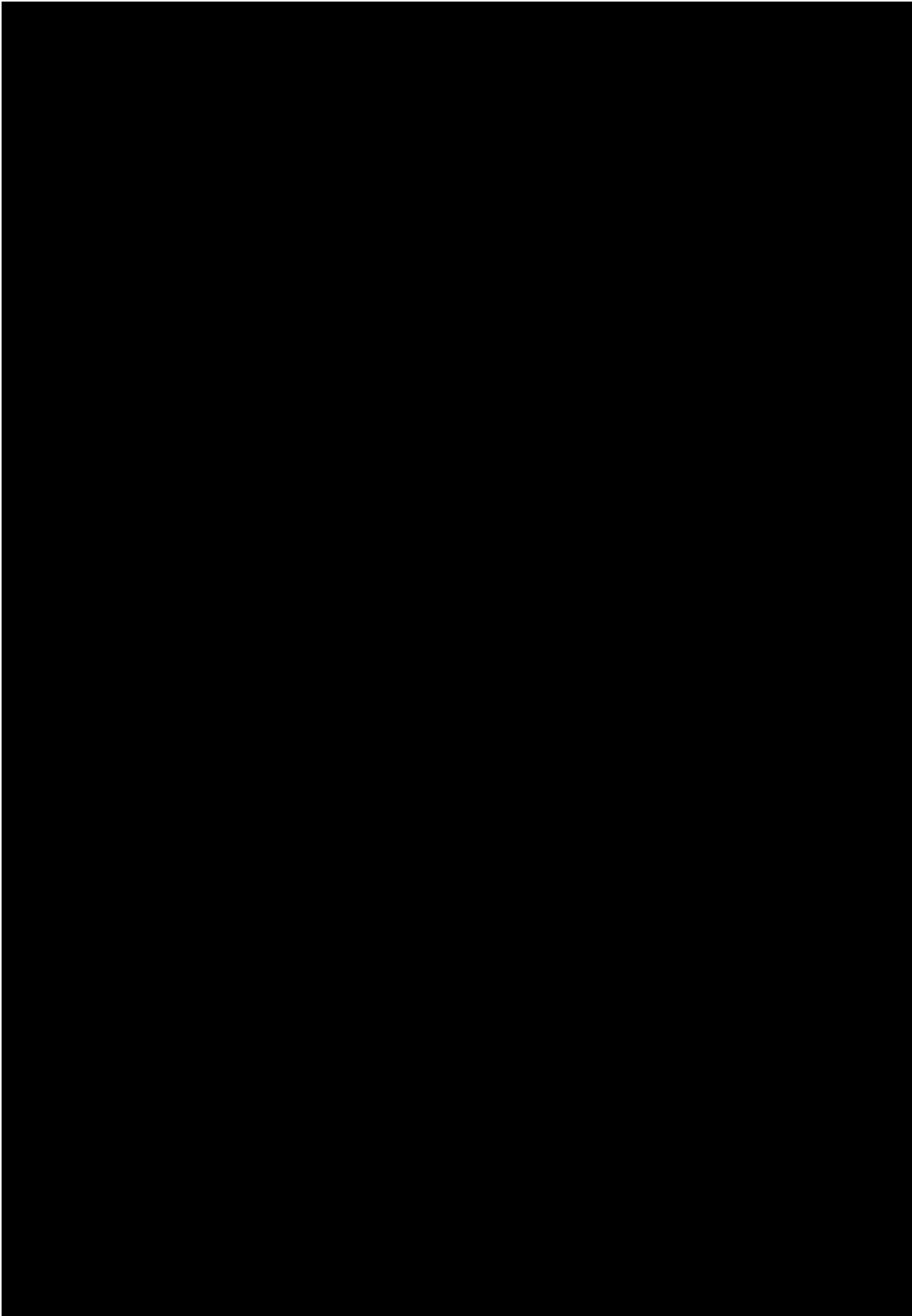
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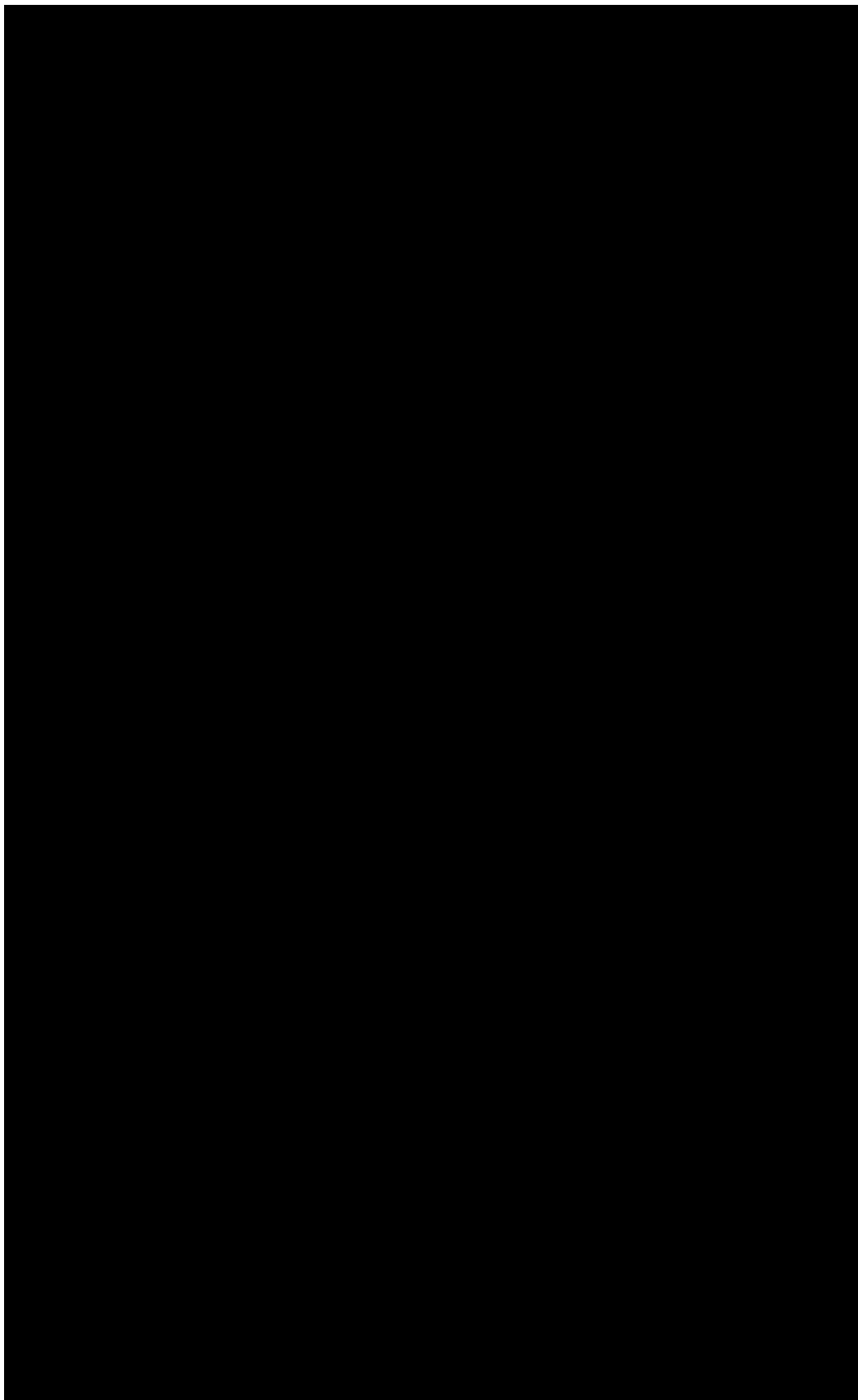


