

Core Terms – Mid-Tier, Crown Copyright 2025, [Subject to Contract]

# Award Form

This Award Form creates this Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	<b>Buyer</b>	The Secretary of State for Health & Social Care acting as part of the Crown (the Buyer).  39 Victoria Street, London, SW1H 0EU
2.	<b>Supplier</b>	Name: <b>The NHS Confederation</b>  Address: <b>2<sup>nd</sup> Floor, 18 Smith Square, London, England, SW1P 3HZ</b>  Registration Charity number: <b>1090329</b>  Company Number: <b>04358614</b>
3.	<b>Contract</b>	This Contract between the Buyer and the Supplier is for the delivery of services for Eight NHS Employers workplans, See Schedule 2 ( <i>Specification</i> ) for full details.
4.	<b>Contract reference</b>	C396077
5.	<b>Buyer Cause</b>	Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Buyer is liable to the Supplier.
6.	<b>Collaborative working principles</b>	The Collaborative Working Principles apply to this Contract.  See Clause 3.1.3 for further details.
7.	<b>Financial Transparency Objectives</b>	The Financial Transparency Objectives apply to this Contract.  See Clause 6.3 for further details.

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8.	<b>Start Date</b>	<p>Contract start date is 01/01/2026</p> <p>3 month transition period to run until 31/03/2026.</p> <p>New work programme activity and new reporting process to commence from 01/04/2026 including service credits. Transition funding is available until 31/03/2026</p>
9.	<b>Expiry Date</b>	01/01/2029
10.	<b>Extension Period</b>	Further period up to <b>2 years</b> upon mutual agreement
11.	<b>Ending this Contract without a reason</b>	<p>The Buyer shall be able to terminate this Contract without reason giving a 180 day notice period (6 months).</p> <p>Please see Clause 14.3.</p>
12.	<p><b>Incorporated Terms</b></p> <p>(together these documents form the "<b>this Contract</b>")</p>	<p>The following documents are incorporated into this Contract. Where numbers are missing we are not using these Schedules. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> <li>(a) This Award Form</li> <li>(b) Any Special Terms (see <b>Section 13 (Special Terms)</b> in this Award Form)</li> <li>(c) Core Terms</li> <li><b>(d)</b> Schedule 6 (<i>Intellectual Property Rights</i>)</li> <li>(e) Schedule 1 (<i>Definitions</i>)</li> <li>(f) Schedule 20 (<i>Processing Data</i>)</li> <li>(g) The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> <li>(i) Schedule 2 (<i>Specification</i>)</li> <li>(ii) Schedule 3 (<i>Charges</i>)</li> </ul> </li> </ul>

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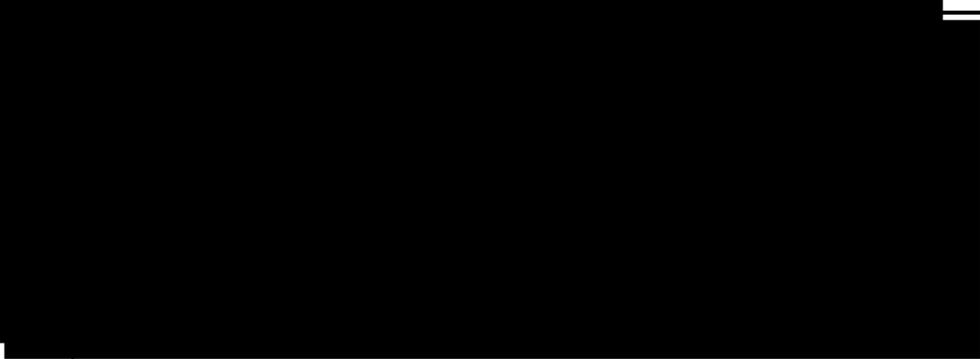
		<ul style="list-style-type: none"> <li>(iii) Schedule 5 (<i>Commercially Sensitive Information</i>)</li> <li>(iv) Schedule 7 (<i>Staff Transfer</i>)</li> <li>(v) Schedule 8 (<i>Implementation Plan &amp; Testing</i>)</li> <li>(vi) Schedule 10 (<i>Performance Levels</i>)</li> <li>(vii) Schedule 11 (<i>Continuous Improvement</i>)</li> <li>(viii) Schedule 12 (<i>Benchmarking</i>)</li> <li>(ix) Schedule 13 (<i>Contract Management</i>)</li> <li>(x) Schedule 14 (<i>Business Continuity and Disaster Recovery</i>)</li> <li>(xi) Schedule 15 (<i>Carbon Reduction</i>)</li> <li>(xii) Schedule 16 (<i>Security</i>)</li> <li>(xiii) Schedule 18 (<i>Prompt Payment</i>)</li> <li>(xiv) Schedule 4 (<i>Tender</i>), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.</li> </ul>
13.	<b>Special Terms</b>	<p>DHSC reserve the right to amend or remove work programme areas</p> <p>Where new work programme activity is added to replace the work ended, it will not exceed the level of workload requirement previously agreed.</p> <p>Minor amendments to workplans are to start in the following quarter. Significant changes / removal of work programmes, which would also lead to a significant decrease in funding, will require 180 days' notice.</p> <p>If funding is to remain the same or increased, the supplier will work with the authority to implement these changes as soon as possible.</p>

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		Access by NHS bodies to this service is not conditional or enhanced by or limited in any way by their membership (or not) of NHS Confederation
14.	<b>Buyer's Environmental Policy</b>	Not required
15.	<b>Social Value Commitment</b>	The Supplier agrees, in providing the Deliverables and performing its obligations under this Contract, to deliver the Social Value outcomes in Schedule 4 ( <i>Tender</i> ) and report on the Social Value KPIs as required by Schedule 10 ( <i>Performance Levels</i> ).
16.	<b>Buyer's Security Requirements</b>	The Buyer has chosen Option 1 - Short Form As set out in Schedule 16 ( <i>Security</i> )
17.	<b>Goods</b>	Not applicable

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21.	<b>Payment method</b>	The Price and Contract Price with respect to each year of the Contract will be paid to the Contractor by quarterly payments in arrears. Unless otherwise stated in the contract, the Contractor shall submit an invoice for Services to be completed to the satisfaction of the Authority, quarterly in arrears and payment shall be within 30 days of receipt of a properly prepared invoice
22.	<b>Key Performance Indicators</b>	Service Credits will accrue in accordance with Schedule 10 ( <i>Performance Levels</i> )
23.	<b>Liability</b>	
24.	<b>Progress Meetings and</b>	The Supplier shall attend Progress Meetings with the Buyer every quarter.

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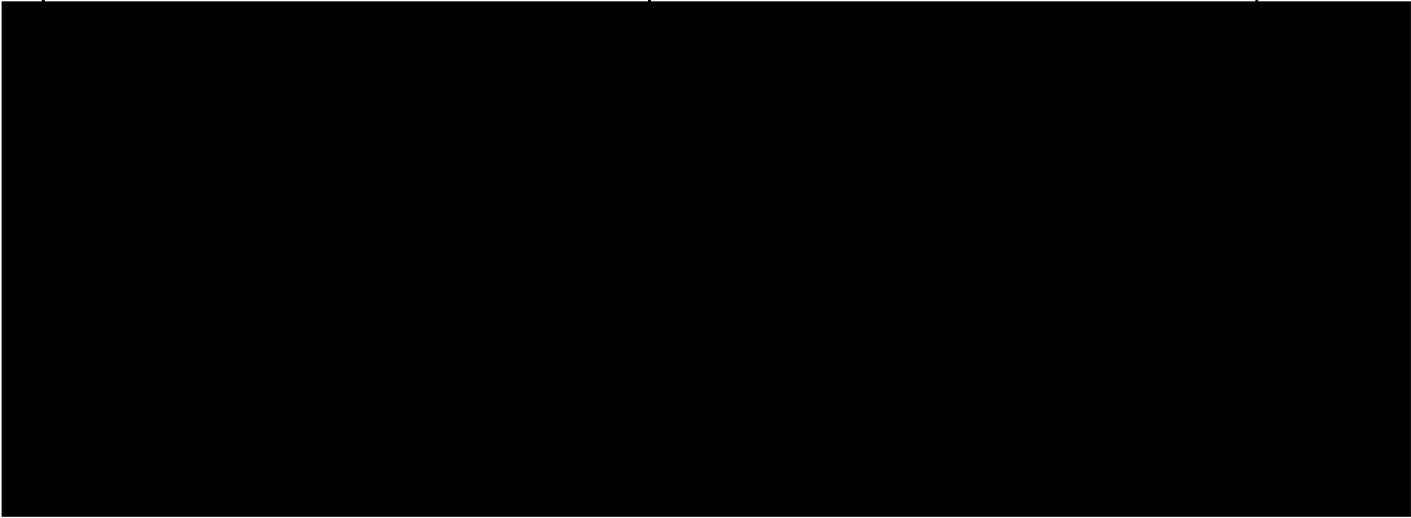
	<b>Progress Reports</b>	The Supplier will provide quarterly progress reports
25.	<b>Guarantor</b>	Not applicable
26.	<b>Virtual Library</b>	Not applicable
27.	<b>Supplier's Contract Manager</b>	[Redacted]
28.	<b>Supplier Authorised Representative</b>	[Redacted]
29.	<b>Supplier Compliance Officer</b>	[Redacted]
30.	<b>Supplier Data Protection Officer</b>	[Redacted]
31.	<b>Supplier Marketing Contact</b>	[Redacted]

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32.	<b>Key Subcontractors</b>	Not applicable
33.	<b>Buyer Authorised Representative</b>	

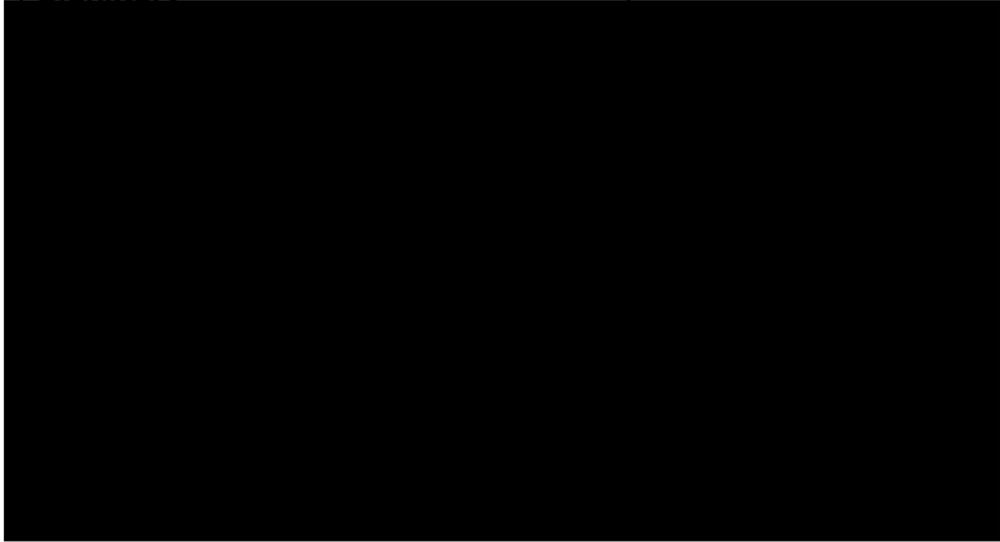
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<b>Supplier's Authorised Signatory*</b>	<b>Buyer's Authorised Signatory*</b>
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Award Form, Crown Copyright 2025, [Subject to Contract]

**Supplier's Authorised Secondary  
Signatory\***





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## **Core Terms – Mid-tier**

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**1. Definitions used in the contract**

Interpret this Contract using Schedule 1 (*Definitions*).

**2. How the contract works**

2.1 The Contract:

2.1.1 is between the Supplier and the Buyer; and

2.1.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.

2.2 The Supplier acknowledges it has all the information required to perform its obligations under this Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.3 The Supplier acknowledges that it has satisfied itself of all details relating to:

2.3.1 the Buyer's requirements for the Deliverables;

2.3.2 the Buyer's operating processes and working methods; and

2.3.3 the ownership and fitness for purpose of the Buyer Assets,

and it has advised the Buyer in writing of:

2.3.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;

2.3.5 the actions needed to remedy each such unsuitable aspect; and

2.3.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract.

2.4 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

2.4.1 verify the accuracy of the Due Diligence Information; and

2.4.2 properly perform its own adequate checks.

2.5 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

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2.6 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. **What needs to be delivered**

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

- (a) that comply with the Specification, the Tender Response and this Contract;
- (b) using reasonable skill and care;
- (c) using Good Industry Practice;
- (d) using its own policies, processes and internal quality control measures as long as they don't conflict with this Contract;
- (e) on the dates agreed; and
- (f) that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.

3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, with the suppliers agreement on the choice of the DHSC third party, the supplier will co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:

- (a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later". **The supplier shall notify the buyer of any potential delivery impacts before any issues arise so the buyer can appropriately adjust any KPI's or service credits where applicable**
- (b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;

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- (d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

**3.2 Goods clauses**

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.3 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery.
- 3.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.5 The Supplier warrants that the Goods shall be:
  - (a) of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
  - (b) fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer; and
  - (c) free from defects in design, material and workmanship.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

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- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14) days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 3.2.13 Without limiting any other remedies to which it may be entitled, the Buyer shall be entitled to exercise its rights under Clause 3.2.12 in relation to Goods that don't conform with Clause 3.2.5, for a reasonable period, or such period specified in the Award Form, regardless of whether the Goods have been accepted by the Buyer.
- 3.2.14 The Buyer will not be liable for any actions, claims or Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

**3.3 Services clauses**

- 3.3.1 Late Delivery of the Services will be a Default of this Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of this Contract.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to this Contract.

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- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.
- 3.3.7 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.8 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.

**4. Pricing and payments**

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
  - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges,
  - 4.3.1 before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Buyer in respect of the sum; or
  - 4.3.2 if later, by the date on which the payment falls due in accordance with the invoice,  
  
subject to the invoice being verified by the Buyer as valid and undisputed; and
  - 4.3.3 in cleared funds using the payment method and details stated in the invoice or in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 includes the minimum required information set out in Section 68(9) of the Procurement Act 2023;
  - 4.4.2 includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and

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- 4.4.3 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 Where any invoice does not conform to the Buyer's requirements set out in Clause 4.4, or the Buyer disputes the invoice, the Buyer shall notify the Supplier without undue delay.
- 4.6 The Buyer shall accept for processing any electronic invoice that complies with the Electronic Invoice Standard, provided that it is valid and undisputed.
- 4.7 Where any invoice does not conform to the Buyer's requirements set out in this Clause 4, the Buyer shall notify the Supplier without undue delay and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 4.8 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.9 The Supplier must ensure that all Subcontractors are paid, in full:
  - 4.9.1 before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Supplier in respect of the sum; or
  - 4.9.2 if later, by the date on which the payment falls due in accordance with the invoice,subject to the invoice being verified by the Supplier as valid and undisputed. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

**5. The Buyer's obligations to the supplier**

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
  - 5.1.1 the Buyer cannot terminate this Contract under Clause 14.4.1;
  - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deductions under this Contract;
  - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
  - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.

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5.2 Clause 5.1 only applies if the Supplier:

5.2.1 gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;

5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and

5.2.3 mitigated the impact of the Buyer Cause.

## 6. Record keeping and reporting

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of this Contract during the Contract Period and for seven (7) years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.

6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:

6.3.1 on or before the Effective Date;

6.3.2 at the end of each Contract Year; and

6.3.3 within six (6) Months of the end of the Contract Period,

and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.

6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:

6.4.1 Supplier's currently incurred or forecast future Costs; and

6.4.2 forecast Charges for the remainder of this Contract,

then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.

6.5 The Buyer or an Auditor can Audit the Supplier.

6.6 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:

6.6.1 complies with the Supplier's operating procedures; and

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- 6.6.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7 During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
  - 6.7.1 all information within the permitted scope of the Audit;
  - 6.7.2 any Sites, equipment and the Supplier System used in the performance of this Contract; and
  - 6.7.3 the Supplier Staff.
- 6.8 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
  - 6.9.1 correcting any identified Default;
  - 6.9.2 rectifying any error identified in a Financial Report; and
  - 6.9.3 repaying any Charges that the Buyer has overpaid.
- 6.10 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - 6.10.1 tell the Buyer and give reasons;
  - 6.10.2 propose corrective action; and
  - 6.10.3 provide a deadline for completing the corrective action.
- 6.11 Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.
- 6.12 At the end of each Contract Year, at its own expense, the Supplier will provide a report to the Buyer setting out a summary of its compliance with Clause 4.9, such report to be certified by the Supplier's Authorised Representative as being accurate and not misleading.

**7. Supplier staff**

- 7.1 The Supplier Staff involved in the performance of this Contract must:

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- 7.1.1 be appropriately trained and qualified;
- 7.1.2 be vetted using
  - (a) the staff vetting requirements set out in Schedule 16 (*Security*) (if that Schedule is used);
  - (b) the requirements set out in the Award Form (if set out there); or
  - (c) where no other requirements are set out, the HMG Baseline Personnel Security Standard found at [https://assets.publishing.service.gov.uk/media/5b169993ed915d2cbae4af03/HMG\\_Baseline\\_Personnel\\_Security\\_Standard\\_-\\_May\\_2018.pdf](https://assets.publishing.service.gov.uk/media/5b169993ed915d2cbae4af03/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf), as replaced or updated from time to time;
- 7.1.3 where the performance of this Contract will, or is likely to, give Supplier Staff access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, be further vetted in accordance with Schedule 32 (*Background Checks*); and
- 7.1.4 comply with all conduct requirements when on the Buyer's Premises.
- 7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on this Contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.
- 7.4 The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 7.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.
- 7.6 The provisions of this Clause 7 are in addition to and not in substitution for the employment exit provisions of Schedule 7 (*Staff Transfer*).

## 8. Supply chain

### 8.1 Appointing Subcontractors

- 8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

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- (a) manage Subcontractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract; and
- (c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

8.1.2 The Supplier must ensure that it does not any time during the Contract Period enter into a Subcontract with:

- (a) any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or
- (b) any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained the Buyer's prior written consent to the appointment of the relevant proposed Subcontractor.

## 8.2 **Mandatory provisions in Sub-Contracts**

8.2.1 If a Subcontractor is to be appointed under this Contract, then the Buyer may, in accordance with Section 72 of the Procurement Act 2023, require that the Supplier enters into a legally binding arrangement with the proposed Subcontractor within such reasonable period after the Effective Date as may be specified by the Buyer.

8.2.2 If the Supplier does not enter into a legally binding agreement in accordance with Clause 8.2.1 the Buyer may:

- (a) terminate this Contract and the consequences of termination set out in Clauses 14.5.1(b) to 14.5.1(g) shall apply; or
- (b) require the Supplier to enter into a legally binding agreement with an alternate Subcontractor.

8.2.3 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- (a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or

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- (b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
  - (i) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law;
  - (ii) require that all Subcontractors are paid:
    - i. before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or
    - ii. if later, the date by which the payment falls due in accordance with the invoice,
 

subject to the invoice being verified by the party making payment as valid and undisputed;
  - (iii) require the party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion and notify the Subcontractor without undue delay if it considers the invoice invalid or it disputes the invoice; and
  - (iv) allow the Buyer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

8.2.4 The Supplier must ensure that a term equivalent to Clause 8.2.3 is included in each Sub-Contract in its supply chain, such that each Subcontractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract. References to the “Supplier” and “Subcontractor”, in Clause 8.2.1 are to be replaced with references to the respective Subcontractors who are parties to the relevant contract.

**8.3 When Sub-Contracts can be ended**

8.3.1 At the Buyer’s request, the Supplier must terminate any Sub-Contracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which isn’t pre-approved by the Buyer in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;

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- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer; and/or
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law.

#### **8.4 Ongoing responsibility of the Supplier**

The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

#### **8.5 Competitive terms**

8.5.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

8.5.2 If the Buyer uses Clause 8.5.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

### **9. Rights and protection**

9.1 The Supplier warrants and represents that:

9.1.1 it has full capacity and authority to enter into and to perform this Contract;

9.1.2 this Contract is entered into by its authorised representative;

9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;

9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under this Contract and for the Buyer to receive the Deliverables;

9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract; and

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- 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event.
  - 9.2 The warranties and representations in Clauses 2.6 and 9.1 are repeated each time the Supplier provides Deliverables under this Contract.
  - 9.3 The Supplier indemnifies the Buyer against each of the following:
    - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts this Contract; and
    - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
  - 9.4 All claims indemnified under this Contract must use Clause 30.
  - 9.5 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that provision by the Supplier.
  - 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
  - 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.
- 10. Intellectual Property Rights (IPRs)**
- 10.1 The Parties agree that the terms set out in Schedule 6 (*Intellectual Property Rights*) shall apply to this Contract.
  - 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
  - 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
    - 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
    - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
  - 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

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## 11. Rectifying issues

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
  - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
  - 11.3.1 will give reasonable grounds for its decision; and
  - 11.3.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

## 12. Escalating issues

- 12.1 If the Supplier fails to:
  - 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
  - 12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.
- 12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

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### 13. Step-in rights

- 13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:
- 13.1.1 whether it will be taking action itself or with the assistance of a third party;
  - 13.1.2 what Required Action the Buyer will take during the Step-In Process;
  - 13.1.3 when the Required Action will begin and how long it will continue for;
  - 13.1.4 whether the Buyer will require access to the Sites; and
  - 13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 13.2 For as long as the Required Action is taking place:
- 13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
  - 13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
  - 13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
  - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

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#### 14. Ending the contract

14.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.

14.2 The Buyer can extend this Contract for the Extension Period by giving the Supplier written notice before this Contract expires as described in the Award Form.

#### 14.3 Ending the contract without a reason

The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than one hundred and eighty (180) days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clause 14.6.3 applies.

#### 14.4 When the Buyer can end this Contract

14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate this Contract by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

- (a) there's a Supplier Insolvency Event;
- (b) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- (d) there's any Material Default of this Contract;
- (e) there's any Material Default of any Joint Controller Agreement relating to this Contract;
- (f) there's a Default of Clauses 2.6, 12, 31 or Schedule 28 (*ICT Services*) (where applicable);
- (g) the performance of the Supplier causes a Critical KPI Failure to occur;
- (h) there's a consistent repeated failure to meet the Key Performance Indicators in Schedule 10 (*Performance Levels*);
- (i) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (j) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;

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- (k) the Supplier fails to comply with its legal obligations in the fields of environmental, social or employment Law when providing the Deliverables;
- (l) the Supplier fails to comply with its obligations under Part D (*Pensions*) of Schedule 7 (*Staff Transfer*);
- (m) the Supplier committing a material Default under Paragraphs 7.1.1 or 7.1.2 of Part D (*Pensions*) of Schedule 7 (*Staff Transfer*);
- (n) in accordance with Section 78, and/or Section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of Section 78(7) of the Procurement Act 2023 have been met, where:
  - (i) the Buyer considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
  - (ii) the Supplier has, since the award of the Contract become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Sections 78(8) (where applicable) of the Procurement Act 2023 have been met; and/or
  - (iii) any Subcontractor has, since the award of the Contract become an excluded supplier or excludable supplier as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Section 78(3) to 78(8) of the Procurement Act 2023 have been met;
- (o) the Supplier fails to enter into a legally binding agreement with any Subcontractor in accordance with Section 72 of the Procurement Act 2023; and/or
- (p) where any Subcontractor has, since the award of the Contract, become an excluded supplier or excludable supplier as defined in Section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause 14.4.1(p) the Buyer:
  - (i) has notified the Supplier of its intention to terminate under this Clause, and why the Buyer has decided to terminate the Contract;

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- (ii) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Buyer's decision to terminate; and
- (iii) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Subcontractor.

**14.5 What happens if the contract ends**

14.5.1 Where the Buyer terminates this Contract under Clauses 14.4.1 (excluding 14.4.1(n)(i)), 10.4, 12.3 or 36.3, Paragraph 7 of Part D of Schedule 7 (*Staff Transfer*), Paragraph 2.2 of Schedule 12 (*Benchmarking*) (where applicable), Paragraph 4.1 of Schedule 19 (*Corporate Resolution Planning*) (where applicable) Paragraph 7 of Schedule 24 (*Financial Difficulties*) (where applicable) or Paragraph 3.1.12(b) of Part A or Paragraph 3.8.2 of Part B (where applicable) of Schedule 26 (*Sustainability*) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law, other than Government Data (i) that is Personal Data in respect of which the Supplier is a Controller; and (ii) in respect of which the Supplier has rights to hold the Government Data independently of this Contract;
- (e) the Supplier must promptly return any of the Buyer's property provided under the terminated Contract;
- (f) the Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier); and
- (g) the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates this Contract under Clause 24.3 or the Buyer terminates under Clause 14.4.1(n)(i):

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- (a) each party must cover its own Losses; and
- (b) Clauses 14.5.1(b) to 14.5.1(g) apply.

14.5.3 The following Clauses survive the termination or expiry of this Contract: 3.2.12, 4, 6, 7.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (*Definitions*), Schedule 3 (*Charges*), Schedule 7 (*Staff Transfer*), Schedule 30 (*Exit Management*)) (if used), Schedule 6 (*Intellectual Property Rights*) and any Clauses and Schedules which are expressly or by implication intended to continue.

#### 14.6 When the Supplier (and the Buyer) can end the contract

14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within thirty (30) days of the date of the Reminder Notice.

14.6.2 The Supplier also has the right to terminate this Contract in accordance with Clauses 24.3 and 27.5.

14.6.3 Where the Buyer terminates this Contract under Clause 14.3 or the Supplier terminates this Contract under Clause 14.6.1 or 27.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and
- (c) Clauses 14.5.1(b) to 14.5.1(g) apply.

#### 14.7 Partially ending and suspending the contract

14.7.1 Where the Buyer has the right to terminate this Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends this Contract it can provide the Deliverables itself or buy them from a third party.

14.7.2 The Buyer can only partially terminate or suspend this Contract if the remaining parts of this Contract can still be used to effectively deliver the intended purpose.

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14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

**15. How much you can be held responsible for?**

15.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and/or

15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:

15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and

15.3.3 any liability that cannot be excluded or limited by Law.

15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 9.3.2, 10.2, 35.3.2 or Schedule 7 (*Staff Transfer*) of this Contract.

15.5 In spite of Clause 15.1, the Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (*Staff Transfer*) of this Contract.

15.6 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.6.4 is no more than the Data Protection Liability Cap.

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- 15.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.
- 15.8 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
  - 15.8.1 Deductions; and
  - 15.8.2 any items specified in Clause 15.4.
- 15.9 If more than one Supplier is party to this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

**16. Obeying the law**

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (*Sustainability*).
- 16.2 The Supplier shall comply with the provisions of:
  - 16.2.1 the Official Secrets Acts 1911 to 1989; and
  - 16.2.2 Section 182 of the Finance Act 1989.
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

**17. Insurance**

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (*Insurance Requirements*).

**18. Data protection and security**

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (*Processing Data*).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any

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Government Data, including back-up data, is a secure system that complies with the Security Requirements (including Schedule 16 (*Security*) (if used)) and otherwise as required by Data Protection Legislation.

18.4 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.

18.5 If the Government Data is any of (i) corrupted, (ii) lost or (iii) sufficiently degraded, in each case as a result of the Supplier's Default, so as to be unusable the Buyer may either or both:

18.5.1 tell the Supplier (at the Supplier's expense) to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and

18.5.2 restore the Government Data itself or using a third party and shall be repaid by the Supplier any reasonable expenses incurred in doing so.

18.6 The Supplier:

18.6.1 must, subject to the Security Requirements, including in Schedule 16 (*Security*) (if used), provide the Buyer with copies of Government Data held by the Supplier or any Subcontractor in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;

18.6.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

18.6.3 must, subject to the Security Requirements including in Schedule 16 (*Security*) (if used), securely erase all Government Data held by the Supplier or a Subcontractor when asked to do so by the Buyer (and certify to the Buyer that it has done so) using a deletion method that ensures that even a determined expert using specialist techniques can recover only a small fraction of the data deleted, unless and to the extent required by Law to retain it, other than Government Data in respect of which the Supplier is a Controller, or the Supplier has rights to hold the Government Data independently of the Contract; and

18.6.4 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. **What you must keep confidential**

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19.1 Each Party must:

19.1.1 keep all Confidential Information it receives confidential and secure;

19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and

19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;

19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;

19.2.3 if the information was given to it by a third party without obligation of confidentiality;

19.2.4 if the information was in the public domain at the time of the disclosure;

19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;

19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;

19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and

19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

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- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
  - 19.4.2 on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
  - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 19.4.4 where requested by Parliament;
  - 19.4.5 under Clauses 4.9 and 20; and
  - 19.4.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 (*Staff Transfer*) and Schedule 30 (if used).
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6 Transparency Information and any information which is disclosed pursuant to Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise this Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

**20. When you can share information**

- 20.1 The Supplier must tell the Buyer within forty eight (48) hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 20.2.1 publish the Transparency Information; and
  - 20.2.2 comply with any Request for Information,
- any such co-operation and/or information from the Supplier shall be provided at no additional cost.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request for

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Information and may talk to the Supplier to help it decide whether to publish information under Clause 20, taking into account any agreed Commercially Sensitive Information set out in Schedule 5. However, the extent, content and format of the disclosure shall be decided by the Buyer, in its sole discretion.

**21. Invalid parts of the contract**

If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

**22. No other terms apply**

The provisions incorporated into this Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

**23. Other people's rights in this Contract**

23.1 The provisions of Clauses 4.9, 8.2.3 and 8.2.4, Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3, 3.1 and 3.3 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (*Staff Transfer*) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("**CRTPA**").

23.2 Subject to Clause 23.1, no third parties may use the CRTPA to enforce any term of this Contract unless stated (referring to CRTPA) in this Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

23.3 Except for the provisions of Clauses 4.9, 8.2.3 and 8.2.4, no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.

23.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 23.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**24. Circumstances beyond your control**

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24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:

24.1.1 provides a Force Majeure Notice to the other Party; and

24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

24.3 Either party can partially or fully terminate this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

**25. Relationships created by the contract**

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

**26. Giving up contract rights**

A partial or full waiver or relaxation of the terms of this Contract is only valid if it is stated to be a waiver in writing to the other Party.

**27. Transferring responsibilities**

27.1 The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer's written consent.

27.2 Subject to Schedule 27 (*Key Subcontractors*), the Supplier cannot subcontract this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;

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27.2.3 the proposed Subcontractor employs unfit persons; and/or

27.2.4 the proposed Subcontractor is an excluded or excludable supplier within the meaning of the Procurement Act 2023 and any associated regulations.

27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

27.5 The Supplier can terminate this Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.

27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

27.7.1 their name;

27.7.2 the scope of their appointment;

27.7.3 the duration of their appointment;

27.7.4 a copy of the Sub-Contract; and

27.7.5 whether the Supplier considers that an exclusion ground within the meaning of the Procurement Act 2023 and any associated regulations does or may apply to the Sub-contractor.

**28. Changing the Contract**

28.1 Either Party can request a Variation to this Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.

28.2 The Supplier must provide an Impact Assessment either:

28.2.1 with the Variation Form, where the Supplier requests the Variation; and

28.2.2 within the time limits included in a Variation Form requested by the Buyer.

28.3 If the Variation to this Contract cannot be agreed or resolved by the Parties, the Buyer can either:

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- 28.3.1 agree that this Contract continues without the Variation; and
  - 28.3.2 refer the Dispute to be resolved using Clause 39 (*Resolving Disputes*).
  - 28.4 The Buyer is not required to accept a Variation request made by the Supplier.
  - 28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
    - 28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
    - 28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
  - 28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
  - 28.7 If there is a Specific Change in Law or one is likely to happen during this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or this Contract and provide evidence:
    - 28.7.1 of how it has affected the Supplier's costs; and
    - 28.7.2 that the Supplier has kept costs as low as possible, including in Subcontractor costs.
  - 28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.
29. **How to communicate about the contract**
- 29.1 All notices under this Contract shall be in writing and be served by e-mail unless it is not practicable to do so. An e-mail is effective at 9:00am on the first Working Day after sending unless an error message is received.
  - 29.2 If it is not practicable for a notice to be served by e-mail in accordance with Clause 29.1, notices can be served by means of personal delivery or Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery. If either of these options are used to serve a notice, such notices are considered effective on the

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Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day.

29.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or e-mail address in the Award Form.

29.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

**30. Dealing with claims**

30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.

30.2 At the Indemnifier's cost the Beneficiary must both:

30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

30.2.2 give the Indemnifier reasonable assistance with the claim if requested.

30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.

30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and

30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

**31. Exclusions**

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- 31.1 During the Contract Period the Supplier shall notify the Buyer as soon as reasonably practicable if:
- 31.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or
  - 31.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.
- 31.2 If the Supplier notifies the Buyer in accordance with Clause 31.1.1 then the Supplier must promptly provide any information the Buyer reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 31.3 If the Supplier notifies the Buyer in accordance with Clause 31.1.2 above then the Supplier must promptly provide any information reasonably requested by the Buyer in relation to the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.
- 31.4 The Buyer may terminate this Contract if:
- 31.4.1 the Supplier has failed to provide notification under Clause 31.1.1 as soon as reasonably practicable after the Supplier become aware that an exclusion ground within the Procurement Act 2023 and any associated regulations does or may apply to the Supplier;
  - 31.4.2 the Supplier has failed to provide notification under Clause 31.1.2 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023; and/or
  - 31.4.3 any notification or information provided by the Supplier under Clause 31.1, 31.2 and/or 31.3 is incomplete, inaccurate or misleading,
- and the consequences of termination set out in Clause 14.5.1 shall apply.
- 31.5 Clause 31.4 is without prejudice to the Buyer's rights to terminate the Contract in accordance with Clause 14.4.1(n).

**32. Equality, diversity and human rights**

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32.1 The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:

32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

**33. Health and safety**

33.1 The Supplier must perform its obligations meeting the requirements of:

33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

33.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of this Contract.

**34. Environment**

34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

**35. Tax**

35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate this Contract where the Supplier has not paid a minor tax or social security contribution.

35.2 Where the Charges payable under this Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within five (5) Working Days including:

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- 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
  - 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:
  - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to income tax and National Insurance contributions (including IR35); and
  - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 35.4 At any time during the Contract Period, the Buyer may specify information that the Supplier must provide with regard to the Supplier, the Supplier Staff, the Workers, or the Supply Chain Intermediaries and set a deadline for responding, which:
  - 35.4.1 demonstrates that the Supplier, Supplier Staff, Workers, or Supply Chain Intermediaries comply with the legislation specified in Clause 35.3.1, or why those requirements do not apply; and
  - 35.4.2 assists with the Buyer's due diligence, compliance, reporting, or demonstrating its compliance with any of the legislation in Clause 35.3.1.
- 35.5 The Buyer may supply any information they receive from the Supplier under Clause 35.4 to HMRC for revenue collection and management and for audit purposes.
- 35.6 The Supplier must inform the Buyer as soon as reasonably practicable if there any Workers or Supplier Staff providing services to the Buyer who are contracting, begin contracting, or stop contracting via an intermediary which meets one of conditions A-C set out in Section 61N of the Income Tax (Earnings and Pensions) Act 2003 and/or Regulation 14 of the Social Security Contributions (Intermediaries) Regulations 2000.
- 35.7 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

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35.7.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

35.7.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

35.7.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and

35.7.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

**36. Conflict of interest**

36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, perceived or potential Conflict of Interest happens or is expected to happen.

36.3 The Buyer will consider whether there are any reasonable steps that can be put in place to mitigate an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such steps do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and, subject to Clause 36.4, where the reason for the unresolvable actual or potential Conflict of Interest is in the reasonable opinion of the Buyer

36.3.1 outside of the control of the Supplier, Clauses 14.5.1(b) to 14.5.1(g) shall apply; or

36.3.2 within the control of the Supplier, the whole of Clause 14.5.1 shall apply.

36.4 Where the Supplier has failed to notify the Buyer about an actual or potential Conflict of Interest and the Buyer terminates under Clause 36.3, the whole of Clause 14.5.1 shall apply.

**37. Reporting a breach of the contract**

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37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected:

37.1.1 breach of Law;

37.1.2 Default of Clause 16.1; and

37.1.3 Default of Clauses 31 to 36.

37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 37.1 to the Buyer or a Prescribed Person.

**38. Further Assurances**

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

**39. Resolving disputes**

39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.

39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1 determine the Dispute;

39.3.2 grant interim remedies; and

39.3.3 grant any other provisional or protective relief.

39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under

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Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.

39.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

40. **Which law applies**

This Contract and any Disputes arising out of, or connected to it, are governed by English law.



# Schedule 1 (Definitions)

## 1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
  - 1.3.1 reference to a gender includes the other gender and the neuter;
  - 1.3.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.3.3 a reference to any Law includes a reference to that Law as modified, amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) before or after the date of this Contract and any prior or subsequent legislation under it;
  - 1.3.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.3.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - 1.3.6 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;
  - 1.3.7 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, Paragraphs, Annexes and tables are, unless otherwise provided, references to the parts, Paragraphs, Annexes and tables of the Schedule in which these references appear;
  - 1.3.8 references to "**Paragraphs**" are, unless otherwise provided, references to the Paragraph of the appropriate Schedules unless otherwise provided;

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- 1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the Clause or Paragraph numbers specified;
  - 1.3.10 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
  - 1.3.11 any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - 1.3.12 a reference to a document (including this Contract) is to that document as varied, amended, novated, ratified or replaced from time to time.
- 1.4 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

- "Achieve"** in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "**Achieved**", "**Achieving**" and "**Achievement**" shall be construed accordingly;
- "Additional FDE Group Member"** any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (*Financial Difficulties*);
- "Affected Party"** the party seeking to claim relief in respect of a Force Majeure Event;
- "Affiliates"** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
- "Allowable Assumptions"** the assumptions (if any) set out in Annex 2 of Schedule 3 (*Charges*);
- "Annex"** extra information which supports a Schedule;

- "Approval"** the prior written consent of the Buyer and **"Approve"** and **"Approved"** shall be construed accordingly;
- "Associates"** in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
- "Audit"** the Buyer's right to:
- (a) verify the integrity and content of any Financial Report;
  - (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with this Contract);
  - (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
  - (d) verify the Open Book Data;
  - (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
  - (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (*Sustainability*), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
  - (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including

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- the supply of information to the Comptroller and Auditor General;
  - (i) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
  - (j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
  - (k) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
- "Auditor"**
- (a) the Buyer's internal and external auditors;
  - (b) the Buyer's statutory or regulatory auditors;
  - (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
  - (d) HM Treasury or the Cabinet Office;
  - (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and
  - (f) successors or assigns of any of the above;
- "Award Form"**
- the document outlining the Incorporated Terms and crucial information required for this Contract, to be executed by the Supplier and the Buyer;
- "Beneficiary"**
- a Party having (or claiming to have) the benefit of an indemnity under this Contract;
- "Buyer"**
- the public sector purchaser identified as such in the Order Form;
- "Buyer Assets"**
- the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of this Contract;

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<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
<b>"Buyer Cause"</b>	has the meaning given to it in the Award Form;
<b>"Buyer Equipment"</b>	any hardware, computer or telecoms devices, and equipment that forms part of the Buyer System;
<b>"Buyer Existing IPR"</b>	any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Crown Body, any Crown IPR, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise)
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's information and communications technology system, including any software or Buyer Equipment, owned by the Buyer, or leased or licenced to it by a third party, that: <ul style="list-style-type: none"><li>(a) is used by the Buyer or the Supplier in connection with this Contract;</li><li>(b) interfaces with the Supplier System; and/or</li><li>(c) is necessary for the Buyer to receive the Services;</li></ul>
<b>"Buyer Third Party"</b>	any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;

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<b>"Buyer's Confidential Information"</b>	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with this Contract; and</p> <p>information derived from any of the above;</p>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of this Contract which comes into force after the Effective Date;
<b>"Change of Control"</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under this Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>["Code"</b>	<p>in respect of the Developed System means:</p> <p>(a) the source code;</p> <p>(b) the object code;</p> <p>(c) third party components, including third party coding frameworks and libraries; and</p> <p>(d) all supporting documentation;]</p>
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in Schedule 5 ( <i>Commercially Sensitive Information</i> ) (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if

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	disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Confidential Information"</b>	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
<b>"Contract"</b>	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
<b>"Contract Period"</b>	the term of this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, until the End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in Sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly;

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- "Controller"** has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
- "Core Terms"** the Buyer's terms and conditions which apply to and comprise one part of this Contract set out in the document called **"Core Terms"**;
- "Costs"** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:
- (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:
    - (i) base salary paid to the Supplier Staff;
    - (ii) employer's National Insurance contributions;
    - (iii) pension contributions;
    - (iv) car allowances;
    - (v) any other contractual employment benefits;
    - (vi) staff training;
    - (vii) work place accommodation;
    - (viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and
    - (ix) reasonable recruitment costs, as agreed with the Buyer;
  - (b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
  - (c) operational costs which are not included within (a) or (b) above, to the extent that

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such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and

- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:

- (a) Overhead;
- (b) financing or similar constraints;
- (c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) taxation;
- (e) fines and penalties;
- (f) amounts payable under Schedule 12 (*Benchmarking*) where such Schedule is used; and
- (g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"COTS Software" or "Commercial off the shelf Software"** non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;

**"Critical KPI Failure"** has the meaning given to it in the Award Form;

**"Crown Body"** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Crown IPR"** any IPR which is owned by or licensed to the Crown, and which are or have been developed

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	independently of this Contract (whether prior to the Effective Date or otherwise);
<b>"CRTPA"</b>	the Contract Rights of Third Parties Act 1999;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>"Data Protection Legislation"</b>	<ul style="list-style-type: none"> <li>(a) the UK GDPR;</li> <li>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</li> <li>(c) all applicable Law about the processing of personal data and privacy; and</li> <li>(d) (to the extent that it applies) the EU GDPR;</li> </ul>
<b>"Data Protection Liability Cap"</b>	has the meaning given to it in the Award Form;
<b>"Data Protection Officer"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deductions"</b>	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under this Contract;
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of

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the Supplier, of its Subcontractors or any Supplier

Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;

**"Defect"**

any of the following:

- (a) any error, damage or defect in the manufacturing of a Deliverable; or
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;

**"Delay Payments"**

the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;

**"Deliverables"**

Goods, Services or software that may be ordered and/or developed under this Contract including the Documentation;

**"Delivery"**

delivery of the relevant Deliverable or Milestone in accordance with the terms of this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (*Implementation Plan and Testing*) is used issue by the Buyer of a Satisfaction

Certificate. **"Deliver"** and **"Delivered"** shall be construed accordingly;

**"Dependent Parent Undertaking"**

any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;

**["Developed System"**

any software or system that the Supplier will develop under this Contract:

- (a) as part of the Services;
- (b) to provide the Services; or
- (c) to Handle Government Data.]

**"Disaster"**

the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);

**"Disclosing Party"**

the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (*What you must keep confidential*);

**"Dispute"**

any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;

**"Dispute Resolution Procedure"**

the dispute resolution procedure set out in Clause 39 (*Resolving disputes*);

<b>"Documentation"</b>	<p>descriptions of the Services and Key Performance Indicators, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under this Contract as:</p> <ul style="list-style-type: none"> <li>(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li> <li>(b) is required by the Supplier in order to provide the Deliverables; and/or</li> <li>(c) has been or shall be generated for the purpose of providing the Deliverables;</li> </ul>
<b>"DOTAS"</b>	<p>the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;</p>
<b>"DPA 2018"</b>	<p>the Data Protection Act 2018;</p>
<b>"Due Diligence Information"</b>	<p>any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;</p>
<b>"Effective Date"</b>	<p>the date on which the final Party has signed this Contract;</p>
<b>"EIR"</b>	<p>the Environmental Information Regulations 2004;</p>
<b>"Electronic Invoice Standard"</b>	<p>in relation to an electronic invoice means a form that:</p> <ul style="list-style-type: none"> <li>(a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic</li> </ul>

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	invoicing - Part 1: Semantic data model of the core elements of an electronic invoice); and
	(b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>"End Date"</b>	the earlier of:  (a) the Expiry Date as extended by the Buyer under Clause 14.2; or  (b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;
<b>"End User"</b>	a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
<b>"Equality and Human Rights Commission"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Escalation Meeting"</b>	a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;

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<b>"Estimated Year 1 Charges"</b>	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
<b>"Estimated Yearly Charges"</b>	for the purposes of calculating each Party's annual liability under Clause 15.1 means: <ul style="list-style-type: none"> <li>(a) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or</li> <li>(c) after the end of this Contract, the Charges paid or payable in the last Contract Year during the Contract Period;</li> </ul>
<b>"EU GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Contract (whether prior to the Start Date or otherwise);
<b>"Exit Plan"</b>	has the meaning given to it in Paragraph 4.1 of Schedule 30 ( <i>Exit Management</i> );
<b>"Expiry Date"</b>	the date of the end of this Contract as stated in the Award Form;
<b>"Extension Period"</b>	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
<b>"FDE Group"</b>	the Supplier and any Additional FDE Group Member;
<b>"Financial Distress Event"</b>	the occurrence of one or more the following events: <ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> </ul>

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- (b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;
- (d) any FDE Group entity commits a material breach of covenant to its lenders;
- (e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
  - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;

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- (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
  - (iii) non-payment by any FDE Group entity of any financial indebtedness;
  - (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
  - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or
  - (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,
- (j) in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with this Contract; or
  - (k) any **one** of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 (*Financial Difficulties*) for any of the FDE Group entities failing to meet the required Financial Target Threshold;

**"Financial Report"**

a report provided by the Supplier to the Buyer that:

- (a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
- (c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract; and

- (d) is certified by the Supplier's Chief Financial Officer or Director of Finance;
- "Financial Transparency Objectives"**
- (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;
- (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;
- (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;
- "FOIA"**
- the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
- "Force Majeure Event"**
- any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:
- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;

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- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - (i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
  - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
  - (iii) any failure of delay caused by a lack of funds,

and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;

**"Force Majeure Notice"** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

**"General Anti-Abuse Rule"**

- (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;

**"General Change in Law"** a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;

**"Goods"** goods made available by the Supplier as specified in Schedule 2 (*Specification*) and in relation to a Contract;

**"Good Industry Practice"** at any time the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence

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and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;

**"Government"**

the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**"Government Data"**

any:

- (a) 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;
- (b) Personal Data for which the Buyer is a, or the, Controller; or
- (c) any meta-data relating to categories of data referred to in (a) or (b),

that:

- (i) is supplied to the Supplier by or on behalf of the Buyer; or
- (ii) that the Supplier is required to generate, Process, Handle, store or transmit under this Contract;

and for the avoidance of doubt includes the Code and any meta data relating to the Code;

**"Government Procurement Card"**

the Government's preferred method of purchasing and payment for low value goods or services <https://www.gov.uk/government/publications/government-procurement-card--2>;

**"Guarantor"**

the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (*Guarantee*) in relation to this Contract;

**"Halifax Abuse Principle"**

the principle explained in the CJEU Case C-255/02 Halifax and others;

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<b>"Handle"</b>	any operation performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of that data;
<b>"HMRC"</b>	His Majesty's Revenue and Customs;
<b>"ICT Environment"</b>	the Buyer System and the Supplier System;
<b>"ICT Policy"</b>	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> <li>(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Contract;</li> <li>(b) details of the cost of implementing the proposed Variation;</li> <li>(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</li> <li>(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</li> <li>(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;</li> </ul>
<b>"Implementation Plan"</b>	the plan for provision of the Deliverables set out in Schedule 8 ( <i>Implementation Plan and Testing</i> )

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	where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
<b>"Incorporated Terms"</b>	the contractual terms applicable to this Contract specified in the Award Form;
<b>"Indemnifier"</b>	a Party from whom an indemnity is sought under this Contract;
<b>"Independent Controller"</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>"Indexation"</b>	the adjustment of an amount or sum in accordance with this Contract;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Initial Period"</b>	the initial term of this Contract specified in the Award Form;
<b>"Insolvency Event"</b>	with respect to any person, means: <ul style="list-style-type: none"> <li>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> <li>(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or</li> <li>(ii) (being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;</li> </ul> </li> <li>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986</li> </ul>

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other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
  - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
  - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
  - (iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

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(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**"Installation Works"**

all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with this Contract;

**"Intellectual Property Rights" or "IPR"**

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"IP Completion Day"**

has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;

**"IPR Claim"**

any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 6 (*Intellectual Property Rights*) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under this Contract;

**"IR35"**

means Chapter 8 and Chapter 10 of Part 2 of Income Tax (Earnings and Pensions) Act 2003 and

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	the Social Security Contributions (Intermediaries) Regulations 2000;
<b>"Joint Controller Agreement"</b>	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 ( <i>Processing Data</i> );
<b>"Joint Control"</b>	where two (2) or more Controllers jointly determine the purposes and means of Processing;
<b>"Joint Controllers"</b>	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
<b>"Key Performance Indicators"</b>	any key performance indicators applicable to the provision of the Deliverables under this Contract (as specified in the Annex to Part A of Schedule 10 ( <i>Performance Levels</i> ));
<b>"Key Staff"</b>	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 ( <i>Key Supplier Staff</i> );
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Subcontractor;
<b>"Key Subcontractor"</b>	<p>any Subcontractor:</p> <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>(c) with a Sub-Contract with this Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract,</li> </ul> <p>and the Supplier shall list all such Key Subcontractors in the Award Form;</p>
<b>"Know-How"</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the

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Deliverables but excluding know-how already in the other Party's possession before the Effective Date;

**"Law"**

any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

**"Law Enforcement Processing"**

processing under Part 3 of the DPA 2018;

**"Losses"**

all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **"Loss"** shall be interpreted accordingly;

**"Malicious Software"**

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

**"Material Default"**

a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)

**"Marketing Contact"**

shall be the person identified in the Award Form;

**"Milestone"**

an event or task described in the Implementation Plan;

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<b>"Milestone Date"</b>	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"National Insurance"</b>	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
<b>"New IPR"</b>	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR</p>
<b>"New IPR Item"</b>	a deliverable, document, product or other item within which New IPR subsists;
<b>"Notifiable Default"</b>	<p>(a) the Supplier commits a Material Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical KPI Failure;</p>
<b>"Object Code"</b>	software and/or data in machine-readable compiled object code form;
<b>"Open Book Data"</b>	<p>complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:</p> <p>(a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement</p>

costs) and the unit cost and total actual costs of all Deliverables;

- (b) operating expenditure relating to the provision of the Deliverables including an analysis showing:
  - (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
  - (ii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
  - (iv) Reimbursable Expenses, if allowed under the Award Form;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
- (e) the Supplier Profit achieved over the Contract Period and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period;

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any material that is published for use, with rights to access, copy, modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> and the Open

	Standards Principles documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> , and includes the Open Source publication of Software;
<b>"Open Source"</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>"Open Licence Publication Material"</b>	items created pursuant to this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
<b>"Overhead"</b>	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Undertaking"</b>	has the meaning set out in Section 1162 of the Companies Act 2006;
<b>"Parliament"</b>	takes its natural meaning as interpreted by Law;
<b>"Party"</b>	the Buyer or the Supplier and <b>"Parties"</b> shall mean both of them where the context permits;
<b>"Personal Data"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Personal Data Breach"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Prescribed Person"</b>	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing">https://www.gov.uk/government/publications/blowing</a>

[-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies;](#)

<b>"Processing"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires, and <b>"Process"</b> shall be construed accordingly;
<b>"Processor"</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>"Processor Personnel"</b>	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Contract;
<b>"Progress Meeting"</b>	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
<b>"Progress Report"</b>	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
<b>"Protective Measures"</b>	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in Schedule 16 ( <i>Security</i> ) (if used) and Schedule 20 ( <i>Processing Data</i> );
<b>"Provisional Supplier Staff List"</b>	has the meaning given in Schedule 7 ( <i>Staff Transfer</i> );
<b>"Public Sector Body "</b>	a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;

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<b>"Recall"</b>	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information;
<b>"Rectification Plan"</b>	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (<i>Rectification Plan</i>) which shall include:</p> <ul style="list-style-type: none"><li>(a) full details of the Notifiable Default that has occurred, including a root cause analysis;</li><li>(b) the actual or anticipated effect of the Notifiable Default; and</li><li>(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);</li></ul>
<b>"Rectification Plan Process"</b>	the process set out in Clause 11 ( <i>Rectifying issues</i> );
<b>"Reimbursable Expenses"</b>	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"><li>(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</li><li>(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</li></ul>

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<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Reminder Notice"</b>	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
<b>"Replacement Deliverables"</b>	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
<b>"Request For Information"</b>	a request for information or an apparent request relating to this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
<b>"Required Action"</b>	the action the Buyer will take and what Deliverables it will control during the Step-In Process;
<b>"Required Insurances"</b>	the insurances required by Schedule 22 ( <i>Insurance Requirements</i> );
<b>"Satisfaction Certificate"</b>	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 ( <i>Implementation Plan and Testing</i> ) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
<b>"Schedules"</b>	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
<b>"Security Management Plan"</b>	

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the Supplier's  
security  
management plan  
prepared pursuant  
to Schedule 16  
(*Security*) (if  
applicable);

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<b>"Security Requirements"</b>	the security requirements in the Award Form including Schedule 16 ( <i>Security</i> ) (if used);
<b>"Serious Fraud Office"</b>	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of Schedule 10 ( <i>Performance Levels</i> ) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Performance Levels;
<b>"Service Period"</b>	has the meaning given to it in the Award Form;
<b>"Services"</b>	services made available by the Supplier as specified in Schedule 2 ( <i>Specification</i> ) and in relation to a Contract;
<b>"Sites"</b>	<p>any premises (including the Buyer Premises, the Supplier's premises or third party premises):</p> <p>(a) from, to or at which:</p> <p style="margin-left: 40px;">(i) the Deliverables are (or are to be) provided; or</p> <p style="margin-left: 40px;">(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;</p> <p>(b) where:</p> <p style="margin-left: 40px;">(i) any Supplier Equipment or any part of the Supplier System is located;</p> <p style="margin-left: 40px;">(ii) any physical interface with the Buyer System takes place;</p>
<b>"SME"</b>	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
<b>"Social Value"</b>	the additional social benefits that can be achieved in the delivery of this Contract set out in Schedule 2 ( <i>Specification</i> ) and Schedule 10 ( <i>Performance Levels</i> );

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<b>"Social Value KPIs"</b>	the Social Value priorities set out in Schedule 2 (Specification) and Schedule 10 ( <i>Performance Levels</i> );
<b>"Software"</b>	any software including Specially Written Software, COTS Software and software that is not COTS Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in Schedule 6 ( <i>Intellectual Property Rights</i> );
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Special Terms"</b>	any additional terms and conditions set out in the Award Form incorporated into this Contract;
<b>"Specially Written Software"</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
<b>"Specific Change in Law"</b>	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;
<b>"Specification"</b>	the specification set out in Schedule 2 ( <i>Specification</i> );
<b>"Standards"</b>	any:

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- (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) standards detailed in the specification in Schedule 2 (*Specification*);
- (c) standards agreed between the Parties from time to time;
- (d) relevant Government codes of practice and guidance applicable from time to time;

**"Start Date"** the date specified on the Award Form;

**"Step-In Process"** the process set out in Clause 13 (*Step-in rights*);

**"Step-In Trigger Event"** the occurrence of any of the following:

- (a) the Supplier's level of performance constituting a Critical KPI Failure;
- (b) the Supplier committing a Material Default which is irremediable;
- (c) where a right of termination is expressly reserved in this Contract;
- (d) an Insolvency Event occurring in respect of the Supplier or any Guarantor;
- (e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;
- (f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;
- (g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;
- (h) the existence of a serious risk to the health or safety of persons, property or the

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	environment in connection with the Deliverables; and/or
	(i) a need by the Buyer to take action to discharge a statutory duty;
<b>"Step-Out Plan"</b>	the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under this Contract following the completion of the Step-In Process;
<b>"Sub-Contract"</b>	any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party:  (a) provides the Deliverables (or any part of them);  (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or  (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
<b>"Subcontractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
<b>"Subsidiary Undertaking"</b>	has the meaning set out in Section 1162 of the Companies Act 2006;
<b>"Supplier"</b>	the person, firm or company identified in the Award Form;
<b>"Supplier Assets"</b>	all assets and rights used by the Supplier to provide the Deliverables in accordance with this Contract but excluding the Buyer Assets;
<b>"Supplier Authorised Representative"</b>	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
<b>"Supplier Equipment"</b>	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other

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items supplied  
and used by the  
Supplier (but not

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	hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
<b>"Supplier Existing IPR"</b>	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
<b>"Supplier Existing IPR Licence"</b>	a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 6 ( <i>Intellectual Property Rights</i> );
<b>"Supplier Group"</b>	the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
<b>"Supplier New and Existing IPR Licence"</b>	a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 6 ( <i>Intellectual Property Rights</i> );
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to: <ul style="list-style-type: none"> <li>(a) Achieve a Milestone by its Milestone Date;</li> <li>(b) provide the Goods and/or Services in accordance with the Key Performance Indicators; and/or</li> <li>(c) comply with an obligation under this Contract;</li> </ul>
<b>"Supplier Profit"</b>	in relation to a period, the difference between the total Charges (in nominal cash flow terms) but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of this Contract for the relevant period;
<b>"Supplier Profit Margin"</b>	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Staff"</b>	any individual engaged, directly or indirectly, or employed by the Supplier or any Subcontractor, in the

	management or performance of the Supplier's obligations under this Contract;
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier or any Subcontractor in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
<b>"Supplier's Confidential Information"</b>	<ul style="list-style-type: none"><li>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li><li>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract; and</li><li>(c) information derived from any of (d) and (e) above;</li></ul>
<b>"Supplier's Contract Manager"</b>	the person identified in the Award Form appointed by the Supplier to oversee the operation of this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
<b>"Supply Chain Intermediary"</b>	any entity (including any company or partnership) in an arrangement with a Worker, where the Worker performs or is under an obligation personally to perform, services for the Buyer;
<b>"Supporting Documentation"</b>	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under this Contract detailed in the information are properly payable;

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<b>"Tender Response"</b>	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 ( <i>Tender</i> );
<b>"Termination Assistance"</b>	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Period"</b>	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 ( <i>Exit Management</i> );
<b>"Termination Assistance Notice"</b>	has the meaning given to it in Paragraph 5.1 of Schedule 30 ( <i>Exit Management</i> );
<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Test Issue"</b>	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in this Contract;
<b>"Test Plan"</b>	a plan: <ul style="list-style-type: none"> <li>(a) for the Testing of the Deliverables; and</li> <li>(b) setting out other agreed criteria related to the achievement of Milestones;</li> </ul>
<b>"Tests and Testing"</b>	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and <b>"Tested"</b> shall be construed accordingly;
<b>"Third Party IPR"</b>	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;

<b>"Third Party IPR Licence"</b>	a licence to the Third Party IPR as set out in Schedule 6 ( <i>Intellectual Property Rights</i> );
<b>"Transparency Information"</b>	<ul style="list-style-type: none"> <li>(a) any information permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023 which shall be determined by the Buyer taking into account Schedule 5 (<i>Commercially Sensitive Information</i>);</li> <li>(b) any information about this Contract, including the content of this Contract requested and required to be disclosed under FOIA or the EIRs, and any changes to this Contract agreed from time to time, subject to any relevant exemptions, which shall be determined by the Buyer taking into account Schedule 5 (<i>Commercially Sensitive Information</i>);</li> <li>(c) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time; and</li> <li>(d) any of the information that the Buyer is permitted or required to publish by the Procurement Act 2023, any regulations published under it and any Procurement Policy Notes, relating to the performance of the Supplier against any KPI and any information contained in any Performance Monitoring Reports (as that term is defined in Schedule 10 (<i>Performance Levels</i>)), subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by the Buyer taking into account Commercially Sensitive Information listed in Schedule 5 (<i>Commercially Sensitive Information</i>) (if any);</li> </ul>
<b>"UK GDPR"</b>	has the meaning as set out in Section 3(10) of the DPA 2018, supplemented by Section 205(4) of the DPA 2018;

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<b>"US Data Privacy Framework"</b>	as applicable: (a) the UK Extension to the EU-US Data Privacy Framework; and/or (b) the EU-US Data Privacy Framework;
<b>"Variation"</b>	a variation to this Contract;
<b>"Variation Form"</b>	the form set out in Schedule 21 ( <i>Variation Form</i> );
<b>"Variation Procedure"</b>	the procedure set out in Clause 28 ( <i>Changing the contract</i> );
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"VCSE"</b>	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>"Verification Period"</b>	has the meaning given to it in the table in Annex 2 of Schedule 3 ( <i>Charges</i> );
<b>"Work Day"</b>	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Work Hours"</b>	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
<b>"Worker"</b>	any individual that personally performs, or is under an obligation personally to perform services for the Buyer; and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.



## Schedule 2 (Specification)

### 1. OVERVIEW

**1.1. The purpose of this document is to provide potential providers with full details of the Department of Health and Social Care's (DHSC, 'the Department') requirements that will form the basis of an appropriate contract.**

1.2. (B) Throughout this document the word 'Potential Provider' means the body completing these questions i.e. the legal entity responsible for the information provided and ultimately the service provided.

1.3. (B) Throughout this Specification, the importance of each requirement will be abbreviated as follows: -

- **Mandatory (M)** – These are requirements which the Department regards as the most important requirements as specified in the Specification. There is a high volume of requirements that have been identified as mandatory. If a potential supplier cannot display these requirements, they would be disqualified from the procurement.
- **Desirable (D)** – These are requirements to be provided by the Potential Provider as part of the provision of the service. It indicates that the requirement described is felt to be particularly valuable and will be scored accordingly during evaluation. Failure to comply with a desirable requirement will result in the tender being marked down but will not result in disqualification. Where appropriate a separate cost may be associated with these requirements.
- **Optional (O)** – These are requirements that the Department sees as beneficial within the provision of the proposed service. Failure to comply with an optional requirement will not result in your tender being marked down and will not result in disqualification. However, where optional requirements are available within the core service at no additional charge, they will be seen to strengthen the tender and influence the marking of the technical merit and quality section only. For the avoidance of doubt, the optional requirements will not influence the marking of Price.
- **Background Information (B)** – This indicates general or specific information provided to you which should be considered when responding to the related mandatory, desirable, optional and information requirements.

### 2. BACKGROUND TO THE CONTRACTING AUTHORITY

2.1. (B) The Department of Health and Social Care (DHSC) supports Ministers in building a sustainable NHS fit for the future, which includes building a sustainable workforce. We work closely with our partners in the health and care system, our arm's length bodies (ALBs), agencies and across government in supporting and achieving this.

2.2. (B) As part of the work to build a sustainable NHS workforce, The Department invests significantly in consistent workforce policy development and implementation across the NHS in England via this contract. It is via this contract that the relationships with NHS trade unions are also maintained with the supplier playing a valuable role in managing the collective bargaining machinery on behalf of the department via the NHS Staff Council, medical Joint Negotiating Committees, and the Social Partnership Forum. This supplements the independent relationships the Department holds with any and all trade unions.

### 3. BACKGROUND TO REQUIREMENT

#### **3.1. Tender for the provision of Employers' Organisation Services Contract**

3.1.1. (B) The Department of Health and Social Care (DHSC) is procuring a single supplier award for a contract to deliver the services for an employers' organisation services contract for the NHS in England.

3.1.2. The contract discharges a key duty of Secretary of State by supporting workforce policy development and implementation within the system. The contract ensures this by creating helpful separation between the wider health system and the Department and feeding in a unified employer voice, supporting the practical application and delivery of workforce policy. It is via this contract that the relationships with NHS trade unions are also maintained with the supplier playing a valuable role in managing the collective bargaining machinery on behalf of the department via the NHS Staff Council, medical Joint Negotiating Committees, and the Social Partnership Forum.

The contract will allow the Department to be at arm's length, enabling more frank conversations with the system on workforce policy, allowing issues to be identified early and ensuring workforce leaders are equipped with the necessary tools to implement new changes.

#### **3.2. Current Position**

3.2.1. The contract has previously been provided by NHS Employers under the NHS Confederation umbrella. This procurement seeks to replace and modernise the contract formally known as the NHS Employers Contract when it comes to an end on 31<sup>st</sup> December 2025

3.2.2. In terms of workforce policy, the Department has clear strategic objectives that this contract must support.

3.2.3. (M) The policy objectives from this procurement and the acquisition of this new commercial contract include:

- To ensure a clear employer voice from across the NHS in England to input into policy development and application relating to the NHS workforce. A potential supplier should have reference to wider structures and landscape within the NHS as set out in Section 29.
- To support employers across all NHS organisations in England to be the best they can be by providing support, establishing networks and sharing of best practice at the relevant level
- To manage and lead the employer input into negotiations to make any changes to national terms and conditions of employment for NHS staff.
- To enable the staff side voice to also be represented through the effective management of collective bargaining structures in matters relating to terms and conditions of service and other key matters as identified.
- To ensure that NHS workforce policies are effectively and consistently implemented and communicated across all NHS organisations in England.

### **3.3. Surge Requirement**

3.3.1. (O) . In line with the above expectations and to recognise a degree of flex in the contract and the composition of annual work programmes, we expect to hold in reserve a maximum of £500,000 per annum for any flex in the contractual delivery as a Rate Card for any ad hoc requirements that occur in the contract year. The work programmes as set out in Section 8 are indicative, and the Department can (at its sole discretion) instruct resource to be moved between work programmes or to different activities as it determines. This allows the supplier to swiftly direct resources to these policy areas as per direction from the Department. This requirement provides opportunities to cover possible changes to the service, through a variation to the contract, that cannot at this stage be anticipated. Any additional services will be agreed with the contracted supplier and subject to approval (including assessment of affordability and value for money) by the Department.

## **4. THE REQUIREMENT**

### **4.1. SCOPE OF REQUIREMENT**

4.1.1. The contract must support delivery of the following top level workforce ambitions:

- To support the NHS to deliver high-quality, safe, and sustainable hospital care and secure the workforce needed in line with national strategies on workforce and the wider NHS
- To link in with the 10 Year Health Plan, which intends to reform the NHS and make it fit for the future as part of the government's five long term missions

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- To improve healthcare outcomes and services through a well-supported workforce and through implementation of the Department's strategic priorities
- Consistent delivery of workforce policies aligned with these commitments.
- This includes joining up thinking across the system and with any relevant ALBs such as NHS England (NHSE).
- The successful supplier must have an awareness of the latest progressive thinking and relevant expertise in equality, diversity and inclusion and how this underpins the aims of creating a fairer more diverse workplace.

4.2. (M) The Supplier will be expected to be both reactive and proactive in delivery of the services. The supplier must be proactive in recognising and responding to changes in the operational environment. The supplier must be reactive in responding to Ministerial priorities. The delivery of this should be designed in a bespoke manner and be flexible where possible, acting upon DHSC and Ministerial priorities.

## 5. AIM AND OVERVIEW OF THE CONTRACT

### 5.1. Aim of the Contract

- A contract coordinating employers services across the NHS and including the coverage of 8 annual work programmes which are interlinked and co-dependent, as well as any other ad hoc requirements as needed by the Department

Work Programme 1: Pay and Contracts

Work Programme 2: Workforce Supply: (a) medical expansion and reform, (b) clinical expansion and (c) new roles.

Work Programme 3: Workforce Supply: International Recruitment

Work Programme 4: Pensions and Total Reward

Work Programme 5: Employment Practice and Safe Recruitment

Work Programme 6: Staff Experience and Retention

Work Programme 7: Staff Engagement including Social Partnership Forum (SPF)

Work Programme 8: Professional Standards

5.2. (M) Coverage of the work programmes is a mandatory requirement to the Department.

## 6. Interdependencies

6.1. The 8 Work Programmes are interlinked – there are some overarching services that cut across all work programmes. For example: the need for clear and up to date communications for all work programmes is covered by the Communications

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Corporate Service as detailed below. Alongside this, there is a clear need for effective engagement with key stakeholders, including employers across the NHS in England, outside of the individual work programmes which is best delivered via an Engagement Service that sits across the work programmes. There is also overlap between the work programmes where they deal with cross cutting priorities or themes. The majority of these work programmes sit within the workforce directorate of the Department.

## 7. Overarching Services

7.1. There are two distinct overarching services that are to be provided which interlink with all 8 Work Programmes: A Communications Service and an Engagement Service. These two services support the successful delivery and co-ordination of all 8 work programmes.

7.2. The Communications Service underpins all the work programmes. It ensures that relevant work at national level (e.g. by government, ALBs and the supplier itself) is communicated effectively to workforce functions across NHS organisations to achieve the greatest impact in terms of consistent policy implementation and delivery.

7.2.1. Deliverables include (not exhaustive):

- Providing strategic and tactical communications advice and support to programme teams to deliver the communications elements of their work programmes.
- Maintaining a website that is accessible, easy to search, and able to effectively host key documents (e.g. up-to-date national contracts) in a way that can be easily navigated.
- Producing engaging content to keep the audience up to date with the latest news and developments on workforce issues in the health and care sector. This should include communications to ensure that NHS organisations are proactively complying with legal and regulatory duties.
- Ensuring that all communications can reach their required audience. This should include maintaining an up-to-date distribution list for all workforce directors in the NHS in England, as well as programme-specific distribution lists.
- Ensuring key communications channels, social media accounts and bulletins are kept running and up to date, progressively improving them to suit the needs of the audience

7.3. (M) The Engagement Service also underpins all work programmes covering extensive and effective management to the HR community, enabling the supplier to gather intelligence and feedback from employers in a structured and strategic way and provides space for employers to discuss key workforce issues and work through solutions.

The deliverables for the Engagement Service include (not exhaustive):

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- Co-ordination of strategic regional and national networks of workforce directors (or equivalent roles in NHS bodies) These networks should be used to discuss the implementation of key national policies (including sometimes at the specific request of the Department/NHSE), to co-ordinate regional-based approaches to workforce policy where appropriate, and for the supplier to understand how it, the Department, and NHSE can best support employers with any issues that emerge.
- Co-ordination of networks for specific programme areas (where appropriate). These networks should be used to share intelligence and best practice, to enable the supplier to gain an in-depth understanding of any issues or operational barriers to implementing national policies/contracts, and for the supplier to understand and test how it can best support employers with these issues (e.g. through providing additional guidance/products). These channels of engagement should be reviewed to ensure they are progressively improving and are continually effective.
- All networks should be used to gather intelligence from employers and NHS bodies (both strategic and operational) to support the development of national workforce policies, both through formal routes (e.g. government consultations), and by informally feeding intelligence into the Department. The supplier should ensure that it gathers views from different geographies and organisation size/types and should also have the ability to gather this intelligence at short notice (when occasionally requested by the Department).
- The Engagement Service should enable the supplier to receive real-time intelligence on emerging issues impacting workforce policy in the NHS. For any emerging issues that are identified, we expect the supplier to assess the extent and impact of these, and to communicate this back to the Department as well as co-ordinating a response within the relevant work programme(s).
- Through the Engagement Service, the supplier should utilise alternative methods to gather frank employer and commissioner perspectives on national policy or consultations, supporting the positioning of responses. This could potentially include submissions to the Pay Review Bodies in line with the annual pay setting process but also include proactive methods where deemed necessary.

## 8. WORK PROGRAMMES

8.1. The policy objectives and key deliverables of each work programme are detailed below:

### 1. Work Programme 1: Pay and contracts

The aim of this programme of work is to ensure that, through working in partnership with trade unions and employers, effective and relevant national terms and conditions are maintained to support the attraction, recruitment, and retention of NHS staff.

This work also aims to ensure that national pay and contractual provisions are implemented correctly and consistently by NHS organisations at a local level.

To support these aims it is expected that employers' views on matters relating to pay and contracts will be represented at a national level. This work programme covers pay and contracts for employed non-medical (Agenda for Change) and medical and dental (Consultants, Doctors in Training, Speciality and Specialist doctors, Salaried GPs, and Salaried Dentists)

Deliverables:

**Provide the secretariat role for national collective bargaining machinery, ensuring a strategic approach is taken to the work programmes, reflecting key priorities. Ensure that the process around these groups works effectively with appropriate employer representation, relevant agendas and papers, and appropriate follow up action taken**

- Deliver the negotiation and partnership machinery for the NHS Staff Council and Joint Negotiating Committees (JNCs) (and any standing or time-limited sub-groups).
- Take a strategic view of work programmes under the collective bargaining machinery, ensuring they support the delivery of government objectives whilst balancing the views of key stakeholders
- Keep terms and conditions and associated guidance under review and work with trade unions to identify where changes may be required
- Ensure that DHSC and NHSE are appropriately sighted on the work plan and activity of the Staff Council/JNCs and have early notice of upcoming discussions so that ministerial steers can be sought as appropriate
- Develop and maintain the constructive working relationships with trade unions and employers required to facilitate the productive running of the Staff Council/JNCs-
- Be live to proposed changes to the Terms and Conditions of Service (TCS) via the collective bargaining machinery that could have ramifications for wider pay and industrial relations policy or have costs attached.
- Anticipate and co-ordinate changes to the ESR payroll system that result from Staff Council or JNC decisions and the annual pay round, ensuring that DHSC sign-off has been granted
- Co-ordinate the delivery of national pay and/or contractual negotiations with trade unions when a Ministerial mandate has been granted, working within a cost envelope agreed by DHSC and NHSE.
- Undertake proactive strategic horizon scanning and planning to ensure that DHSC, NHSE and employer representatives, and other stakeholders as appropriate, are informed and in the best position to engage in any national partnership discussions and negotiations

**Support employers to understand and implement the national terms and conditions of service and deliver policy changes in this space**

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- Host up-to-date versions of the national medical, dental and AfC contracts on the supplier's website and publish pay circulars and TCS advisory notices etc. to inform employers of contractual changes
- Provide guidance to employers on interpretation of TCS, delivering tailored communications and products to employers, helping employers to build resilience in the expertise required to manage and implement TCS.
- Take a lead role in implementation and assurance of changes to TCS.
- Co-ordinate the development of communications (in partnership with unions and employers) to the service that are needed following any decisions from the Staff Council/JNCs.
- Co-ordinate the delivery of specialist Job Evaluation (JE) training with a view to increase capability of the training offer to support organisations to effectively implement the NHS JES and develop employer-focused resources to support this. Building in capacity for further policy development on upcoming changes to JE over the next 3 years.
- Work with DHSC and NHSE to manage risk and identify emerging pay and contractual issues, including incorrect application of the TCS, and agree cohesive and innovative approaches to protect the system against incorrect application and to ensure the service is engaging in managing these.
- Manage national inboxes for local HR queries about the interpretation of the national contracts.
- Manage implementation of pay and contract reform deals as and when required, including working with DHSC and NHSE to assess benefits realisation and equality impacts of such changes
- Develop and manage the necessary networks to bring employers together (at both strategic and operational level) to discuss pay and contractual issues, ensure the consistent application of provisions where appropriate, and share best practice etc.
- To work both reactively and proactively, recognising the evolving nature of ministerial priorities, and working closely with DHSC/NHSE to surge resources where necessary

**Provide the employer voice to support national policy development relating to pay and terms and conditions**

- Regularly engage with employers across different geographies and healthcare settings, through appropriate networks, to understand their views, concerns, and priorities and ensure that there is a diversity of the employer voice.
- Actively seek intelligence to inform the development of policy, and as part of any wider discussions on reform of the national contracts. This will include any representation made from employers in England within the context of any national collective bargaining structures (i.e. NHS Staff Council, JNCs and any standing or time-limited sub-groups)
- Engage with nationally led work relating to doctors employed on local terms and conditions, including work specifically focused on international recruitment, feeding in intel from relevant employer groups and updating employers on outcomes.
- Link in with employer organisations in the devolved administrations to understand shared and competing priorities across the UK

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- Consider wider links with NHS workforce fora including the Social Partnership Forum and its subgroup, the Workforce Issues Group (WIG) engagement workstream.
- Ensure that the employer voice is represented by responding to relevant government consultations and the annual pay rounds by submitting written and oral evidence to the health pay review bodies. Where appropriate, gather evidence and commission analysis to help demonstrate issues and support employers' views
- Develop methods to enable DHSC to obtain an employer view on an ad hoc basis, when requested
- Develop future horizon scanning capacity to explore and communicate employer risks and mitigation to NHSE/DHSC to allow for proactive policy development

-2. Work Programme 2: Workforce supply: (a) medical expansion and reform, (b) clinical expansion and (c) new roles.

This programme of work is designed to help employers across NHS organisations including Integrated Care Boards (ICBs) to consider the opportunities arising from the expansion and reform of healthcare education and training. The Government will publish a 10-year health plan to reform the NHS and make it fit for the future, which will set out a bold agenda to deliver on the 3 big shifts needed to move healthcare from hospital to the community, analogue to digital, sickness to prevention.

Deliverables:

- Working with relevant stakeholders e.g., NHS England Workforce Training and Education (WTE) and Talent for Care teams, Department for Education, Royal Colleges and the independent healthcare professional regulators<sup>[1]</sup> on the availability and distribution of relevant educational opportunities across NHS Organisations and Integrated Care Systems
- Engaging with employers on education and training, skills, and redesign topics. This includes offering advice and guidance, testing ideas, clarifying policies, sharing good practice from case studies, and connecting employers with other employers that are working on similar priorities. This will then be used to inform any future policy development, programme planning and resource consequences
- Responding to enquiries: engaging with employers about matters relating to education and training via email, MS Teams, or telephone.
- Developing and maintaining networks of employers (either on a regional or Integrated Care Systems (ICS) basis) to facilitate sharing of best practice e.g., on designing and implementing new roles, expanding apprenticeships, building clinical supervisor capacity. Giving employers the opportunity to hear and understand developments in policy direction, connect with each other, share intelligence, test ideas, and influence positive change
- Reviewing policy documentation from DHSC (and NHS England), and providing feedback to DHSC and NHS England from an employer perspective on the relevant policies and provide intelligence from employers on the

implementation of initiatives (including where employers have highlighted any risks and issues)

- Supporting DHSC's strategic objectives through timely intelligence on risks, issues, and barriers to policy implementation of education and training priorities from an employer perspective
- Contributing to relevant partnership groups, including the Medical and Dental Workforce Forum
- Supporting workforce design across ICS partners including supporting and sharing innovation and best practice including supporting the retention of healthcare students and NHS staff across the ICS including supporting supply routes and career progression
- Engagement with employers to provide an employer perspective in recruitment of trainees, doctors, dentists, pharmacists, healthcare scientists, nurses, midwives and allied health professionals to the Department and NHS England. This includes discussing the issues with individual employers and representative bodies to identify any barriers to implementation and concerns alongside promoting the use of new roles.
- Contribute from an employer perspective by gathering employer feedback and helping to overcome any implementation issue to NHS England's work reforming Postgraduate Specialty training which includes specific actions as detailed in the Improving Doctors Lives programme (i.e. rotation reform) and initiatives which increase flexibility in training, and internships
- To contribute to the implementation of the medical degree apprenticeship, the Physician Associate and Anaesthesia Associate roles and other new education and training roles that are developed by gathering views, intelligence and feedback from employers to inform the policy making for DHSC
- To contribute to the medical and clinical apprenticeship funding policy by gathering views and good practice from employers to inform policy making for DHSC and NHSE
- To contribute to the Medical educators workstream by engaging with the Medical Education Employer Reference Group on curriculum changes, educator capacity, training reform, and educational leadership. Engagement with the National Association of Medical Education Managers and MedEdLeaders UK
- Continue to attend Medical & Dental Recruitment & Selection Programme Board and Recruitment Group, UK Foundation Programme Board, and medical and dental geographical redistribution groups to gather and disseminate information on recruitment and onboarding of doctors in training
- To contribute from an employer perspective to the Dental Early Years Training Reform programme by gathering employer feedback, views and good practice, and actively engaging with relevant groups and meetings including XXX. Support the strategic objectives of the Dental Early Years Training Reform programme and help to overcome any implementation issues, including by identifying and disseminating information on emerging issues with contractual arrangements. [NB: DHSC reserves the right to amend this deliverable once a new supplier is in place.] Increasing awareness for leaders in systems and organisations around the importance of improving access and widening participation in education and training, to ensure we can

widen participation and improve representation in relevant initiatives, such as apprenticeships. This work will also support the development of more inclusive pedagogy approaches within learning and development and making NHS organisations more representative of the communities they serve.

### 3. Work Programme 3: Workforce Supply: International Recruitment

This programme of work supports all NHS employers (209 NHS providers) and ICSs (42) in England to improve international recruitment planning, implementation and practices, making it a responsive tool to meet workforce needs. This helps the NHS to attract and recruit internationally educated skilled healthcare professionals in an ethical and sustainable way. Delivery of effective international recruitment contributes to a strong workforce, enabling the NHS to deliver effective care and respond to the 10 year plan.

#### Deliverables:

- Managing an Ethical Recruiters List which consists of international recruitment organisations, UK recruitment agencies, and collaborations that recruit ethically through adherence to the [Code](#) for the international recruitment of health and social care personnel
- The mechanism and processes used will need to be flexible, responsive and timely. The process will include but is not limited to:
  - 🕒 Setting clear criteria for entry to the list
  - 🕒 Setting clear criteria for how high standards will be monitored and maintained through:
    - Investigation of any reported malpractice within 3 months of reporting, resulting in a decision on sanction (if any) to DHSC and the recruiters affected
    - Monthly random sample investigations to ensure adherence (5% of list)
    - Timely removal of those that do not meet standards within one month of a decision being made.
    - Quarterly updates on sanctions or additions to the List
  - 🕒 Ensuring that organisations on the list are genuinely active in the international recruitment space.
  - 🕒 Promoting the value of the list to employers and agencies that wish to do international recruitment
- Supporting the development and the application of national policy and guidance relating to international recruitment and international workforce issues. This may include but is not limited to:
  - Engaging with employers to understand their views, which will be shared with DHSC, NHS England and other stakeholders, to help to inform policy making processes

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- Highlighting new, existing and updated policy through regular, high-quality communications. This may include but not limited to engagement with employers via email, phone, virtual meetings or webinars.
- Developing bespoke guidance for employers where necessary, covering new, updated or existing policies.
- Providing a support service (could be by email, telephone or another medium) for NHS organisations to seek advice or answer policy and process questions. This may include direction to immigration policy based on Gov.uk published policy and processes.

Timelines will be agreed on a case by case basis but will usually be required within 2 months of a commission.

- Advocating for employers in discussions in immigration policy with DHSC and, where necessary, Home Office and UKVI, including but not limited to:
  - Understanding employers' issues, concerns and understanding of the immigration system
  - Attending stakeholder briefings and engagements as needed, feeding back a coherent and clear position from employers
  - Providing guidance, support, and communication on specific immigration issues to employers
  - Provide direction to appropriate gov.uk immigration policy and processes based on Gov.uk published information
- Ensuring there is a useful and reliable website available for employers seeking up to date international recruitment information and guidance:
  - the content must be reviewed regularly (at least monthly) and updated with any new information
  - Analyse viewing figures of the International Recruitment focussed webpages including information on user journey across all webpages and the website traffic source on a quarterly basis.
  - Twice a year undertake market research to understand what employers are seeking and if the website provides it.
- Supporting the delivery of relevant policies through:
  - Ad hoc intelligence on risks, issues, barriers to policy implementation of international recruitment, education, and training priorities within the LTWP from an employer perspective to support understanding of policy impact, adherence and future policy development,
  - Regular reporting as requested by DHSC/NHS England
  - Bespoke guidance for areas or professions where international recruitment is needed at pace.

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- Providing support to other UK-wide organisations who wish to improve international recruitment processes. This includes but is not limited to devolved administrations, private sector healthcare and social care providers/organisations.
- Working effectively and responsively as part of a multi-organisation response to managing practical, communication and other risks for ad hoc events (recent examples - fraud, covid travel restrictions).
- Providing a quarterly assessment of all deliverables to demonstrate impact and reach of programme to demonstrate contract adherence.

#### 4. Work Programme 4: Pensions and total reward

The aim of this work programme is to support employers across the NHS to develop, implement and communicate effective strategic reward approaches that support organisational priorities, and provide the employer voice on issues associated with the NHS Pension Scheme.

##### Deliverables:

A. Provide technical expertise and a secretariat function to the NHS Pension Scheme Advisory Board (SAB) and associated sub-groups. The SAB is a statutory board comprising of staff and employer representatives that advises the Secretary of State on the desirability of changes to the NHS Pension Scheme. It convenes quarterly and the Technical Advisory sub-group meets monthly as required. SAB is a neutral forum which supports building and maintaining constructive industrial relations with trade unions.

This deliverable is important as it is critical to support the discharge of statutory obligations and to operate a SAB that has recognised independence from DHSC. Activities to deliver include (but not exhaustive):

- Provide technical input and advice to the Scheme Manager (DHSC holds statutory obligations) on the desirability of changes to the NHS Pension Scheme.
- Co-ordinate the development of SAB responses to government consultations relating to pension scheme design issues.
- Gather and represent the views of employers on pension scheme design issues.
- Work in partnership with member representatives from the NHS trade unions to reach effective joint outcomes.
- Commission and manage the contract for the provision of independent actuarial advisers to the NHS Pension Scheme Advisory Board.
- Engage with independent advisors, DHSC and the co-chairs to ensure all SAB work is progressed effectively and efficiently.
- Undertake secretariat functions for each meeting, including drafting agendas, papers, minutes, and actions.
- Chair the Technical Advisory Group.
- Produce and publish the SAB annual report.

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- Ensure there are the appropriate numbers of employer representatives on sub-groups so that there is a balance between employer and staff representatives.
  - Provide knowledge and operational expertise of pension/reward policies to support employer representatives on the groups.
- B. Engage with a range of employers on their approach to pensions and strategic reward including how they might adapt their reward offer to respond to latest developments and workforce challenges. This includes statutory NHS bodies and independent providers of NHS services.
- C. Develop new and updated tools and resources to support employers' approach to strategic reward. Activities to deliver include:
- Prepare and publish resources to support employers to promote the value of the NHS Pension Scheme and total reward package in the NHS, to support retention and attraction.
  - Help employers understand the latest developments to the NHS Pension Scheme.
  - Promote Total Reward Statement (TRS) availability to employers throughout the year and develop and share resources to help employers to encourage uptake and improved understanding of TRS.
  - Promote the availability and benefits of the NHS Business Service Authority's 'My NHS Pension' app following its launch. The app is currently in the beta phase.
  - Explore and share examples of good employer practice in relation to employee total reward approaches.
  - Help employers to support their workforce with pension tax issues and the local flexibilities available to them to support retention. Help employers to embed retirement flexibilities into their HR policies and practice, to support late career retention and flexible working. This includes the partial retirement option offered by the NHS Pension Scheme and retire/return practices
  - Provide resources and leadership to employers to consider the overlap/interdependencies of pension and reward policy when considering the wider employment offer. This will include developing work (and taking on employer feedback) to help leaders to understand and leverage the employment offer (including the NHS Pension Scheme) to effectively communicate the recruitment and retention benefits in promotion of the longevity of an NHS career. Ensure there is continuous improvement in this approach with regular learning shared with DHSC and NHSE to ensure consistency

## 5. Work Programme 5: Employment practice and safe recruitment

This programme of work seeks to deliver effective support on the implementation of non-pay terms and conditions of service and in tackling HR employment practice

issues. This includes:

- Working with relevant parties across the NHS (including stakeholders, government bodies and employers) to gather intelligence to inform the development of policy and legislation which has an impact on HR employment practice and staff rights under NHS terms and conditions.
- Safe recruitment - working with relevant government departments and other stakeholders to consider changes to pre-existing policy, regulations or law which has an impact on the mandated background check requirements when recruiting in the NHS roles within England. This includes providing a policy steer to inform the development of operational guidance to employers in the NHS on the mandated background check requirements.

Supplier Deliverables:

- To provide DHSC with an operational/employers perspective (nationally) on any proposed changes to government policy or legislation which may not be driven by DHSC but where policy officials identify an impact on HR practice or staff terms and conditions of service under Agenda for Change. This includes taking responsibility to consider and present to DHSC any practical and operational challenges or areas of concern from NHS organisations in implementing any proposed changes, identify solutions to ensure effective implementation. Examples include but are not exclusive to, transitional arrangements under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE regulations/rules), Trade Union activity, family friendly rights, zero hours contracts, redundancy and other exit arrangements, grievance, disciplinary, use of suspension, rights to appeal, and confidentiality clauses in settlement agreements. This is likely to be ad-hoc (often unpredicted) and turn-around can be fast paced.
- To provide operational guidance, resources, and support to ensure NHS employers can meet the mandated background check requirements in line with employment law, regulatory requirements, and NHS policy. This includes any ongoing background checks that may be required as part of employment such as the Home Office's requirements to obtain DBS checks or to prevent illegal working, or regulatory requirements to ensure healthcare professionals remain registered and licensed to practice.
- To provide an advice line to help employers with more tailored advice about requirements.
- To host regular networks (including relevant ICB Chief People Officer Networks) and other relevant events to inform HR and recruiting managers about up and coming changes to legislation or NHS policy relating to safe recruitment and background check requirements. Enabling them to connect with each other, share learning and good practice

## 6. Work Programme 6: Staff Experience and Retention

This work programme aims to enhance the capacity of NHS organisations to deliver and sustain positive staff experience which enhances working lives, improves retention and has a positive impact on patient care. This will also include work to support the workforce community to develop the necessary capability to deliver on the equality, diversity and inclusion (EDI) agenda as set out within the NHS EDI Improvement Plan and the NHS People Promise.

This will require strong partnership working with DHSC and NHS England to respond to national retention priorities and the ability to connect with NHS organisations to understand their needs in this space, share good practice and feedback retention insights and challenges to national policy makers and leaders in DHSC and NHSE.

### Deliverables:

- Collaborate to share and maintain relevant good practice on staff experience and retention – this will include a focus on staff health and wellbeing; tackling bullying, harassment and violence; equality, diversity and inclusion; opportunities for flexible working; and other emerging priorities.
- Inputting from an employer perspective on policy and implementation of NHSE led retention initiatives, including the NHS Retention programme, NHS People Promise Exemplar Programme and initiatives to Improve Doctors' Working Lives.
- Support networks/leads in NHS organisations, giving employers opportunities to connect with each other, feedback nationally and share learning on staff experience and retention.
- Providing expert advice and secretariat to the Staff Council Health, Safety and Wellbeing Group to develop relevant, practical and partnership guidance for NHS Trusts.
- Evaluate and collect data including evidence from the NHS Staff Survey to demonstrate the importance and success of measures across NHS organisations in supporting their staff and improving staff experience and retention.
- Increase organisational development capability across the NHS, sharing learning and best practice through mentoring and other routes.
- Working in close partnership with NHSE, build trusted relationships with a range of stakeholders to enable learning and good practice of complex FTSU (Freedom To Speak Up) casework is shared as widely and consistently as possible to improve Speaking Up.
- Support implementation of the EDI Improvement plan for the NHS workforce to manage and monitor improvements across the NHS, through: stakeholder engagement activities to support the development of new mandated standards in preparation for the proposed legislative changes (Equality Act 2010, Equality (Race and Disability) Bill, Duty of Candour and Mental Health Bill); promoting good practice around EDI training, including more structured activities emphasising how to change behaviours around EDI; supporting the

development of inclusive leadership through career conversations and learning and development.

## 7. Work Programme 7: Staff Engagement including Social Partnership Forum (SPF)

This programme brings together DHSC and ALBs with NHS employers and NHS trade unions to involve them, at an early stage, in the development and implementation of policy and programmes that widely impact on the healthcare workforce outside of the pay/terms conditions space. This work programme seeks to maintain existing SPF structures to encourage and support employers and trade unions to work in partnership to build positive working environments and productive working relationships in which staff can deliver high quality care and services.

### Deliverables:

- supporting delivery and implementation of workforce planning policy and strategy
- Supporting service delivery and planning through effective social partnership working via the SPF vehicle.
- Supporting effective policy development with DHSC through collation of the employer and staff voice within the SPF vehicle.
- Contribute senior management time as the “employer-side” cochair of the national SPF and provide strategic advice to SPF meetings infrastructure and associated senior level planning for SPF, including liaison with senior officials in NHS England, DHSC and other systems partners where required
- Provide Secretariat support functions to the SPF subgroups, through deployment of an independent SPF Programme Manager (jointly accountable to DHSC, the supplier and SPF NHS Staff Side) and provide effective secretariat support to monthly workforce issues group, quarterly violence reduction subgroup meetings and ad hoc partnership workshops.
- Contribute Employer-side secretariat representative to SPF planning meetings
- Secure individual local employer and system level representatives from Integrated Care Boards (ICBs)/Integrated Care Systems (ICSs) for national SPF meetings
- Support the provision of up to 8 main meetings per annum of the National SPF (4 x Wider Group and 4 x Strategic Group). Requirement to chair the Strategic Group meetings alongside staff side cochair.
- As part of that requirement, attend and support planning meetings of the SPF – i.e. 8 x management side “pre-meets” as chair; 4 x SPF cochairs’ planning meetings; 4 x quarterly planning catch-ups with DHSC SPF programme manager.
- Attend and chair ad hoc (average 4 per year) SPF topic-specific workshops and act as cochair as required.

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- Developing and maintaining the SPF website with news and information relevant to its audience and ensuring this is arm's length from DHSC to ensure the support and buy in of relevant stakeholders such as trade unions
- Producing and communicating messages from the national SPF, such as key communications and monthly SPF bulletins, utilising SPF website and other communication cascade channels including maintaining the SPF twitter account to publicise information and resources from the SPF and encourage partnership activity.
- Ensuring co-ordinated national and regional SPF communications through communications team, and through organising a programme of national SPF rep visits to the regional SPFs. This includes:
  - Responsibility regarding "visits" to organise the programme of visits and secure (or provide) representatives from the national SPF, provide supporting briefing to representative attending and liaise with regional SPFs. Regarding coordinated comms, primary responsibilities are to ensure appropriate content on SPF website and update it, send out relevant new alerts, develop and send out "key comms" from SPF Wider Group meetings to SPF network.
  - Sponsor HPMA award for partnership working between employers and trade unions, negotiate package with HPMA and liaise with organisers regarding award panel judging, and provide one of the judges for that
  - Supporting a system workforce focus to shape and influence workforce policy and products by having Integrated Care Boards (ICB) Chief People Officer (CPO) representatives and other system reps where appropriate on the social partnership working

## 8. Work Programme 8: Professional Standards

This work programme ensures high professional standards for clinical professionals are held and maintained across the NHS workforce, including an initial scoping exercise, looking at the Maintaining High Professional Standards (MHPS) framework with a view to potential revision of the framework to meet modern standards and to enable action to be taken to protect patient safety.

### Deliverables:

- The findings of the scoping exercise will be presented to DHSC and NHSE and this work may also include the possible review of the MHPS framework and development of an updated/revised framework. The revised framework should support safe and effective practice and provide clarity for professionals and organisations on handling concerns. It is expected that an initial scoping exercise should result in a stakeholder engagement plan and a proposal setting out areas for possible review. The new supplier would be expected to lead on stakeholder engagement and co-ordinate and lead this exercise. The scope of this deliverable is subject to confirmation from the Authority.
- Providing communications on changes to professional regulation or information on new areas of regulation and seeking input from employers on specific regulated roles

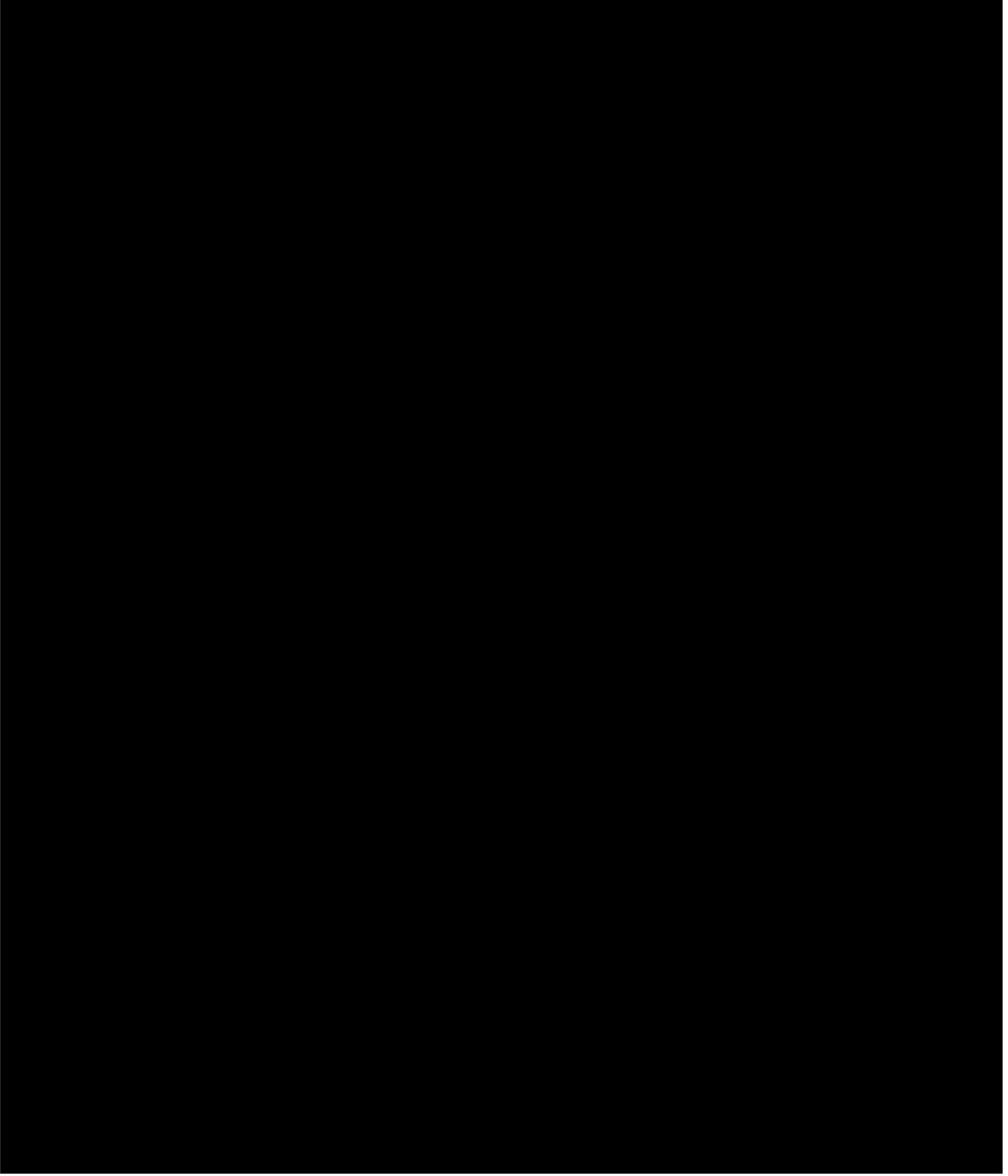
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[\[1\]](#) The healthcare professional regulators include: the General Medical Council, General Dental Council, Nursing and Midwifery Council, Health and Care Professions Council.