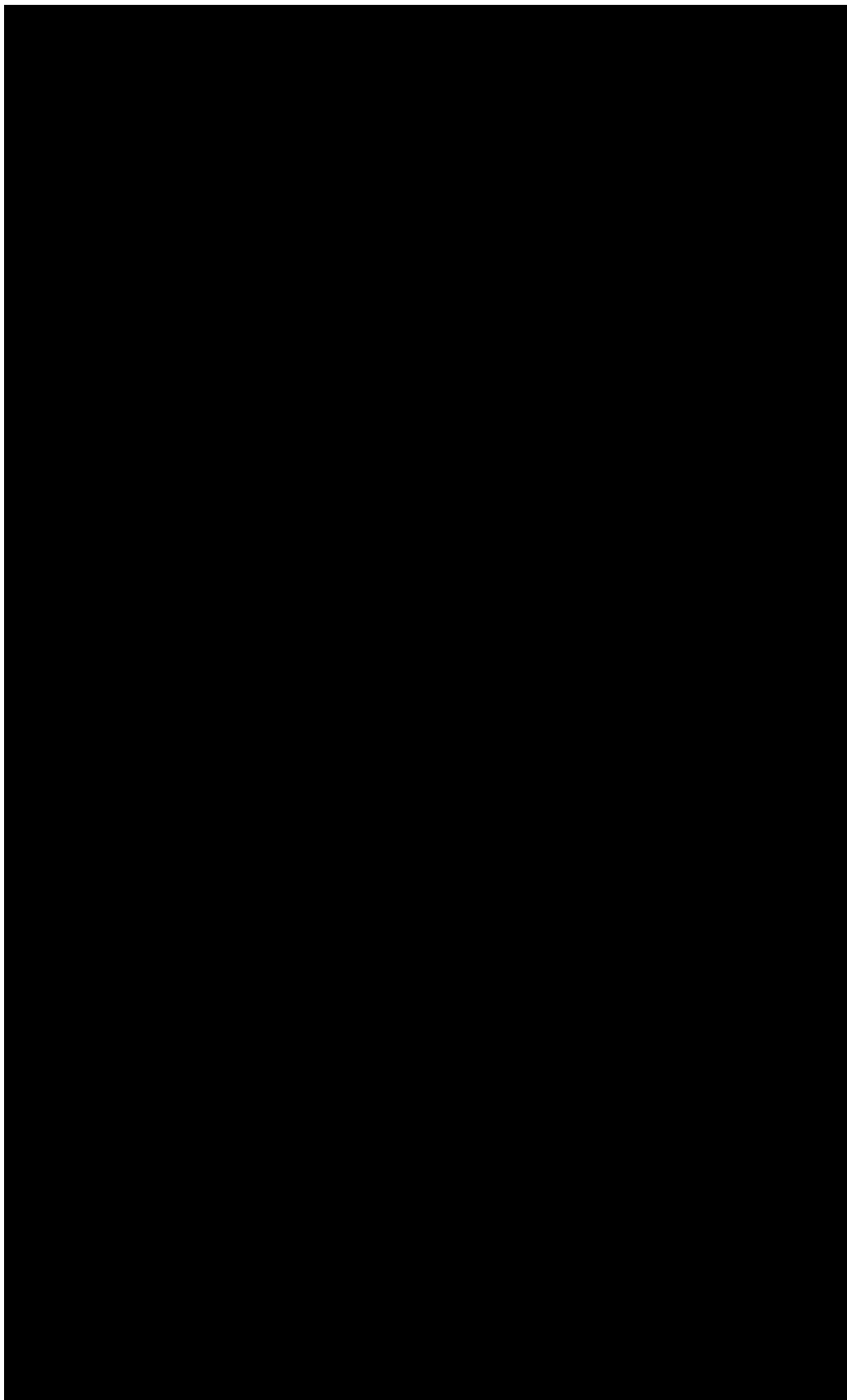


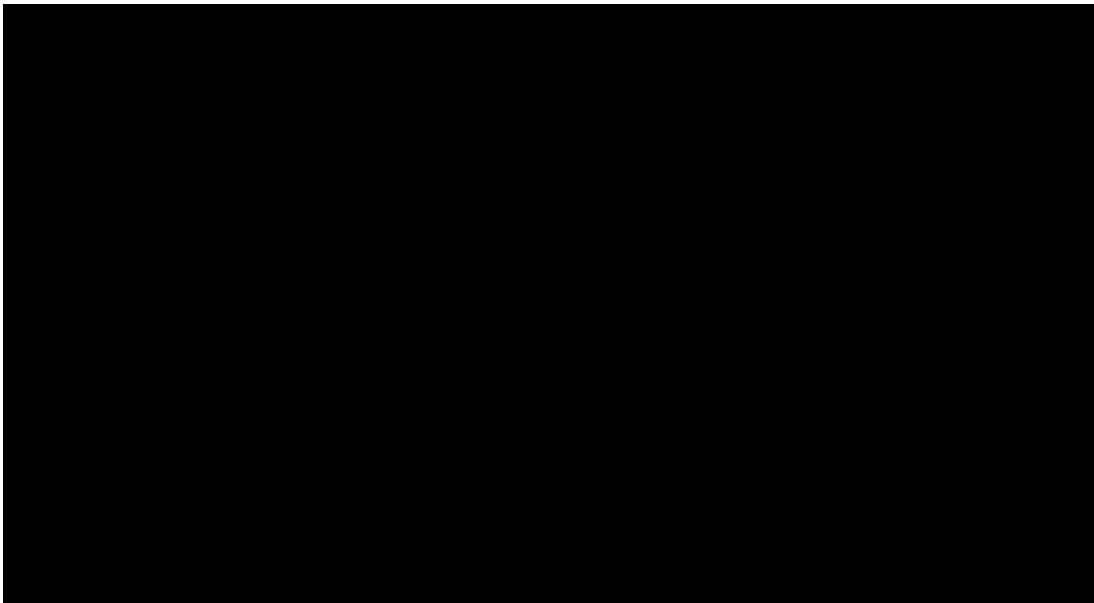
## Annex 2 - Current LSOs











## SCHEDULE 2 - PRICING

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2. [REDACTED]

[REDACTED]