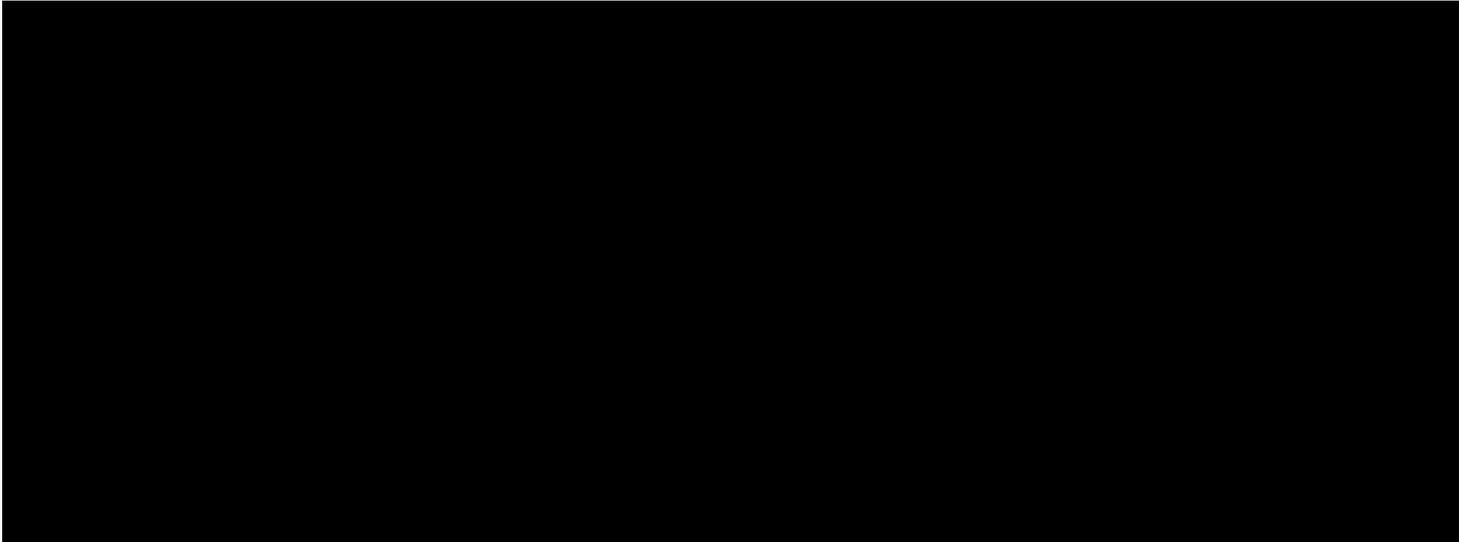


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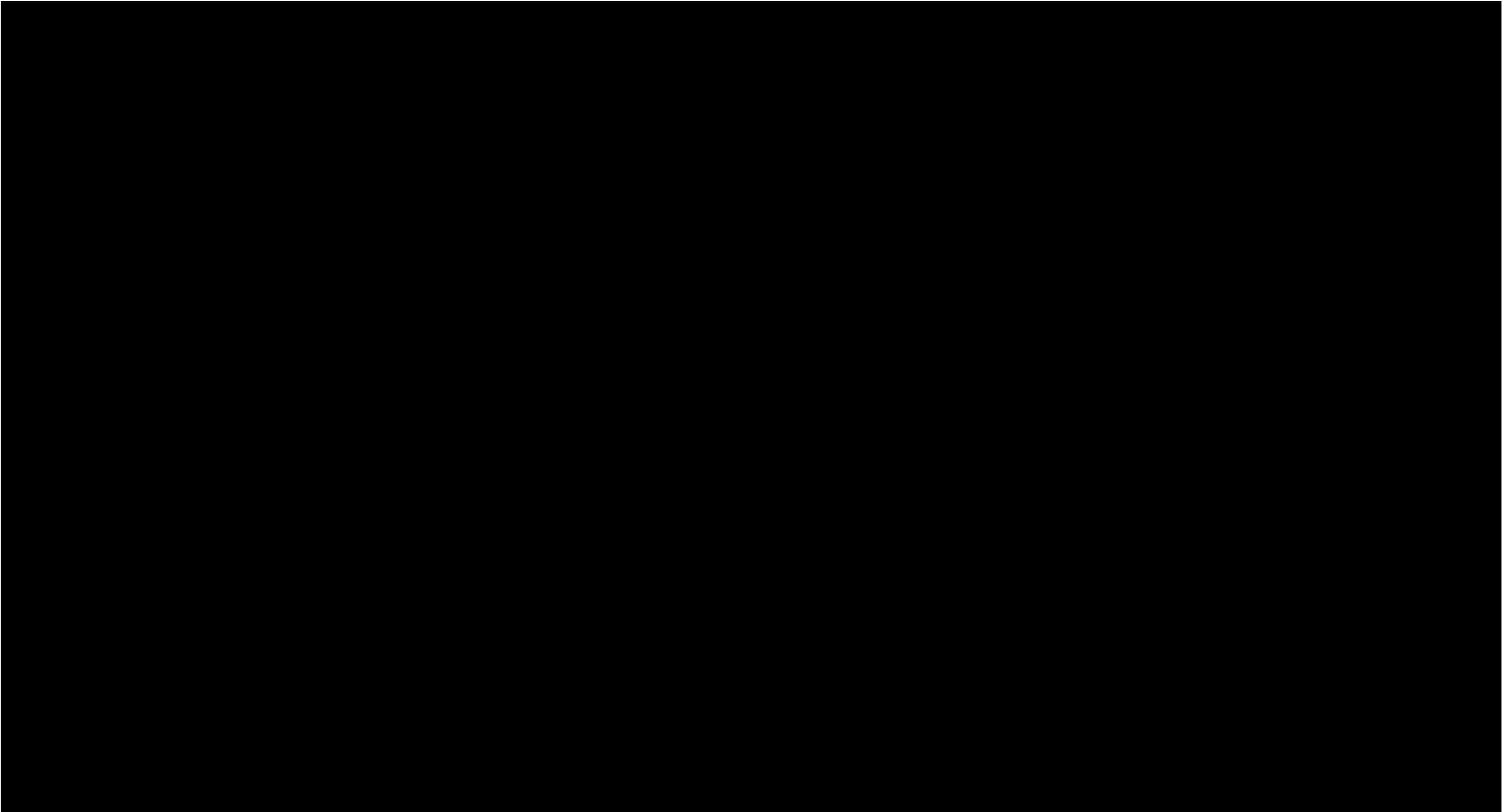
## Schedule 3 (Charges)



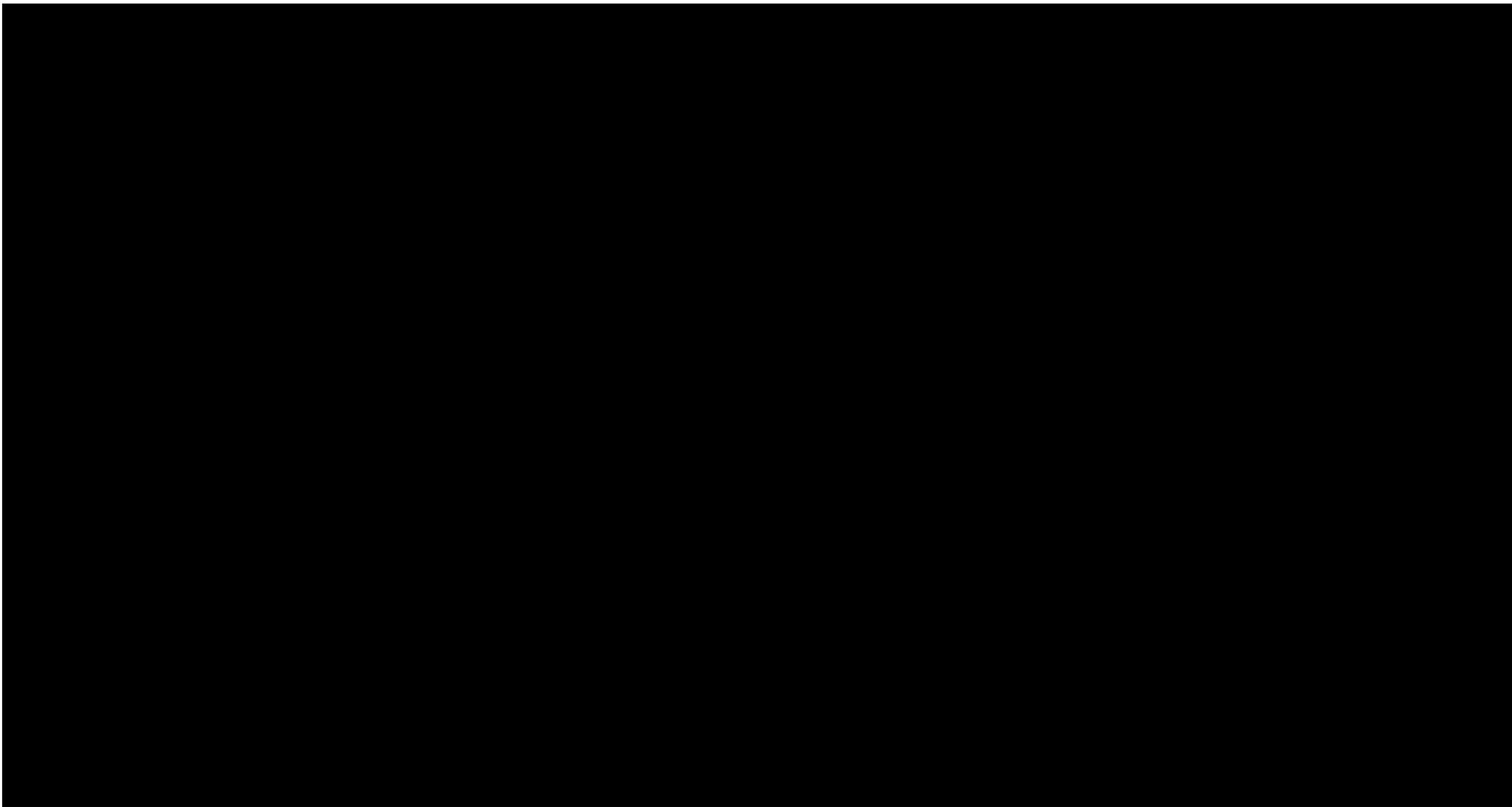
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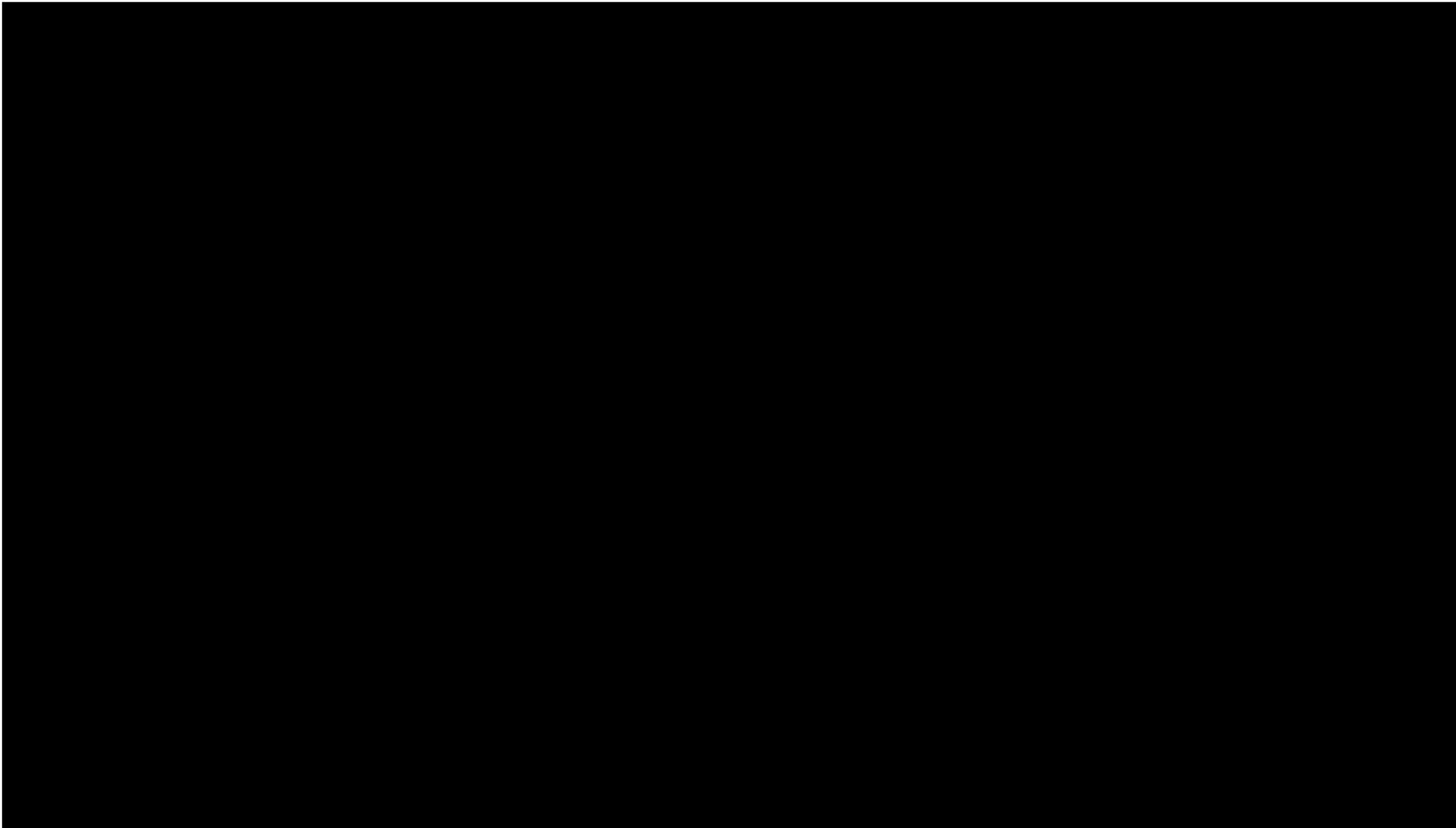
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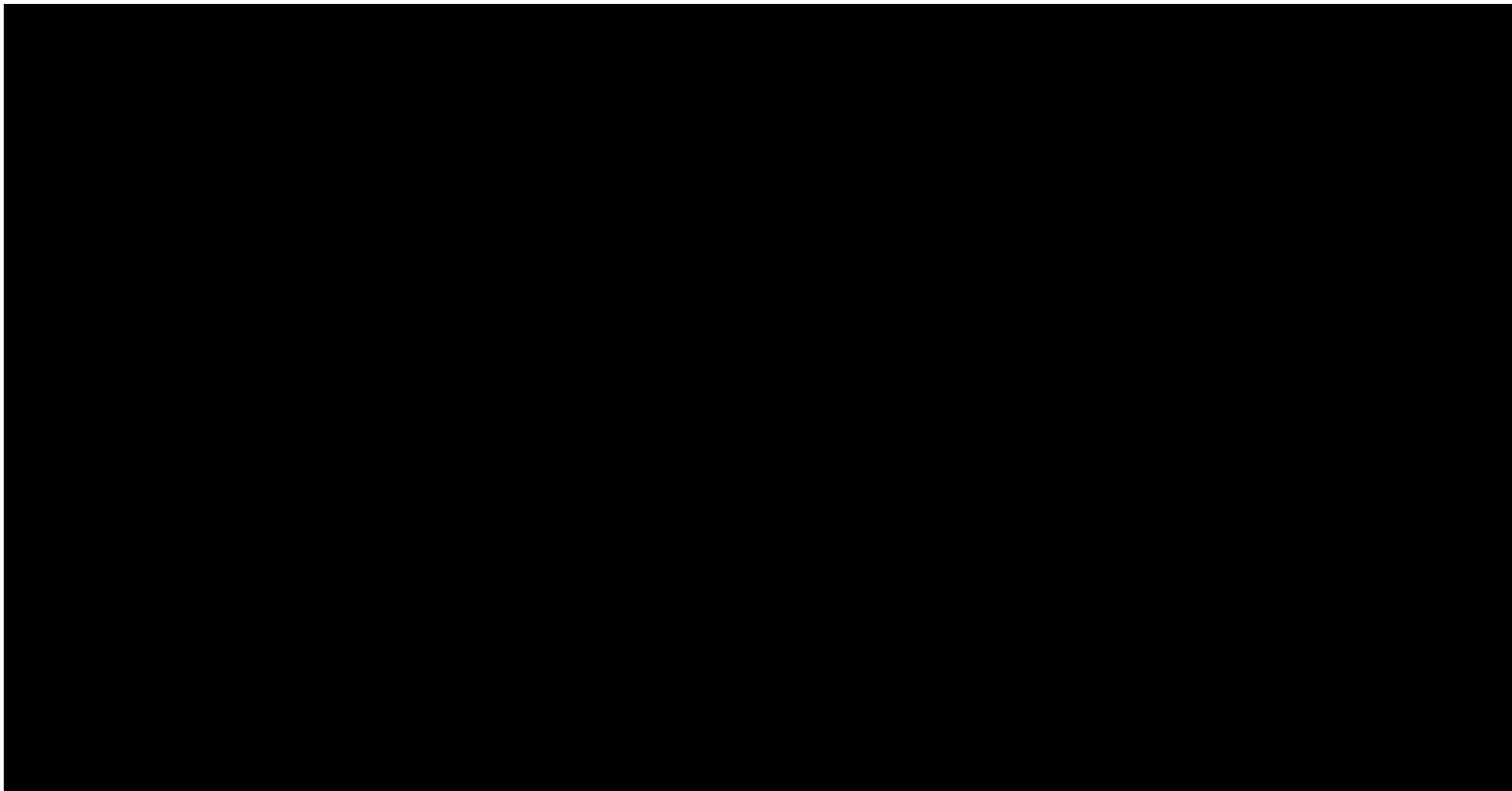
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Schedule 3 (Charges), Crown Copyright 2025, [Subject to Contract]



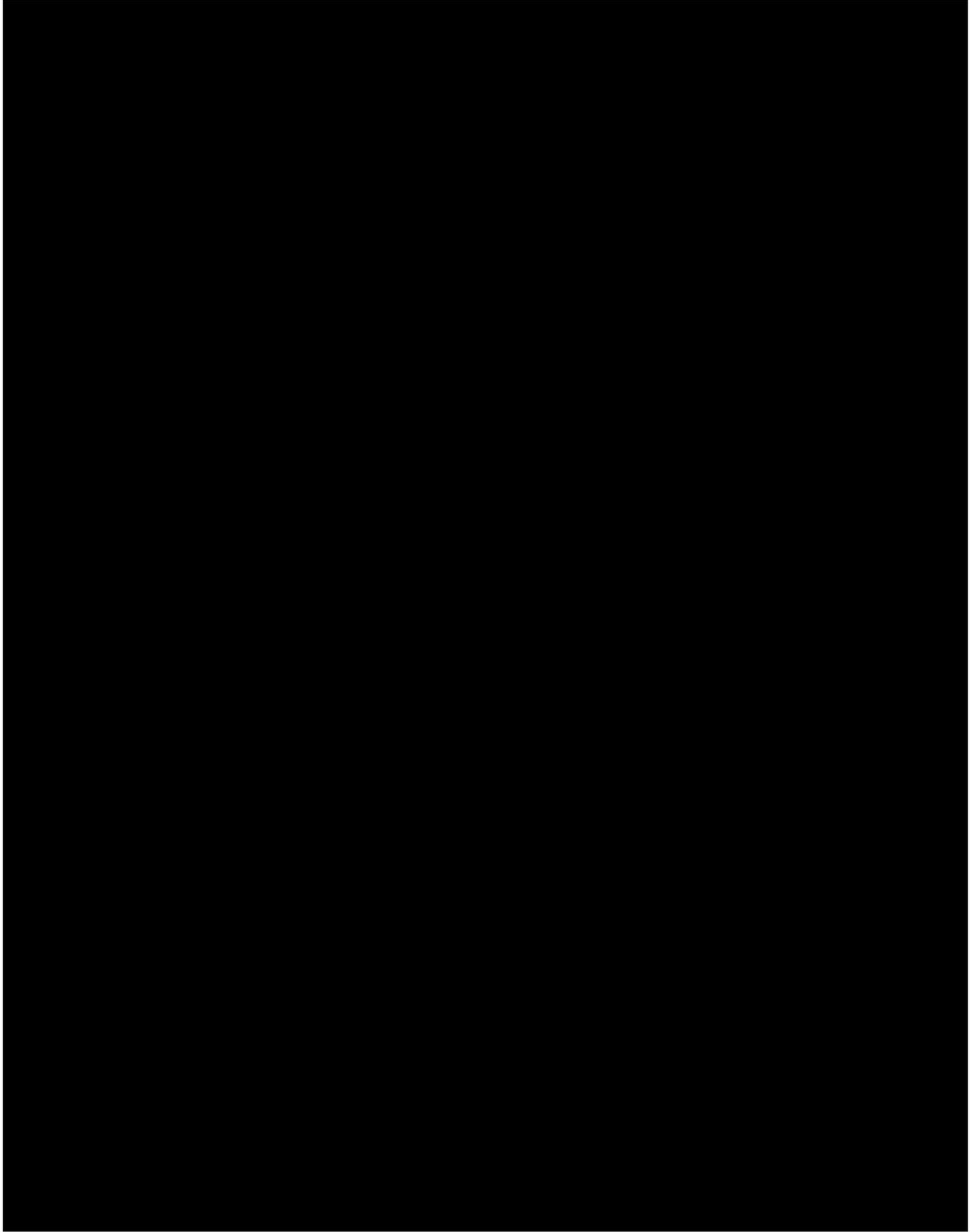


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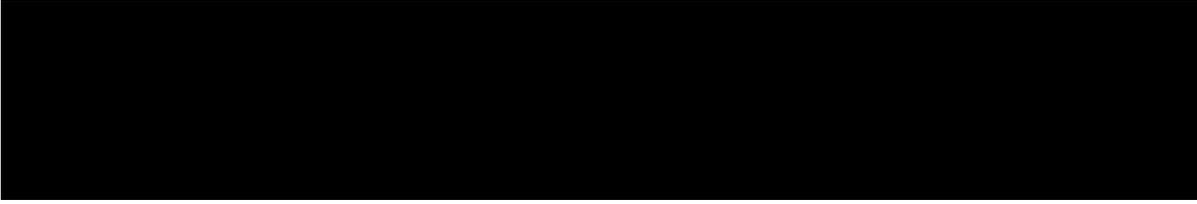
## Schedule 4 (Tender)



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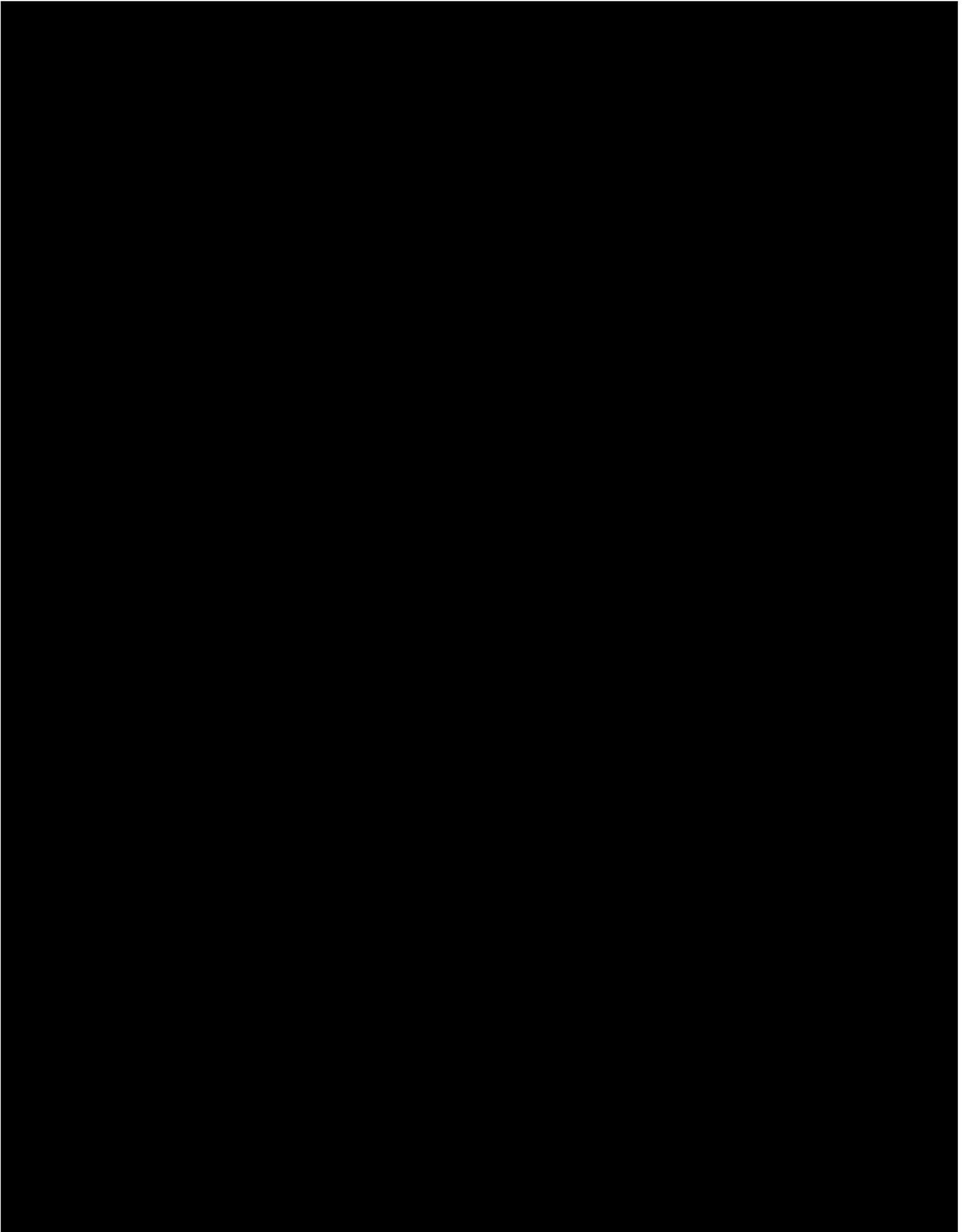
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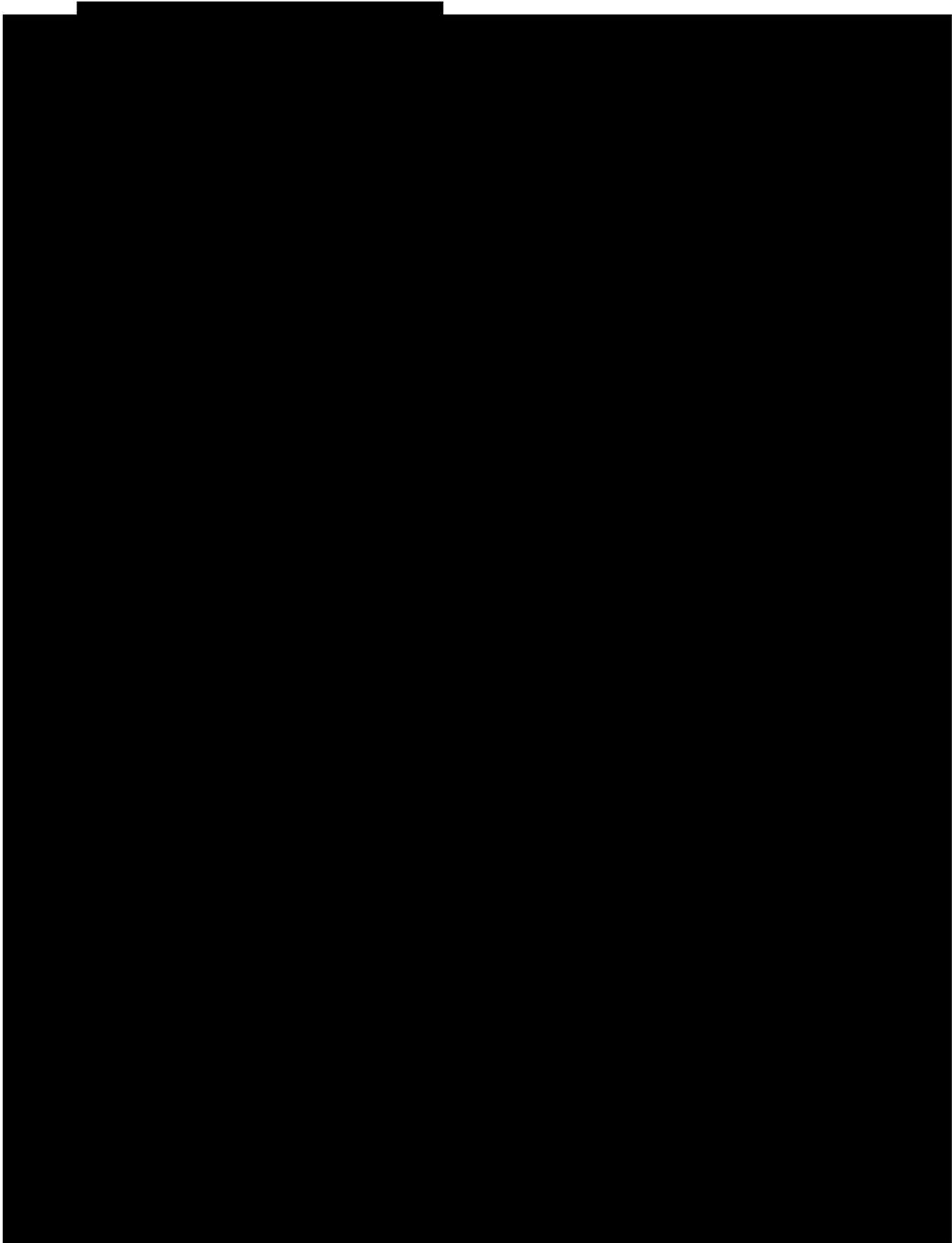


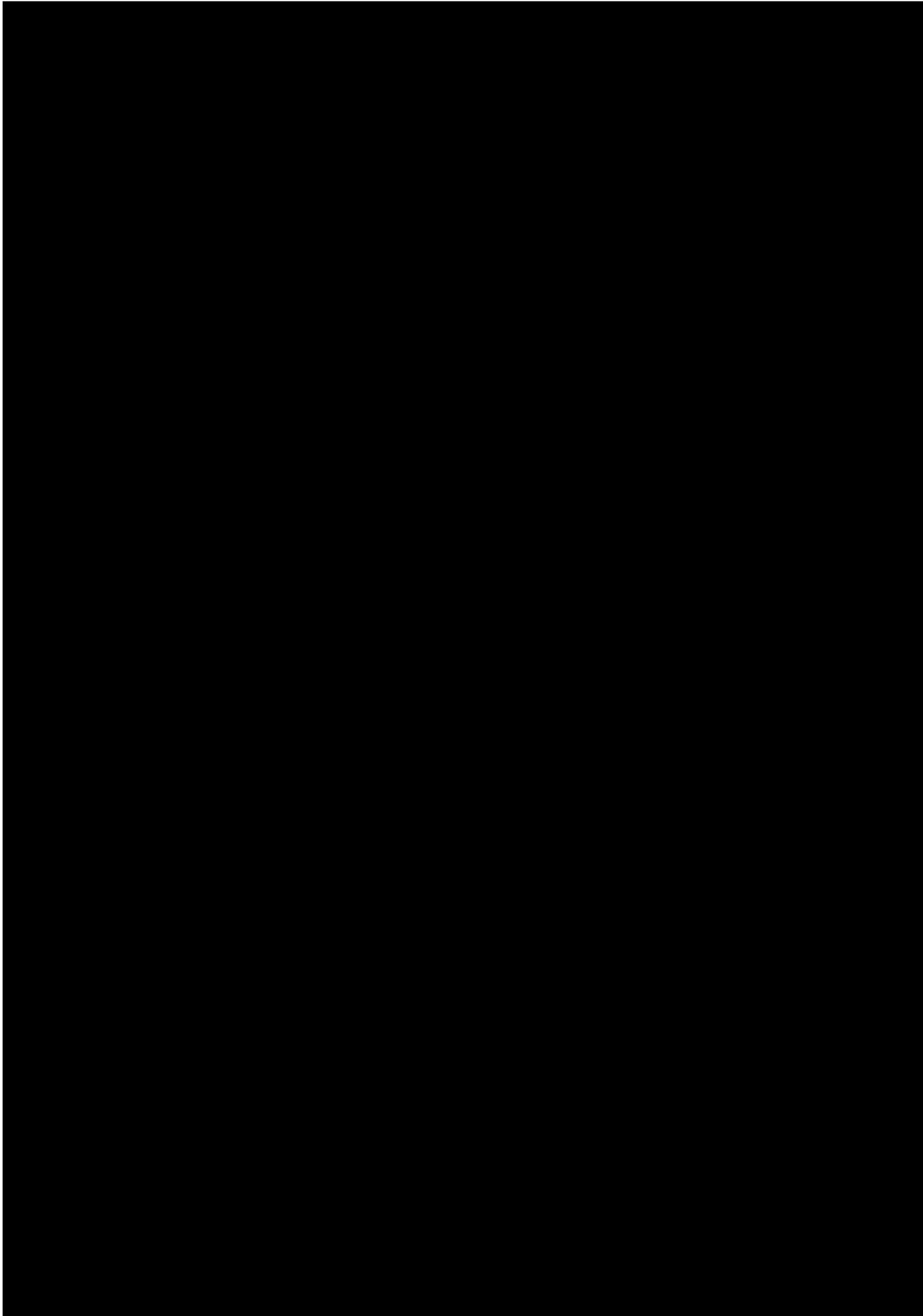
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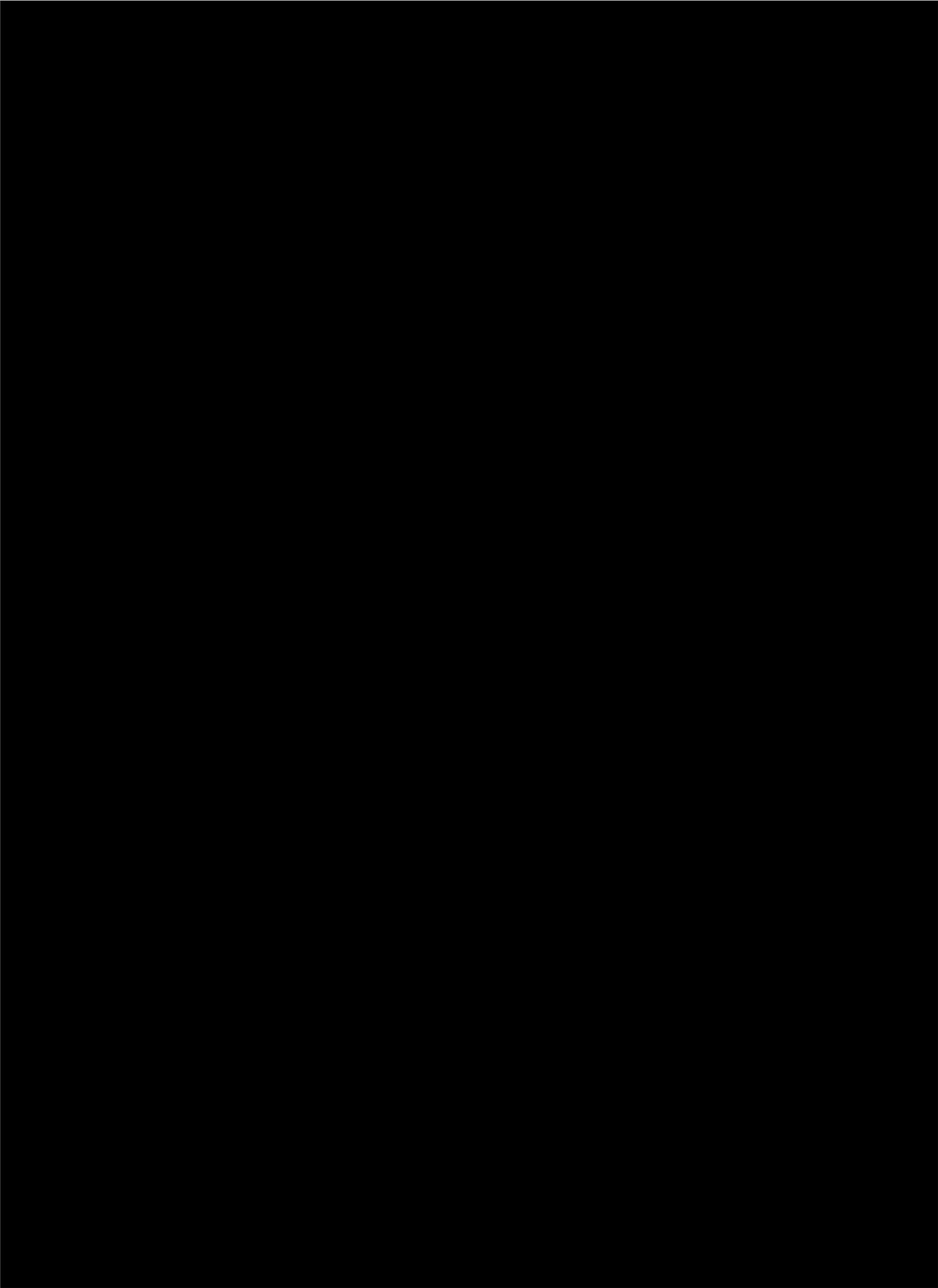
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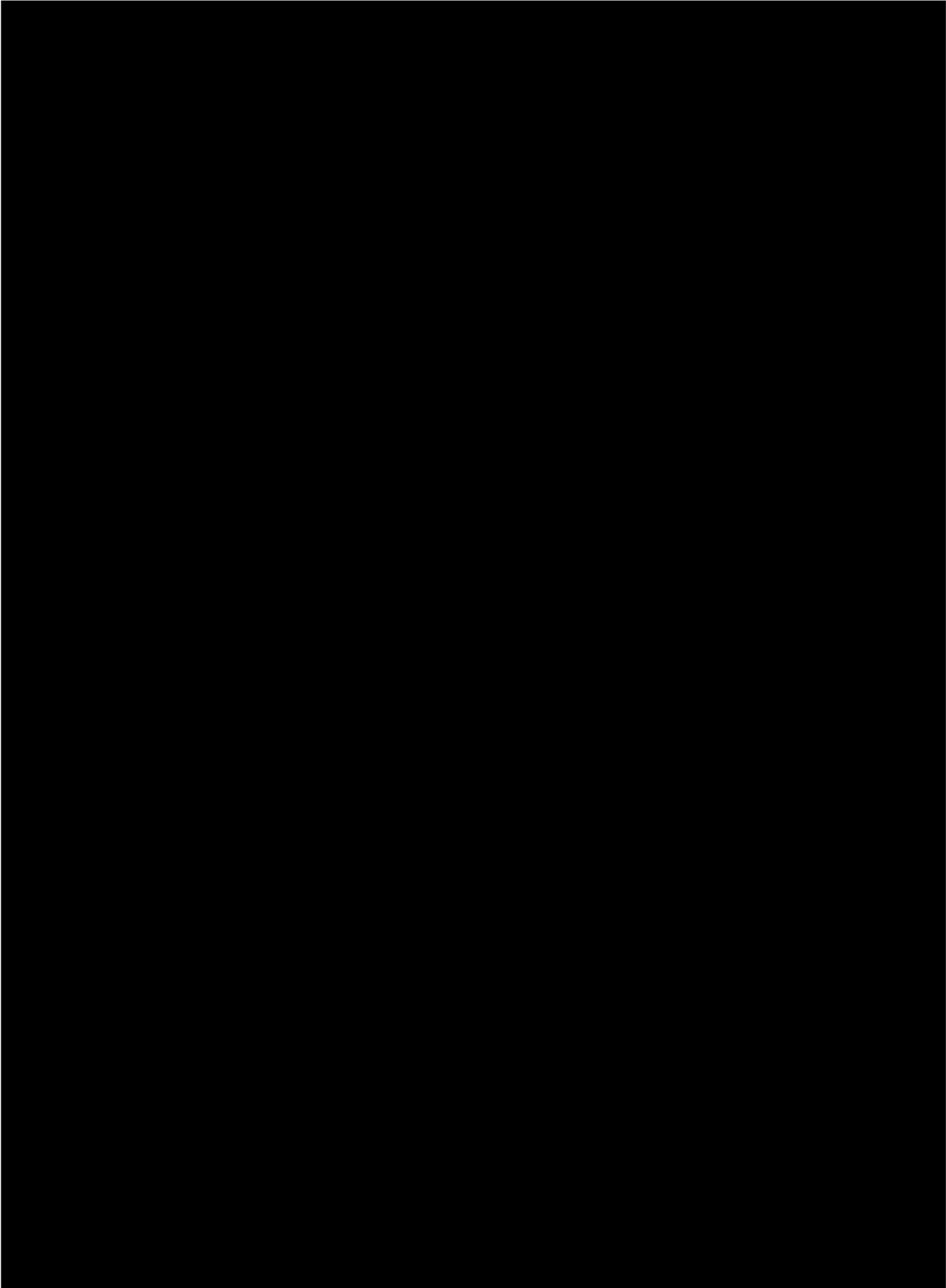


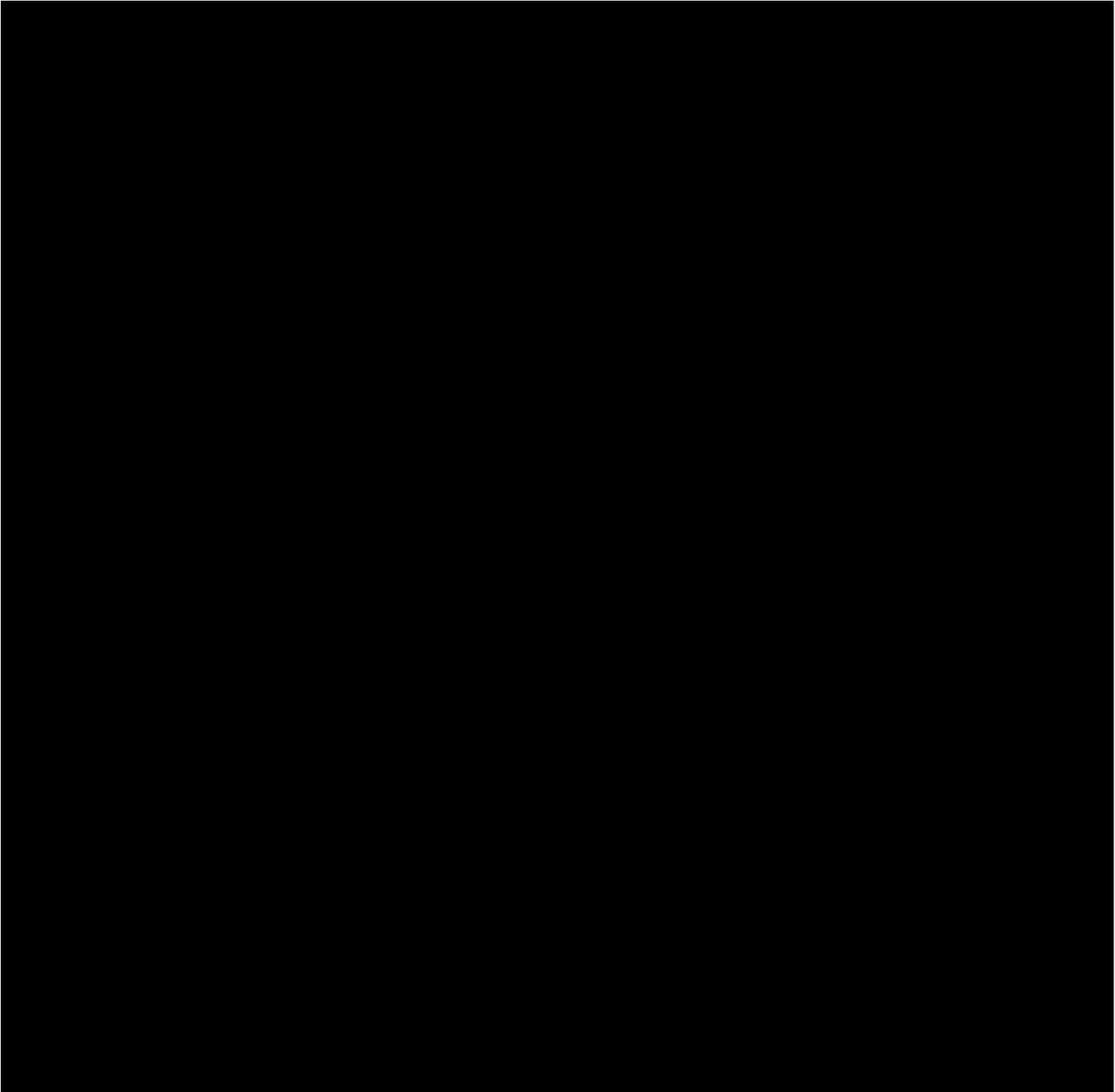


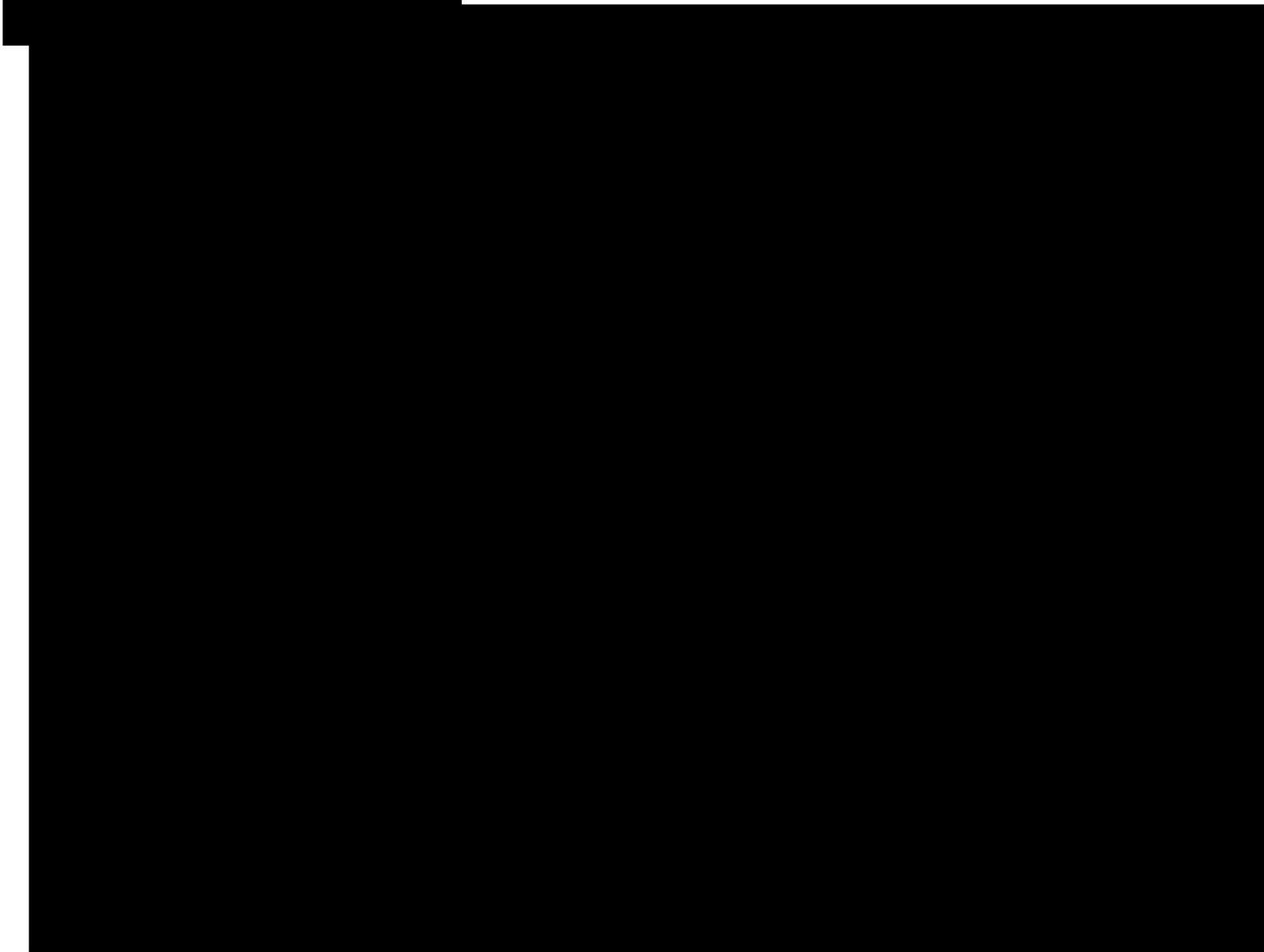


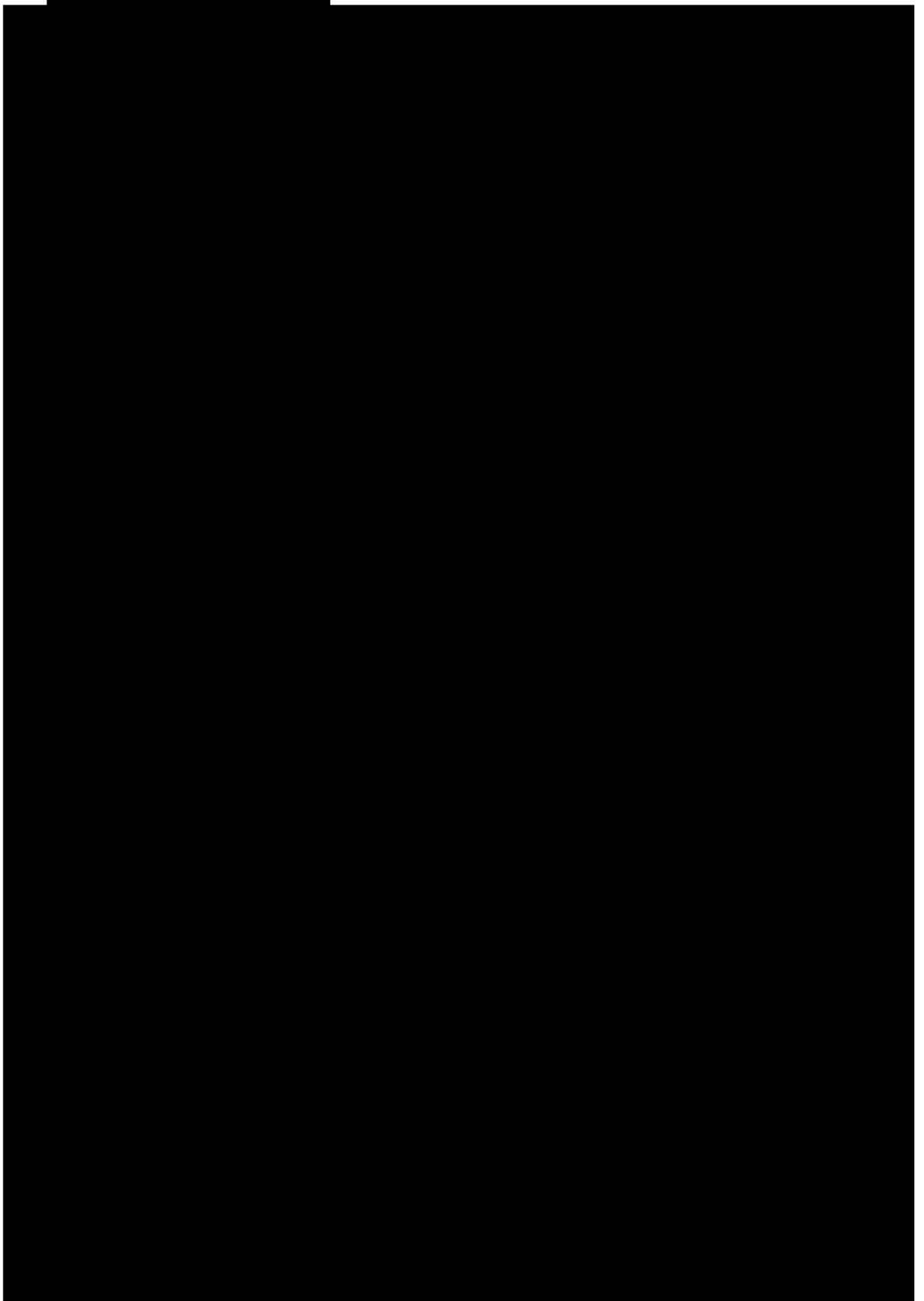


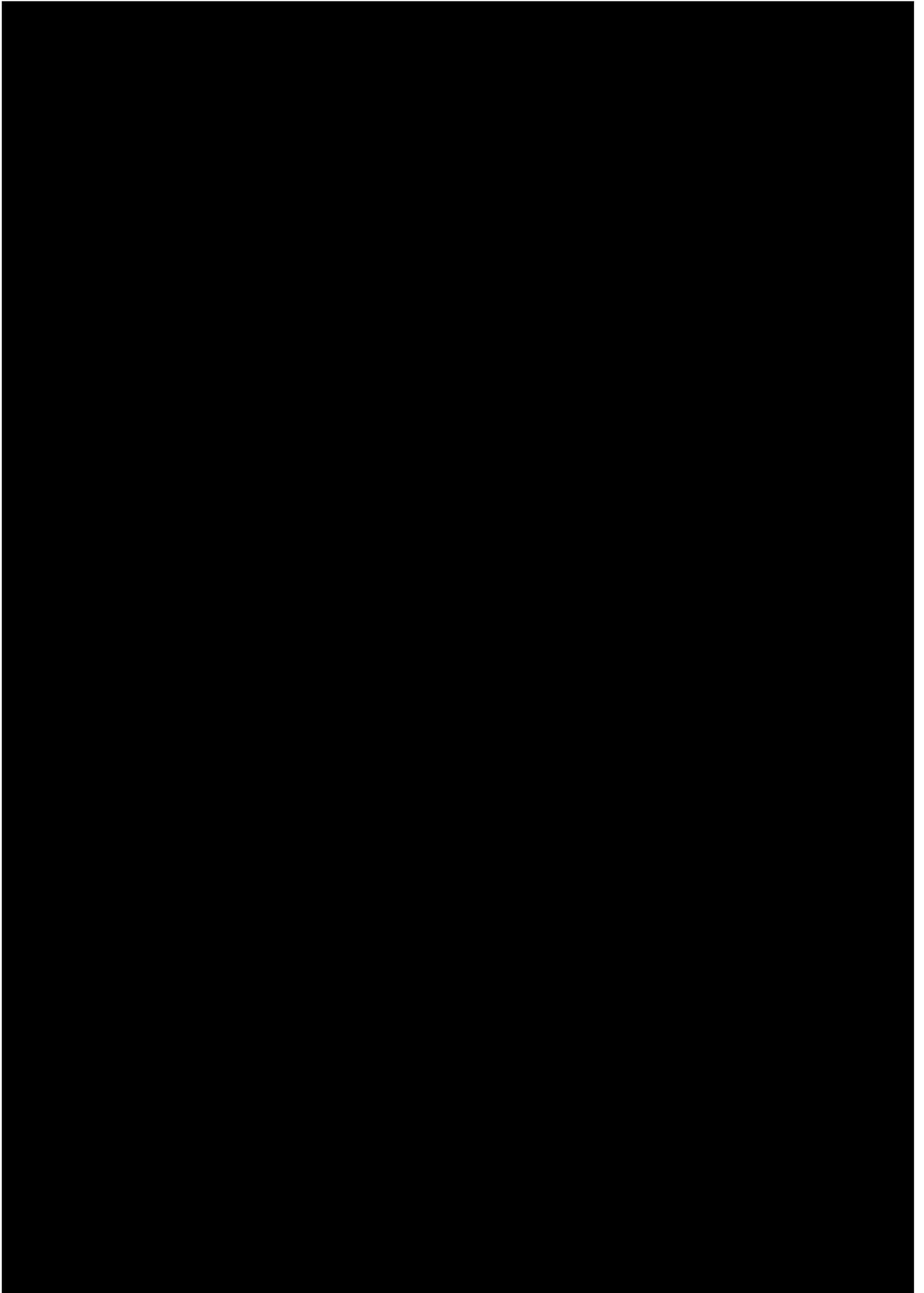


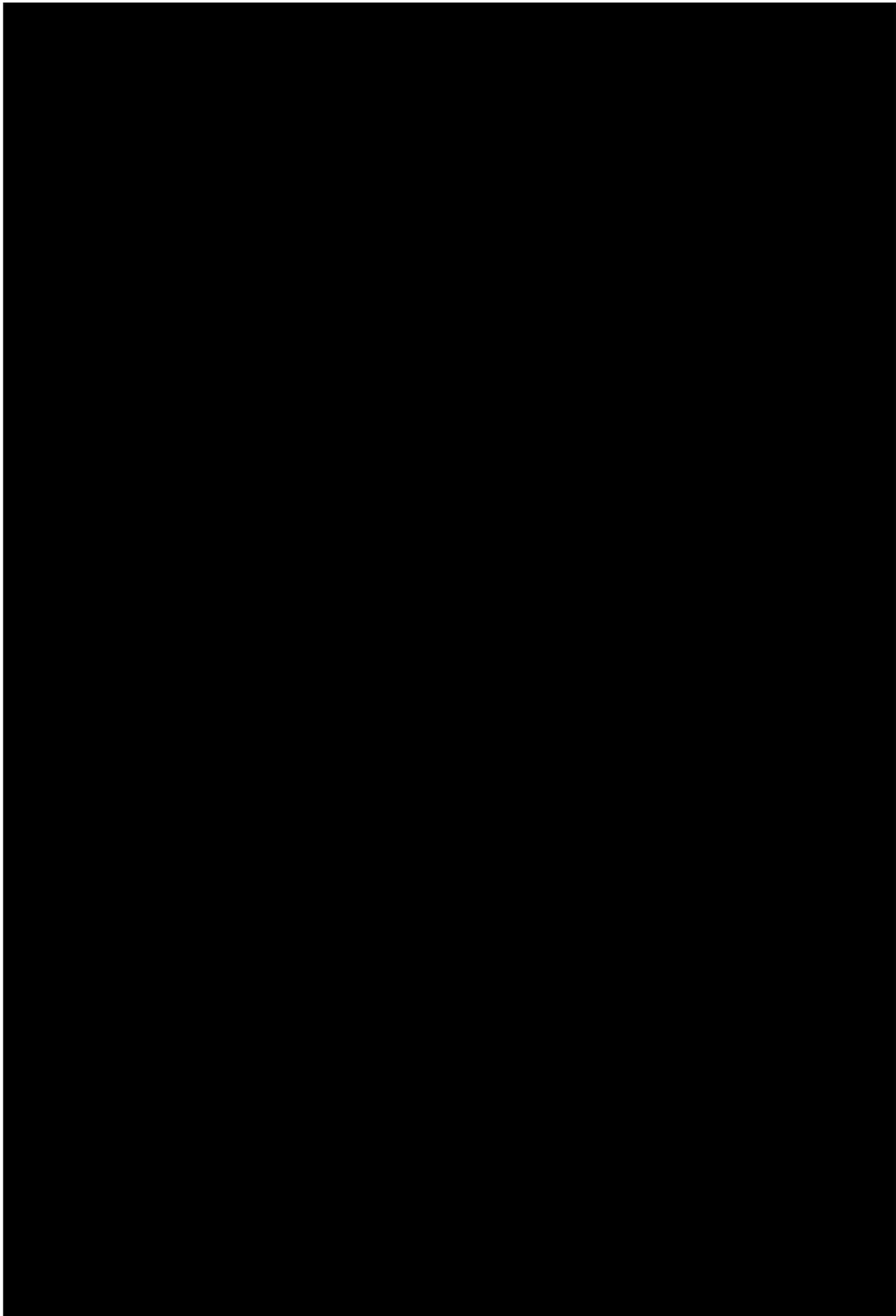


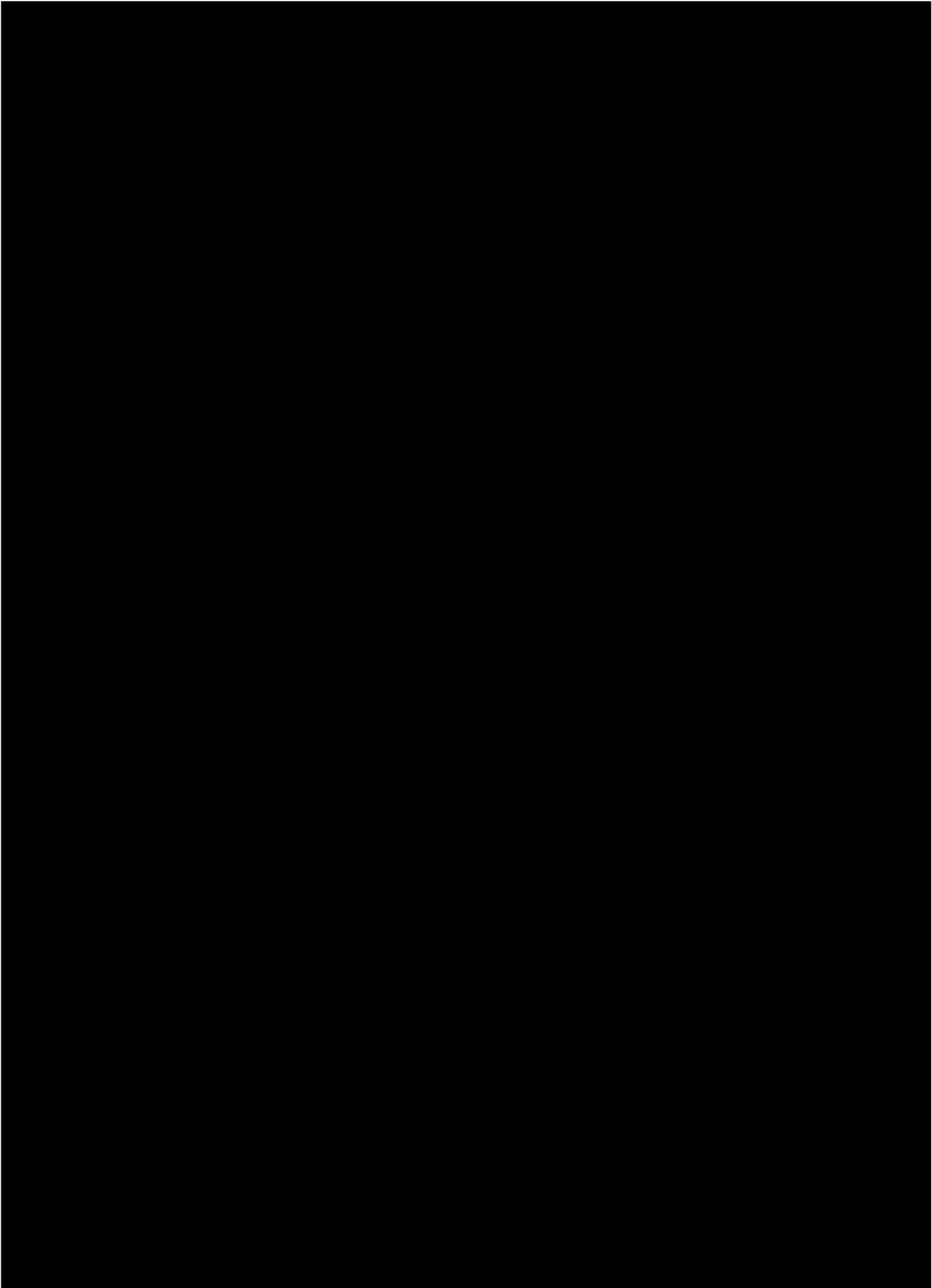






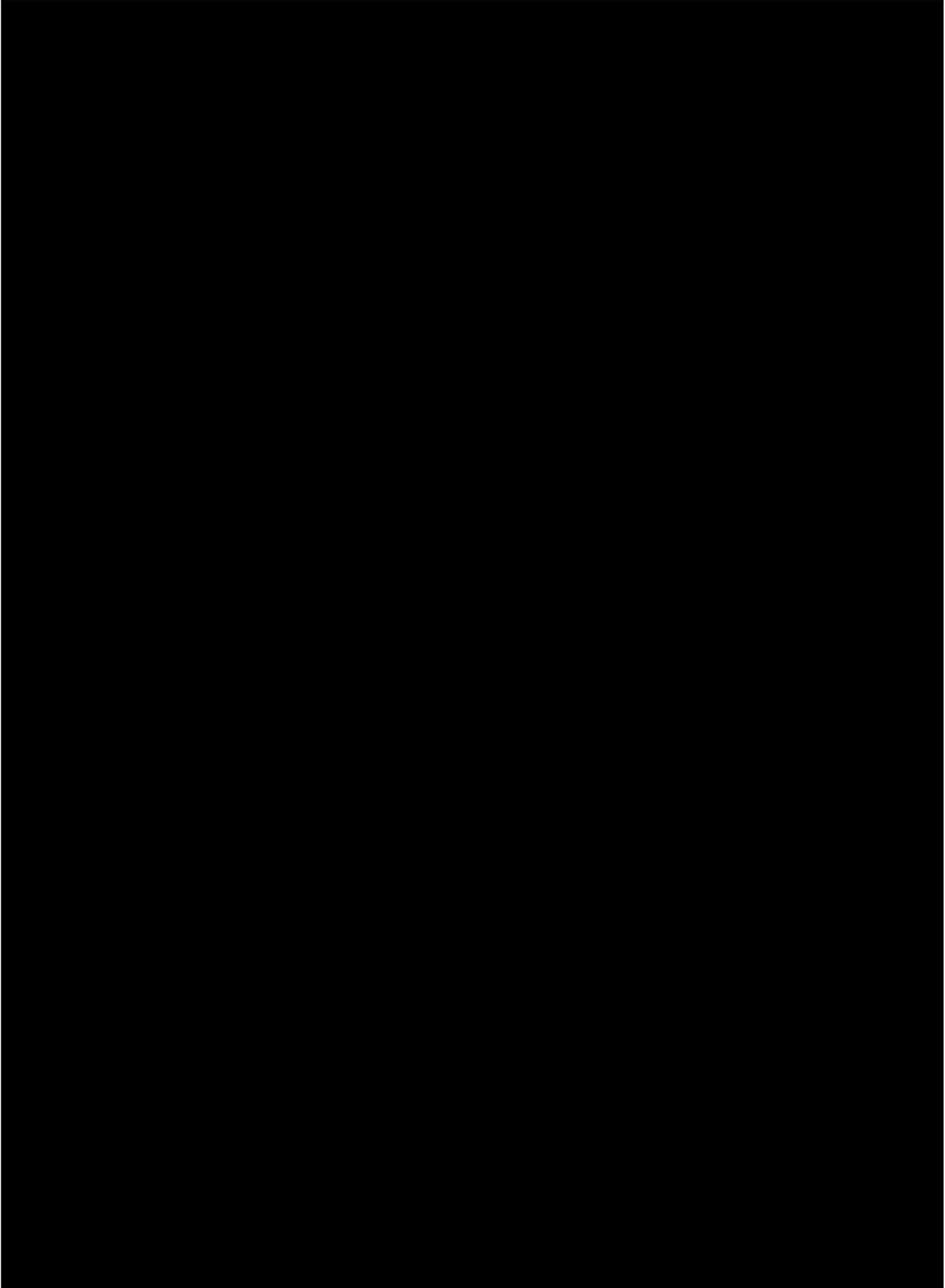


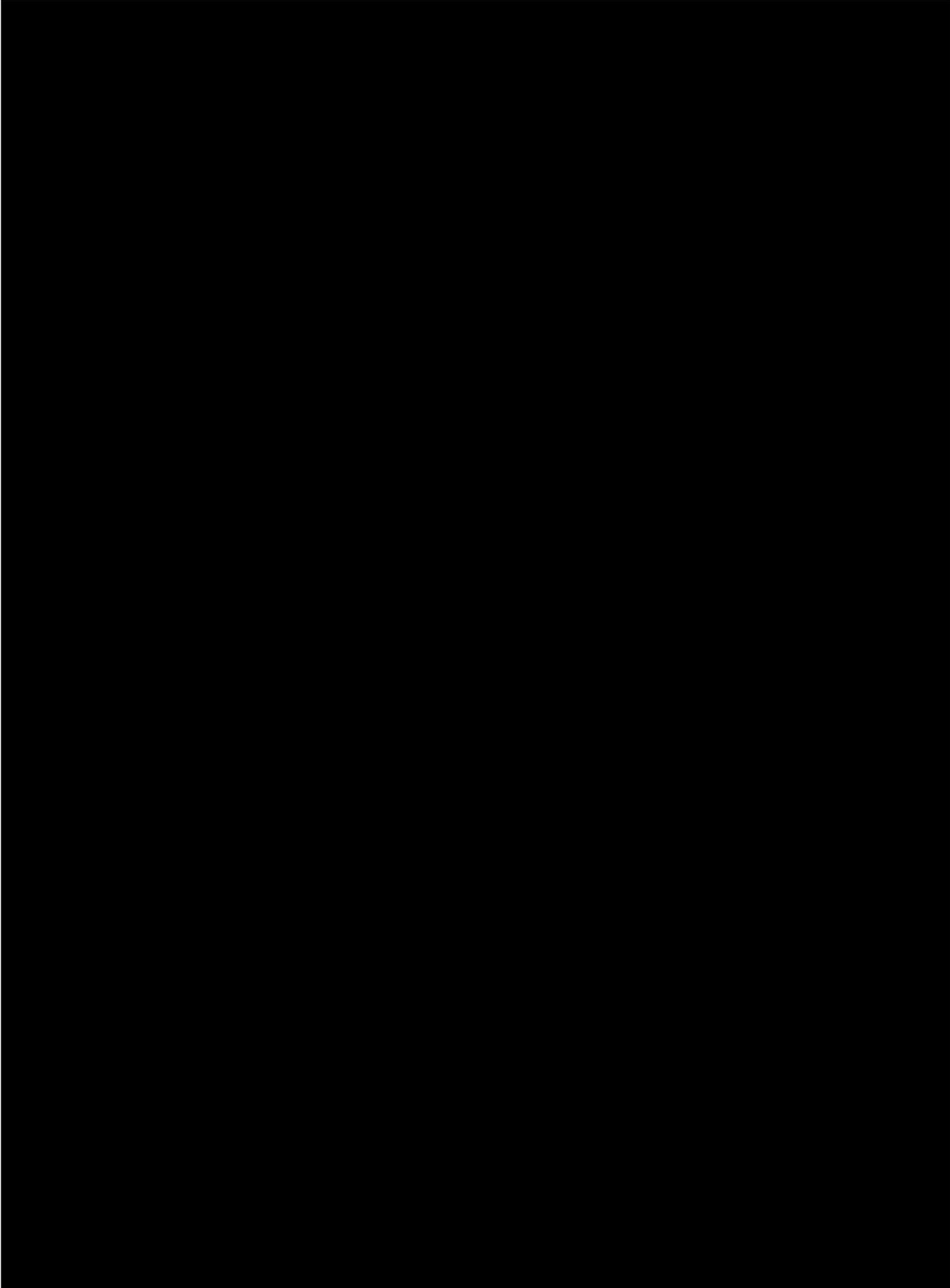


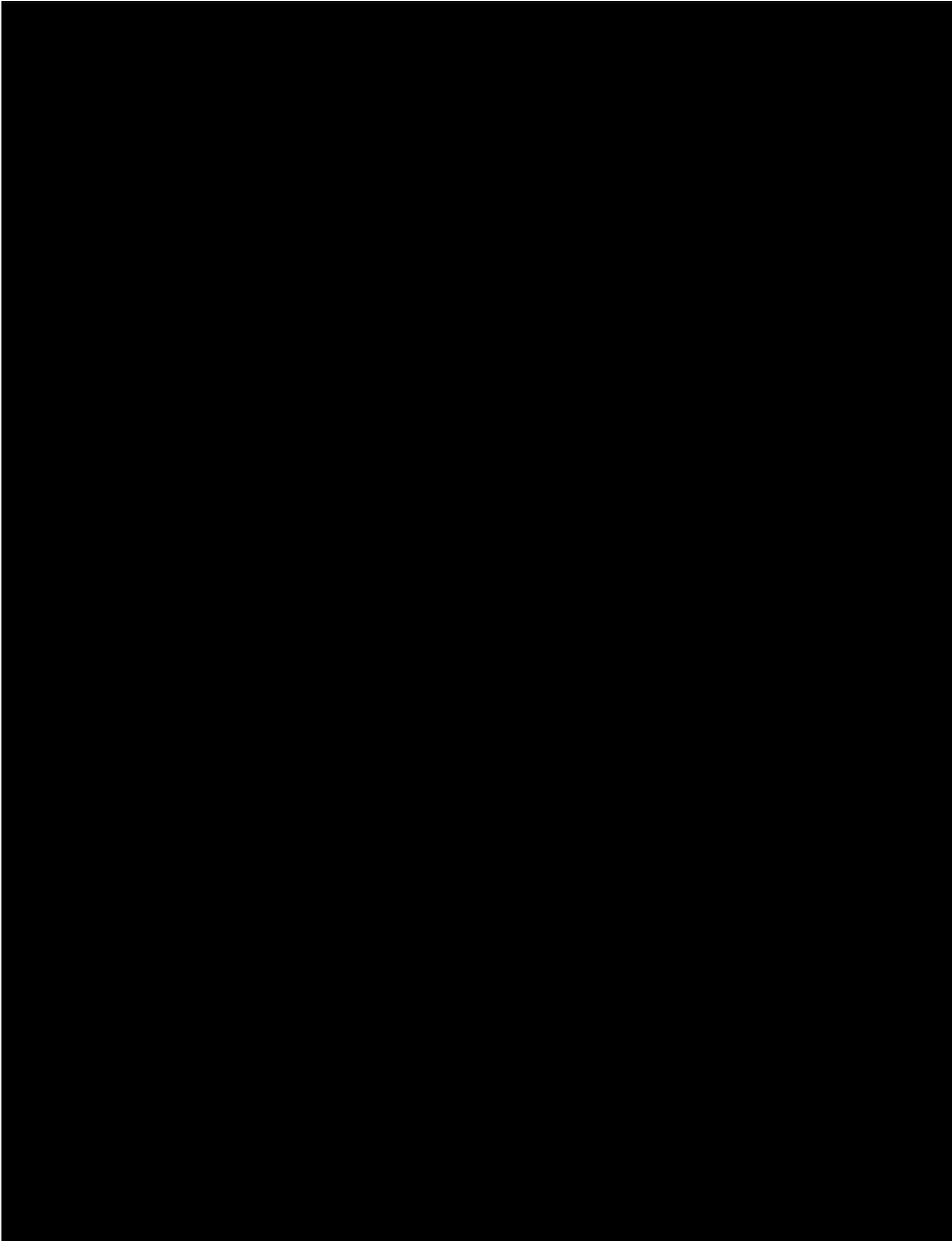


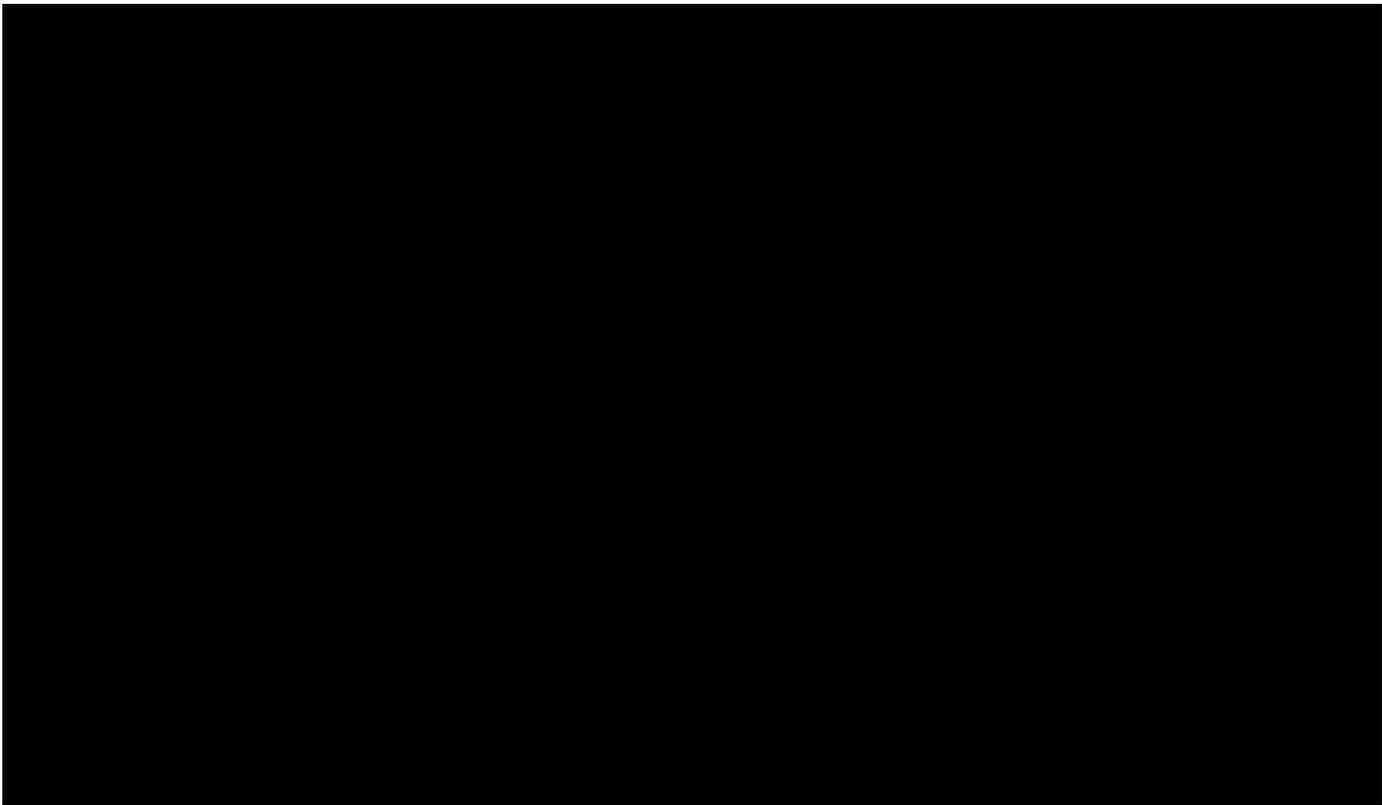


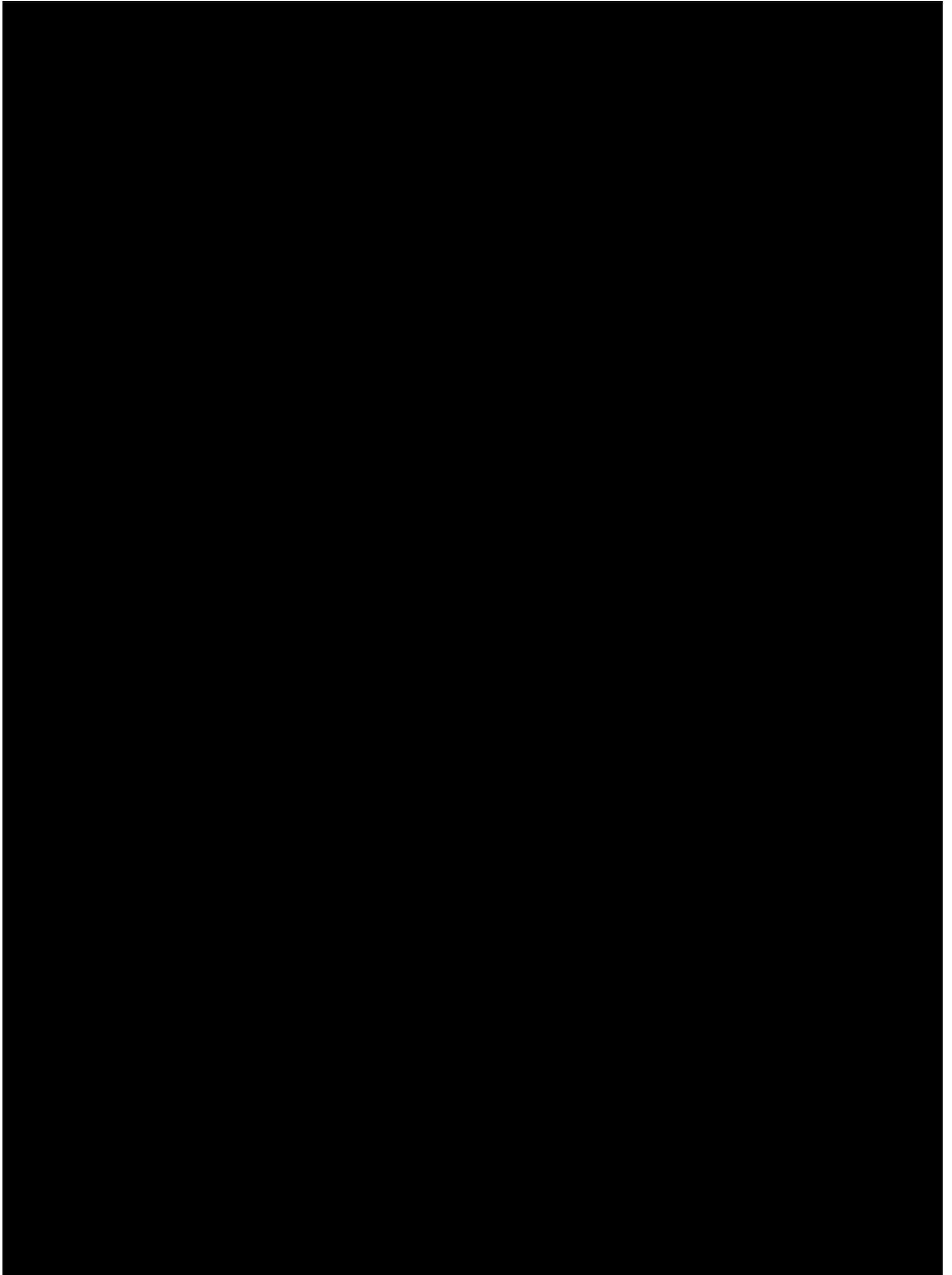




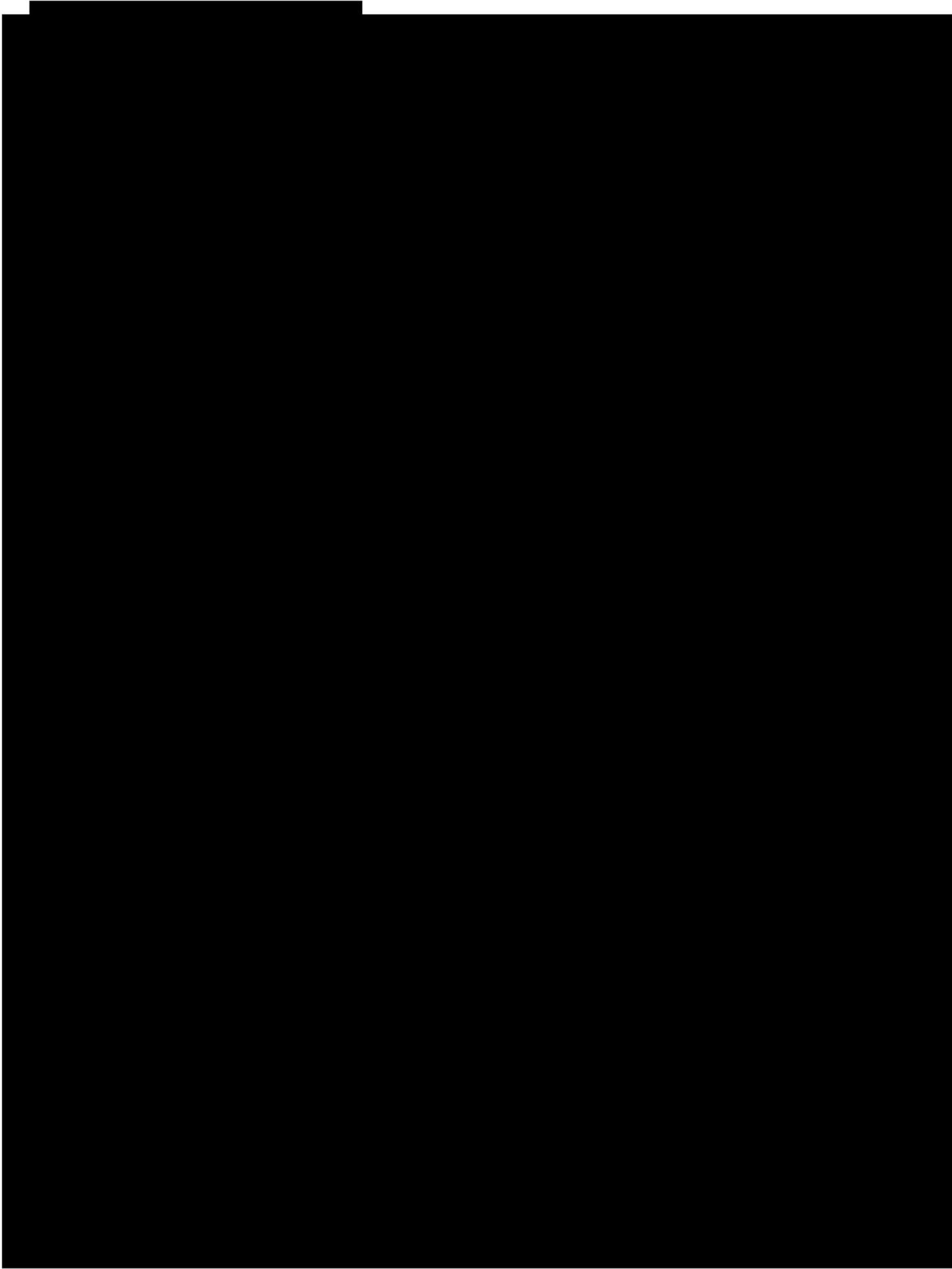


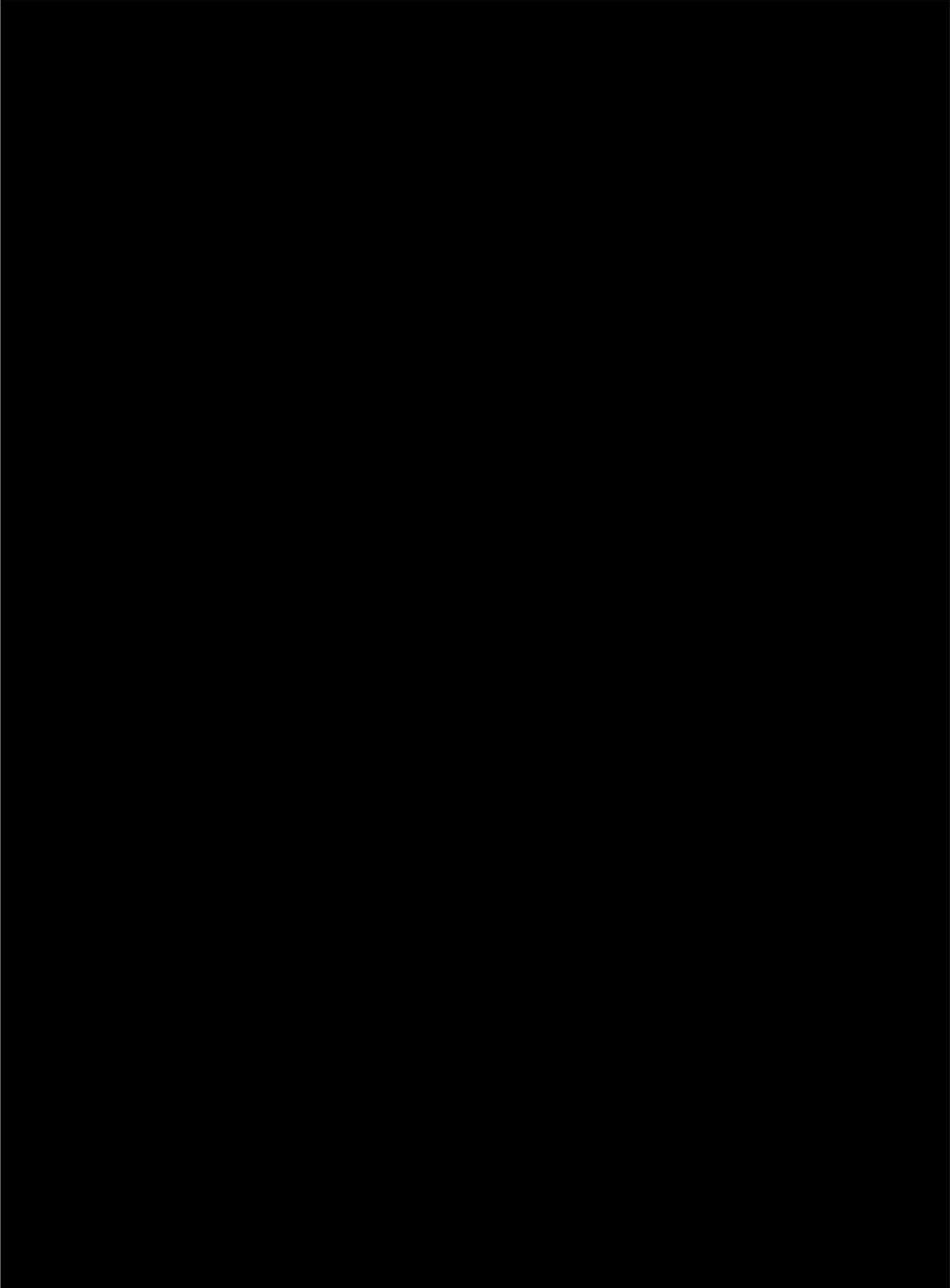


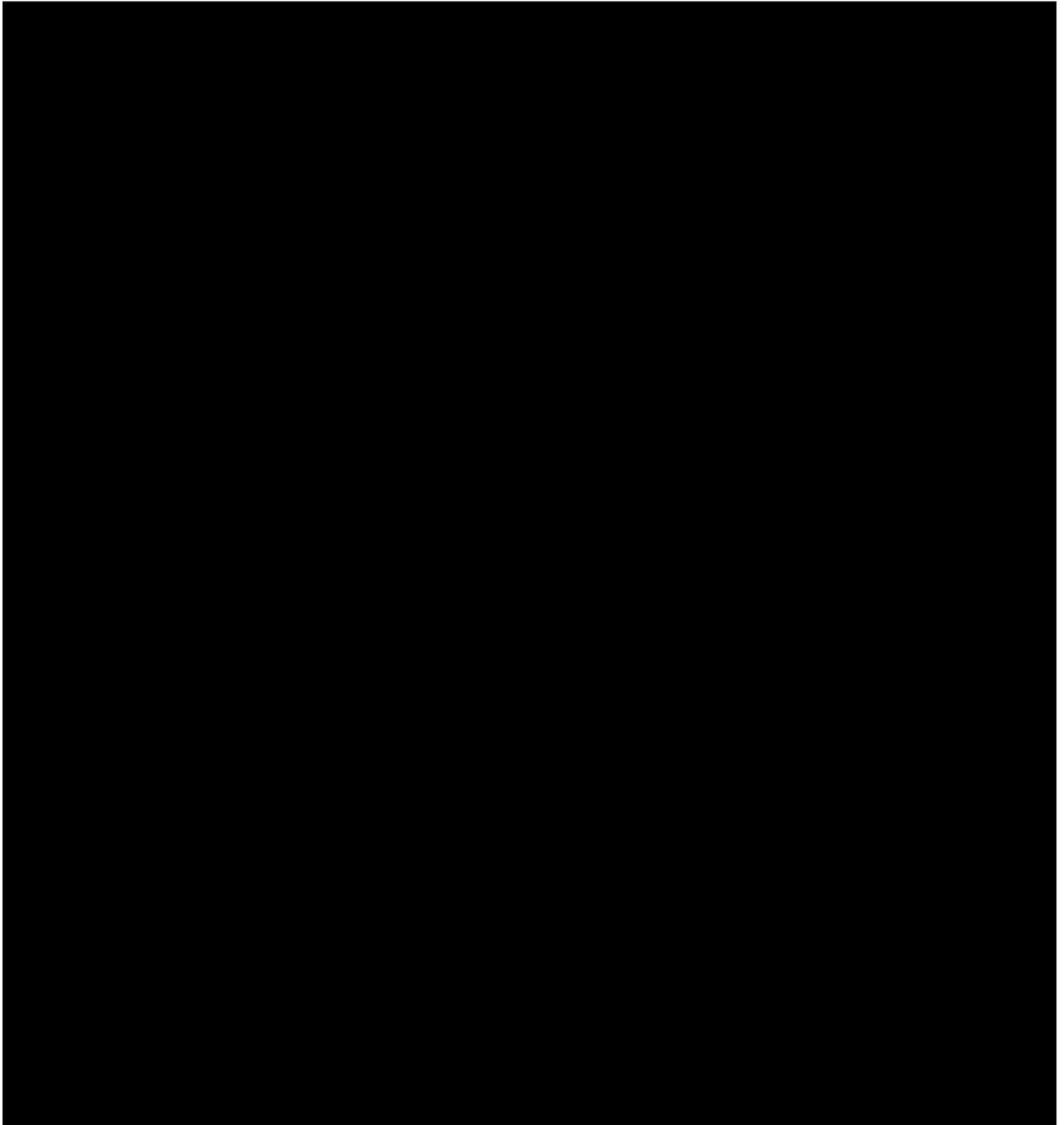