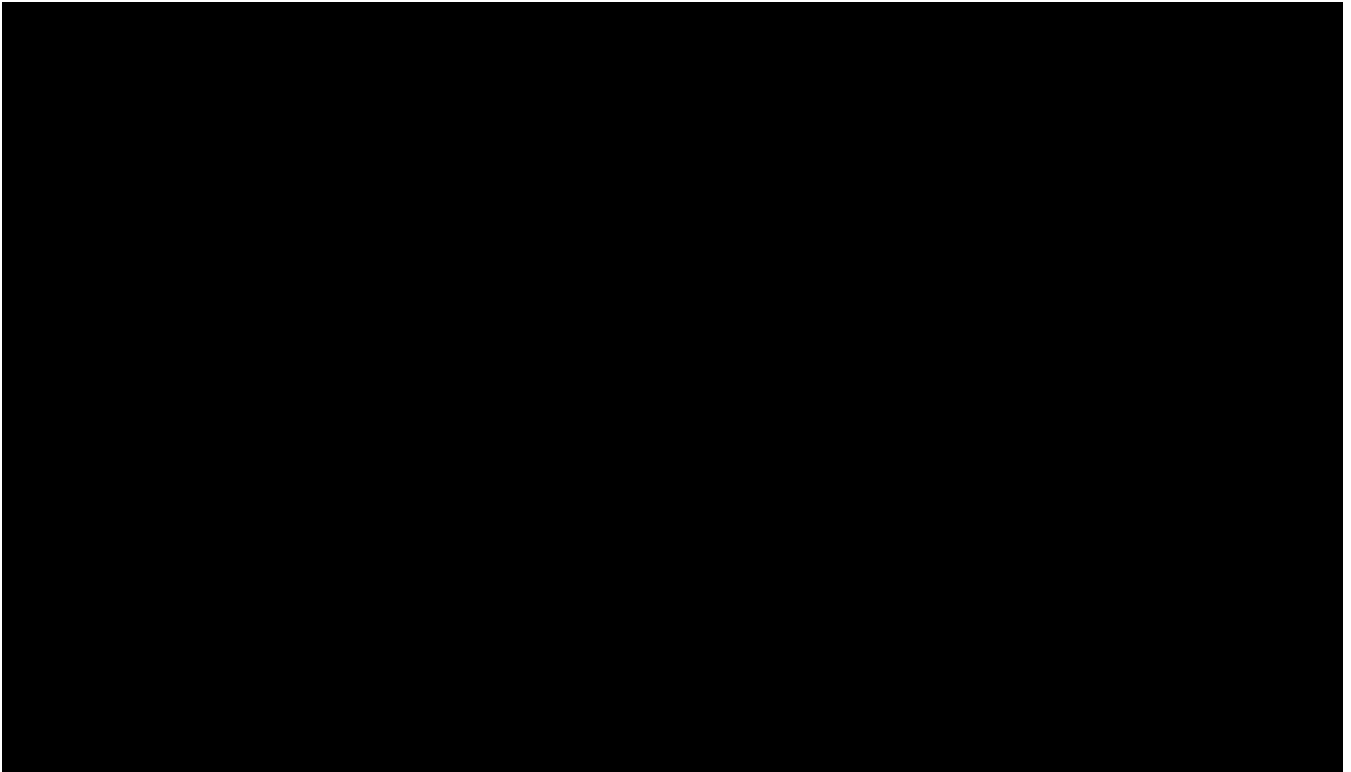
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# SCHEDULE 3 - CHANGE CONTROL

## Contract Change Note ("CCN")

<b>CCN Number</b>	
<b>Contract Reference Number &amp; Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

---

WHEREAS the Consortium 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	

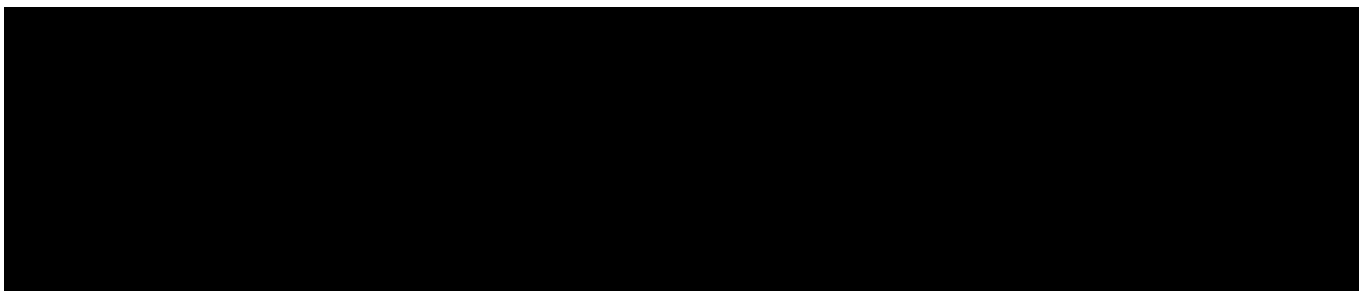


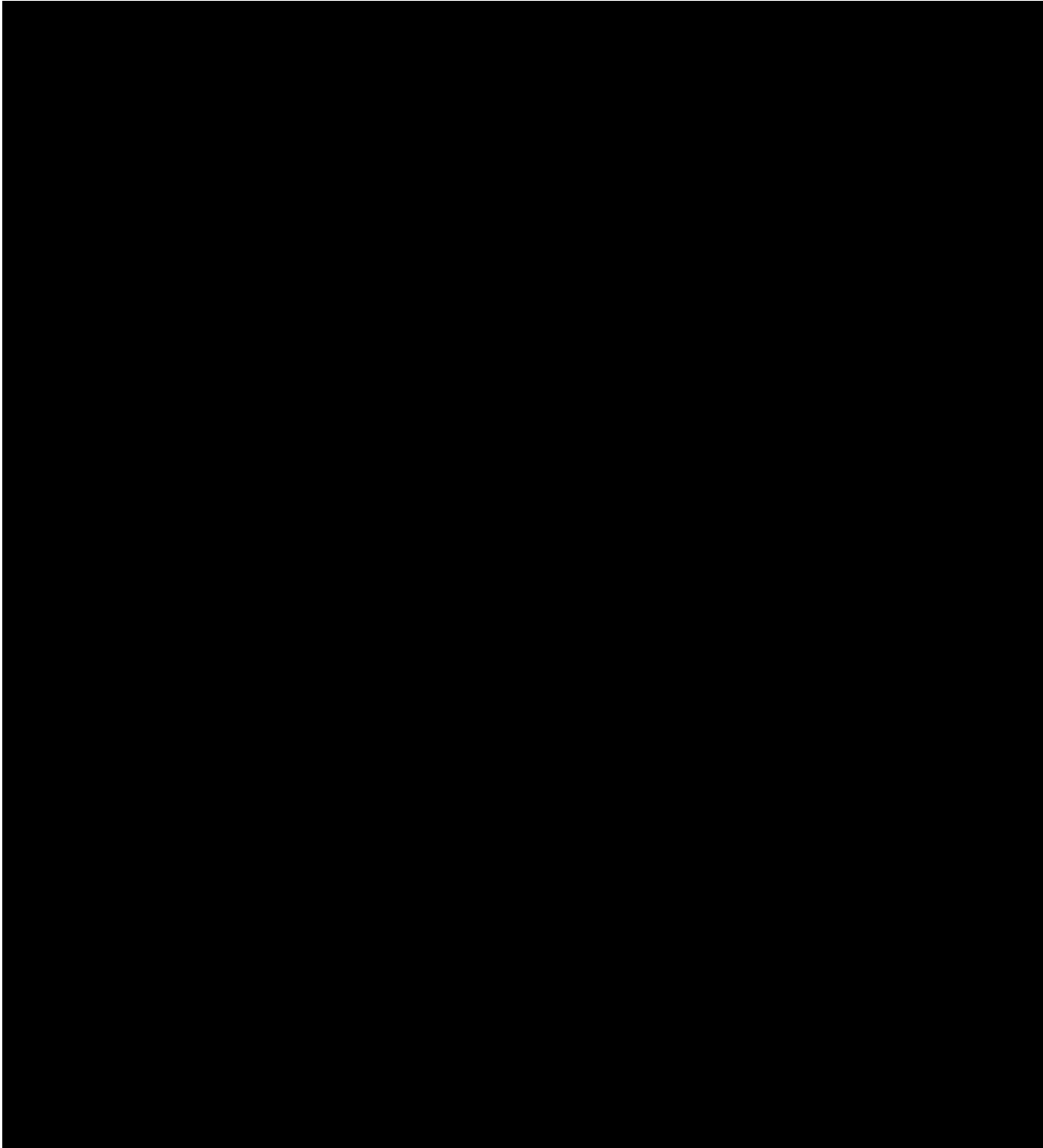
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

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

## SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

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





# SCHEDULE 5 - NON DISCLOSURE AGREEMENT

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

BETWEEN:

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

and

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

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

WHEREAS:

- (a) The Consortium has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Consortium. The Disclosee is an [insert employee, professional advisor or consultant] of the Consortium engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Consortium under the Contract.

- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Consortium to ensure that the Disclosee enters into a non-disclosure agreement with the Consortium on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Consortium to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

### **Definition and Interpretation**

1. In this Agreement:

- a) “Confidential Information” means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;
- b) “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978,

exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Consortium is bound to comply.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Consortium's delivery of the services under the Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.

8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Consortium, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Consortium shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.
11. Where the disclose is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Consortium to terminate the contract of engagement with the Disclosee immediately, and the Consortium shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Consortium or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Disclosee when required to  
  
do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;

- 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
- 14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
- 14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

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

- 15. The Disclosee shall: notify the Consortium and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
- 16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
- 17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.



18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach or non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the

rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.

25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

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

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

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SIGNED by the Disclosee:

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SCHEDULE 6 - CONSORTIUM AND THIRD PARTY SOFTWARE

## CONSORTIUM SOFTWARE

For the purposes of this Schedule 6, “**Consortium Software**” means software which is proprietary to the Consortium, including software which is or will be used by the Consortium for the purposes of providing the Services. The Consortium Software comprises the following items:

Software	Supplier (if Affiliate of the Consortium)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?

### THIRD PARTY SOFTWARE

For the purposes of this Schedule 6, “**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Consortium for the purposes of providing the Services including the software specified in this Schedule 6. The Third Party Software shall consist of the following items:

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


# SCHEDULE 7 - SECURITY REQUIREMENTS, POLICY AND PLAN

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 7, unless the context otherwise requires the following provisions shall have the meanings given to them below:

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

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

**“Consortium Software”** means software which is proprietary to the Consortium, including software which is or will be used by the Consortium for the purposes of providing the Services and which is specified as such in Schedule 6.

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

**“Protectively Marked”** shall have the meaning as set out in the Security Policy Framework.

**“Security Plan”** means the Consortium’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 7.

**“Software”** means Specially Written Software, Consortium Software and Third Party Software.

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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Consortium for the purposes of providing the Services including the software and which is specified as such in Schedule 6.