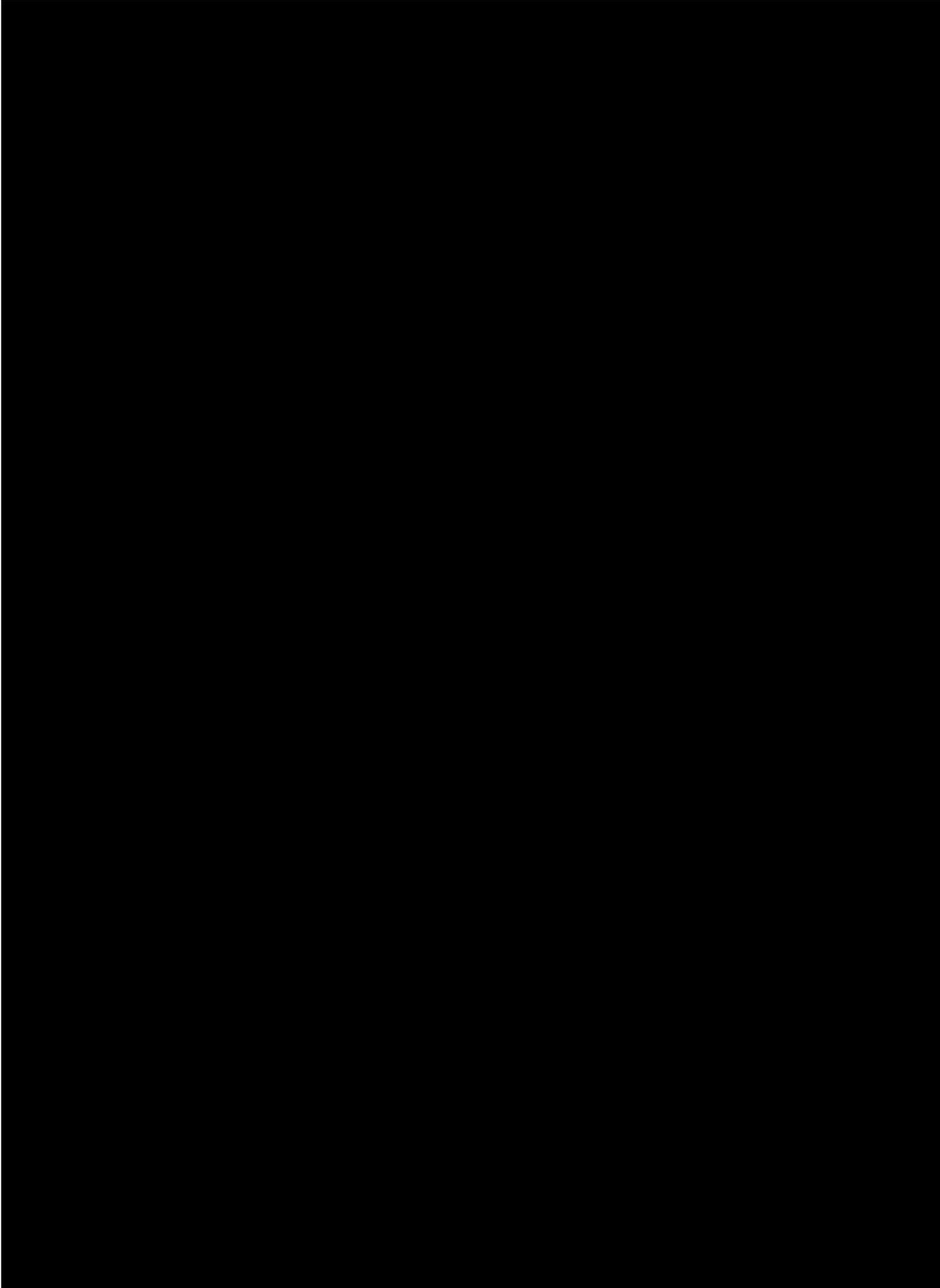


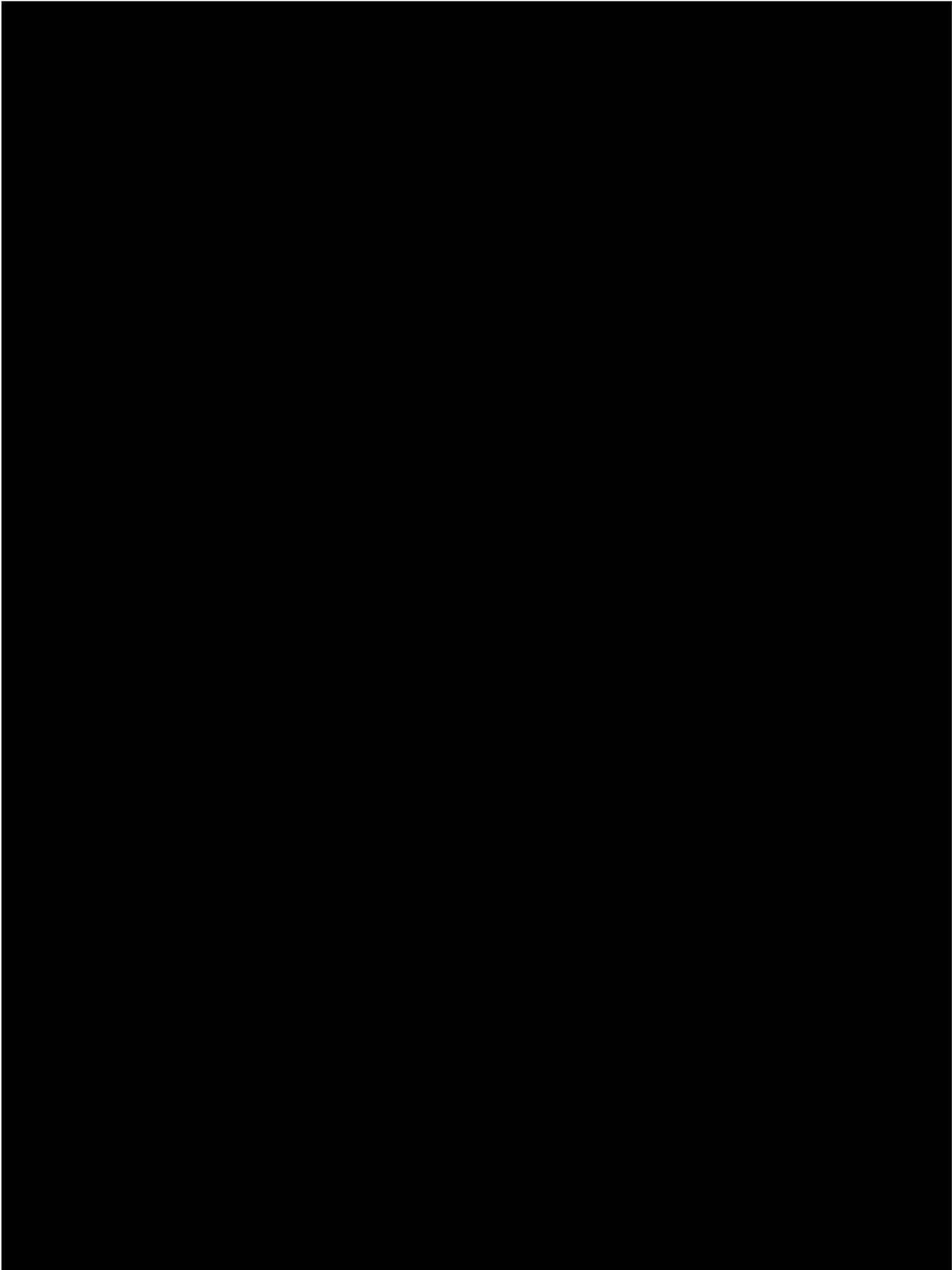




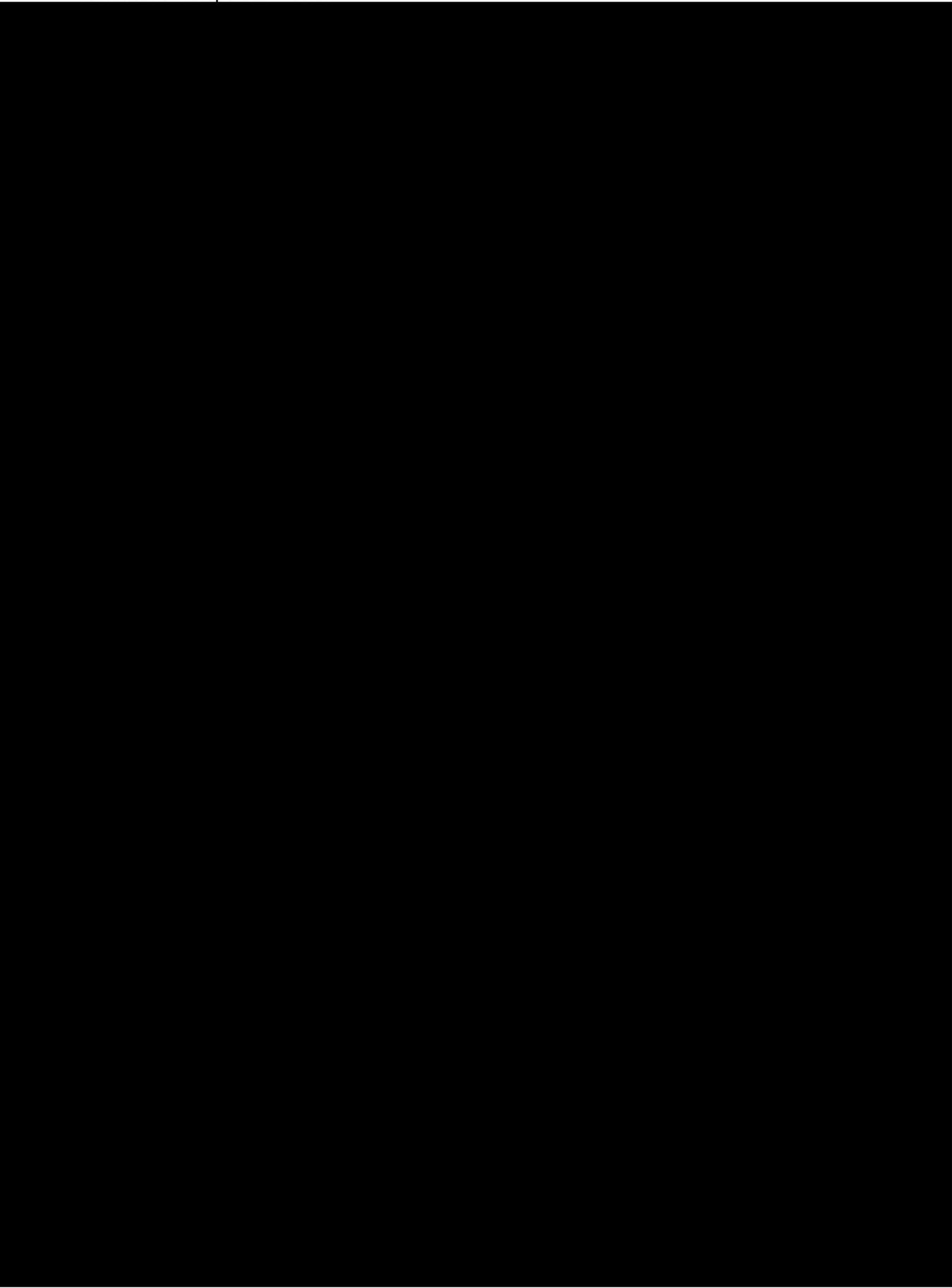




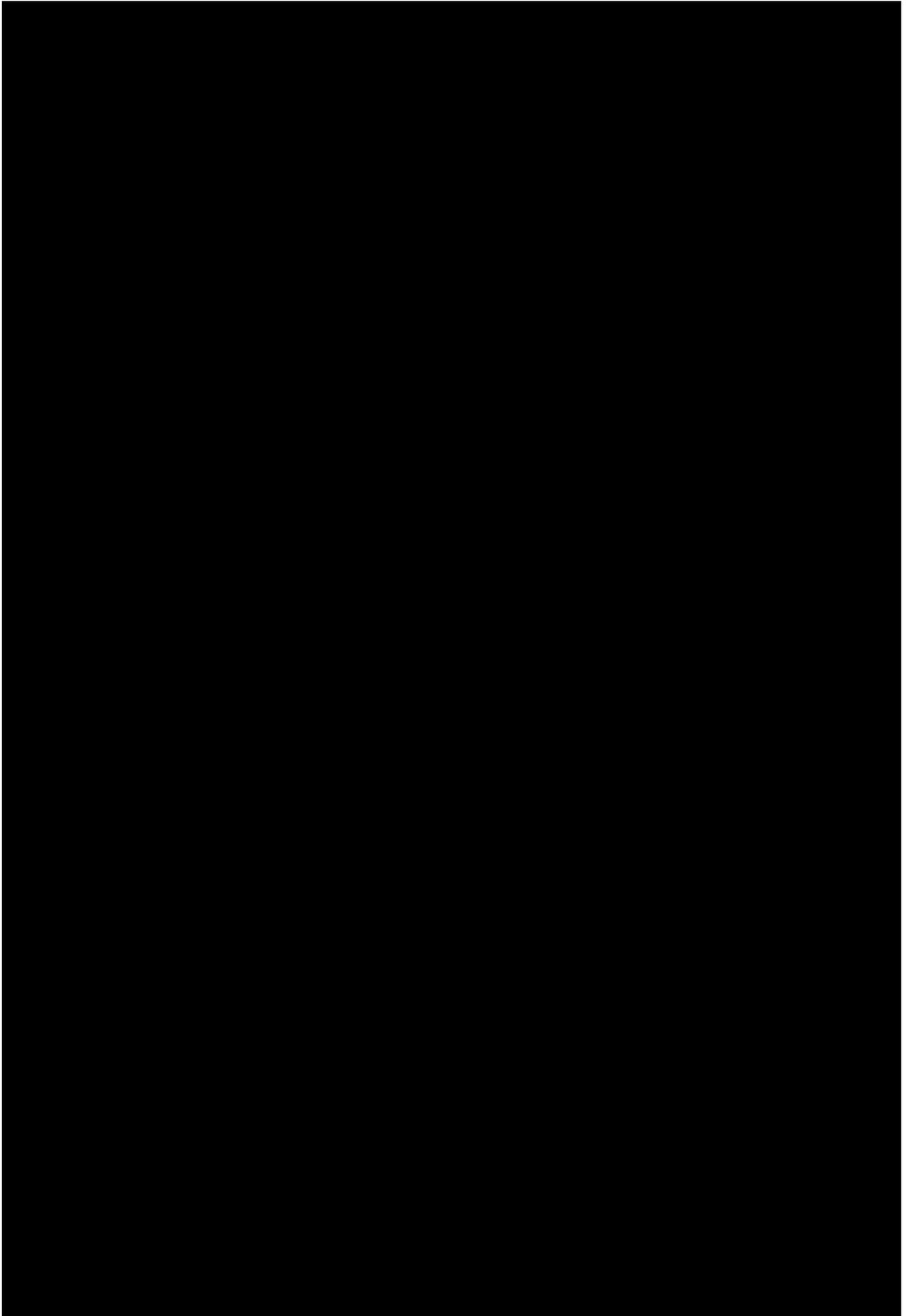


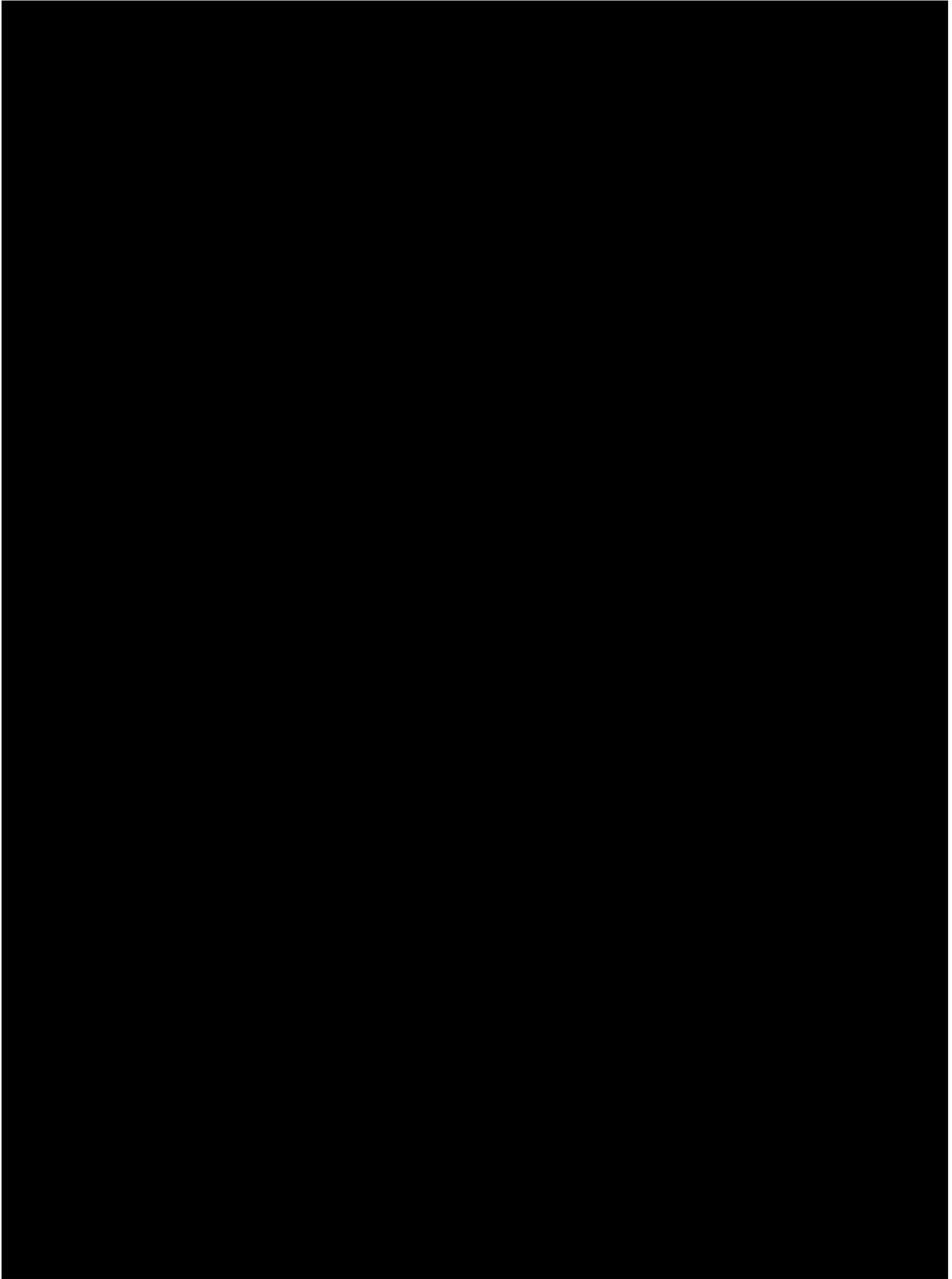


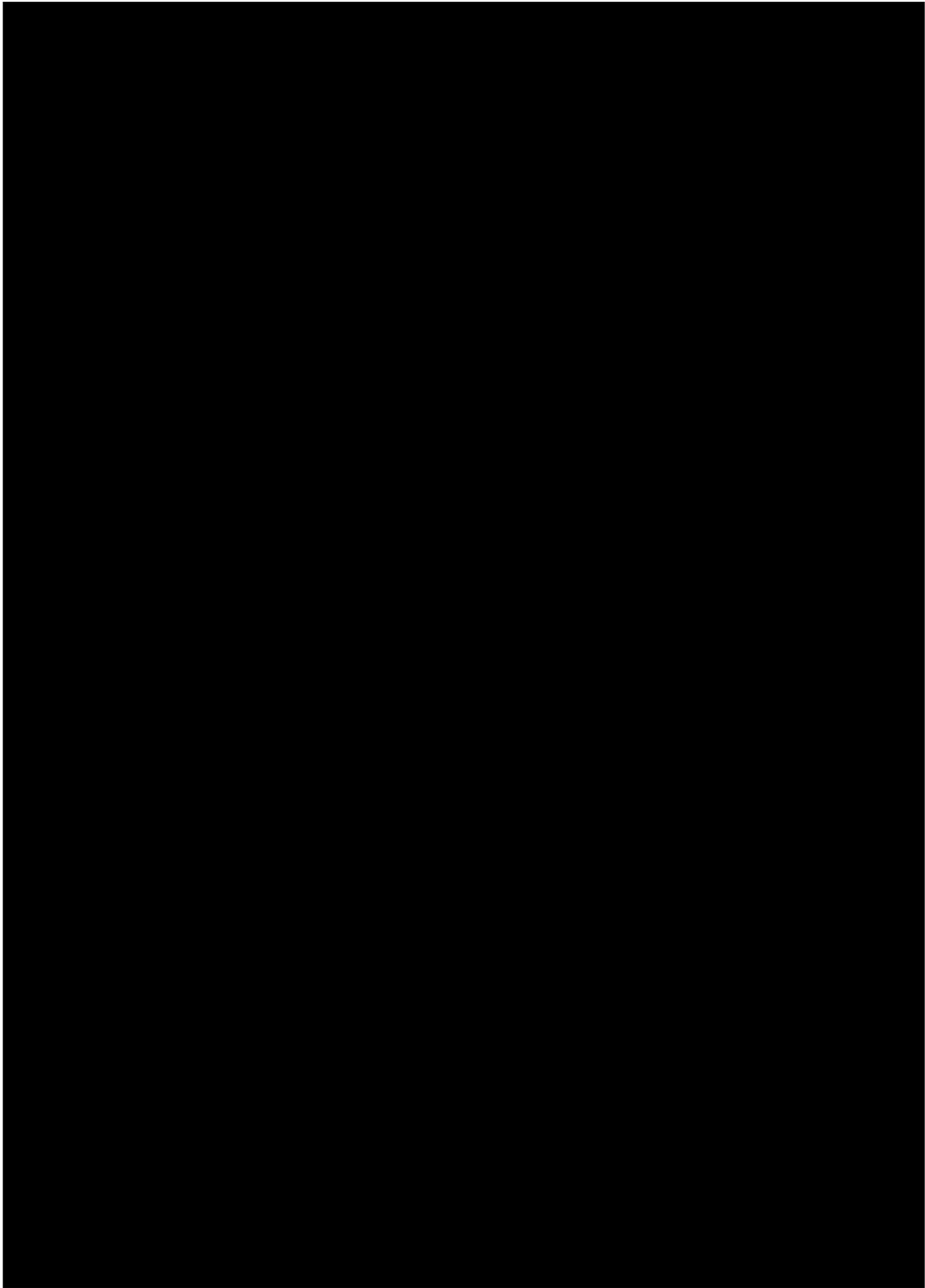
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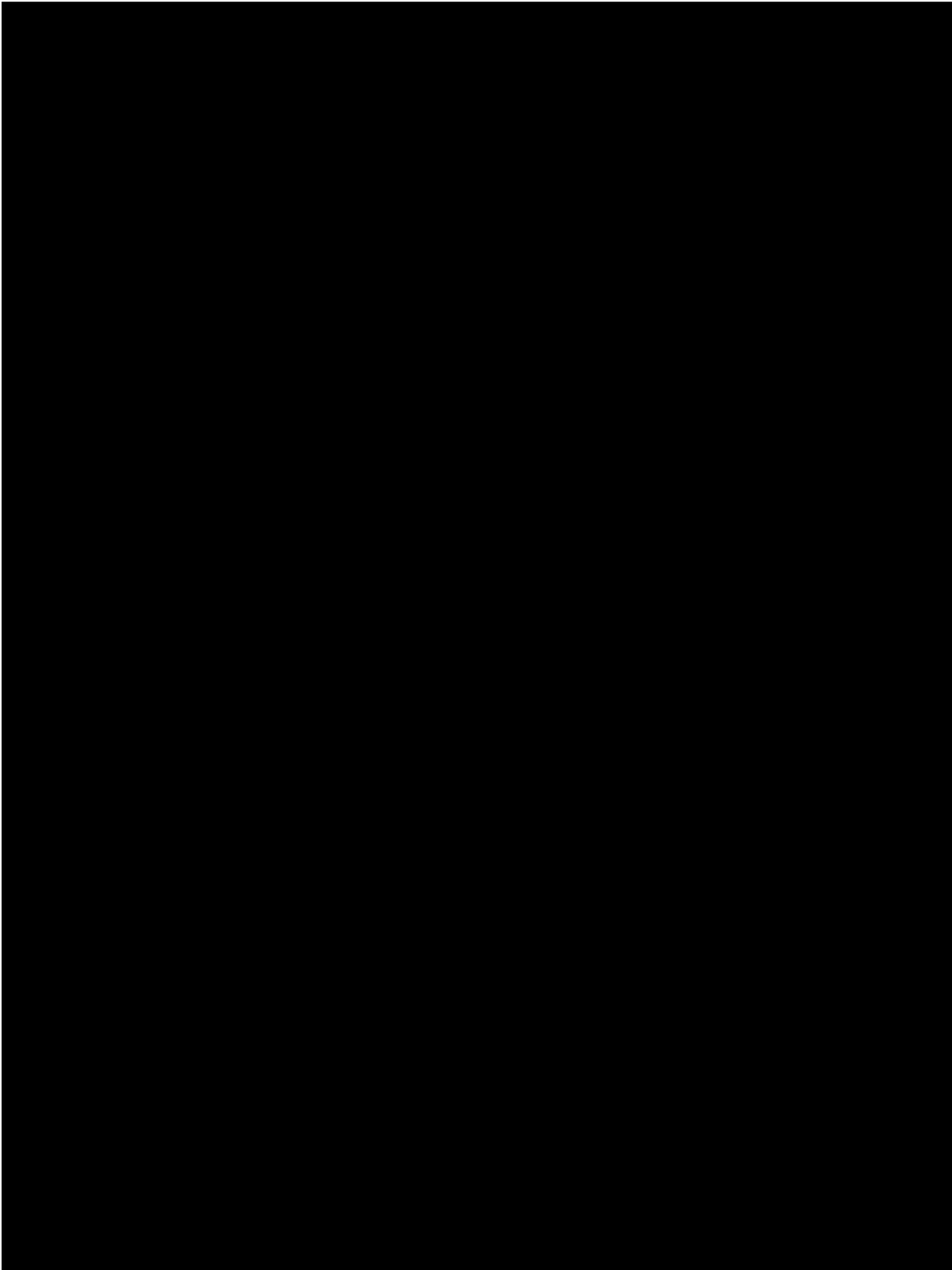


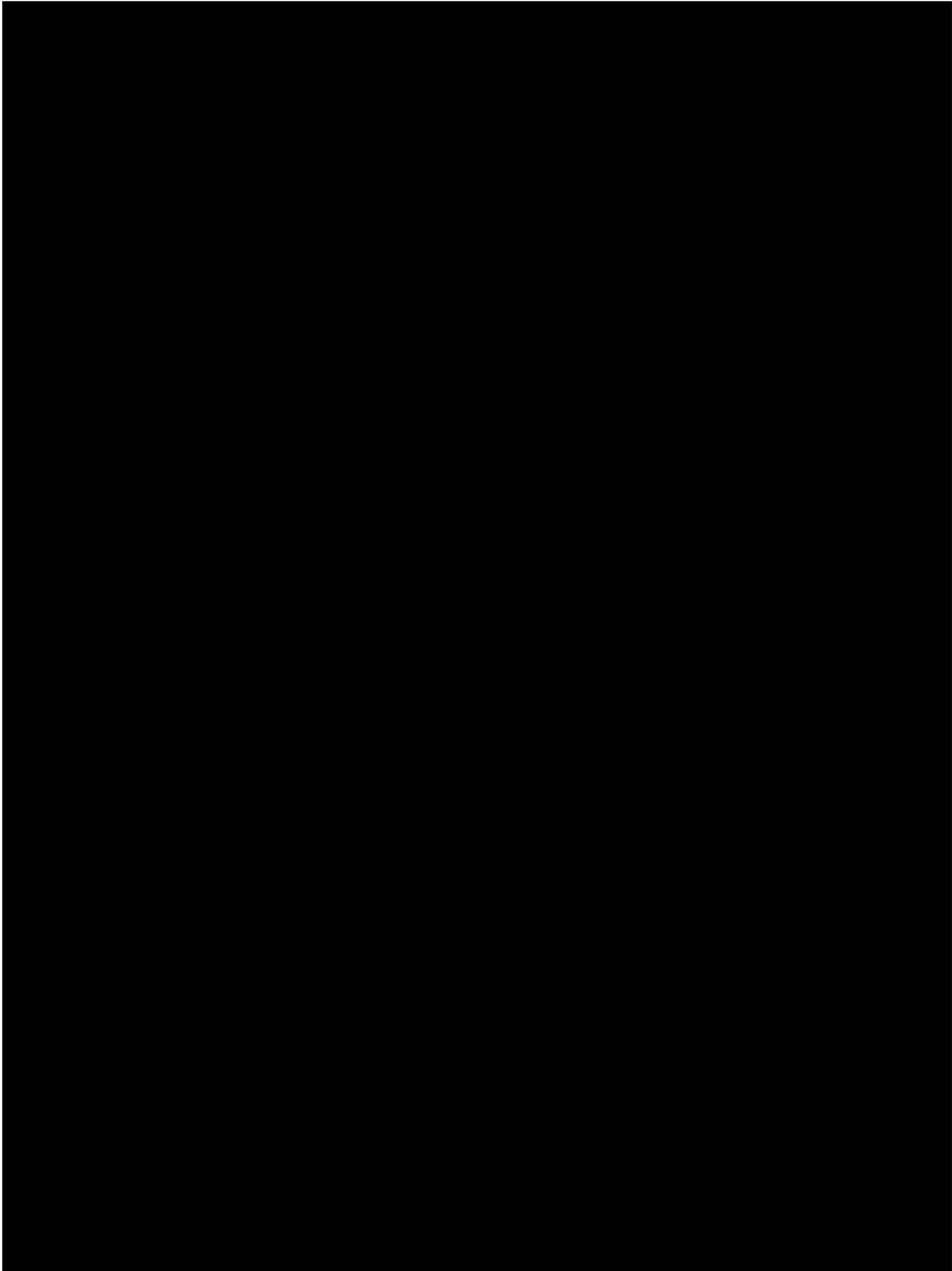


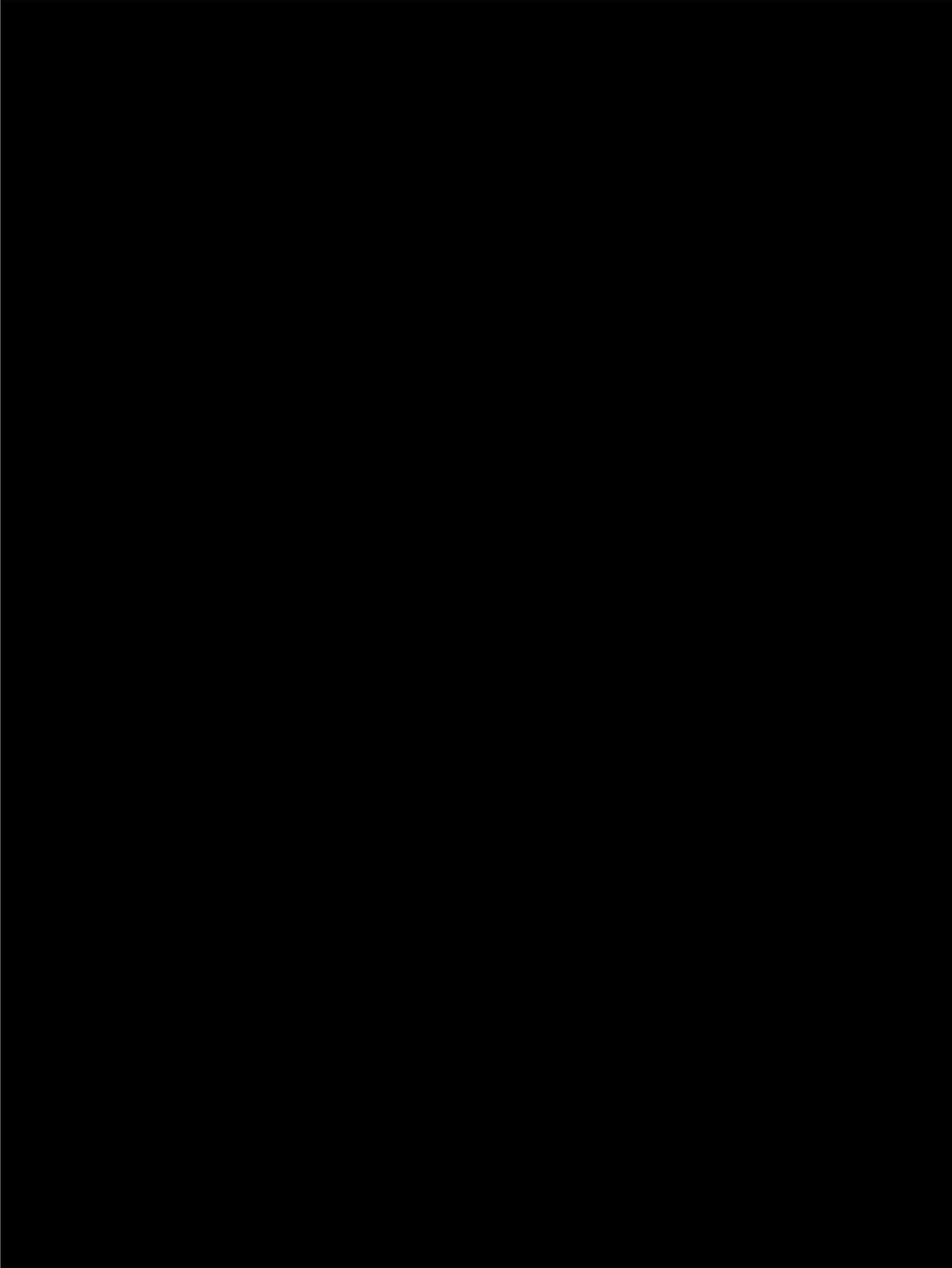


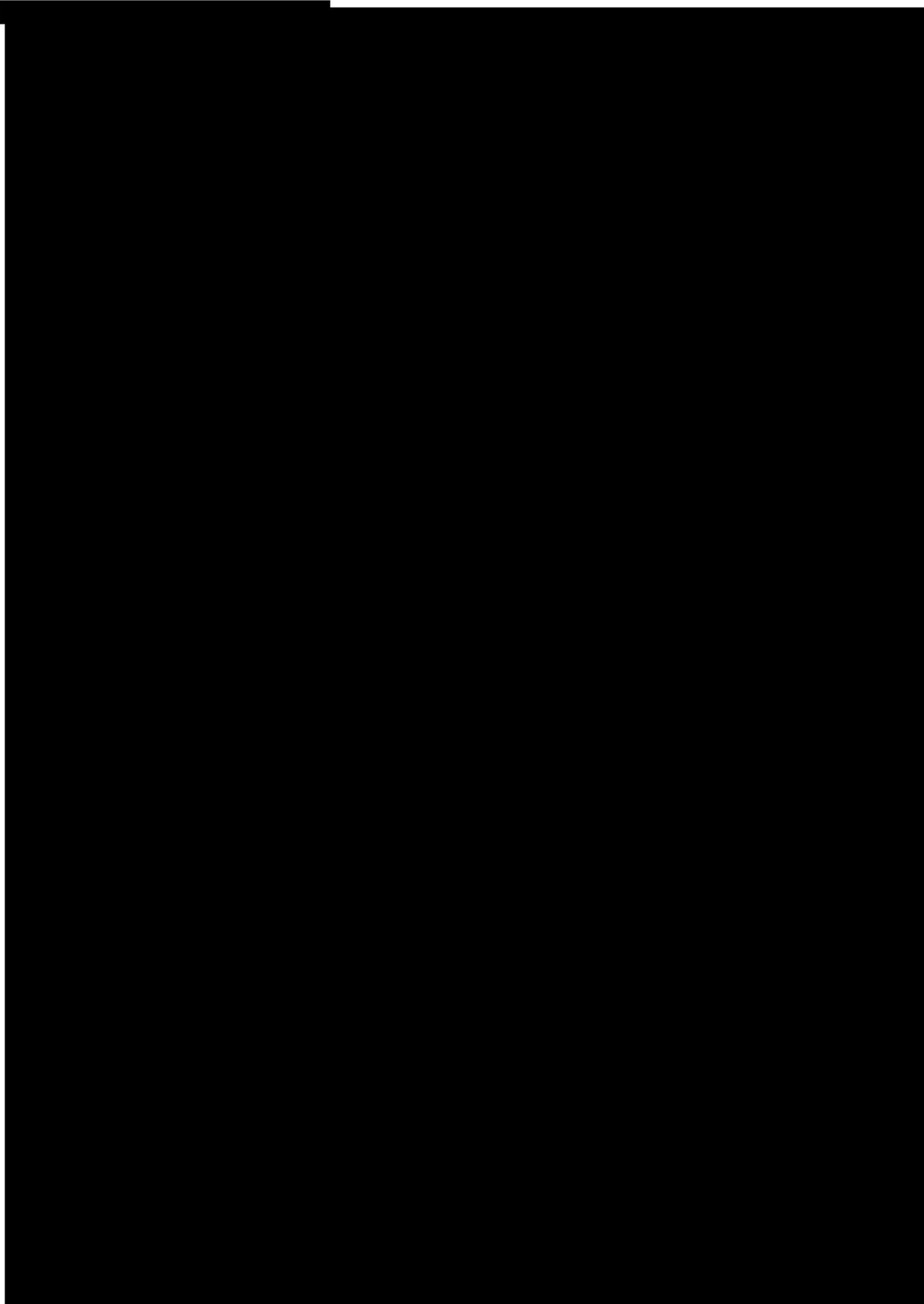


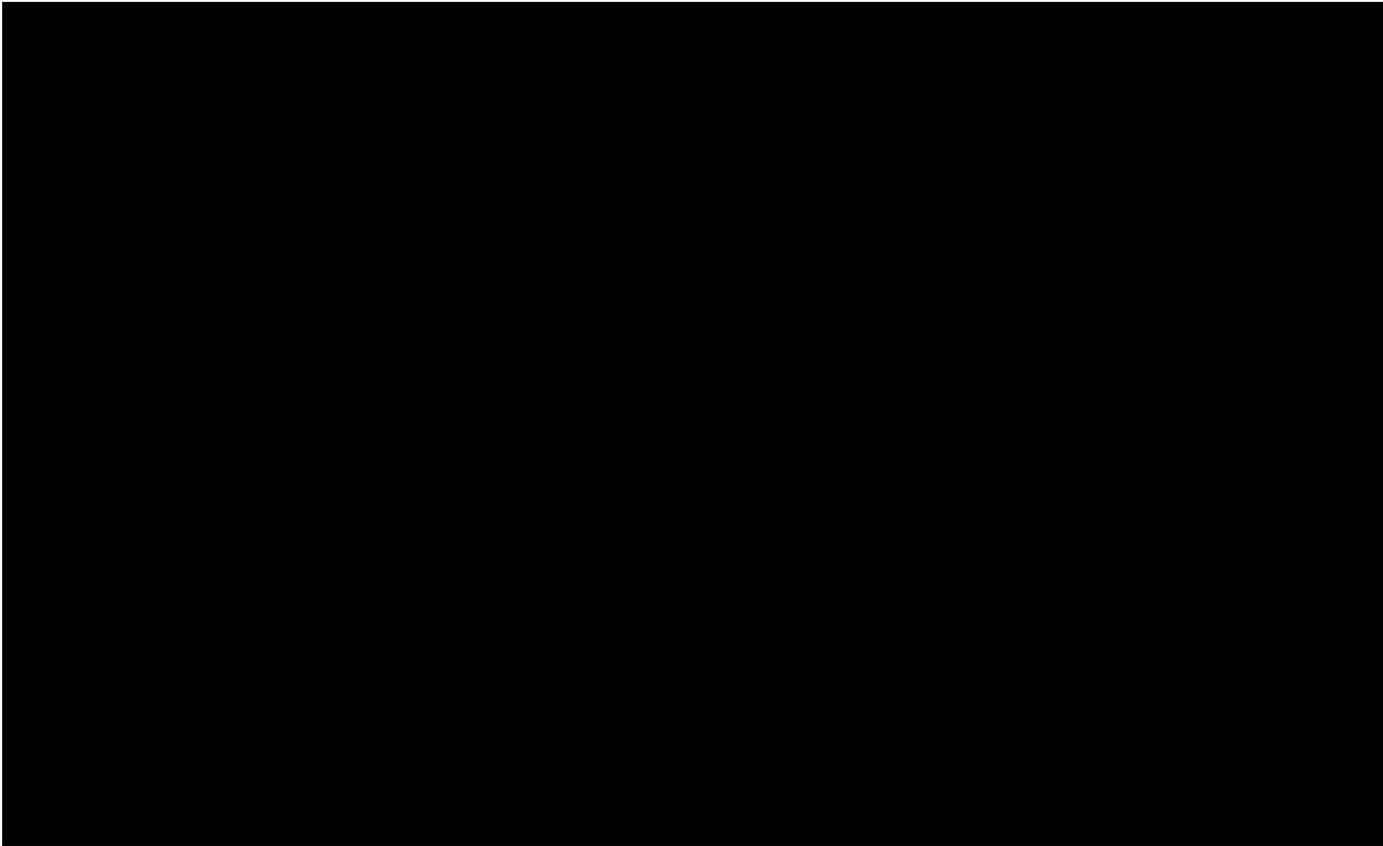
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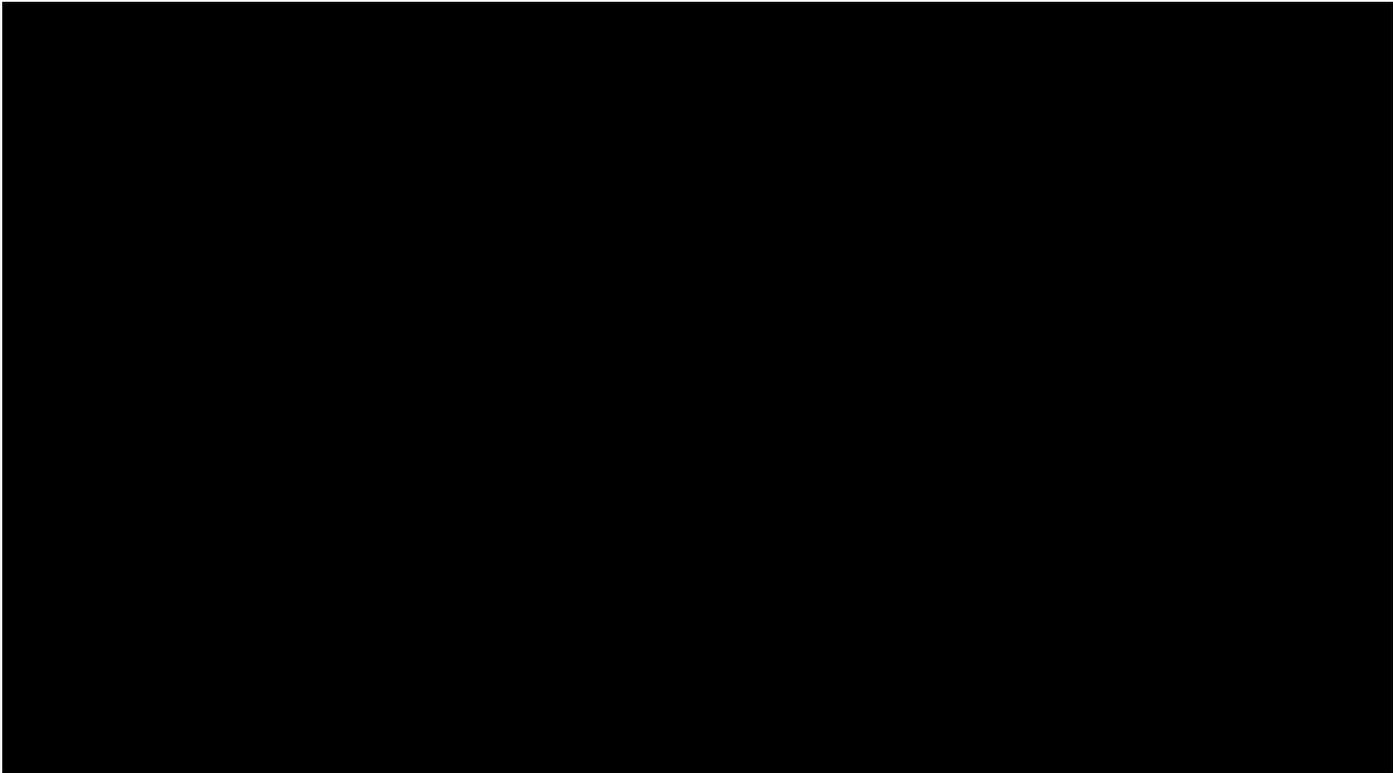


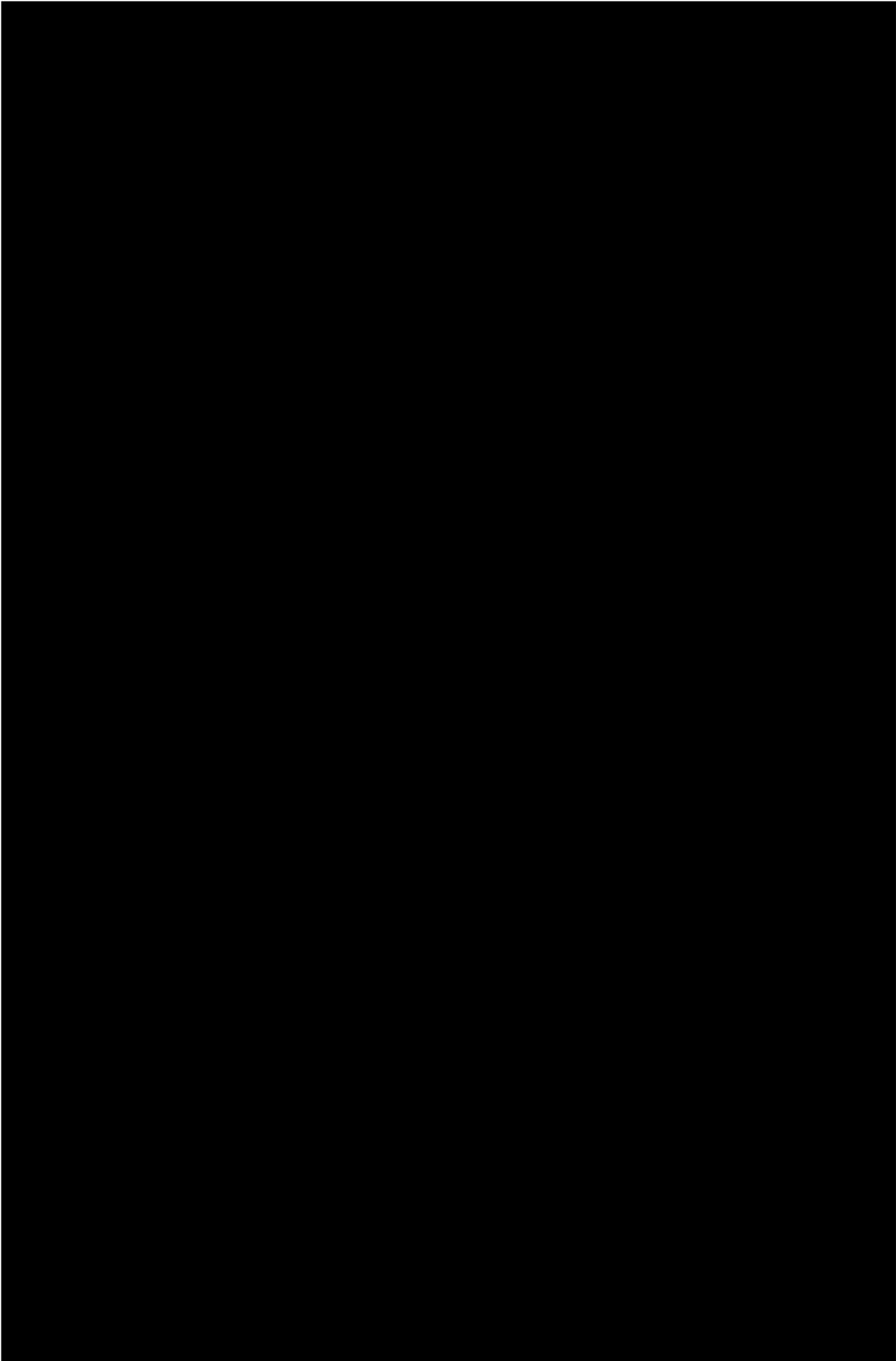


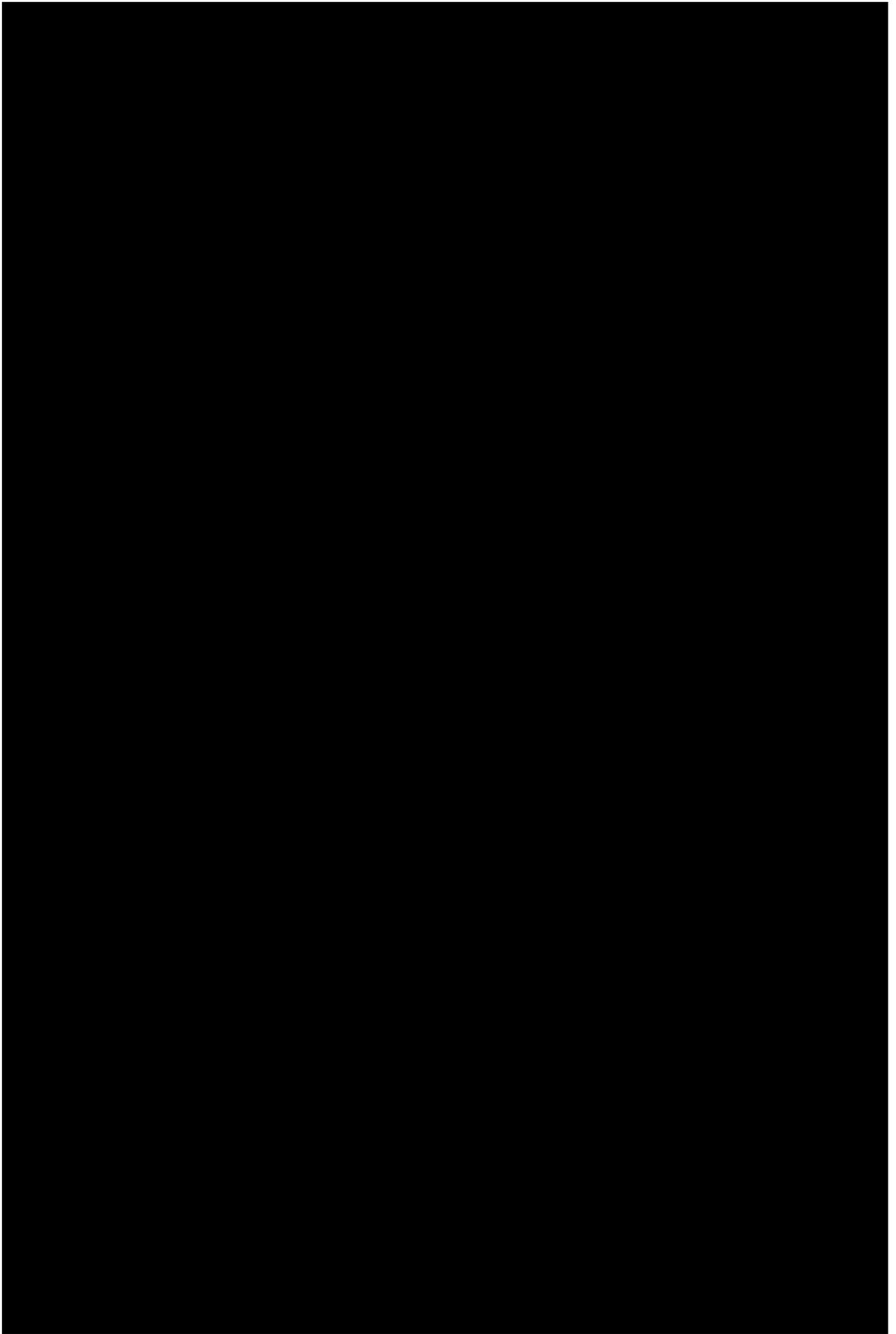


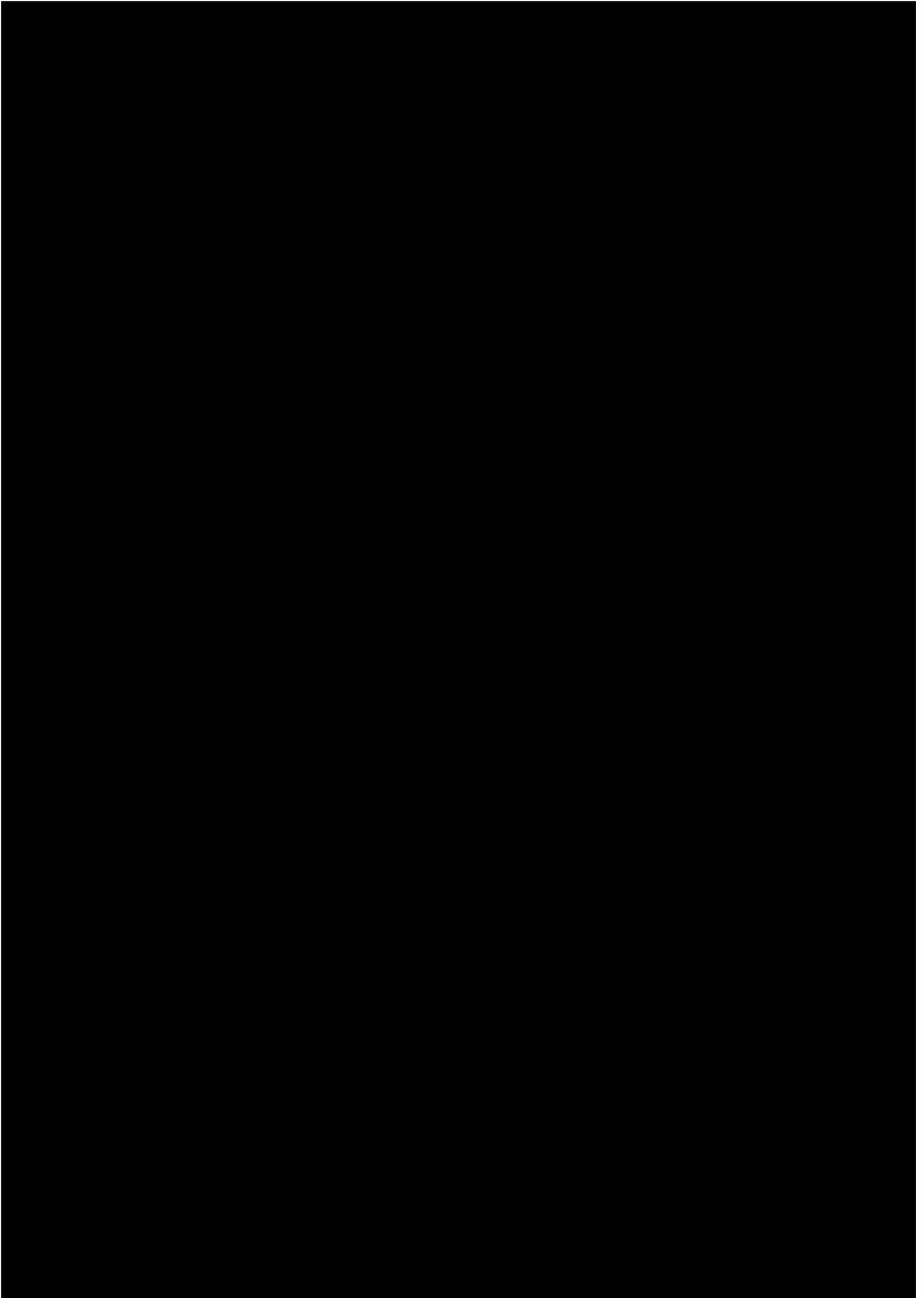




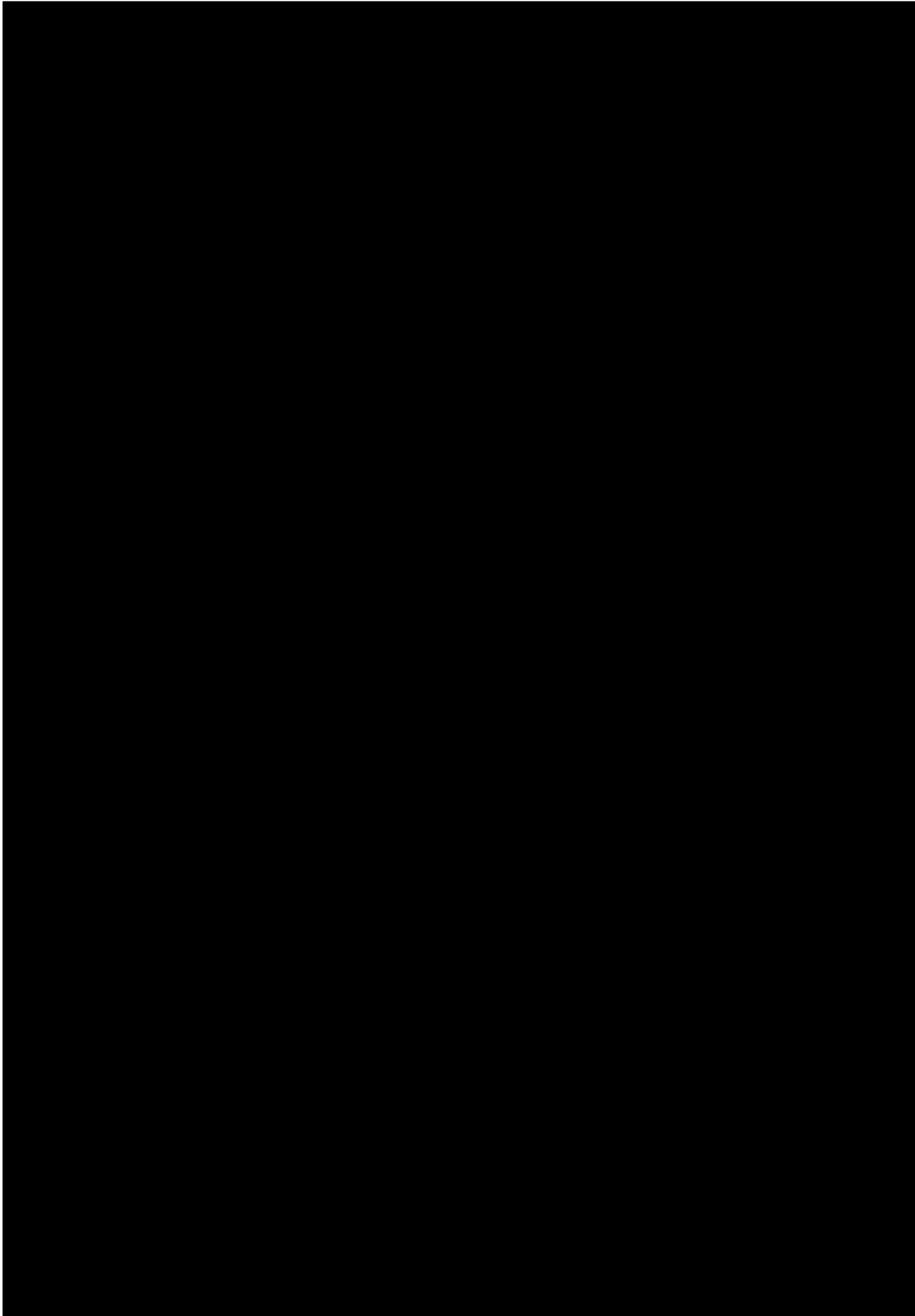


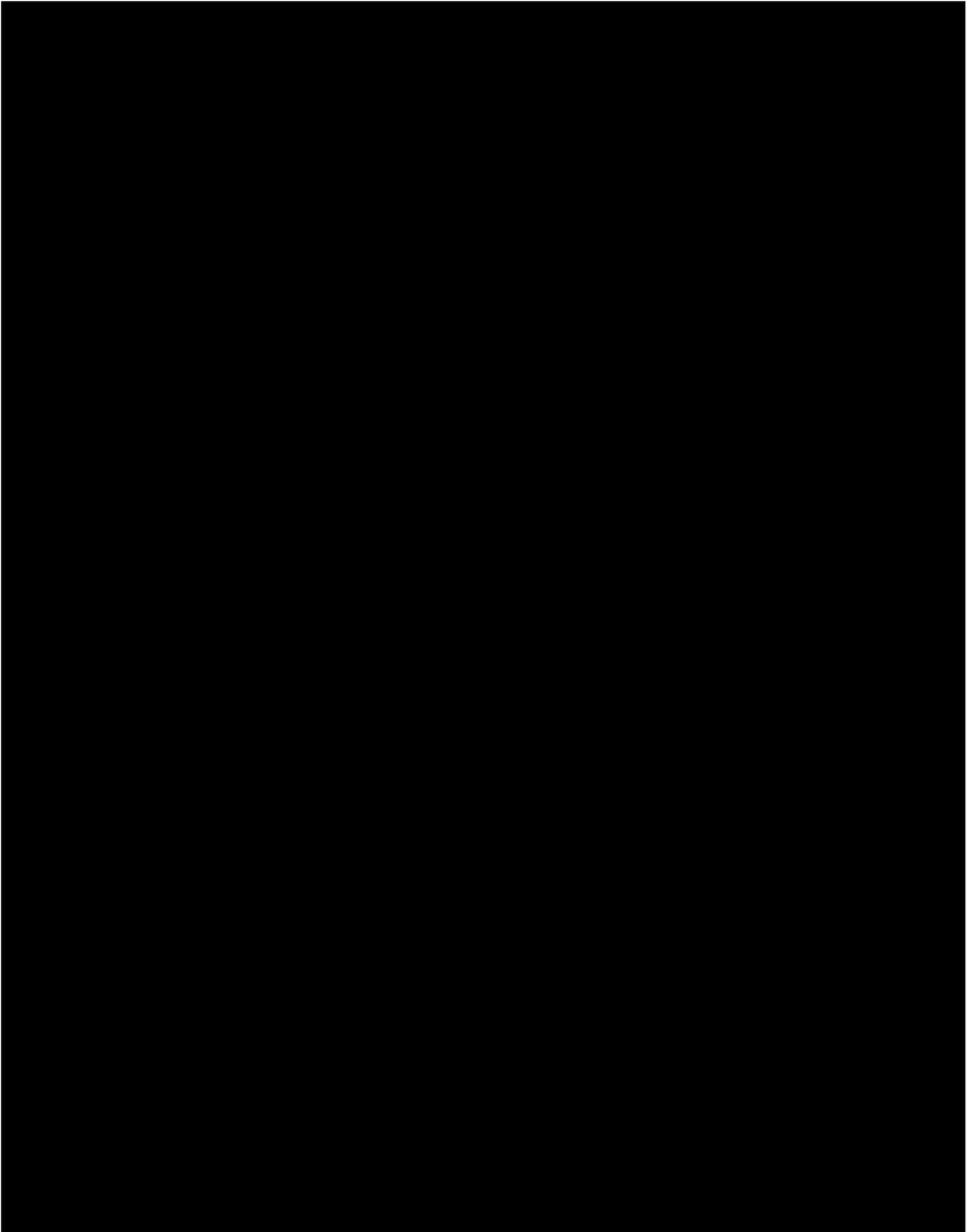


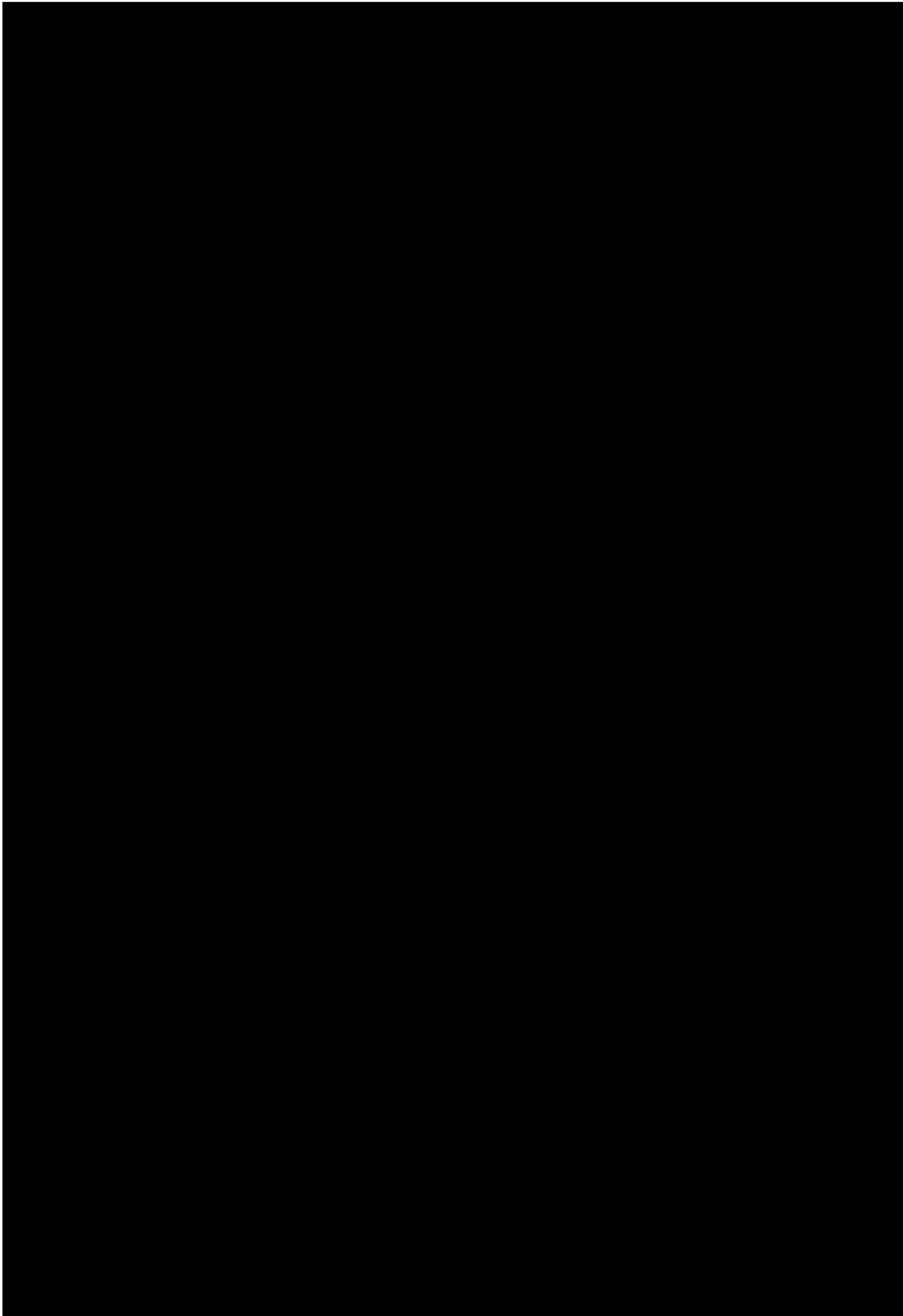


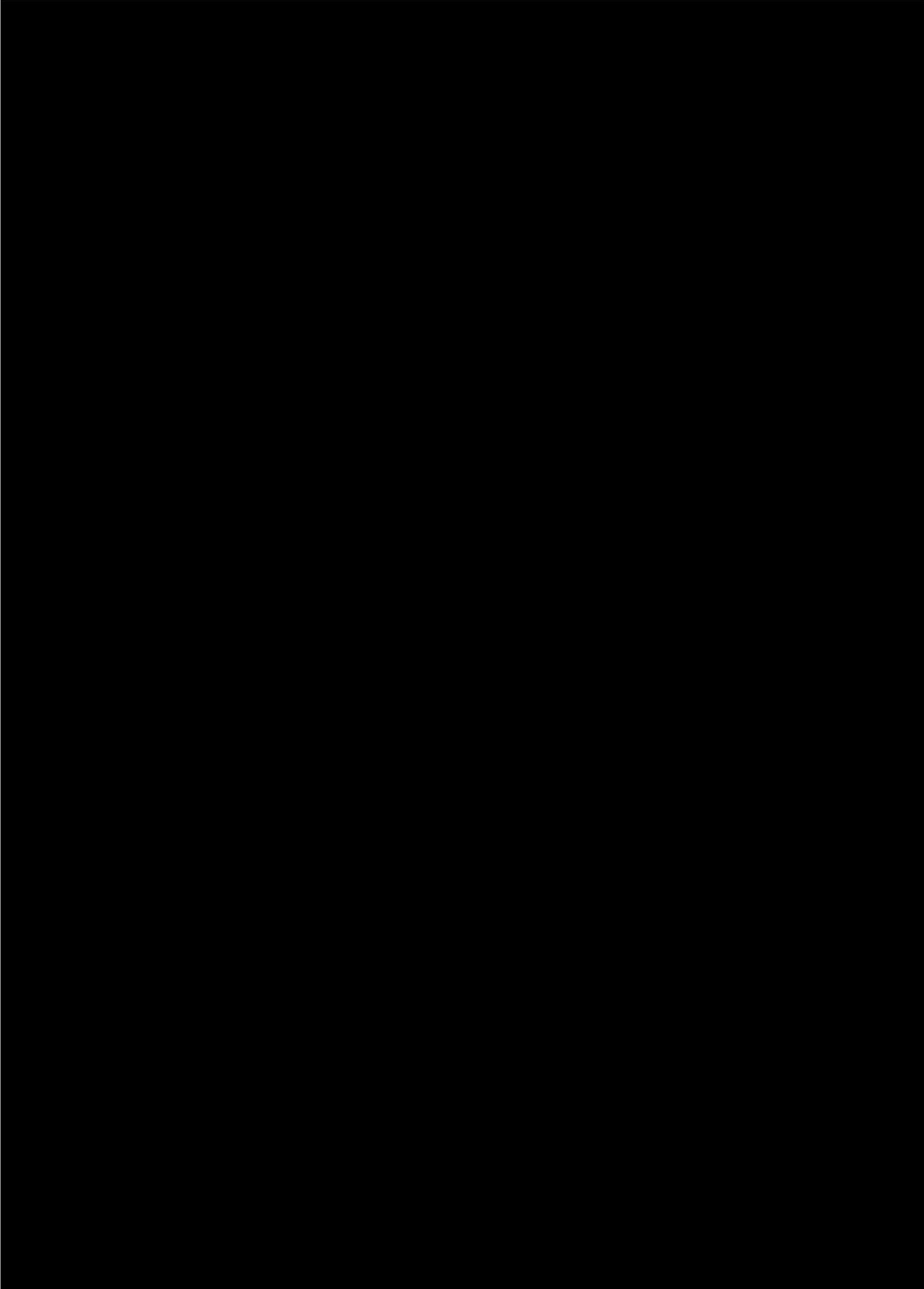


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Theme 5, Model Award Criteria 8.1











Schedule 4 (Tender), Crown Copyright 2025, [Subject to Contract]

Schedule 4 (Tender), Crown Copyright 2025, [Subject to Contract]

Schedule 5 (Commercially Sensitive Information), Crown Copyright 2025, [Subject to Contract]

## **Schedule 5 (Commercially Sensitive Information)**



Schedule 5 (Commercially Sensitive Information), Crown Copyright 2025, [Subject to Contract]





Schedule 6 (Intellectual Property Rights), Crown Copyright 2025, [Subject to Contract]

## Schedule 6 (Intellectual Property Rights)

Part A: Intellectual Property Rights (no ICT Services) .....	1
Option 1 .....	1

Schedule 6 (Intellectual Property Rights), Crown Copyright 2025, [Subject to Contract]

# Part A: Intellectual Property Rights (no ICT Services)

## Option 1

### 1. General Provisions and Ownership of IPR

- 1.1 Any New IPR created under this Contract is owned by the Buyer.
- 1.2 Each Party keeps ownership of its own Existing IPR.
- 1.3 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 1.1 and 1.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.4 Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 1.5 Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.6 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 1.7 If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 2 and 4, the Supplier must, within 10 Working Days notify the Buyer:
  - 1.7.1 the specific Intellectual Property Rights the Buyer has not received licences to; and
  - 1.7.2 the Deliverables affected.
- 1.8 For the avoidance of doubt:
  - 1.8.1 except as provided for in Paragraphs 2.3.2(b)(iii)(A) or 4.1.2(b) and (c), the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 2 and 4;
  - 1.8.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

Schedule 6 (Intellectual Property Rights), Crown Copyright 2025, [Subject to Contract]

- (a) sections 55 and 56 of the Patents Act 1977;
- (b) section 12 of the Registered Designs Act 1949; or
- (c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

**2. Licences in respect of Supplier Existing IPR**

2.1 The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 2.3 in respect of each Deliverable where:

- 2.1.1 the Supplier Existing IPR is embedded in the Deliverable;
- 2.1.2 the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for its intended purpose; or
- 2.1.3 the Deliverable is a customisation or adaptation of Supplier Existing IPR.

2.2 The categories of Supplier Existing IPR described in Paragraph 2.1 are mutually exclusive.

2.3 The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

- 2.3.1 in the case of Supplier Existing IPR embedded in a Deliverable:
  - (a) has no restriction on the identity of any transferee or sub-licensee;
  - (b) allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 2.4; and
  - (c) is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

2.3.2 in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

- (a) allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 2.4;
- (b) is transferrable to only:

Schedule 6 (Intellectual Property Rights), Crown Copyright 2025, [Subject to Contract]

- (i) a Crown Body;
- (ii) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (iii) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
  - (A) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (B) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (*What you must keep confidential*);
- (c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:
  - (i) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
  - (ii) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (*What you must keep confidential*); and
- (d) is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph.

2.4 For the purposes of Paragraph 2.3, the relevant purposes are

- 2.4.1 to allow the Buyer or any End User to receive and use the Deliverables;
- 2.4.2 to allow the Buyer to commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items; and
- 2.4.3 for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

### 3. Licences granted by the Buyer

3.1 The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that:

3.1.1 is non-exclusive, royalty-free and non-transferable;

3.1.2 is sub-licensable to any Sub-contractor where:

(a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (*What you must keep confidential*); and

(b) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

3.1.3 allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations under this Contract; and

3.1.4 terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.

3.2 When the licence granted under Paragraph 3.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 3.1.2:

3.2.1 immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);

3.2.2 either:

(a) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or

(b) if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and

3.2.3 ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

#### **4. Licences in respect of Third Party IPR**

4.1 The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

4.1.1 Approval is granted by the Buyer; and

4.1.2 one of the following conditions is met:

- (a) the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.1.3;
- (b) if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 4.1.2(a), all the following conditions are met:
  - (i) the Supplier has notified the Buyer in writing giving details of:
    - (A) what licence terms can be obtained from the relevant third party; and
    - (B) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
  - (ii) the Buyer has agreed to accept the licence terms of one of those third parties; and
  - (iii) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or
- (c) the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

4.1.3 The Third Party IPR licence referred to in Paragraph 4.1 is the licence set out in Paragraph 2.3 as if:

- (a) the term Third Party IPR were substituted for the term Supplier Existing IPR; and
- (b) the term third party were substituted for the term Supplier, in each place they occur.

Schedule 6 (Intellectual Property Rights), Crown Copyright 2025, [Subject to Contract]

## Schedule 7 (Staff Transfer)

### 1. Definitions

1.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Admission Agreement"</b>	the CSPS Admission Agreement (as defined in Annex D1: CSPS);
<b>"Employee Liability"</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"><li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>(b) unfair, wrongful or constructive dismissal compensation;</li><li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li><li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li><li>(e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;</li></ul>

Schedule 7 (Staff Transfer), Crown Copyright 2025, [Subject to Contract]

	(f) claims whether in tort, contract or statute or otherwise; and
	(g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
<b>"Fair Deal Employees"</b>	as defined in Part D;
<b>"Final Supplier Staff List"</b>	a list provided by the Supplier of all Supplier Staff whose employment will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Former Supplier"</b>	a supplier supplying the Services to the Buyer before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);
<b>"New Fair Deal"</b>	the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including:  (a) any amendments to that document immediately prior to the Relevant Transfer Date;  (b) any similar pension protection in accordance with the Annexes to Part D of this Schedule as notified to the Supplier by the Buyer;
<b>"Notified Subcontractor"</b>	a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>"Old Fair Deal"</b>	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the supplementary guidance <i>"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"</i> issued in June 2004;

Schedule 7 (Staff Transfer), Crown Copyright 2025, [Subject to Contract]

<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 ( <i>When the Buyer can end this contract</i> ) or 14.6 ( <i>When the Supplier can end the contract</i> );
<b>"Provisional Supplier Staff List"</b>	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>"Replacement Subcontractor"</b>	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations apply;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
<b>"Service Transfer"</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>"Staffing Information"</b>	in relation to all persons identified on the Provisional Supplier Staff List or Final Supplier Staff List, as the case may be, the information required in Annex E2 ( <i>Table of Staffing Information</i> ) in that format together with the employee liability information specified in regulation 11(2) and 11(3) and, if applicable, 11(4) of the Employment Regulations and such other information as the Buyer may reasonably require.

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The Buyer may, acting reasonably, make changes to the format or information requested in Annex E2 from time to time.

- "Statutory Schemes"** means the CSPS or NHSPS as defined in the Annexes to Part D of this Schedule;
- "Transferring Buyer Employees"** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;
- "Transferring Former Supplier Employees"** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
- "Transferring Supplier Employees"** those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

**2. Interpretation**

Where a provision in this Schedule imposes any obligation on the Supplier, including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

**3. Which parts of this Schedule apply**

The following parts of this Schedule marked "Applicable" shall apply to this Contract and the parts marked "N/A" shall not apply:

- 3.1 Part A (Staff Transfer At Operational Services Commencement Date – Transferring Employees from the Buyer to the Supplier): N/A
- 3.2 Part B (Staff Transfer At Operational Services Commencement Date – Transfer From Former Supplier): N/A
- 3.3 Part C (No Staff Transfer Expected On Operational Services Commencement Date): Applicable
- 3.4 Part D (Pensions): Applicable
  - 3.4.1 Annex D1 (CSPS): Applicable
  - 3.4.2 Annex D2 (NHSPS): Applicable
  - 3.4.3 Annex D3 (LGPS): N/A
  - 3.4.4 Annex D4 (Other Schemes): N/A
- 3.5 Part E (Staff Transfer on Exit): Applicable

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3.5.1 Annex E1 (List of Notified Subcontractors): Applicable

3.5.2 Annex E2 (Staffing Information): Applicable

## **Part A: Staff Transfer at the Start Date**

### **Transferring Employees from the Buyer to the Supplier**

#### **1. What is a relevant transfer**

1.1 The Buyer and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.

1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate).

#### **2. Indemnities the Buyer must give**

2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

- 2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
  - (b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;

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- 2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
  - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
  - 2.1.5 a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;
  - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of the Employment Regulations; and
  - 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or

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- 2.2.2 arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that their contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
  - 2.3.1 the Supplier will, or shall procure that the Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing; and
  - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Supplier and/or any Subcontractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with the Law;
  - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment or alleged employment;
  - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:
  - 2.4.1 for any contravention of the Equality Act 2010 (or predecessor/successor legislation); or
  - 2.4.2 for equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or
  - 2.4.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.
- 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than six (6) Months from the relevant Transfer Date.

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- 2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall ensure that the Notified Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

**3. Indemnities the Supplier must give and its obligations**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
    - (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Subcontractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;

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- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.6 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary

apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier

#### **4. Information the Supplier must provide**

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Subcontractor shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
  - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - 5.2.2 Old Fair Deal; and/or
  - 5.2.3 the New Fair Deal.
- 5.3 The Supplier acknowledges, in respect of those Transferring Buyer Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("**CSCS**") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.
- 5.4 Any changes necessary to this Contract as a result of Changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

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## **6. Pensions**

The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:

- 6.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 6.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

## **Part B: Staff transfer at the Start Date**

### **Transfer from a Former Supplier on Re-procurement**

#### **1. What is a relevant transfer**

1.1 The Buyer and the Supplier agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Former Supplier Employee.

1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **2. Indemnities given by the Former Supplier**

2.1 Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or

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- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions

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- proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within five (5) Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Supplier;
- 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2:
- (a) no such offer has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved;
  - (d) the Supplier and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person,
- and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.4 The indemnity in Paragraph 2.3:
- 2.4.1 shall not apply to:
- (a) any claim for:
    - (i) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or

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- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or
  - (b) any claim that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.
- 2.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that any Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

**3. Indemnities the Supplier must give and its obligations**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:
  - 3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and

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- conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
  - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  - 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
  - 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and
  - 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.5 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the

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Former Supplier's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4. Information the Supplier must give**

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. Cabinet Office requirements**

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - 5.1.2 Old Fair Deal; and/or
  - 5.1.3 the New Fair Deal.
- 5.2 Any changes necessary to this Contract as a result of changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

#### **6. Limits on the Former Supplier's obligations**

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that

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the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **7. Pensions**

7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:

7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

7.1.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

## **Part C: No Staff Transfer on the Commencement of Services**

### **1. What happens if there is a staff transfer**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Buyer or (because the Supplier was the only Former Supplier) any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer claims, or it is determined in relation to any employee of the Buyer, that their contract of employment has been transferred from the Buyer to the Supplier or any Subcontractor pursuant to the Employment Regulations then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
  - 1.2.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
  - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment; and
  - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person and, subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.3 and this Paragraph 1.2.4 and all applicable employment procedures set out in applicable Law, and subject also to Paragraph 1.5, the Buyer will indemnify the Supplier or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2, provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.3 If any such person as is described in Paragraph 1.2 is neither re-employed by the Buyer or employed by any third party nor dismissed by the Supplier or the relevant Subcontractor within the period(s) referred to in Paragraph 1.2, the employment of such person shall be treated as having transferred to the Supplier or the relevant Subcontractor (as appropriate) and the Supplier shall, or shall procure that the relevant Subcontractor shall (a) comply with such obligations as may be imposed upon it under Law, and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

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- 1.4 Where any person remains employed by the Supplier or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier or the relevant Subcontractor (as the case may be) and the Supplier shall indemnify the Buyer, and shall procure that the relevant Subcontractor shall indemnify the Buyer, against any Employee Liabilities that the Buyer may incur in respect of any such employees of the Supplier or any relevant Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to:
  - 1.5.1 any claim:
    - (a) for any contravention of the Equality Act 2010 (or its predecessor or any successor legislation); or
    - (b) for equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
in relation to any alleged act or omission of the Supplier or any Subcontractor; or
  - 1.5.2 any claim that the termination of employment was unfair because the Supplier or relevant Subcontractor neglected to follow a fair dismissal procedure; or
  - 1.5.3 any claim in relation to any termination of employment occurring later than 6 Months from the relevant Transfer Date.
- 1.6 If the Supplier or the relevant Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier or the relevant Subcontractor (as the case may be) and the Supplier shall (i) comply with the provisions of Part D: Pensions and its Annexes of this Staff Transfer Schedule, and (ii) indemnify the Buyer against any Employee Liabilities that the Buyer may incur in respect of any such employees of the Supplier or any relevant Subcontractor.

## Part D: Pensions

### 1. Definitions

1.1 In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (*Definitions*) and shall be deemed to include the definitions set out in the Annexes:

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Best Value Direction"</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPS"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>	has the meaning given in Annex D2 to this Part D;
<b>"Fair Deal Eligible Employees"</b>	each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D) and the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) as applicable (and shall include any such employee who has been admitted to or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);

<p><b>"Fair Deal Employees"</b></p>	<p>those:</p> <p>(a) Transferring Buyer Employees; and/or</p> <p>(b) Transferring Former Supplier Employees; and/or</p> <p>(c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; and/or</p> <p>(d) where the Former Supplier becomes the Supplier those employees</p> <p>who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
<p><b>"Fair Deal Schemes"</b></p>	<p>the relevant Statutory Scheme or a Broadly Comparable pension scheme;</p>
<p><b>"NHSPS"</b></p>	<p>the schemes as defined in Annex D2 to this Part D; and</p>
<p><b>"New Fair Deal"</b></p>	<p>has the meaning given to it in Paragraph 1 of this Staff Transfer Schedule.</p>

**2. Supplier obligations to participate in the pension schemes**

- 2.1 In respect of all or any Fair Deal Employees, each of Annex D1: CSPS or Annex D2: NHSPS, as appropriate, shall apply.
- 2.2 The Supplier undertakes to the Buyer to do, and to procure that any relevant Subcontractor will do, all such things and execute any documents (including any relevant Admission Agreement or Direction Letter/Determination, if necessary) as may be required to enable the Supplier or the relevant Subcontractor to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees, and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes to the Buyer:

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- 2.3.1 to pay, and to procure that any relevant Subcontractor will pay, to the Statutory Schemes all such amounts as are due under any relevant Admission Agreement or Direction Letter/Determination or otherwise and to deduct and pay, and to procure that any relevant Subcontractor will deduct and pay, to the Statutory Schemes such employee contributions as are required; and
- 2.3.2 to be fully responsible for all other costs, contributions, payments and other amounts relating to the participation of the Supplier or any relevant Subcontractor in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier shall, and shall procure that any relevant Subcontractor shall, comply with its requirements from the Start Date or, where it or the relevant Subcontractor previously provided a Broadly Comparable pension scheme, from the date it or the relevant Subcontractor (as the case may be) is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier and any such Subcontractor shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

**3. Supplier obligation to provide information**

- 3.1 The Supplier undertakes to the Buyer:
  - 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
  - 3.1.2 not to issue, or suffer or permit any Subcontractor to issue, any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
  - 3.1.3 to retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.

**4. Indemnities the Supplier must give**

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified NHS Pensions, the Buyer, any Replacement Supplier and any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by them which:

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- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any Default by the Supplier under this Part D, the CSPA Admission Agreement and/or the Direction Letter/Determination;
- 4.1.2 relate to the payment of benefits under or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Supplier or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
  - (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
  - (b) arise out of the failure of the Supplier or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; or
- 4.1.4 arise out of or in connection with the Supplier (or any Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Contract Period.
- 4.2 The indemnities in this Part D and its Annexes:
  - 4.2.1 shall survive termination of this Contract; and
  - 4.2.2 shall not be affected by the caps on liability contained in Clause 15. *(How much you can be held responsible for).*

**5. What happens if there is a dispute**

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall, in the absence of agreement between the Buyer and the Supplier, be referred to an independent Actuary:
  - 5.1.1 who will act as an expert and not as an arbitrator;
  - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
  - 5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.
- 5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement, the independent Actuary shall be appointed by the President for

the time being of the Institute and Faculty of Actuaries on the application of the Parties.

## 6. Other people's rights

- 6.1 The Parties agree that Clause 23 (*Other people's rights in this contract*) applies, and that the CRTPA applies, to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Supplier under this Part D, in their own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed in respect of them by the Subcontractor in their own right under section 1(1) of the CRTPA.

## 7. What happens if there is a breach of this Part D

- 7.1 The Supplier agrees to notify the Buyer should it Default in respect of any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate this Contract for Material Default and that the consequences of termination set out in Clause 14.5.1 shall apply in the event that the Supplier:
  - 7.1.1 commits an irremediable Default of any provision or obligation it has under this Part D; or
  - 7.1.2 commits a Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the Default and requiring the Supplier to remedy it.

## 8. Transferring New Fair Deal Employees

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or any other form of compulsory transfer of employment), the Supplier shall, and shall procure that any relevant Subcontractor shall:
  - 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);
  - 8.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
  - 8.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

## 9. What happens to pensions if this Contract ends

- 9.1 The provisions of Part E: Staff Transfer on Exit (*Mandatory*) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Supplier shall (and shall procure that its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier, any Replacement Subcontractor, NHS Pensions, CSPS, the relevant Administering Authority or the Buyer may reasonably require, to enable the Replacement Supplier and any relevant Replacement Subcontractor to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employees that remain eligible for New Fair Deal protection following a Service Transfer.

## 10. Broadly Comparable Pension Schemes on the Relevant Transfer Date

- 10.1 If the terms of Paragraph 4 of Annex D2: NHSPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
  - 10.2.1 established by the Relevant Transfer Date;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's or a Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier or any Subcontractor has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any relevant Subcontractor shall):
  - 10.3.1 supply to the Buyer details of its (or the relevant Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;

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- 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under sections 75 or 75A of the Pensions Act 1995;
- 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing the bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation with and assistance to any other Actuary appointed by the Buyer (where applicable); this will be with a view to the bulk transfer terms providing day for day or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employees who consent to such a transfer; and
- 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier's or Subcontractor's Broadly Comparable pension scheme is closed to future accrual or terminated; the relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Supplier or any Subcontractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any relevant Subcontractor shall) prior to the termination of this Contract:
- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable); the bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits), and the actuarial basis for this past service reserve basis should be aligned to the funding requirements of the relevant Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered; the bulk transfer terms shall be subject to

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an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or the relevant Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the relevant Subcontractor shall) pay the amount of the difference to the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct; the Supplier shall indemnify the Buyer and the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer may direct) for any failure to pay the difference as required under this Paragraph.

## **11. Broadly Comparable Pension Schemes in other Circumstances**

11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS or 5.2 of Annex D2: NHSPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

11.2 Such Broadly Comparable pension scheme must be:

- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
- 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
- 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's or any relevant Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and

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- 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier or any Subcontractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Buyer details of its (and any relevant Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and withdrawal and exit from the relevant Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under sections 75 or 75A of the Pensions Act 1995;
- 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable); the Supplier must ensure that day for day or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
- 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier or any relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier or the relevant Subcontractor's Broadly Comparable pension scheme is closed to future accrual or terminated; the relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the Supplier or any Subcontractor has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph

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11, the Supplier shall (and shall procure that any relevant Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the relevant Subcontractor (as agreed between them) must pay the Replacement Supplier's or the relevant Replacement Subcontractor's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the amount of the Shortfall as required, provided that in the absence of any agreement between the Supplier and the relevant Subcontractor, the amount of the Shortfall shall be paid in full by the Supplier. The Supplier shall indemnify the Buyer and the Replacement Supplier's or relevant Replacement Subcontractor's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

## 12. Right of Set-Off

12.1 The Buyer shall have the right to set off against any payments due to the Supplier under this Contract an amount equal to:

12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; and

12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Buyer shall also have the right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as a result of Paragraph 12.1 above.

## Annex D1: Civil Service Pension Schemes (CSPS)

### 1. Definitions

1.1 In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal; and
<b>"CSPS"</b>	the "Alpha" pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill-health Benefits Arrangements and (ii) Death Benefits Arrangements; and the Civil Service Additional Voluntary Contribution Scheme.

### 2. Access to equivalent pension schemes after transfer

2.1 In accordance with New Fair Deal, if the employment of any CSPS Fair Deal Employee compulsorily transfers to the Supplier or any Subcontractor as a result of either the award of this Contract or a Relevant Transfer, the Supplier shall, and shall procure that any such relevant Subcontractor shall, if in either case the Supplier or the relevant Subcontractor (as the case may be) is not an employer which participates automatically in the CSPS, secure a CSPS Admission Agreement to ensure that the relevant CSPS Fair Deal Employees and CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join, immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier shall, and shall procure that any relevant Subcontractors shall, procure that the relevant CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the

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provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier or any Subcontractor enters into a CSPA Admission Agreement in accordance with Paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and shall procure that any relevant Subcontractors shall), at no extra cost to the Buyer, offer the relevant remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 11 of Part D of this Staff Transfer Schedule.

## Annex D2: NHS Pension Scheme

### 1. Definitions

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<p><b>"Direction Letter/Determination"</b></p>	<p>an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;</p>
<p><b>"NHS Broadly Comparable Employees"</b></p>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> <li>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</li> <li>(b) their employment with a Former Supplier who provided access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they were entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</li> </ul> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and who the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS;</p>

<p><b>"NHSPS Eligible Employees"</b></p>	<p>any NHSPS Fair Deal Employee who at the relevant time is an active member of or eligible to participate in the NHSPS under a Direction Letter/Determination;</p>
<p><b>"NHSPS Fair Deal Employees"</b></p>	<p>means, other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> <li>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</li> <li>(b) their employment with a Former Supplier who provided access to the NHSPS pursuant to an NHS Pensions Direction letter or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they were entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</li> </ul> <p>and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services the same as or similar to the Services.</p> <p>For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;</p>
<p><b>"NHS Body"</b></p>	<p>has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by</p>

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	section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Arrears"</b>	any failure on the part of the Supplier or any Subcontractor to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
<b>"Retirement Benefits Scheme"</b>	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

**2. Membership of the NHS Pension Scheme**

- 2.1 In accordance with New Fair Deal, if the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer to the Supplier or any Subcontractor, and the Supplier or that Subcontractor is not an NHS Body or other employer which participates automatically in the NHSPS, the Supplier shall, or shall procure that the relevant Subcontractor shall, secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier or any relevant Subcontractor to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure, or must procure that the relevant Subcontractor secures, a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Supplier must ensure, and must procure that any relevant Subcontractor ensures, that:
  - 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of its receipt by the Supplier or the relevant Subcontractor (as the case may be).
- 2.4 The Supplier must ensure (and procure that each Subcontractor ensures) that all NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to or are eligible for membership of the NHSPS under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that each Subcontractor will) comply with the terms of each relevant Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care, in respect of the NHSPS Fair Deal Employees for so long

as it or any Subcontractor (as the case may be) remains bound by the terms of any such Direction Letter/Determination.

- 2.6 Where any employee omitted from any Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex is subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that any relevant Subcontractor will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that each relevant Subcontractor will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

### **3. Continuation of early retirement rights after transfer**

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and must ensure that each relevant Subcontractor provides) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

### **4. NHS Broadly Comparable Employees**

The Supplier shall (and shall procure that each relevant Subcontractor shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

### **5. What the Buyer will do if the Supplier breaches and/or cancels its pension obligations**

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or any relevant Subcontractor) breaches the terms of its Direction Letter/Determination. Notwithstanding the foregoing, the Supplier shall notify the Buyer in the event that it (or any relevant Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or any relevant Subcontractor) ceases to participate in the NHSPS for whatever reason, the Supplier shall (and shall procure that any such Subcontractor shall) offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.
- 5.3 If the Buyer is entitled to terminate this Contract or the Supplier (or any relevant Subcontractor) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising

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its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as the case may be) to offer Broadly Comparable Pension Benefits, on such terms as shall be decided by the Buyer. The provisions of Paragraph 10 (Broadly Comparable Pension Schemes on the Relevant Transfer Date ) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or any relevant Subcontractor.

- 5.4 In addition to the Buyer's right to terminate this Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid to the Supplier under this Contract or otherwise.

## **6. Compensation when pension scheme access can't be provided**

- 6.1 If the Supplier (or any relevant Subcontractor) is unable to provide the NHSPS Eligible Employees with either membership of:
- 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
  - 6.1.2 a Broadly Comparable pension scheme,
- the Buyer may in its sole discretion permit the Supplier (or the relevant Subcontractor) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or relevant Subcontractor, as the case may be) having consulted with a view to reaching agreement with any trade union recognised in respect of the NHSPS Fair Deal Employees or, in the absence of such trade union, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.
- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate this Contract.

## **7. Indemnities that the Supplier must give**

- 7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights in the period from the Relevant Transfer Date until the date of termination or expiry of this Contract, or the level of such Pension Benefits or NHS Premature Retirement Rights provided, constitutes a breach of their employment or any other rights.

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## **Annex D4: Other Schemes**

## Part E: Staff Transfer on Exit

### 1. Obligations before a Staff Transfer

1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract; and
- 1.1.3 the date which is twelve (12) Months before the end of the Contract Period; or
- 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Provisional Supplier Staff List, together with the Staffing Information in relation to the Provisional Supplier Staff List and it shall provide an updated Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier or Replacement Subcontractor:

- 1.2.1 the Final Supplier Staff List, which shall identify the basis upon which it is asserted that the individuals there listed are Transferring Supplier Employees; and
- 1.2.2 the Staffing Information in relation to the Final Supplier Staff List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier or Replacement Subcontractor.

1.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraphs 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):

- 1.5.1 not replace or re-deploy any Supplier Staff listed on the Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person they replace;
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment, or (ii)

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- pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
  - 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provisional Supplier Staff List;
  - 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
  - 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Provisional Supplier Staff List save by due disciplinary process;
  - 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer or any Replacement Supplier or Replacement Subcontractor (as the case may be);
  - 1.5.8 give the Buyer, any Replacement Supplier and any Replacement Subcontractor reasonable access to Supplier Staff and their consultation representatives to inform them about the intended transfer and to consult with them on any measures envisaged by the Buyer, Replacement Supplier or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
  - 1.5.9 co-operate with the Buyer and any Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
  - 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier or Replacement Subcontractor, of any notice to terminate employment given by the Supplier to or received from any persons listed on the Provisional Supplier Staff List regardless of when such notice takes effect;
  - 1.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice away any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer or any Replacement Supplier or Replacement Subcontractor (unless otherwise instructed by the Buyer (acting reasonably));

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- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
  - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier and ensure that any Broadly Comparable pension schemes set up by any Subcontractor are fully funded;
  - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
  - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions of this Staff Transfer Schedule which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
  - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Buyer relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Contract Period, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of Supplier Staff engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each Supplier Staff engaged in providing the Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions of this Staff Transfer Schedule); and
  - 1.6.4 a description of the nature of the work undertaken by each member of the Supplier Staff, broken down by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date, including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier or Replacement Subcontractor, in respect of

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each person on the Final Supplier Staff List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 updated tax code as at the Service Transfer Date if the code has changed since it was previously provided;
  - 1.7.5 updated details of any voluntary deductions from pay as at the Service Transfer Date if changes have occurred since the details were previously provided;
  - 1.7.6 a copy of the personnel file and all other records regarding the service of the Transferring Supplier Employee;
  - 1.7.7 all information required to meet the minimum record keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 2015; and
  - 1.7.8 updated bank/building society or other account details for payroll purposes if they have changed since they were previously provided.
- 1.8 From the date of the earliest event referred to in Paragraphs 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that within twenty (20) Working Days of a request from the Buyer it shall, and shall procure that each Subcontractor shall, use reasonable endeavours to comply with any reasonable request to align and assign Supplier Staff to any future delivery model proposed by the Buyer for Replacement Services within thirty (30) Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

## **2. Staff Transfer when the contract ends**

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services (or any part of the Services) being undertaken by a Replacement Supplier or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and any Transferring Supplier Employees and between any Subcontractor and any Transferring Supplier Employees (except in each case in relation to any contract terms disappplied by regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the relevant

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Replacement Supplier or Replacement Subcontractor (as the case may be) and the relevant Transferring Supplier Employees.

- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Final Supplier Staff List arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, pay for accrued but untaken holiday, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a Broadly Comparable pension scheme, which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier or the relevant Subcontractor (as appropriate); and (ii) the relevant Replacement Supplier or Replacement Subcontractor (as appropriate).
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and any Replacement Supplier and Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring before but excluding the Service Transfer Date of:
- (a) any collective agreement applicable to any of the Transferring Supplier Employees; and
- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

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- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
    - (b) in relation to any employee who is not identified in the Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer or any Replacement Supplier or Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
  - 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Final Supplier Staff List for whom it is alleged the Buyer or any Replacement Supplier or Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer or any Replacement Supplier or Replacement Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of any Replacement Supplier or Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their terms and conditions of employment or working conditions proposed by any Replacement Supplier or Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the failure of any Replacement Supplier or Replacement Subcontractor to comply with its obligations under the Employment Regulations.

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2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier or any Subcontractor who is not identified in the Final Supplier Staff List claims, or it is determined in relation to any employees of the Supplier or any Subcontractor, that their contract of employment has been transferred from the Supplier or that Subcontractor to any Replacement Supplier or Replacement Subcontractor pursuant to the Employment Regulations then:

- 2.5.1 the relevant Replacement Supplier or Replacement Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
- 2.5.2 the Supplier may offer, or may procure that any Subcontractor or other third party offers, employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the relevant Replacement Supplier or Replacement Subcontractor, provided always that such steps are in compliance with all applicable Law;
- 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or any Subcontractor, the relevant Replacement Supplier or Replacement Subcontractor (as the case may be) shall immediately release the person from its employment or alleged employment;
- 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the relevant Replacement Supplier or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person,

and subject to the relevant Replacement Supplier's or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4, the Supplier will indemnify the relevant Replacement Supplier or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's or any Subcontractor's employees referred to in Paragraph 2.5, provided that the Replacement Supplier takes, or procures that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

- 2.6.1 any claim for:
  - (a) any contravention of the Equality Act 2010 (or any predecessor or successor legislation); or
  - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of any Replacement Supplier or Replacement Subcontractor; or
- 2.6.2 any claim that the termination of employment was unfair because any relevant Replacement Supplier or Replacement Subcontractor neglected to follow a fair dismissal procedure; or

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- 2.6.3 any claim arising out of any termination of employment occurring later than six (6) Months from the Service Transfer Date.
- 2.7 If at any point the relevant Replacement Supplier or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.8 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Final Supplier Staff List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a Broadly Comparable pension scheme which in any case are attributable in whole or in part to the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.8.1 the Supplier or any relevant Subcontractor; and
- 2.8.2 the relevant Replacement Supplier or Replacement Subcontractor, as the case may be.
- 2.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and Replacement Subcontractor, in writing, with such information as is necessary to enable the Buyer, the Replacement Supplier and Replacement Subcontractor (as the case may be) to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that any Replacement Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.10 Subject to Paragraph 2.12, the Buyer shall procure that any Replacement Supplier indemnifies the Supplier and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.10.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier or any Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.10.2 the breach or non-observance by the Replacement Supplier or any Replacement Subcontractor on or after the Service Transfer Date of:

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- (a) any collective agreement applicable to any of the Transferring Supplier Employees identified in the Final Supplier Staff List; and
  - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Final Supplier Staff List which the Replacement Supplier or any Replacement Subcontractor is contractually bound to honour;
- 2.10.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier or any Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.10.4 any proposal by the Replacement Supplier or any Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations or otherwise) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.10.5 any statement communicated by the Replacement Supplier or any Replacement Subcontractor to, or action undertaken by the Replacement Supplier or any Replacement Subcontractor in respect of, any Transferring Supplier Employee identified in the Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.10.6 any proceeding, claim or demand by HMRC or any other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or any Subcontractor to the

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Replacement Supplier or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or such other statutory authority relates to financial obligations arising on or after the Service Transfer Date;

- 2.10.7 a failure of the Replacement Supplier or any Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.10.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or any Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.11 The indemnity in Paragraph 2.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from any failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations, or to the extent that the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

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## **Annex E1: List of Notified Subcontractors**

## Annex E2: Staffing Information

### EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: [Insert name of Transferor]

Number of Employees in-scope to transfer: [ ]

#### **[Guidance notes**

- 1** *If you have any Key Subcontractors, please complete all the above information for any staff employed by such Key Subcontractor(s) in a separate spreadsheet.*
- 2** *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
- 3** *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.]*

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EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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EMPLOYEE DETAILS & KEY TERMS								
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?	
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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		ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
	Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
	Emp No 1								
	Emp No 2								
	Emp No								
	Emp No								
	Emp No								
	Emp No								
	Emp No								

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CONTRACTUAL PAY AND BENEFITS								
Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

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<b>CONTRACTUAL PAY AND BENEFITS</b>						
<b>Details</b>	<b>Annual leave entitlement (excluding bank holidays)</b>	<b>Bank holiday entitlement</b>	<b>Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)</b>	<b>Maternity or paternity or shared parental leave entitlement and pay</b>	<b>Sick leave entitlement and pay</b>	<b>Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

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<b>PENSIONS</b>						
<b>Details</b>	<b>Employee pension contribution rate</b>	<b>Employer pension contribution rate</b>	<b>Please provide the name of the pension scheme and a link to the pension scheme website</b>	<b>Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?</b>	<b>If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?</b>	<b>Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPA, NHSPA, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

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<b>PENSIONS</b>						
<b>Details</b>	<b>If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.</b>	<b>If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.</b>	<b>If the Employee is in the NHSPS, please provide details of the Direction Letter.</b>	<b>If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.</b>	<b>Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?</b>	<b>If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?</b>
<b>Emp No 1</b>						
<b>Emp No 2</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

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OTHER			
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments
Emp No 1			
Emp No 2			
Emp No			



# Schedule 8 (Implementation Plan and Testing)

## Part A - Implementation

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Delay"</b>	(a) a delay in the Achievement of a Milestone by its Milestone Date; or  (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
<b>"Deliverable Item"</b>	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
<b>"Implementation Period"</b>	has the meaning given to it in Paragraph 7.1 of this Part A; and
<b>"Milestone Payment"</b>	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone.