## 1. INTRODUCTION

This Schedule 7 covers:

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

1.5 breaches of security.

## **2. PRINCIPLES OF SECURITY**

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

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

2.2.1 is in accordance with Good Industry Practice and Law;

2.2.2 complies with Security Policy Framework; and

2.2.3 meets any specific security threats to the Consortium System.

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

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

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

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

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

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

### **3. SECURITY PLAN**

3.1 The Consortium shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 7.

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

3.3 Prior to the Commencement Date the Consortium will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.

3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Consortium shall amend it within 10 Working Days of a notice of non-approval from the



Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavors to ensure that the approval process takes as little time as possible and in any event no

longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Consortium in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.5.1 the provisions of this Schedule 7;

3.5.2 the provisions of Schedule 1 relating to security;

3.5.3 the Information Assurance Standards;

3.5.4 the data protection compliance guidance produced by the Authority;

3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;

3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and

3.5.7 appropriate ICT standards for technical countermeasures which are included in the Consortium System.

3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.

3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Consortium should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Consortium which provision the Consortium shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 7.

## **4. AMENDMENT AND REVISION**

4.1 The Security Plan will be fully reviewed and updated by the Consortium annually or from time to time to reflect:

- 4.1.1 emerging changes in Good Industry Practice;
- 4.1.2 any change or proposed change to the Consortium System, the Services and/or associated processes;
- 4.1.3 any new perceived or changed threats to the Consortium System;
- 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
- 4.1.5 a reasonable request by the Authority.

4.2 The Consortium will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

4.3 Any change or amendment which the Consortium proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

## 5. AUDIT AND TESTING

5.1



5.2 [REDACTED]

5.3 [REDACTED]

5.4 [REDACTED]

## 6. BREACH OF SECURITY

6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Consortium shall immediately take all reasonable steps necessary to:

6.2.1 remedy such breach or protect the Consortium System against any such potential or attempted breach or threat; and

6.2.2 prevent an equivalent breach in the future.

6.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Consortium under the Contract, then the Consortium shall be entitled to refer the matter to the CCN procedure set out in Schedule 3.