### 2. Agreeing and following the Implementation Plan

2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan 30 days after the Effective Date.

2.2 The draft Implementation Plan:

2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and

2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.

2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its

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submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

**3. Reviewing and changing the Implementation Plan**

- 3.1 Subject to Paragraph 3.3 of this Part A, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a Material Default.

**4. Security requirements before the Start Date**

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in the Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff requiring access to the Buyer Premises have the appropriate security clearance. It is the

## Schedule 8 (Implementation Plan and Testing), Crown Copyright 2025, [Subject to Contract]

Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior Approval has been received, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.

- 4.6 If a property requires Supplier Staff to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5. **What to do if there is a Delay**

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:

5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;

5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;

5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and

5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6. **Compensation for a Delay**

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:

6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;

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

(a) the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 (*When the Buyer can end the contract*); or

(b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;

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- 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the earlier of (i) the date when the Milestone is Achieved and (ii) the end of the Delay Period Limit];
- 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
- 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 15 (*How much you can be held responsible for*).

**7. Implementation Plan**

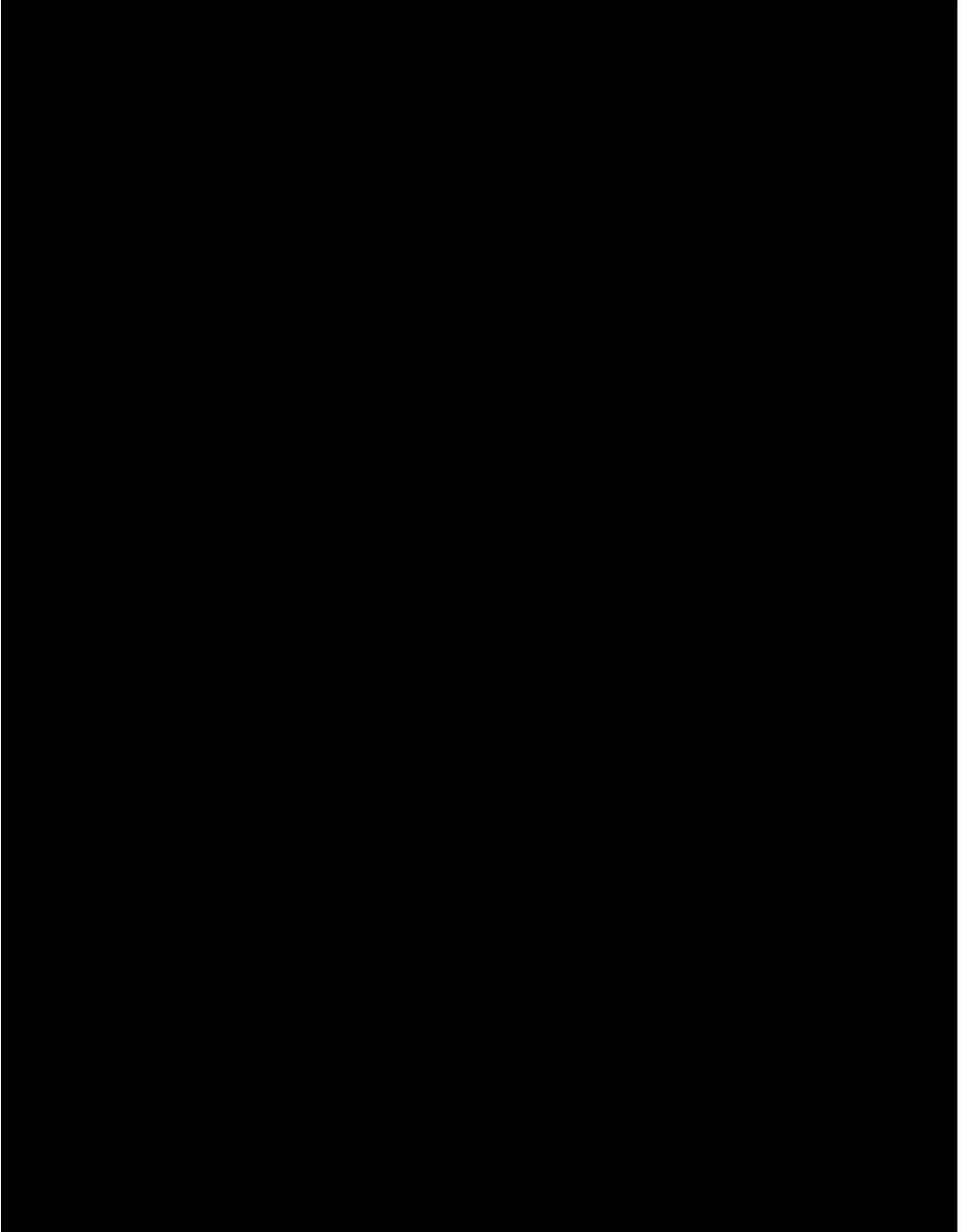
- 7.1 The Implementation Period will be a six (6) Month period.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
  - 7.3.1 work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
  - 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
  - 7.3.3 liaise with the incumbent supplier to enable the full completion of the Implementation Period activities; and
  - 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
  - 7.4.1 how the Supplier will work with the incumbent supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and
  - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.

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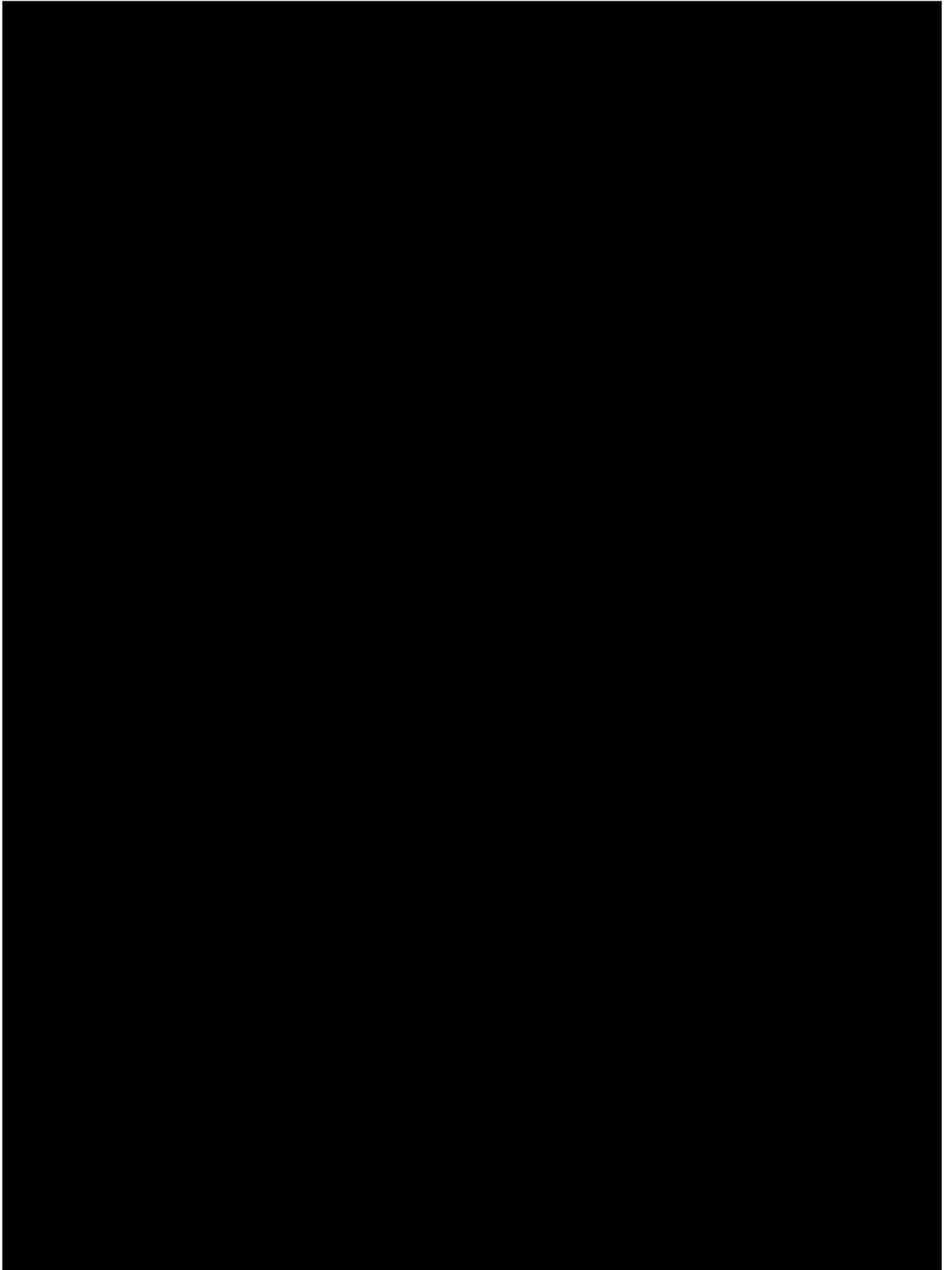
7.5 In addition, the Supplier shall:

- 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
- 7.5.2 mobilise all the Services specified in the Specification within this Contract;
- 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
  - (a) the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to Approval; and
  - (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.

## **Annex 1: Implementation Plan**



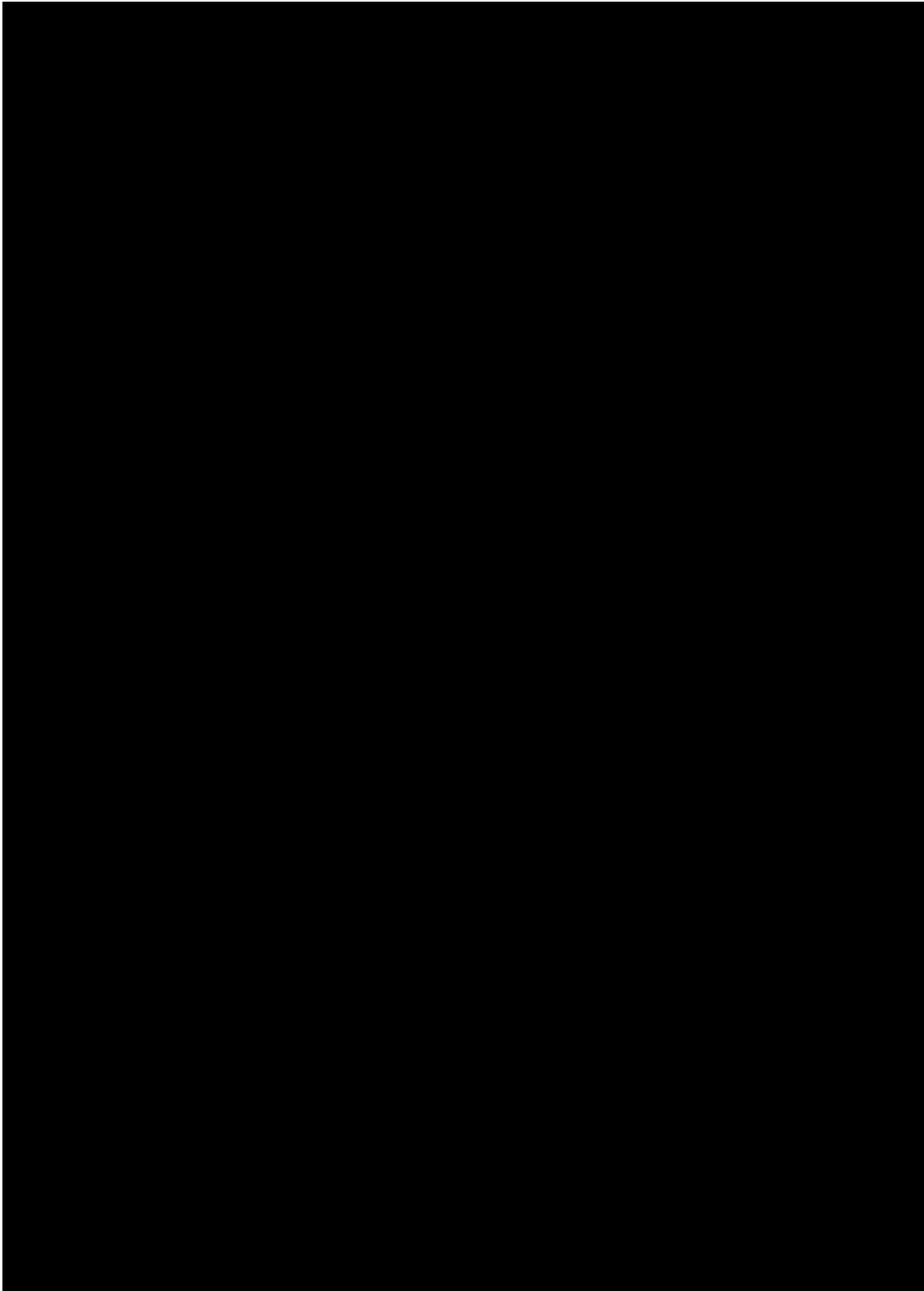
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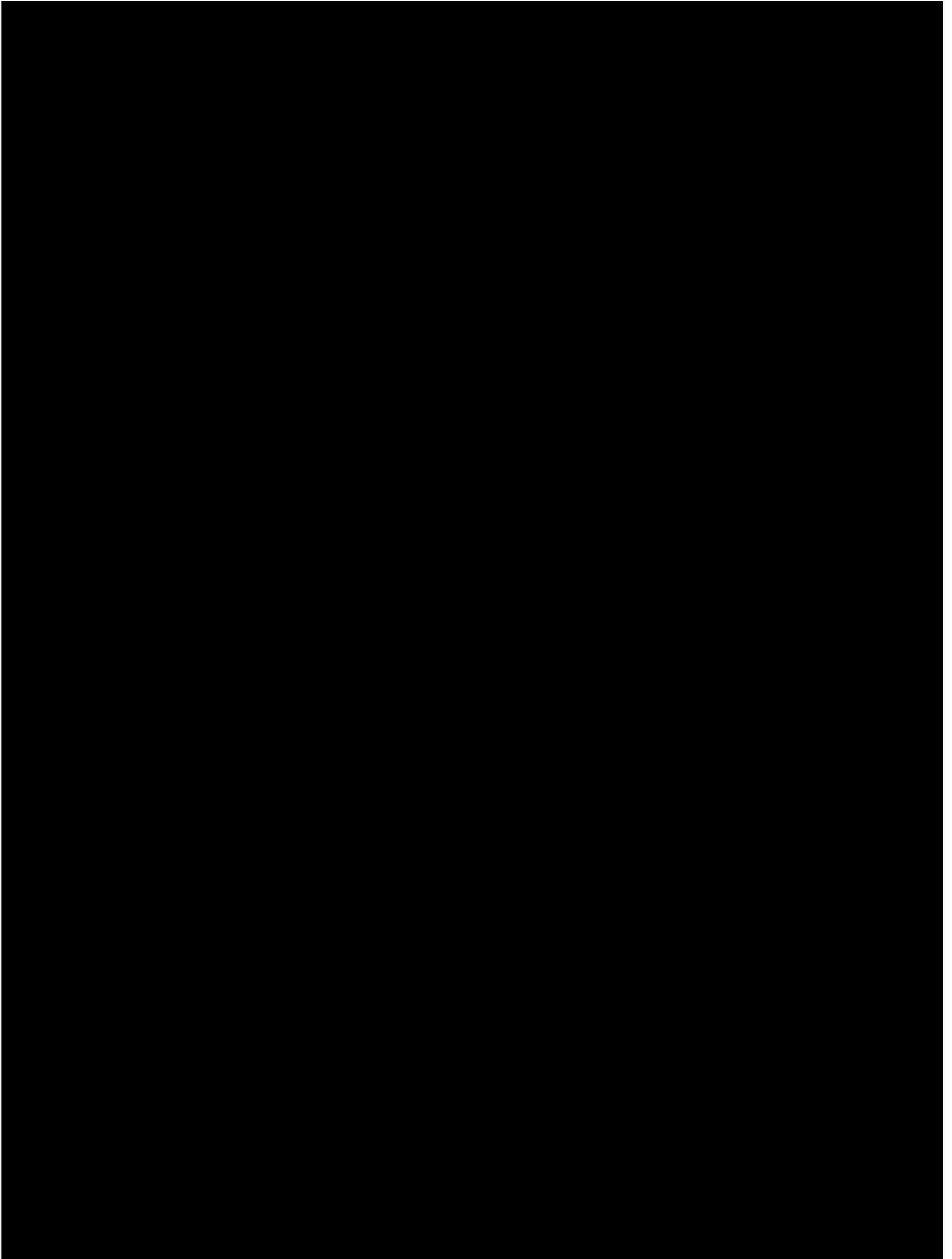
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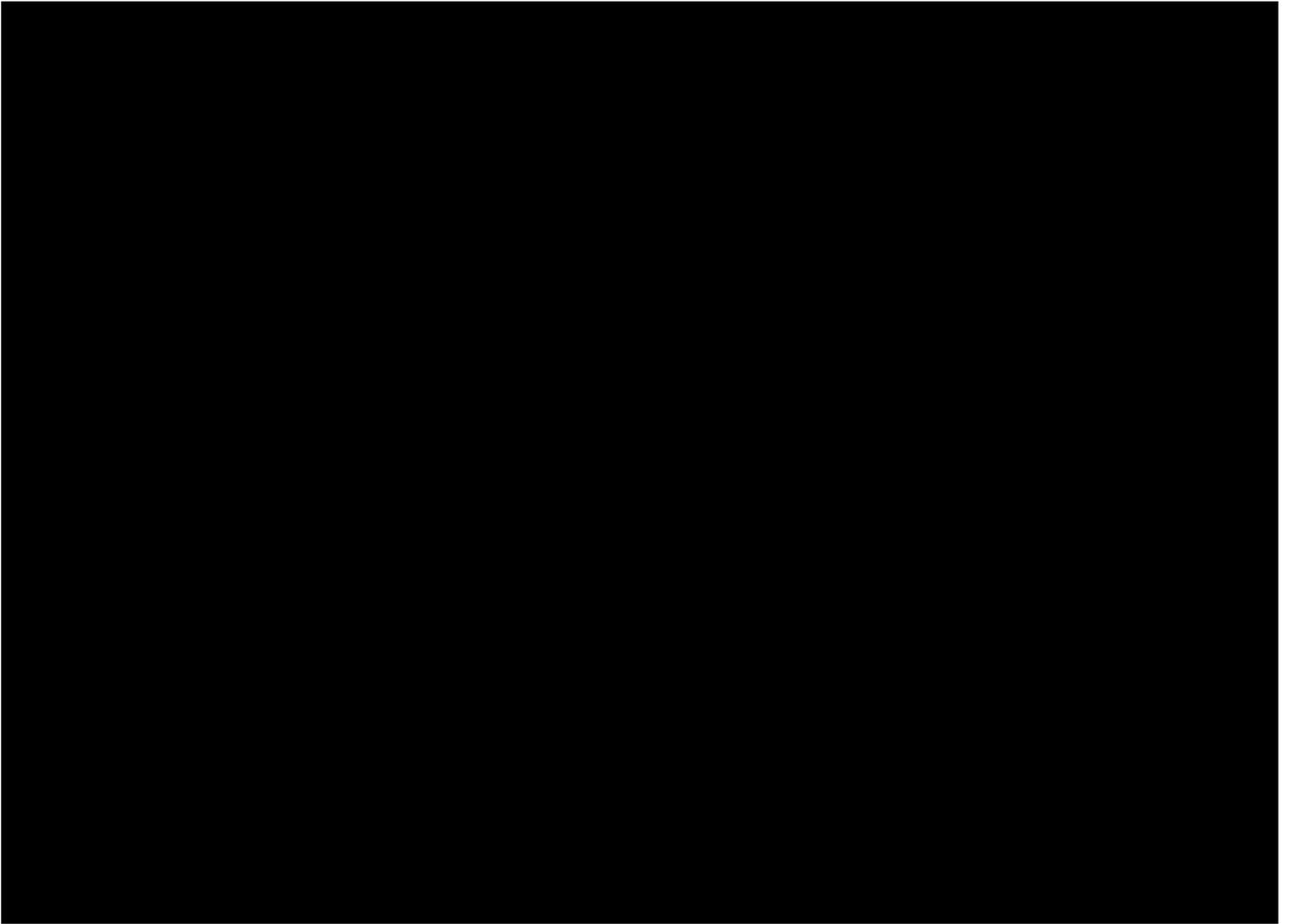
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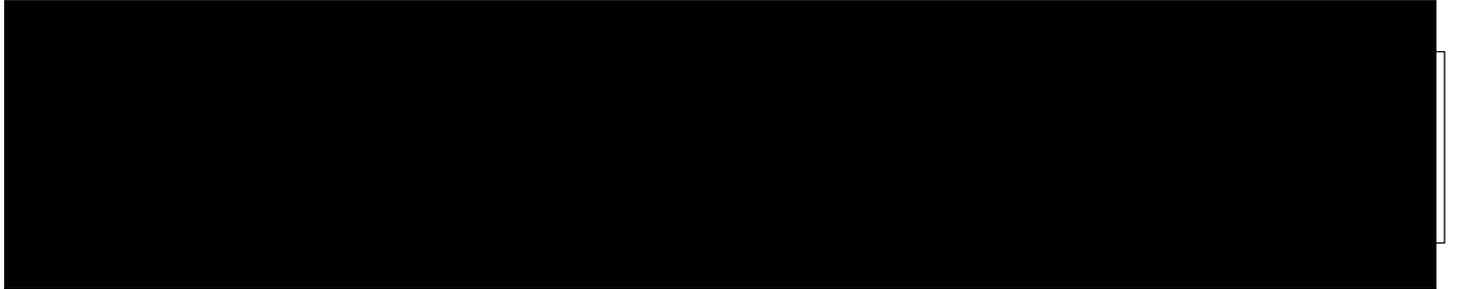
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## Part B - Testing

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Component"</b>	any constituent parts of the Deliverables;
<b>"Material Test Issue"</b>	a Test Issue of Severity Level 1 or Severity Level 2;
<b>"Satisfaction Certificate"</b>	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
<b>"Severity Level"</b>	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Test Issue Management Log"</b>	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Part B of the Schedule;
<b>"Test Issue Threshold"</b>	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
<b>"Test Reports"</b>	the reports to be produced by the Supplier setting out the results of Tests;
<b>"Test Specification"</b>	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
<b>"Test Strategy"</b>	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Part B of the Schedule;
<b>"Test Success Criteria"</b>	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Part B of the Schedule;

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<b>"Test Witness"</b>	any person appointed by the Buyer pursuant to Paragraph 9 of this Part B of the Schedule; and
<b>"Testing Procedures"</b>	the applicable testing procedures and Test Success Criteria set out in this Schedule.

**2. How testing should work**

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
  - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
  - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

**3. Planning for testing**

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case, no later than twenty (20) Working Days after the Effective Date.
- 3.2 The final Test Strategy shall include:
  - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
  - 3.2.4 the procedure to be followed to sign off each Test;

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- 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
- 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
- 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

**4. Preparing for Testing**

- 4.1 The Supplier shall develop Test Plans for the relevant Testing as specified in the Implementation Plan and submit these for Approval as soon as practicable but in any case, no later than twenty (20) Working Days prior to the date of the relevant Test.
- 4.2 Each Test Plan shall include as a minimum:
  - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
  - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its Approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

**5. Passing Testing**

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4 of this Part B.

**6. How Deliverables will be tested**

- 6.1 Following Approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
  - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant

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Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;

6.2.2 a plan to make the resources available for Testing;

6.2.3 Test scripts;

6.2.4 Test pre-requisites and the mechanism for measuring them; and

6.2.5 expected Test results, including:

(a) a mechanism to be used to capture and record Test results; and

(b) a method to process the Test results to establish their content.

**7. Performing the tests**

7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3 of this Part B.

7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.

7.4 The Buyer may raise and close Test Issues during the Test witnessing process.

7.5 The Supplier shall provide to the Buyer in relation to each Test:

7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and

7.5.2 the final Test Report within 5 Working Days of completion of Testing.

7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

7.6.1 an overview of the Testing conducted;

7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;

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- 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
  - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1 of this Part B; and
  - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
  - 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
  - 7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

## 8. Discovering Problems

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

## 9. Test witnessing

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

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- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
  - 9.3.1 shall actively review the Test documentation;
  - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - 9.3.3 shall not be involved in the execution of any Test;
  - 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
  - 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
  - 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

**10. Auditing the quality of the test**

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.

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10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

**11. Outcome of the testing**

11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:

11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;

11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Material Default.

11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:

11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.

11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (*Pricing and payments*).

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- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
  - 11.10 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for Approval within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5 of this Part B); and
  - 11.11 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

**12. Risk**

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
  - 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
  - 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

## Annex 1: Test Issues – Severity Levels

### 1. **Severity 1 Error**

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

### 2. **Severity 2 Error**

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
  - 2.1.1 causes a Component to become unusable;
  - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables.

### 3. **Severity 3 Error**

- 3.1 This is an error which:
  - 3.1.1 causes a Component to become unusable;
  - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;

but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

### 4. **Severity 4 Error**

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

### 5. **Severity 5 Error**

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

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## Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

### Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Contract**") [insert Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [insert Buyer name] ("**Buyer**") and [insert Supplier name] ("**Supplier**") dated [insert Effective Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in this Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]



# Schedule 10 (Performance Levels)

## 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Critical KPI Failure"</b>	has the meaning given to it in the Award Form;
<b>"KPI Failure"</b>	a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator;
<b>"KPI Performance Measure"</b>	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
<b>"KPI Threshold"</b>	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
<b>"Measurement Period"</b>	in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
<b>"Performance Monitoring Reports"</b>	has the meaning given in Paragraph 1.2 of Part B of this Schedule;
<b>"Performance Review Meetings"</b>	has the meaning given in Paragraph 1.3 of Part B of this Schedule;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Key Performance Indicators; and
<b>"Service Credit Cap"</b>	has the meaning given to it in the Award Form.

## 2. What happens if you don't meet the Key Performance Indicators

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each Key Performance Indicator.
- 2.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any KPI Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer

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detailing the level of service which was achieved in accordance with the

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provisions of Part B (Performance Monitoring) of this Schedule to enable the Buyer to assess the Supplier's performance against each Key Performance Indicator in each Measurement Period.

2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:

2.4.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or

2.4.2 the KPI Failure:

- a) exceeds the relevant KPI Threshold;
- b) has arisen due to a wilful Default by the Supplier;
- c) results in the corruption or loss of any Government Data (in which case the indemnity in Clause 18.6.4 and any or all of the other provisions of Clauses 18.4 and 18.5 and/or Clause 18.6 of the Core Terms may apply); and/or
- d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- e) the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (*When the Buyer can end the contract*).

### 3. Critical KPI Failure

On the occurrence of a Critical KPI Failure:

3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical KPI Failure**"),

provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for Material Default.

## **Part A: Key Performance Indicators and Service Credits**

### **1. Key Performance Indicators**

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any KPI Performance Measure; or
- 1.2 is likely to cause or causes a Critical KPI Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Critical KPI Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a KPI Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical KPI Failure has occurred, exercise its right to Compensation for Critical KPI Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 shall apply).

### **2. Service Credits**

- 2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

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## **Annex to Part A: Key Performance Indicators and Service Credits Table**

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Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
[Accurate and timely billing of Buyer	Accuracy /Timelines	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage under the specified KPI Performance Measure	[Insert assessment frequency. See guidance above on frequencies of assessment (and therefore publication) under the Procurement Act 2024, the Sourcing Playbook, and DDaT Playbook. See also para 1.7 of Part B below on publication]
Access to Buyer support	Availability	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage under the specified KPI Performance Measure	[See above]
[Social Value KPI 1]	[ ]	[ ]	[ ]	[Note where appropriate (see guidance above), this can be set at 0%]	[See above]

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Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
[Social Value KPI 2]	[ ]	[ ]	[ ]	[ ]	[See above]
[Social Value KPI 3]	[ ]	[ ]	[ ]	[ ]	[See above]

**NHS CONFEDERATION**

**REVISED 18<sup>th</sup> Nov: Service Credit Proposal for the NHS Employers Contract**

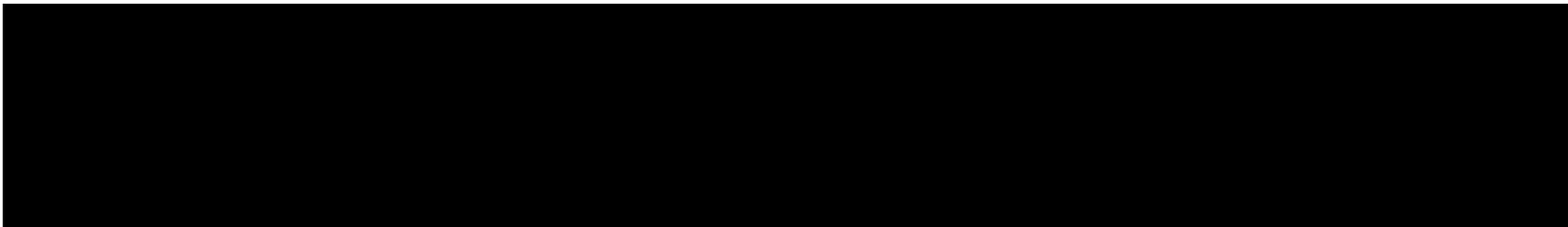
Service Credit KPIs

The table below shows the KPIs to be linked to the Service Credit process.

<b>KPI</b>	<b>Description</b>	<b>Target</b>	<b>Measurement approach</b>
KPI1	<b>Service delivery timeliness</b>	98% of agreed deliverables met within specified timelines.  Drop target to 90% for the initial period and then return to tender submission level of 98% thereafter.	Quarterly performance reporting with RAG ratings.
KPI2	<b>Employer engagement and satisfaction</b>	75% satisfaction rating from NHS employers.  Drop to 65% for initial period.	Surveys and feedback mechanisms.
KPI3	<b>Response to employer enquiries</b>	95% of enquiries acknowledged within 48 hours, resolved within 10 working days.  Drop to 85% for initial period.	CRM and query resolution tracking system.

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KPI4	<b>Workforce policy impact</b>	75% of stakeholders report improved knowledge/application of policies.  Drop to 70% for initial period.	Surveys, qualitative feedback, case studies.
KPI5	<b>Training effectiveness</b>	75% of participants report increased confidence in workforce practices.  Drop to 70% for initial period.	Training evaluations and impact assessments.
KPI6	<b>Quality and Accessibility of Content *</b>	75% of website users and subscribers rate quality and accessibility as good or excellent.  Drop to 70% for initial period.	Annual communications survey.
KPI7	<b>Does this Network / Guidance help your Organisation / Team to be a Better Employer **</b>	75% of respondents rate networks and guidance as good or excellent.  Drop to 70% for initial period.	Web hits, attendance rates, and surveys.



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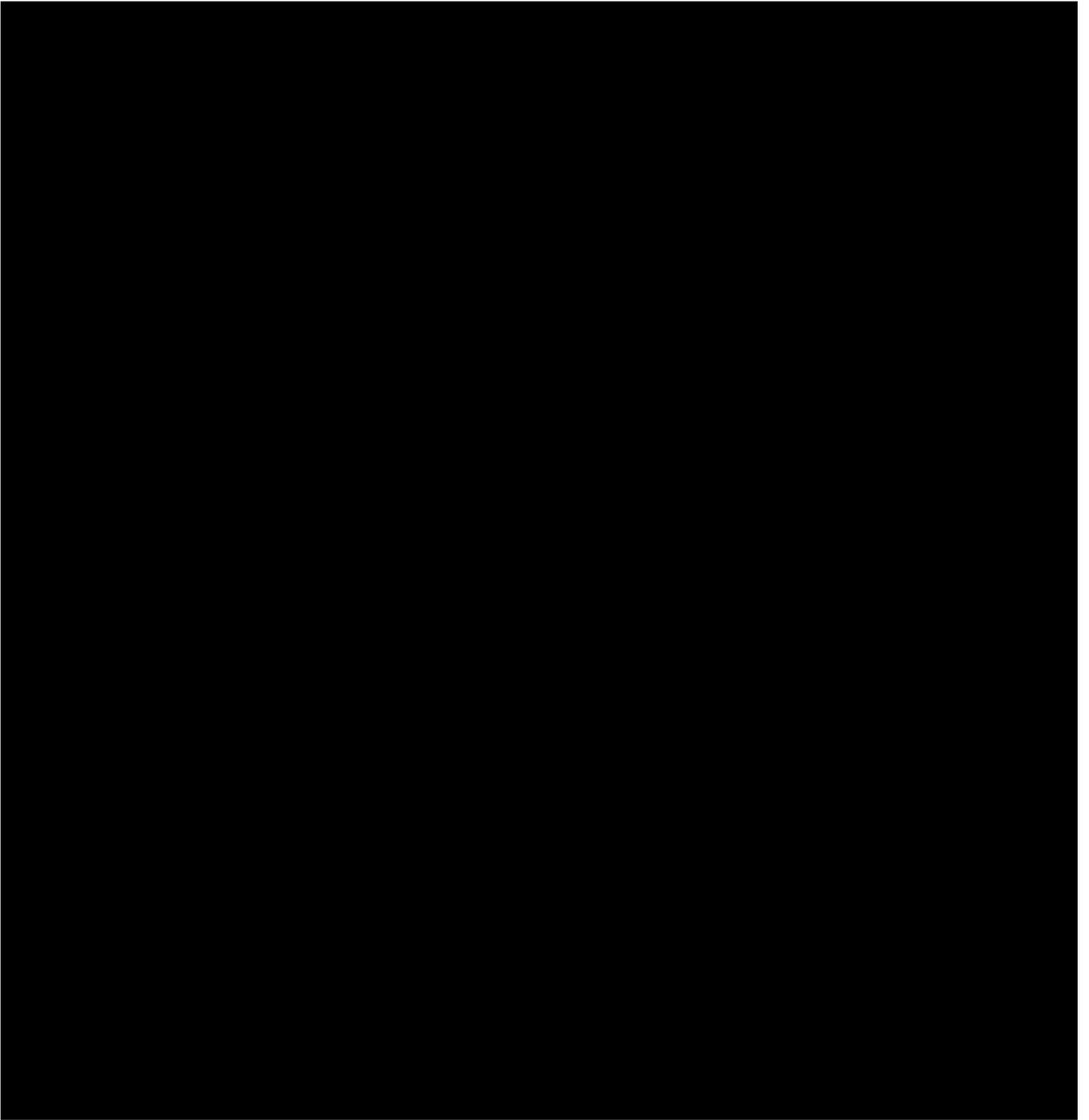
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## Part B: Performance Monitoring

### 1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Key Performance Indicators will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process agreed pursuant to Paragraph 1.1 of Part B of this Schedule and with such frequency as shall be agreed between the Parties pursuant to Paragraph 1.1 to enable the Buyer to assess the Supplier's performance against each Key Performance Indicator in each Measurement Period. The Performance Monitoring Reports shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 1.2.1 for each Key Performance Indicator, the actual performance achieved against the KPI Performance Measure for the relevant Service Period and, where a Measurement Period has ended in the period covered by the Performance Monitoring Report, the most recently ended Measurement Period;
  - 1.2.2 a summary of all failures to achieve Key Performance Indicators that occurred during that Service Period;
  - 1.2.3 details of any Critical KPI Failures;
  - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Key Performance Indicators to which the Service Credits relate; and
  - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
  - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
  - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
  - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to

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the Buyer's Representative and any other recipients agreed at the relevant meeting.

- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
- 1.6 The relevant table in the Annex to Part A of this Schedule describes how the levels of performance under the KPI Performance Measures will be mapped to the performance ratings prescribed under regulation 38(5) of the Procurement Regulations 2024. The mapping set out in that table will be applied by the Buyer when publishing relevant Transparency Information relating to the Performance Indicators and/or the Supplier's performance against the relevant KPIs pursuant to Section 52(3) and/or Section 71(2) of the Procurement Act 2023 and the associated Regulations.
- 1.7 The Supplier acknowledges and agrees that, each time the Buyer conducts an assessment of the Supplier's performance against a Key Performance Indicator, the Buyer may publish information as required by Law in relation to that assessment.

## **2. Satisfaction Surveys**

The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## Schedule 11 (Continuous Improvement)

### 1. Supplier's Obligations

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
  - 1.3.1 identifying the emergence of relevant new and evolving technologies;
  - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 1.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier for Approval within six (6) Months following the Effective Date.
- 1.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

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- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
  - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of this Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.



## Schedule 12 (Benchmarking)

### 1. Definitions

1.1 In this Schedule, the following expressions shall have the following meanings:

<b>"Benchmark Review"</b>	a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;
<b>"Benchmarked Deliverables"</b>	any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;
<b>"Comparable Rates"</b>	the Charges for Comparable Deliverables;
<b>"Comparable Deliverables"</b>	deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Supplier shall propose an approach for developing a comparable Deliverables benchmark;
<b>"Comparison Group"</b>	a sample group of organisations providing Comparable Deliverables which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;
<b>"Equivalent Data"</b>	data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;
<b>"Good Value"</b>	that the Benchmarked Rates are within the Upper Quartile; and
<b>"Upper Quartile"</b>	in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables.

## **2. When you should use this Schedule**

- 2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.
- 2.2 This Schedule sets out to ensure the Contract represents value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 of this Schedule, in which case the consequences of termination set out in Clause 14.5.1 shall apply.
- 2.3 Amounts payable under this Schedule shall not fall with the definition of a Cost.

## **3. Benchmarking**

### **3.1 How benchmarking works**

- 3.1.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Deliverables.
- 3.1.2 The Buyer shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Start Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.
- 3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.
- 3.1.4 The Deliverables that are to be the Benchmarked Deliverables will be identified by the Buyer in writing.
- 3.1.5 Upon its request for a Benchmark Review the Buyer shall nominate a benchmarker. The Supplier must approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
- 3.1.6 The cost of a benchmarker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

### **3.2 Benchmarking Process**

- 3.2.1 The benchmarker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:
  - (a) a proposed cost and timetable for the Benchmark Review;

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- (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not Approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its approval of the draft plan.
- 3.2.5 Once it has received the approval of the draft plan, the benchmarker shall:
  - (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the benchmarker's professional judgment using:
    - (A) information from other service providers to the Buyer;
    - (B) survey information;
    - (C) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
    - (D) market intelligence;
    - (E) the benchmarker's own data and experience;
    - (F) relevant published information; and
    - (G) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
  - (b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
  - (c) using the Equivalent Data, calculate the Upper Quartile; and
  - (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its

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reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates;
- (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

### 3.3 Benchmarking Report

3.3.1 For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;

3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:

- (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
- (b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
- (c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.

3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 28 (Changing the Contract).



## Schedule 13 (Contract Management)

### 1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Operational Board"</b>	the board established in accordance with Paragraph 4.1 of this Schedule; and
<b>"Project Manager"</b>	the manager appointed in accordance with Paragraph 2.1 of this Schedule.

### 2. Project Management

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

### 3. Role of the Supplier Project Manager

- 3.1 The Supplier Project Manager shall be:
  - 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position themselves; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Project Manager in regards to this Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3 Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under this Contract.

#### **4. Role of The Operational Board**

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex to the Schedule.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

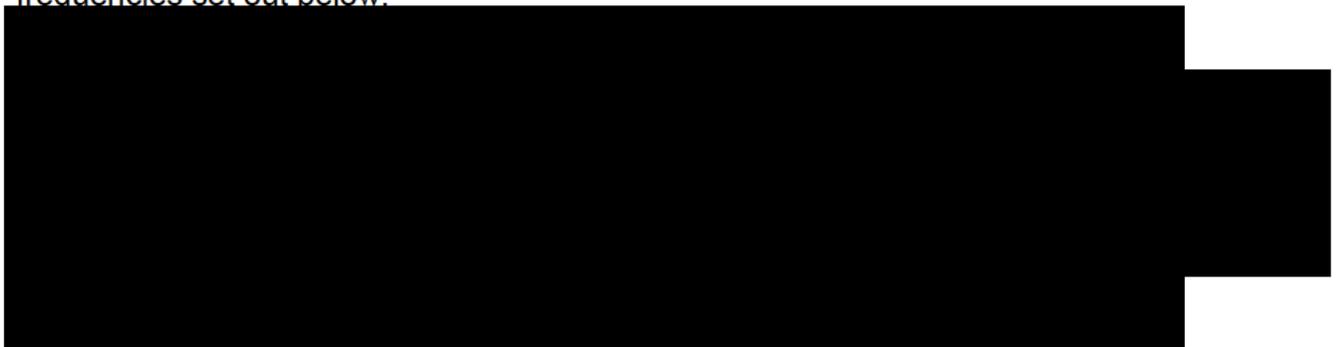
#### **5. Contract Risk Management**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to this Contract which the Buyer and the Supplier have identified.

#### **6.**



The Parties agree to operate the following boards at the locations and at the frequencies set out below:



**Governance and Accountability:**



**Procedures**

**The Project Sponsor is responsible for chairing meetings, and the Project Manager is responsible for distributing the agenda and associated papers in advance of meetings.**

**Reporting**

**Project Manager to circulate approved minutes to all attendees' post meetings**

**Meeting schedule**

**Board to meet every 2 weeks. Frequency to be reviewed and could be increased at pivotal points.**

**Decisions**

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**The Project Board makes its decisions by consensus. When consensus cannot be reached, the Project Sponsor makes the final decision, taking the majority opinion into consideration.**

Schedule 14 (Business Continuity and Disaster Recovery), Crown Copyright 2025, [Subject to Contract]

# Schedule 14 (Business Continuity and Disaster Recovery)

## 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"BCDR Plan"</b>	has the meaning given to it in Paragraph 2.1 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
<b>"Related Supplier"</b>	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule; and
<b>"Supplier's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule.

## 2. BCDR Plan

- 2.1 Within forty (40) Working Days of the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
  - 2.1.2 the recovery of the Deliverables in the event of a Disaster.
- 2.2 The BCDR Plan shall cover the following:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
  - 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### 3. General Principles of the BCDR Plan (Section 1)

- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
    - (c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
    - (d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
    - (e) a business impact analysis of different anticipated failures or disruptions;
  - 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
  - 3.1.9 identify the procedures for reverting to "**normal service**";
  - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
  - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and

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- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Key Performance Indicators, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any Default by the Supplier of this Contract.

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Key Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

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## **5. Disaster Recovery (Section 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
  - 5.2.1 loss of access to the Buyer Premises;
  - 5.2.2 loss of utilities to the Buyer Premises;
  - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
  - 5.2.4 loss of a Subcontractor;
  - 5.2.5 emergency notification and escalation process;
  - 5.2.6 contact lists;
  - 5.2.7 staff training and awareness;
  - 5.2.8 BCDR Plan testing;
  - 5.2.9 post implementation review process;
  - 5.2.10 any applicable Key Performance Indicators with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Key Performance Indicators in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
  - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
  - 5.2.13 testing and management arrangements.

## **6. Review and changing the BCDR Plan**

- 6.1 The Supplier shall review the BCDR Plan:
  - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
  - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by

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the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## 7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables;
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with

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the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.

- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## **8. Invoking the BCDR Plan**

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

## **9. Circumstances beyond your control**

The Supplier shall not be entitled to relief under Clause 24 (*Circumstances beyond your control*) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.



## Schedule 15 (Carbon Reduction)

### 1. Definitions

**"Carbon Footprint"** the sum of GHG Emissions from an individual, product, organisation or country, measured in tonnes of carbon dioxide-equivalent (t CO<sub>2</sub>e);

**"Contract Carbon Footprint"** the GHG Emissions resulting from the execution of the Contract as described by the GHG Protocol Corporate Standard;

**"Carbon Reduction Plan (CRP)"** a Carbon Reduction Plan in response to PPN 016;

**"Emissions Reduction"** the reduction of GHG Emissions from a product, service, contract, organisation or country;

**"Emissions Reduction Target (ERT)"** the target for Emissions Reduction for each year of the Contract, expressed as a percentage;

**"Emissions Report"** a report, substantially in the form set out in Table 1, containing, as a minimum, details of the GHG Emissions for this Contract against the Reporting Scopes for each Contract Year, details of any newly identified GHG Hotspots and details of any decarbonisation opportunities;

**"GHG Emissions Reduction Plan (ERP)"** a plan, substantially in the form set out in Table 2, containing the key activities and interventions that will lead to Emissions Reduction;

**"Greenhouse Gas Emissions (GHG Emissions)"** the release of greenhouse gases as defined in the GHG Protocol, typically measured in tonnes of carbon dioxide-equivalent (t CO<sub>2</sub>e).

**"GHG Hotspots"** processes, operations, and activities that have a proportionately large contribution to the total GHG Emissions for the Contract;

**"Government Net Zero Target"** the 2050 target date by which the UK government has committed to achieve Net Zero, pursuant to the Climate Change Act 2008 (2050 Target Amendment) Order 2019;

**"Net Nero"** Net Zero is a state in which the amount of GHG Emissions released into the atmosphere are balanced by the amount of GHG Emissions removed;

**"Reporting Scopes"** the following categories of GHG Emissions:

- (a) **"Scope 1 Emissions"** GHG Emissions that come from the Supplier directly, e.g. from burning fuel in vehicles or boilers that the Supplier owns;
- (b) **"Scope 2 Emissions"**: GHG Emissions from the Supplier's use of electricity; and

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- (c) **"Scope 3 Emissions"** Scope 3 is broken down into 15 sub-categories, including emissions associated with the goods and services you buy, financial services such as investments, and others such as waste or transportation. There are five Scope 3 categories included in the reporting for a Supplier's CRP: upstream transportation and distribution; waste generated in operations; business travel; employee commuting; and downstream transportation and distribution; and

**"Supplier Net Zero Target"** the date by which the Supplier commits to achieve Net Zero.

## 2. Net Zero Obligation

- 2.1 The Supplier shall, through best endeavours, ensure that their environmental impact is minimised throughout the delivery of the Contract.

## 3. Net Zero Commitment

- 3.1 The Supplier acknowledges and understands the Government Net Zero Target. Accordingly, and in line with PPN 016, the Supplier shall:

- 3.1.1 set a Supplier Net Zero Target with a target achievement date the same as or earlier than the Government Net Zero Target;
- 3.1.2 maintain its Carbon Reduction Plan (CRP) in accordance with PPN 016;
- 3.1.3 provide details of steps it is taking as an organisation to reduce its Carbon Footprint in the form of Emissions Reduction initiatives.

- 3.2 If the Buyer, having reviewed the Emissions Report and discussed with the Supplier its progress to achieve the Supplier Net Zero Target, determines (acting reasonably) that the Supplier is making insufficient progress towards achieving the Supplier Net Zero Date, the Buyer may work with the Supplier to determine and implement a suitable rectification plan.

## 4. Net Zero Contractual Commitments

- 4.1 The Supplier commits to delivering this contract in line with its published Contract Reduction Plan, as per PPN 016, and to support the achievement of the Supplier Net Zero Target and the Government Net Zero Target.

- 4.2 The Supplier shall create a Contract Carbon Footprint by undertaking an assessment of the GHG Emissions for this Contract. The assessment shall aim to quantify the GHG Emissions associated with resources, time and assets deployed in the delivery of the Contract and, in particular, identify GHG Hotspots.

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- 4.3 The GHG Emissions assessment outlined in Paragraph 5 should adhere to the [Greenhouse Gas Protocol's Product Standard and should be conducted to a mutually-agreed level of assurance. The GHG Emissions to be included in the assessment shall be mutually agreed between the Supplier and the Buyer.
- 4.4 The Supplier undertakes to, within 3 months of the Effective Date, develop and implement a Carbon Reduction Plan, in the form set out in Table 2, for the contract, with the objective of reducing the Contract Carbon Footprint of this contract by 10% per Contract Year throughout the Contract Period (the "**Emissions Reduction Target (ERT)**"), initially focusing on GHG Hotspots and shall update and provide a copy of the Carbon Reduction Plan to the Buyer annually.
- 4.5 The Supplier warrants to the Buyer that:
- 4.5.1 it has sufficient resources, infrastructure and materials to achieve the ERT by the date of the expiry of the Contract;
- 4.5.2 none of the Goods and Services supplied under this contract will be of lower quality as a result of working towards the ERT; and
- 4.5.3 it will not offer preferential terms and conditions to those other customers who do not require an ERT or similar obligations in their contracts.

## 5. Reporting

- 5.1 The Supplier shall:
- 5.2 re-assess the GHG Emissions every Contract Year; and
- 5.3 provide the Buyer with a written report of the results of each assessment within 3 months of the completion under Paragraph 4.4 of this Schedule 15 using Table 1: Emissions Report below and every following 6 months. The Buyer, acting reasonably, may make adjustments to the content or frequency of Emissions Reports as required.