6.4 The Consortium shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

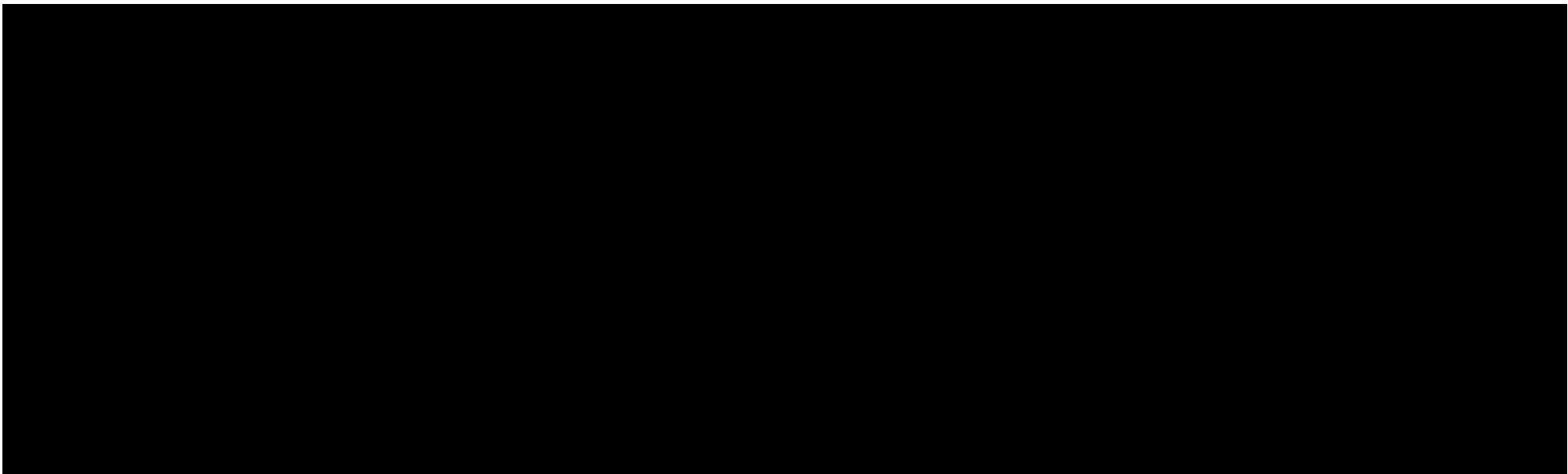
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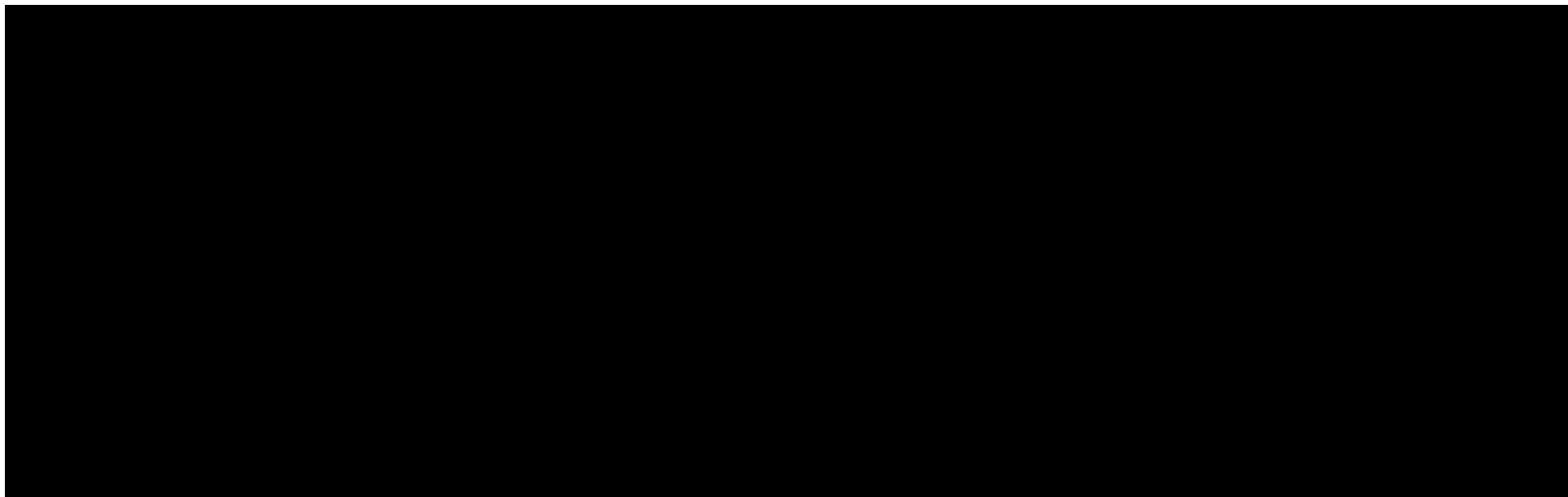
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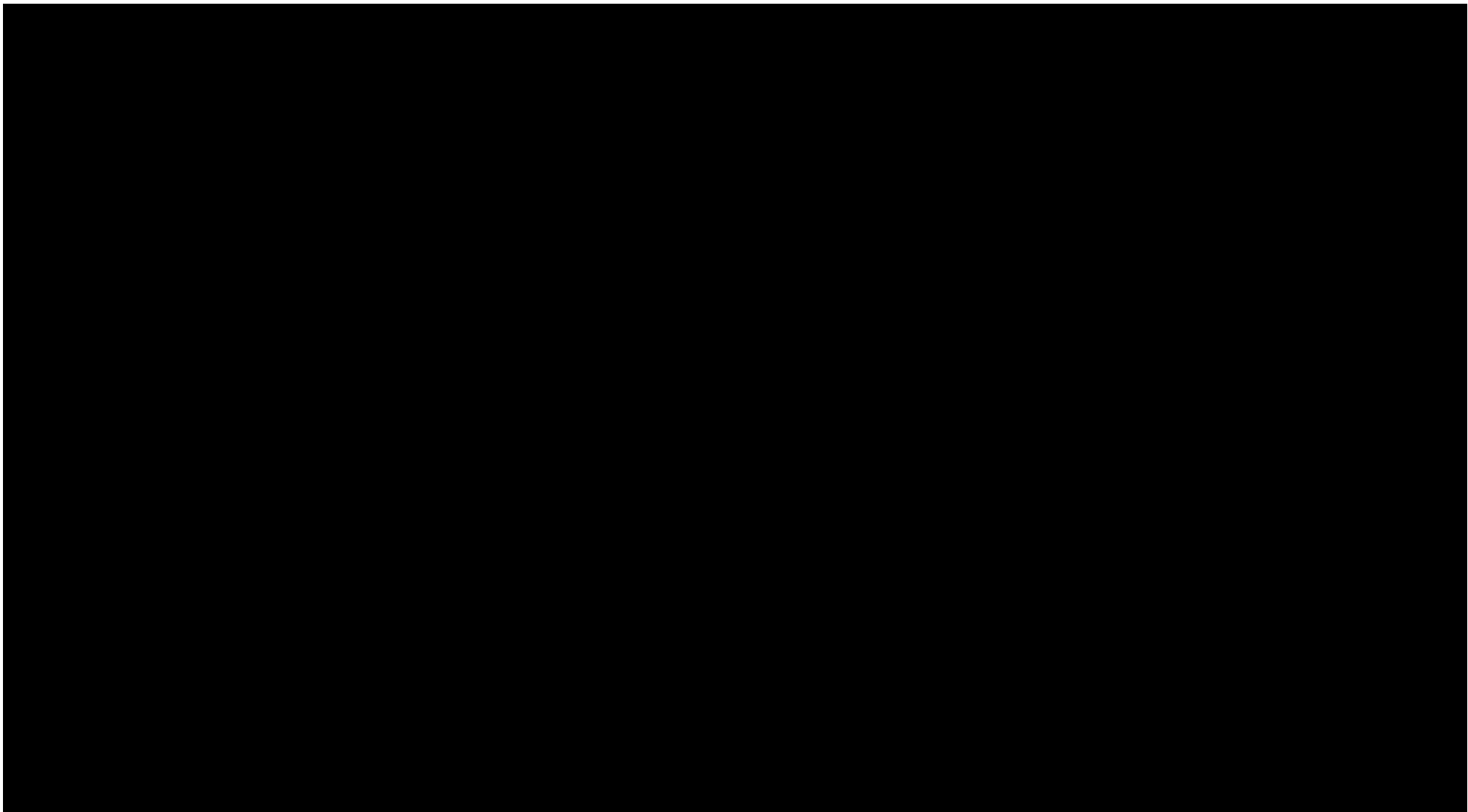
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# SCHEDULE 8 – PERFORMANCE MANAGEMENT FRAMEWORK

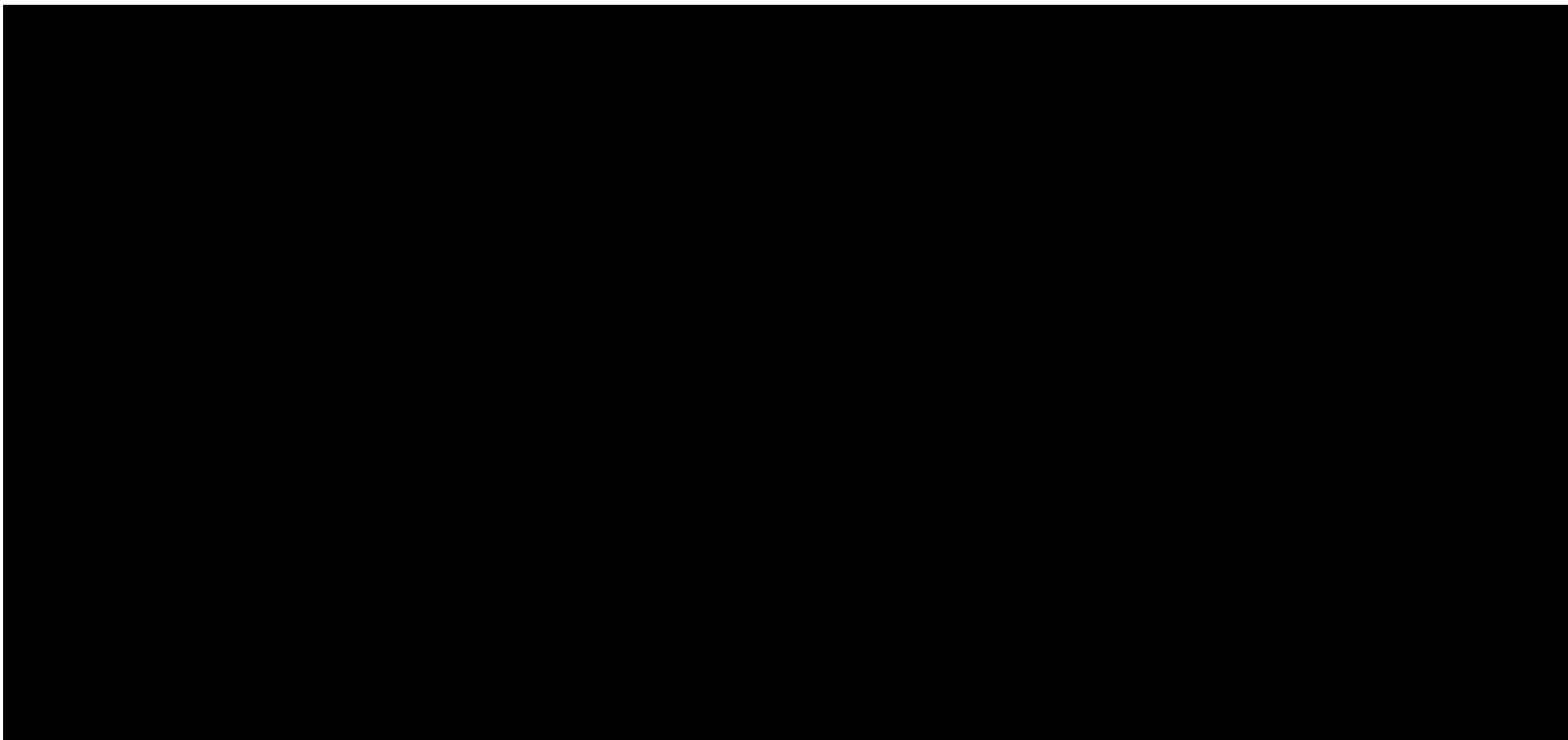
The below table sets out the KPIs which will be used throughout the duration of the Contract.











[illegible]

• [REDACTED]

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