## 6. Net Zero Modification

- 6.1 The Parties agree to, wherever possible, perform their obligations under this Contract in a way that minimises the Contract Carbon Footprint associated with the activities under this Contract.
- 6.2 Either Party may serve written notice to the other Party, requesting or proposing a Net Zero modification in the performance of either Party's obligations under the Contract in order to reduce the Contract Carbon Footprint resulting from this Contract (the "**Net Zero Modification Notice**").
- 6.3 The Net Zero Modification Notice must outline how the proposal will be implemented and must include:

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- 6.3.1 the reason for the proposed Net Zero modification, including how the modification will assist in delivering the Emissions Reduction Target or, alternatively, how the Net Zero modification will improve the Contract Carbon Footprint;
  - 6.3.2 the time within, and the manner in which, the Supplier proposes to implement the proposed Net Zero modification;
  - 6.3.3 the effect the proposed Net Zero modification will have on delivery of the contract (including any extension of time required to the date for practical completion); and
  - 6.3.4 any approvals required to implement the proposed Net Zero modification, and the effect of the proposed Net Zero modification on any existing approvals.
- 6.4 The requested Net Zero modification:
- 6.4.1 must be capable of being implemented within 60 days following agreement between the Parties;
  - 6.4.2 must not result in an increase in an overall liability or cost to either Party or a reduction in the quality of Goods or Services delivered to either Party by the other as contemplated by this Contract; and
  - 6.4.3 must not cause a reduction in compensation due to either Party under the Contract.
- 6.5 Within 60 days of receipt of the Net Zero Modification Notice, the notified Party must provide the notifying Party with a written response either:
- 6.5.1 accepting the request in the Net Zero Modification Notice and outlining a way to implement it within 60 days;
  - 6.5.2 requesting further information; or
  - 6.5.3 rejecting the request in the Net Zero Modification Notice and explaining, reasonably and in good faith:
    - (a) why the request would have a material negative impact on the notified party in terms of cost, quality, legal risk, or other relevant factors; or
    - (b) why the request would not have a material impact on reducing the Contract Carbon Footprint resulting from this Contract.
- 6.6 Where the request in the Net Zero Modification Notice is accepted, the Contract shall be modified following the Variation Procedure.
- 6.7 If the notified party rejects the request in the Net Zero Modification Notice in accordance with Paragraph 7.5.3 but the notifying Party does not

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agree that the request would have a material negative impact on the notified Party then both Parties shall resolve the Dispute in accordance with the Dispute Resolution Procedure.

**7. Remediation Plan**

7.1 The Supplier shall notify the Buyer as soon as it becomes aware of any reason why it might fail to achieve any of the obligations in Paragraph 4. The Buyer shall work with the Supplier to agree a remediation plan for the Supplier **in accordance with the Rectification Plan Process**.

**8. Fuel Emissions**

- 8.1 The Supplier shall avoid fuel emissions wherever possible by:
- 8.1.1 arranging meetings using e-conferencing services where face-to-face meetings are not required by the Buyer;
  - 8.1.2 using logistics to rationalise journeys and minimise miles travelled in the transportation of goods to Buyer Premises;
  - 8.1.3 providing online and webinar-based training for Supplier Staff, minimising the need for travel to attend courses; and
  - 8.1.4 encouraging Supplier Staff to use electric/hybrid vehicles or the rail service rather than petrol, diesel powered vehicles or short haul flights.

**9. GHG Emissions Reporting**

**Table 1: Emissions Report**

Contract Year	Contract Emissions			Emerging Hotspots  (including narrative to explain how interventions have affected the results)	GHG	Decarbonisation Opportunities  (including narrative to explain how interventions have affected the results)
	Scope 1	Scope 2	Scope 3			
Year 1						

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Contract Year	Contract Emissions			Emerging GHG Hotspots  (including narrative to explain how interventions have affected the results)	Decarbonisation Opportunities  (including narrative to explain how interventions have affected the results)
	Scope 1	Scope 2	Scope 3		
Year 2					
Year 3					
Year 4					

Table 2: Carbon Reduction Plan

GHG Hotspot	Contract Year	Estimated Emissions	Actual Emissions	Emissions Reduction Target (ERT) (%)	Actual Reduction (%)

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GHG Hotspot	Contract Year	Estimated Emissions	Actual Emissions	Emissions Reduction Target (ERT) (%)	Actual Reduction (%)

## Annex A – Optional Paragraphs

### Part A - General Provisions

1. For the provision and disposal of Goods:
  - 1.1 Suppliers should ensure waste is minimised and the amount of waste sent to landfill is reduced. Suppliers should also ensure packaging material is recyclable where possible;
  - 1.2 where a Good is unsuitable for refurbishment, the Supplier shall ensure the Good is recycled or disposed of in an environmentally friendly manner;
  - 1.3 the Supplier shall provide the Buyer with appropriate evidence that the Good has been disposed of in accordance with the requirements of the duty of care for waste as set out in the Waste Duty of Care Code of Practice 2018, or its successor;
  - 1.4 waste materials deposited into landfill sites shall be in accordance with the Environment Agency Landfill Directive;
  - 1.5 the Supplier shall work with the Buyer to offer a waste management service at little or no cost to the Buyer;
  - 1.6 where the Supplier stipulates a cost for the waste management service, the Buyer shall be provided with a breakdown of all Supplier costs. The Supplier shall detail mitigating action taken to reduce costs for the Buyer;
  - 1.7 the Supplier shall take responsibility for waste management and work with the Buyer to ensure they meet external and internal targets for the reduction of waste. The Supplier shall develop sustainable ways of achieving zero waste to landfill and continuous improvements as advances in technology arise;

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- 1.8 the Supplier shall provide information to the Buyer on the methods of disposal of waste, showing clear evidence of using disposal methods which are environmentally preferable as required. The Supplier shall, wherever possible, recycle or use for energy recovery to avoid waste being sent to landfill and assure that as much of the waste as possible will be recycled; and
- 1.9 the Buyer may request from the Supplier details on the action taken by Supplier to prevent waste being sent to landfill including whether the goods were reused via donation to charitable organisations or good causes.
2. The Supplier shall work proactively with its Subcontractors to help quantify and reduce the environmental impacts of the Deliverables. When requested by the Buyer, the Supplier shall communicate annually on progress and reductions made on the environmental impact of the Deliverables the Supplier has undertaken, in accordance with the terms of the Contract.
3. The Supplier shall deliver the obligations in respect of GHG Emissions reporting requirements, on travel undertaken as part of the delivery of the works and services. GHG Emissions shall be calculated in accordance with the DEFRA guidelines for measuring environmental impacts. The Supplier shall ensure that the version used for calculation is current at the time the figures are produced. The current version may be accessed using the link below:  
<https://www.gov.uk/government/publications/environmental-reporting-guidelines-including-mandatory-greenhouse-gas-emissions-reporting-guidance>.

**Part B - Sector Specific Paragraphs**

**1. Technology Sector Paragraphs**

- 1.1 The Supplier shall comply with the [EU Data Centres Code of Conduct \(the “Code of Conduct”\)](#). The Supplier shall ensure that any data centre used in delivering the Services is registered as a “Participant” under this Code of Conduct or provide evidence that the best practices therein have been adopted.
- 1.2 When designing, procuring, implementing and delivering the Contract, the Supplier shall ensure compliance with the technology code of practice, procure “ENERGY STAR” certified products and adopt appropriate best practices set out in ISO 50001 for Energy Management.

**2. IT Hardware Asset Management Sector Paragraphs**

- 2.1 The Supplier shall ensure that IT Assets procured for the delivery of the Contract shall as a minimum comply with Government Buying Standards (“**GBSs**”) where those standards exist for the asset type concerned i.e. laptops, desktops, workstations, scanners and printers.
- 2.2 Where the IT asset is not covered by GBSs the Supplier shall ensure

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compliance with the GBSs criteria, covering mobile phones, imaging equipment (including printers, scanners, and copiers), and office IT products being monitors/computer displays, personal computers (laptops, notebooks, desktops, thin clients), keyboards, external power supplies and discrete graphic processors.

- 2.3 For asset types where there are no GBSs or EU Green Public Procurement criteria available, the Supplier shall ensure that the models of asset deployed have Energy Star certification (using "ECMA" or equivalent declarations agreed with the Buyer) and comply with "EPEAT" or equivalent schemes for sustainable management of resources and energy over the asset lifecycle.

### 3. **Cloud Services Sector Paragraphs**

- 3.1 When hosting the Services in the cloud, all data centres used either by the Supplier in provision of the Services, must be operated with due regard for energy and cooling efficiency and in accordance with the [EU Data Centres Code of Conduct](#) (the "Code").
- 3.2 In operation of the cloud service, all available power management facilities on Supplier Assets are to be utilised to deliver the service such that standby and other low power modes are activated to match availability to demand, paying due regard to the Key Performance Indicators as specified in Schedule 10 (Performance Levels) of the Contract.
- 3.3 The Supplier shall provide the Buyer with a copy of the annual energy return required by the Code, in respect of the energy used in the provision of the Services.

### 4. **Construction Works Sector Paragraphs**

- 4.1 The Supplier shall, as part of each project contract:
- 4.1.1 consider and propose methods for designing out waste and designing for destruction;
  - 4.1.2 provide a "Site Waste Management Plan"; and
  - 4.1.3 report on waste performance and, where specified, via an online tool.
- 4.2 The Supplier must adhere to the specific requirements regarding the salvaging of materials, ownership of salvaged materials and storage / removal of salvaged materials. The specific requirements will be defined in each contract.

### 5. **Facilities Management Sector Paragraphs**

- 5.1 Suppliers shall provide the Buyer with a sustainability management plan covering the Suppliers approach to:

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- 5.1.1 energy management;
- 5.1.2 water, to include system infrastructure maintenance and wastewater management;
- 5.1.3 waste prevention and management including waste hierarchy and segregation;
- 5.1.4 recycling of waste paper;
- 5.1.5 reducing single use plastics in accordance with the Environmental reporting guidelines: including Streamlined Energy and Carbon Reporting requirements and related Regulations in place across devolved administrations and all future waste related regulations; and
- 5.1.6 minimising transport use.
- 5.2 The Supplier shall ensure that where they have a responsibility to deliver project works on behalf of the Supplier, all new buildings meet the “BREEAM” or equivalent schemes excellent standard, and that retrofits meet the ‘very good’ standard.
- 5.3 The Supplier shall provide the availability of a professional BREEAM assessor service, provided by licensed BREEAM assessors on all matters relating to the BREEAM assessment of the Buyer Premises if required by the Buyer including:
- 5.4 reduction in running costs;
  - 5.4.1 measurement and improvement of the performance of Buyer Premises;
  - 5.4.2 empowerment of staff;
  - 5.4.3 development of action plans; and
  - 5.4.4 reporting of performance.
- 5.5 Where any new or replacement equipment, to include Assets and component parts which contribute to the Buyer's carbon Net Zero performance at the Buyer Premises are required, the Supplier shall be responsible for completing “Whole Life Costing” reports, prioritising low-/zero-carbon technologies and ensuring sustainable procurement methods form the basis of the recommendations issued to the Buyer. The Supplier shall ensure Buyer approval has been received in advance of the commencement of any works at Buyer Premises.
- 5.6 All replacement equipment delivered must be new, or (with the Buyer’s written approval at its sole discretion) as new if recycled, reconstructed, unused and of recent origin.

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- 5.7 The Supplier shall work to reduce the amount of travel undertaken by Supplier Staff and third party Suppliers by combining deliveries of Goods to each Buyer Premises.
- 5.8 The Supplier shall work to reduce GHG Emissions from transport by adopting the use of environmentally-friendly transport solutions.
- 5.9 The Supplier shall bring packaging waste in line with UK government initiatives by:
  - 5.9.1 influencing packaging recovery and recycling rates, and so reduce the amount of packaging disposed into landfill; and
  - 5.9.2 Influencing the amount of packaging actually used in the supply chain.
- 5.10 The Supplier shall support energy management initiatives through:
  - 5.10.1 taking account of, and complying with, the Buyer's energy strategy and action plan and its targets under the "Greening Government Commitments" and any subsequent UK government policy;
  - 5.10.2 working with the Buyer to meet external and internal targets for reducing energy consumption;
  - 5.10.3 ensuring that all energy-consuming plant under its jurisdiction or control is maintained to operate at optimum efficiency and all fuels, gas, electricity are used economically, in accordance with any operational policies issued by the Buyer;
  - 5.10.4 supporting the Buyer's initiatives for energy-saving strategies including separate heating, lighting and ventilation strategies and co-operate with the Buyer in achieving agreed objectives; and
  - 5.10.5 for waste management and collection, by:
    - 5.10.5.1 taking responsibility for waste management and working with the Buyer to strive to meet external and internal targets for the reduction of waste and to develop sustainable ways of achieving zero waste to landfill and continuous improvements as advances in technology arise;
    - 5.10.5.2 providing information to the Buyer on the methods of disposal of waste, showing clear evidence of using disposal methods which are environmentally preferable (if required by the Buyer). The Supplier shall ensure that as much of the waste as possible will be recycled or used for energy recovery, rather than sent to landfill; and

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- 5.10.5.3 developing a waste minimisation plan to reduce product consumption by rethinking the need, redeploying, repairing, refurbishing, leasing and/or hiring Assets as appropriate using a formal mobile Asset management plan.
- 5.11 Where a catering Service is provided, the Supplier shall develop a food waste minimisation plan if required by the Buyer, in accordance with the best practice standard of the food and catering GBS and with the Waste and Resources Action Programme's "Hospitality and Food Service Agreement".
- 5.12 The Supplier shall collect and dispose of all of the waste in line with the "Waste Hierarchy" and best practice.
- 5.13 The Supplier shall ensure that transport GHG Emissions are minimised by optimising collections and ensuring that transportation schedules are planned to reduce GHG Emissions and/or through the use of well maintained, low-emission vehicles and, for example, electric vehicles.
- 5.14 The Supplier shall ensure that all Supplier Staff responsible for collecting waste are trained and adhere to the Buyer's health and safety and environmental policies.
- 5.15 The Supplier shall consider the potential for products to be re-deployed elsewhere, for example, when electrical and electronic products are no longer required, and shall consider using the CCS reuse website for furniture.



**Schedule 16 (Security), Crown Copyright 2024,  
[Subject to Contract]**

# Schedule 16 (Security) Short Form Security Schedule

## Option 1- Short Form

### 1 Supplier obligations

#### Core requirements

- 1.1 The Supplier must comply with the core requirements set out in Paragraphs 4 to 9.
- 1.2 Where the Buyer has selected an option in the table below, the Supplier must comply with the requirements relating to that option set out in the relevant Paragraph:

<b>Certifications</b> (see Paragraph 4)		
The Supplier must have the following Certifications (or equivalent):	ISO/IEC 27001:2022 by a UKAS-recognised Certification Body	<input type="checkbox"/>
	Cyber Essentials Plus	<input type="checkbox"/>
	Cyber Essentials	<input checked="" type="checkbox"/>
	No certification required	<input type="checkbox"/>
Subcontractors that Handle Government Data must have the following Certifications (or equivalent):	ISO/IEC 27001:2022 by a UKAS-recognised Certification Body	<input type="checkbox"/>
	Cyber Essentials Plus	<input type="checkbox"/>
	Cyber Essentials	<input checked="" type="checkbox"/>
	No certification required	<input type="checkbox"/>
<b>Locations</b> (see Paragraph 5)		
The Supplier and Subcontractors may store, access or Handle Government Data in:	the United Kingdom only	<input checked="" type="checkbox"/>
	a location permitted by and in accordance with any regulations for the time being in force made under section 17A of the Data Protection Act 2018 (adequacy decisions by the Secretary of State).	<input type="checkbox"/>
	anywhere in the world not prohibited by the Buyer	<input type="checkbox"/>
<b>Staff Vetting Procedure</b> (see Paragraph 6)		
The Buyer requires a Staff Vetting Procedure other than BPSS		<input type="checkbox"/>
Where an alternative Staff Vetting Procedure is required, that procedure is:		

**Optional requirements**

1.3 Where the Buyer has selected an option in the table below, the Supplier must comply with the requirements of the corresponding Paragraph. Where the Buyer has not selected an option, the corresponding requirement does not apply.

<b>Security Management Plan</b> (see Paragraph 1)	
The Supplier must provide the Buyer with a Security Management Plan detailing how the requirements for the options selected in this table have been met.	<input type="checkbox"/>
<b>Buyer Security Policies</b> (see Paragraph 11)	
The Buyer requires the Supplier to comply with the following policies relating to security management: <ul style="list-style-type: none"> <li>• <b>[List Buyer security policies with which the Supplier and Sub-contractors must comply]</b></li> </ul>	<input type="checkbox"/>
<b>Security testing</b> (see Paragraph 12)	
The Supplier must undertake security testing at least once every Contract Year and remediate any vulnerabilities, where it is technically feasible to do so	<input type="checkbox"/>
<b>Cloud Security Principles</b> (see Paragraph 13)	
The Supplier must assess the Supplier System against the Cloud Security Principles	<input type="checkbox"/>
<b>Record keeping</b> (see Paragraph 14)	
The Supplier must keep records relating to Subcontractors, Sites, Third-party Tools and third parties	<input type="checkbox"/>
<b>Encryption</b> (see Paragraph 15)	
The Supplier must encrypt Government Data while at rest or in transit	<input type="checkbox"/>
<b>Protective Monitoring System</b> (see Paragraph 16)	
The Supplier must implement an effective Protective Monitoring System	<input type="checkbox"/>
<b>Patching</b> (see Paragraph 17)	
The Supplier must patch vulnerabilities in the Supplier System promptly	<input type="checkbox"/>
<b>Malware protection</b> (see Paragraph 18)	
The Supplier must use appropriate Anti-virus Software	<input checked="" type="checkbox"/>
<b>End-user Devices</b> (see Paragraph 19)	
The Supplier must manage End-user Devices appropriately	<input type="checkbox"/>
<b>Vulnerability scanning</b> (see Paragraph 20)	
The Supplier must scan the Supplier System monthly for unpatched vulnerabilities	<input type="checkbox"/>

<b>Access control</b> (see Paragraph 21)	
The Supplier must implement effective access control measures for those accessing sensitive Government Data and for Privileged Users	<input checked="" type="checkbox"/>
<b>Remote Working</b> (see Paragraph 22)	
The Supplier may allow Supplier Staff to undertake Remote Working once an approved Remote Working Policy is in place	<input type="checkbox"/>
<b>Backup and recovery of Government Data</b> (see Paragraph 23)	
The Supplier must have in place systems for the backup and recovery of Government Data	<input type="checkbox"/>
<b>Return and deletion of Government Data</b> (see Paragraph 24)	
The Supplier must return or delete Government Data when requested by the Buyer	<input checked="" type="checkbox"/>
<b>Physical security</b> (see Paragraph 25)	
The Supplier must store Government Data in physically secure locations	<input checked="" type="checkbox"/>
<b>Security breaches</b> (see Paragraph 26)	
The Supplier must report any Breach of Security to the Buyer promptly	<input checked="" type="checkbox"/>

## 2 Definitions

<b>“Anti-virus Software”</b>	<p>means software that:</p> <ul style="list-style-type: none"> <li>(a) protects the Supplier System from the possible introduction of Malicious Software;</li> <li>(b) scans for and identifies possible Malicious Software in the Supplier System;</li> <li>(c) if Malicious Software is detected in the Supplier System, so far as possible: <ul style="list-style-type: none"> <li>(i) prevents the harmful effects of the Malicious Software; and</li> <li>(ii) removes the Malicious Software from the Supplier System;</li> </ul> </li> </ul>
<b>“BPSS”</b>	<p>means the employment controls applied to any individual member of the Supplier Staff that performs any activity relating to the provision or management of the Services, as set out in “HMG Baseline Personnel Standard”, Version 7.0, June 2024 (<a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a>), as that document is updated from time to time;</p>
<b>“Breach of Security”</b>	<p>means the occurrence of:</p> <ul style="list-style-type: none"> <li>(a) any unauthorised access to or use of the Services, the Sites, the Supplier System and/or the Government Data;</li> </ul>

- (b) the loss (physical or otherwise), corruption and/or unauthorised disclosure of any Government Data, including copies of such Government Data; and/or
- (c) any part of the Supplier System ceasing to be compliant with the required Certifications;
- (d) the installation of Malicious Software in the Supplier System;
- (e) any loss of operational efficiency or failure to operate to specification as the result of the installation or operation of Malicious Software in the Supplier System; and
- (f) includes any attempt to undertake the activities listed in sub-Paragraph (a) where the Supplier has reasonable grounds to suspect that attempt:
  - (i) was part of a wider effort to access information and communications technology operated by or on behalf of Central Government Bodies; or
  - (ii) was undertaken, or directed by, a state other than the United Kingdom;

<b>“Buyer Equipment”</b>	means any hardware, computer or telecoms devices, and equipment that forms part of the Buyer System;
<b>“Buyer Security Policies”</b>	means those securities specified by the Buyer in Paragraph 1.3;
<b>“Certifications”</b>	means one or more of the following certifications (or equivalent): <ul style="list-style-type: none"> <li>(a) ISO/IEC 27001:2022 by a UKAS-recognised Certification Body in respect of the Supplier System, or in respect of a wider system of which the Supplier System forms part; and</li> <li>(a) Cyber Essentials Plus; and/or</li> <li>(b) Cyber Essentials;</li> </ul>
<b>“CHECK Scheme”</b>	means the NCSC’s scheme under which approved companies can conduct authorised penetration tests of public sector and critical national infrastructure systems and networks;
<b>“CHECK Service Provider”</b>	means a company which, under the CHECK Scheme: <ul style="list-style-type: none"> <li>(a) has been certified by the NCSC;</li> <li>(b) holds “Green Light” status; and</li> <li>(c) is authorised to provide the IT Health Check services required by Paragraph 7 (<i>Security Testing</i>);</li> </ul>
<b>“Cloud Security Principles”</b>	means the NCSC’s document “Implementing the Cloud Security Principles” as updated or replaced from time to time and found at <a href="https://www.ncsc.gov.uk/collection/cloud-security/implementing-the-cloud-security-principles">https://www.ncsc.gov.uk/collection/cloud-security/implementing-the-cloud-security-principles</a> ;

<b>“CREST Service Provider”</b>	means a company with an information security accreditation of a security operations centre qualification from CREST International;
<b>“Cyber Essentials”</b>	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
<b>“Cyber Essentials Plus”</b>	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
<b>“Cyber Essentials Scheme”</b>	means the Cyber Essentials scheme operated by the NCSC;
<b>“Developed System”</b>	means the software or system that the Supplier is required to develop under this Contract;
<b>“End-user Device”</b>	means any personal computers, laptops, tablets, terminals, smartphones or other portable electronic devices used in the provision of the Services;
<b>“Expected Behaviours”</b>	means the expected behaviours set out and updated from time to time in the Government Security Classification Policy, currently found at paragraphs 12 to 16 and in the table below paragraph 16 of <a href="https://www.gov.uk/government/publications/government-security-classifications/guidance-11-working-at-official-html">https://www.gov.uk/government/publications/government-security-classifications/guidance-11-working-at-official-html</a> ;
<b>“Government Security Classification Policy”</b>	means the policy, as updated from time to time, establishing an administrative system to protect information assets appropriately against prevalent threats, including classification tiers, protective security controls and baseline behaviours, the current version of which is found at <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a> ;
<b>“Handle”</b>	means any operation performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of that data;
<b>“IT Health Check”</b>	means the security testing of the Supplier System;
<b>“NCSC”</b>	means the National Cyber Security Centre, or any successor body performing the functions of the National Cyber Security Centre;
<b>“NCSC Device Guidance”</b>	means the NCSC’s document “Device Security Guidance”, as updated or replaced from time to time and found at <a href="https://www.ncsc.gov.uk/collection/device-security-guidance">https://www.ncsc.gov.uk/collection/device-security-guidance</a> ;
<b>“Privileged User”</b>	means a user with system administration access to the Supplier System, or substantially similar access privileges;

**“Prohibition Notice”**

means the

**“Protective  
Monitoring  
System”**

meaning given to that term by Paragraph 5.4.

has the meaning given to that term by Paragraph 16.1;

<b>“Relevant Conviction”</b>	means any previous or pending prosecution, conviction or caution (excluding any spent conviction under the Rehabilitation of Offenders Act 1974) relating to offences involving dishonesty, terrorism, immigration, firearms, fraud, forgery, tax evasion, offences against people (including sexual offences) or any other offences relevant to Services as the Buyer may specify;
<b>“Remote Location”</b>	means [the relevant Supplier Staff’s permanent home address authorised by the Supplier or Sub-contractor (as applicable) for Remote Working OR a location other than a Supplier’s or a Sub-contractor’s Site];
<b>“Remote Working”</b>	means the provision or management of the Services by Supplier Staff from a location other than a Supplier’s or a Sub-contractor’s Site;
<b>“Remote Working Policy”</b>	the policy prepared and approved under Paragraph 22 under which Supplier Staff are permitted to undertake Remote Working;
<b>“Security Controls”</b>	means the security controls set out and updated from time to time in the Government Security Classification Policy, currently found at Paragraph 12 of <a href="https://www.gov.uk/government/publications/government-security-classifications/guidance-15-considerations-for-security-advisors-html">https://www.gov.uk/government/publications/government-security-classifications/guidance-15-considerations-for-security-advisors-html</a> ;
<b>“Staff Vetting Procedure”</b>	means the procedure for vetting Supplier Staff set out in Paragraph 6;
<b>“Subcontractor Staff”</b>	means: <ul style="list-style-type: none"> <li>(a) any individual engaged, directly or indirectly, or employed, by any Subcontractor; and</li> <li>(b) engaged in or likely to be engaged in: <ul style="list-style-type: none"> <li>(i) the performance or management of the Services; or</li> <li>(ii) the provision of facilities or services that are necessary for the provision of the Services;</li> </ul> </li> </ul>
<b>“Third-party Tool”</b>	means any software used by the Supplier by which the Government Data is accessed, analysed or modified, or some form of operation is performed on it;
<b>UKAS-recognised Certification Body</b>	means: <ul style="list-style-type: none"> <li>(a) an organisation accredited by UKAS to provide certification of ISO/IEC27001:2013 and/or ISO/IEC27001:2022; or</li> <li>(b) an organisation accredited to provide certification of ISO/IEC27001:2013 and/or ISO/IEC27001:2022 by a body with the equivalent functions as UKAS in a state with which the UK has a mutual recognition agreement recognising the technical equivalence of accredited conformity assessment.</li> </ul>

## Part One: Core Requirements

### 3 Handling Government Data

- 3.1 The Supplier acknowledges that it:
- (a) must only Handle Government Data that is classified as OFFICIAL; and
  - (b) must not Handle Government Data that is classified as SECRET or TOP SECRET.
- 3.2 The Supplier must:
- (a) not alter the classification of any Government Data
  - (b) if it becomes aware that it has Handled any Government Data classified as SECRET or TOP SECRET the Supplier must:
    - (i) immediately inform the Buyer; and
    - (ii) follow any instructions from the Buyer concerning that Government Data.
- 3.3 The Supplier must, and must ensure that Sub-contractors and Supplier Staff, when Handling Government Data, comply with:
- (a) the Expected Behaviours; and
  - (b) the Security Controls.

### 4 Certification Requirements

- 4.1 Where the Buyer has not specified Certifications under Paragraph 1, the Supplier must ensure that it and any Subcontractors that Handle Government Data are certified as compliant with Cyber Essentials (or equivalent).
- 4.2 Where the Buyer has specified Certifications under Paragraph 1, the Supplier must ensure that both:
- (a) it; and
  - (b) any Subcontractor that Handles Government Data,
- are certified as compliant with the Certifications specified by the Buyer in Paragraph 1 (or equivalent certifications).
- 4.3 The Supplier must ensure that the specified Certifications (or their equivalent) are in place for it and any relevant Subcontractor:
- (a) before the Supplier or any Subcontractor Handles Government Data; and
  - (b) throughout the Term.

### 5 Location

- 5.1 Where the Buyer has not specified any locations or territories in Paragraph 1, the Supplier must not, and ensure that Subcontractors do not store, access or Handle Government Data outside:
- (a) the United Kingdom; or

- (b) a location permitted by and in accordance with any regulations for the time being in force made under section 17A of the Data Protection Act 2018 (adequacy decisions by the Secretary of State).
- 5.2 Where the Buyer has specified locations or territories in Paragraph 1, the Supplier must, and ensure that all Subcontractors, at all times store, access or Handle Government Data only in or from the geographic areas specified by the Buyer.
- 5.3 The Supplier must, and must ensure that its Subcontractors store, access or Handle Government Data in a facility operated by an entity where:
- (a) the entity has entered into a binding agreement with the Supplier or Subcontractor (as applicable);
  - (b) that binding agreement includes obligations on the entity in relation to security management at least as onerous as those relating to Sub-contractors in this Schedule 16 (Security);
  - (c) the Supplier or Subcontractor has taken reasonable steps to assure itself that:
    - (i) the entity complies with the binding agreement; and
    - (ii) the Subcontractor's system has in place appropriate technical and organisational measures to ensure that the Sub-contractor will store, access, manage and/or Handle the Government Data as required by this Schedule 16 (Security);
  - (d) the Buyer has not given the Supplier a Prohibition Notice under Paragraph 5.4.
- 5.4 The Buyer may by notice in writing at any time give notice to the Supplier that it and its Subcontractors must not undertake or permit to be undertaken the storage, accessing or Handling of Government Data in one or more countries or territories (a "**Prohibition Notice**").
- 5.5 Where the Supplier must and must ensure Subcontractors comply with the requirements of a Prohibition Notice within 40 Working Days of the date of the notice.

## 6 Staff vetting

- 6.1 The Supplier must not allow Supplier Staff, and must ensure that Subcontractors do not allow Subcontractor Staff, to access or Handle Government Data, if that person:
- (a) has not completed the Staff Vetting Procedure; or
  - (b) where no Staff Vetting Procedure is specified in the Order Form:
    - (i) has not undergone the checks required for the BPSS to verify:
      - (A) the individual's identity;
      - (B) where that individual will work in the United Kingdom, the individual's nationality and immigration status so as to demonstrate that they have a right to work in the United Kingdom; and
      - (C) the individual's previous employment history; and
      - (D) that the individual has no Relevant Convictions; and
    - (ii) national security vetting clearance to the level specified by the Buyer for such individuals or such roles as the Buyer may specify.

- 6.2 Where the Supplier considers it cannot ensure that a Sub-contractors will undertake the relevant security checks on any Sub-contractor Staff, it must:
- (a) as soon as practicable, and in any event within 20 Working Days of becoming aware of the issue, notify the Buyer;
  - (b) provide such information relating to the Sub-contractor, its vetting processes and the roles the affected Sub-contractor Staff will perform as the Buyer reasonably requires; and
  - (c) comply, at the Supplier's cost, with all directions the Buyer may provide concerning the vetting of the affected Sub-contractor Staff and the management of the Sub-contractor.

## **7 Supplier assurance letter**

- 7.1 The Supplier must, no later than the last day of each Contract Year, provide to the Buyer a letter from its [chief technology officer] (or equivalent officer) confirming that, having made due and careful enquiry:
- (a) the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters required by this Contract;
  - (b) it has fully complied with all requirements of this Schedule 16 (Security); and
  - (c) all Subcontractors have complied with the requirements of this Schedule 16 (Security) with which the Supplier is required to ensure they comply;
  - (d) the Supplier considers that its security and risk mitigation procedures remain effective.

## **8 Assurance**

8.1 The Supplier must provide such information and documents as the Buyer may request in order to demonstrate the Supplier's and any Subcontractors' compliance with this Schedule 16 (Security).

8.2 The Supplier must provide that information and those documents:

- (a) at no cost to the Buyer;
- (b) within 10 Working Days of a request by the Buyer;
- (c) except in the case of original document, in the format and with the content and information required by the Buyer; and
- (d) in the case of original document, as a full, unedited and unredacted copy.

## **9 Use of Subcontractors and third parties**

9.1 The Supplier must ensure that Subcontractors and any other third parties that store, have access to or Handle Government Data comply with the requirements of this Schedule 16 (Security).

## Part Two: Additional Requirements

### 10 Security Management Plan

10.1 This Paragraph 10 applies only where the Buyer has selected this option in Paragraph 1.3.

#### Preparation of Security Management Plan

10.2 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule 16 (Security) and the Contract in order to ensure the security of the Supplier solution and the Buyer data.

10.3 The Supplier shall prepare and submit to the Buyer within 20 Working Days of the date of this Contract, the Security Management Plan, which must include a description of how all the options selected in this schedule are being met along with evidence of the required certifications for the Supplier and any Subcontractors specified in Paragraph 3.

#### Approval of Security Management Plan

10.4 The Buyer shall review the Supplier's proposed Security Management Plan as soon as possible and must issue the Supplier with either:

- (a) an information security approval statement, which shall confirm that the Supplier may operate the service and process Buyer data; or
- (b) a rejection notice, which shall set out the Buyer's reasons for rejecting the Security Management Plan.

10.5 If the Buyer rejects the Supplier's proposed Security Management Plan, the Supplier must prepare a revised Security Management Plan taking the Buyer's reasons into account, which the Supplier must submit to the Buyer for review within 10 Working Days of the date of the rejection, or such other period agreed with the Buyer.

10.6 The process set out in Paragraph 10.5 shall be repeated until such time as the Authority issues a Risk Management Approval Statement to the Supplier or terminates this Contract.

10.7 The rejection by the Buyer of a second revised Security Management Plan is a material Default of this Contract.

#### Updating Security Management Plan

10.8 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.

#### Monitoring

10.9 The Supplier shall notify the Buyer within 2 Working Days after becoming aware of:

- (a) a significant change to the components or architecture of the Supplier System;
- (b) a new risk to the components or architecture of the Supplier System;
- (c) a vulnerability to the components or architecture of the Supplier System using an industry standard vulnerability scoring mechanism;
- (d) a change in the threat profile;
- (e) a significant change to any risk component;

- (f) a significant change in the quantity of Personal Data held within the Service;
  - (g) a proposal to change any of the Sites from which any part of the Services are provided; and/or
  - (h) an ISO27001 audit report produced in connection with the Certification indicates significant concerns.
- 10.10 Within 10 Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Security Management Plan and submit the updated Security Management Plan to the Buyer for review and approval.

## 11 Buyer Security Policies

- 11.1 The Supplier must comply, when it provides the Services and operates and manages the Supplier System, with all Buyer Security Policies identified in the relevant option in Paragraph 1.3.
- 11.2 If there is an inconsistency between the Buyer Security Policies and the requirement of this Schedule 16 (Security), then the requirements of this Schedule will prevail to the extent of that inconsistency.

## 12 Security testing

- 12.1 The Supplier must:

- (a) before Handling Government Data;
- (b) at least once during each Contract Year; and

undertake the following activities:

- (c) conduct security testing of the Supplier System (an “**IT Health Check**”) in accordance with Paragraph 12.2; and
- (d) implement any findings, and remedy any vulnerabilities identified by the IT Health Check in accordance with Paragraph 12.3.

- 12.2 In arranging an IT Health Check, the Supplier must:

- (a) use only a CHECK Service Provider or CREST Service Provider to perform the IT Health Check;
- (b) design and plan for the IT Health Check so as to minimise the impact of the IT Health Check on the Supplier System and the delivery of the Services;
- (c) ensure that the scope of the IT Health Check encompasses the components of the Supplier System used to access, store, Handle or manage Government Data; and
- (d) ensure that the IT Health Check provides for effective penetration testing of the Supplier System.

- 12.3 The Supplier treat any vulnerabilities as follows:

- (a) the Supplier must remedy any vulnerabilities classified as high in the IT Health Check report:
  - (i) if it is technically feasible to do so, within 5 Working Days of becoming aware of the vulnerability and its classification; or

- (ii) if it is technical feasible to remedy the vulnerability but not technically feasible to do so as required by Paragraph 12.3(a)(i), then as soon as reasonably practicable after becoming aware of the vulnerability and its classification;
- (b) the Supplier must remedy any vulnerabilities classified as high in the IT Health Check report:
  - (i) if it is technically feasible to do so, within 1 month of becoming aware of the vulnerability and its classification; or
  - (ii) if it is technical feasible to remedy the vulnerability but not technically feasible to do so as required by Paragraph 12.3(b)(i), then as soon as reasonably practicable after becoming aware of the vulnerability and its classification;
- (c) the Supplier must remedy any vulnerabilities classified as medium in the IT Health Check report:
  - (i) if it is technically feasible to do so, within 3 months of becoming aware of the vulnerability and its classification; or
  - (ii) if it is technical feasible to remedy the vulnerability but not technically feasible to do so as required by Paragraph 12.3(c)(i), then as soon as reasonably practicable after becoming aware of the vulnerability and its classification;
- (d) where it is not technically feasible to remedy the vulnerability, the Supplier must implement appropriate technical and organisational measures to mitigate the risk posed by the vulnerability.

## 13 Cloud Security Principles

- 13.1 The Supplier must ensure that the Supplier System complies with the Cloud Security Principles.
- 13.2 The Supplier must assess the Supplier System against the Cloud Security Principles to assure itself that it complies with Paragraph 13.1:
- (a) before Handling Government Data;
  - (b) at least once each Contract Year; and
  - (c) when required by the Buyer.
- 13.3 Where the Cloud Security Principles provide for various options, the Supplier must document the option it has chosen to implement and its reasons for doing so.
- 13.4 The Supplier must:
- (a) keep records of any assessment that it makes under Paragraph 13.2; and
  - (b) provide copies of those records to the Buyer within 10 Working Days of any request by the Buyer.

## 14 Information about Subcontractors, Sites and Third-party Tools

- 14.1 The Supplier must keep the following records:
- (a) for Subcontractors or third parties that store, have access to or Handle Government Data:
    - (i) the Subcontractor or third-party's name:

- (A) legal name;
  - (B) trading name (if any); and
  - (C) registration details (where the Subcontractor is not an individual), including:
    - (1) country of registration;
    - (2) registration number (if applicable); and
    - (3) registered address;
  - (ii) the Certifications held by the Subcontractor or third party;
  - (iii) the Sites used by the Subcontractor or third party;
  - (iv) the Services provided or activities undertaken by the Subcontractor or third party;
  - (v) the access the Subcontractor or third party has to the Supplier System;
  - (vi) the Government Data Handled by the Subcontractor or third party; and
  - (vii) the measures the Subcontractor or third party has in place to comply with the requirements of this Schedule 16 (Security);
- (b) for Sites from or at which Government Data is accessed or Handled:
- (i) the location of the Site;
  - (ii) the operator of the Site, including the operator's:
    - (A) legal name;
    - (B) trading name (if any); and
    - (C) registration details (where the Subcontractor is not an individual);
  - (iii) the Certifications that apply to the Site;
  - (iv) the Government Data stored at, or Handled from, the site; and
- (c) for Third-party Tools:
- (i) the name of the Third-party Tool;
  - (ii) the nature of the activity or operation performed by the Third-Party Tool on the Government Data; and
  - (iii) in respect of the entity providing the Third-Party Tool, its:
    - (A) full legal name;
    - (B) trading name (if any)
    - (C) country of registration;
    - (D) registration number (if applicable); and

(E) registered address.

14.2 The Supplier must update the records it keeps in accordance with Paragraph 14.1:

- (a) at least four times each Contract Year;
- (b) whenever a Subcontractor, third party that accesses or Handles Government Data, Third-party Tool or Site changes; or
- (c) whenever required to go so by the Buyer.

14.3 The Supplier must provide copies of the records it keeps in accordance with Paragraph 14.1 to the Buyer within 10 Working Days of any request by the Buyer.

## 15 Encryption

15.1 The Supplier must, and must ensure that all Subcontractors, encrypt Government Data:

- (a) when stored at any time when no operation is being performed on it, including when stored on any portable storage media; and
- (b) when transmitted.

## 16 Protective Monitoring System

16.1 The Supplier must, and must ensure that Subcontractors, implement an effective system of monitoring and reports, analysing access to and use of the Supplier System and the Government Data to:

- (a) identify and prevent any potential Breach of Security;
- (b) respond effectively and in a timely manner to any Breach of Security that does;
- (c) identify and implement changes to the Supplier System to prevent future any Breach of Security; and
- (d) help detect and prevent any potential criminal offence relating to fraud, bribery or corruption using the Supplier System,

(the "**Protective Monitoring System**").

16.2 The Protective Monitoring System must provide for:

- (a) event logs and audit records of access to the Supplier System; and
- (b) regular reports and alerts to identify:
  - (i) changing access trends;
  - (ii) unusual usage patterns; or
  - (iii) the access of greater than usual volumes of Government Data; and
- (c) the detection and prevention of any attack on the Supplier System using common cyber-attack techniques.

## 17 Patching

- 17.1 The Supplier must, and must ensure that Subcontractors, treat any public releases of patches for vulnerabilities as follows:
- (a) the Supplier must patch any vulnerabilities classified as “critical”:
    - (i) if it is technically feasible to do so, within 5 Working Days of the public release; or
    - (ii) if it is technical feasible to patch the vulnerability but not technically feasible to do so as required by Paragraph 17.1(a)(i), then as soon as reasonably practicable after the public release;
  - (b) the Supplier must patch any vulnerabilities classified as “important”:
    - (i) if it is technically feasible to do so, within 1 month of the public release; or
    - (ii) if it is technical feasible to patch the vulnerability but not technically feasible to do so as required by Paragraph 17.1(b)(i), then as soon as reasonably practicable after the public release;
  - (c) the Supplier must remedy any vulnerabilities classified as “other” in the public release:
    - (i) if it is technically feasible to do so, within 2 months of the public release; or
    - (ii) if it is technical feasible to remedy the vulnerability but not technically feasible to do so as required by Paragraph 17.1(c)(i), then as soon as reasonably practicable after the public release;
  - (d) where it is not technically feasible to patch the vulnerability, the Supplier must implement appropriate technical and organisational measures to mitigate the risk posed by the vulnerability.

## 18 Malware protection

- 18.1 The Supplier shall install and maintain Anti-virus Software or procure that Anti-virus Software is installed and maintained on the Supplier System.
- 18.2 The Supplier must ensure that such Anti-virus Software:
- (a) prevents the installation of the most common forms of Malicious Software in the Supplier System;
  - (b) performs regular scans of the Supplier System to check for Malicious Software; and
  - (c) where Malicious Software has been introduced into the Supplier System, so far as practicable
    - (i) prevents the harmful effects from the Malicious Software; and
    - (ii) removes the Malicious Software from the Supplier System.

## 19 End-user Devices

- 19.1 The Supplier must, and must ensure that all Subcontractors, manage all End-user Devices on which Government Data is stored or Handled in accordance with the following requirements:

- (a) the operating system and any applications that store, Handle or have access to Government Data must be in current support by the vendor, or the relevant community in the case of open source operating systems or applications;
  - (b) users must authenticate before gaining access;
  - (c) all Government Data must be encrypted using a suitable encryption tool;
  - (d) the End-user Device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the End-user Device is inactive;
  - (e) the End-User Device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Government Data to ensure the security of that Government Data;
  - (f) the Supplier or Subcontractor, as applicable, can, without physical access to the End-user Device, remove or make inaccessible all Government Data stored on the device and prevent any user or group of users from accessing the device;
  - (g) all End-user Devices are within the scope of any required Certification.
- 19.2 The Supplier must comply, and ensure that all Subcontractors comply, with the recommendations in NCSC Device Guidance as if those recommendations were incorporated as specific obligations under this Contract.

## **20 Vulnerability scanning**

20.1 The Supplier must:

- (a) scan the Supplier System at least once every month to identify any unpatched vulnerabilities; and
- (b) if the scan identifies any unpatched vulnerabilities, ensure they are patched in accordance with Paragraph 17.

## **21 Access control**

21.1 The Supplier must, and must ensure that all Subcontractors:

- (a) identify and authenticate all persons who access the Supplier System before they do so;
- (b) require multi-factor authentication for all user accounts that have access to Government Data or that are Privileged Users;
- (c) allow access only to those parts of the Supplier System and Sites that those persons require;
- (d) maintain records detailing each person's access to the Supplier System.

21.2 The Supplier must ensure, and must ensure that all Subcontractors ensure, that the user accounts for Privileged Users of the Supplier System:

- (a) are allocated to a single, individual user;
- (b) are accessible only from dedicated End-user Devices;
- (c) are configured so that those accounts can only be used for system administration tasks;

- (d) require passwords with high complexity that are changed regularly;
- (e) automatically log the user out of the Supplier System after a period of time that is proportionate to the risk environment during which the account is inactive; and
- (f) are:
  - (i) restricted to a single role or small number of roles;
  - (ii) time limited; and
  - (iii) restrict the Privileged User's access to the internet.

## 22 Remote Working

22.1 The Supplier must ensure, and ensure that Sub-contractors ensure, that:

- (a) unless in writing by the Authority, Privileged Users do not undertake Remote Working;
- (b) where the Authority permits Remote Working by Privileged Users, the Supplier ensures, and ensures that Sub-contractors ensure, that such Remote Working takes place only in accordance with any conditions imposed by the Authority.

22.2 Where the Supplier or a Sub-contractor wishes to permit Supplier Staff to undertake Remote Working, it must:

- (a) prepare and have approved by the Buyer the Remote Working Policy in accordance with this Paragraph;
- (b) undertake and, where applicable, ensure that any relevant Sub-contractors undertake, all steps required by the Remote Working Policy;
- (c) ensure that Supplier Staff undertake Remote Working only in accordance with the Remote Working Policy;
- (d) may not permit any Supplier Staff of the Supplier or any Sub-contractor to undertake Remote Working until the Remote Working Policy is approved by the Buyer.

22.3 The Remote Working Policy must include or make provision for the following matters:

- (a) restricting or prohibiting Supplier Staff from printing documents in any Remote Location;
- (b) restricting or prohibiting Supplier Staff from downloading any Government Data to any End-user Device other than an End User Device that:
  - (i) is provided by the Supplier or Sub-contractor (as appropriate); and
  - (ii) complies with the requirements set out in Paragraph 3 (*End-user Devices*);
- (c) ensuring that Supplier Staff comply with the Expected Behaviours (so far as they are applicable);
- (d) giving effect to the Security Controls (so far as they are applicable); and
- (e) for each different category of Supplier Staff subject to the proposed Remote Working Policy:
  - (i) the types and volumes of Government Data that the Supplier Staff can Handle in a Remote Location and the Handling that those Supplier Staff will undertake;

- (ii) any identified security risks arising from the proposed Handling in a Remote Location;
- (iii) the mitigations, controls and security measures the Supplier or Sub-contractor (as applicable) will implement to mitigate the identified risks; and
- (iv) the business rules with which the Supplier Staff must comply.

22.4 The Supplier may submit a proposed Remote Working Policy to the Buyer for consideration at any time.

## **23 Backup and recovery of Government Data**

23.1 The Supplier must ensure that the Supplier System:

- (a) backs up and allows for the recovery of Government Data to achieve the recovery point and recovery time objectives specified by the Buyer, or in accordance with Good Industry Practice where the Buyer has not specified; and
- (b) retains backups of the Government Data for the period specified by the Buyer, or in accordance with Good Industry Practice where the Buyer has not specified.

23.2 The Supplier must ensure the Supplier System:

- (c) uses backup location for Government Data that are physically and logically separate from the rest of the Supplier System;
- (d) the backup system monitors backups of Government Data to:
  - (i) identifies any backup failure; and
  - (ii) confirm the integrity of the Government Data backed up;
- (e) any backup failure is remedied promptly;
- (f) the backup system monitors the recovery of Government Data to:
  - (i) identify any recovery failure; and
  - (ii) confirm the integrity of Government Data recovered; and
- (g) any recovery failure is promptly remedied.

## **24 Return and deletion of Government Data**

24.1 Subject to Paragraph 24.2, when requested to do so by the Buyer, the Supplier must, and must ensure that all Subcontractors:

- (a) securely erase any or all Government Data held by the Supplier or Subcontractor using a deletion method that ensures that even a determined expert using specialist techniques can recover only a small fraction of the data deleted; or
- (b) provide the Buyer with copies of any or all Government Data held by the Supplier or Subcontractor using the method specified by the Buyer.

24.2 Paragraph 24.1 does not apply to Government Data:

- (a) that is Personal Data in respect of which the Supplier is a Controller;

- (b) to which the Supplier has rights to Handle independently from this Contract; or
  - (c) in respect of which, the Supplier is under an obligation imposed by Law to retain.
- 24.3 The Supplier must, and must ensure that all Sub-contractors, provide the Buyer with copies of any or all Buyer Data held by the Supplier or Sub-contractor:
- (a) when requested to do so by the Buyer; and
  - (b) using the method specified by the Buyer.

## **25 Physical security**

- 25.1 The Supplier must, and must ensure that Subcontractors, store the Government Data on servers housed in physically secure locations.

## **26 Breach of Security**

- 26.1 If the Supplier becomes aware of a Breach of Security that impacts or has the potential to impact the Government Data, it shall:
- (a) notify the Buyer as soon as reasonably practicable after becoming aware of the breach, and in any event within [24] hours;
  - (b) provide such assistance to the Buyer as the Buyer requires until the Breach of Security and any impacts or potential impacts on the Buyer are resolved to the Buyer's satisfaction;
  - (c) where the Law requires the Buyer to report a Breach of Security to the appropriate regulator provide such information and other input as the Buyer requires within the timescales specified by the Buyer; and
  - (d) where the Breach of Security results in the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data, undertake any communication or engagement activities required by the Buyer with the individuals affected by the Breach of Security.

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## Schedule 18 (Prompt Payment)

### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"Unconnected Sub-contract"</b>	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017; and
<b>"Unconnected Sub-contractor"</b>	any third party with whom the Supplier enters into an Unconnected Sub-contract.

### 2. Visibility of Payment Practice

- 2.1 If this Contract has at the Effective Date an anticipated contract value in excess of £5 million per annum (including VAT) averaged over this Contract Period and without prejudice to Clause 4.6 and Clause 8.2.3, the Supplier shall:
- 2.1.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
- (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
  - (b) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 2.1.2 pay all sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) within an average of forty-five (45) days or less after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 2.1.3 include within the Supply Chain Information Report a summary of its compliance with this Paragraph 2.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 2.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, or the Supplier's

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average payment days is greater than forty-five (45) days after the day on

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which the Supplier received an invoice (or otherwise had notice of an amount for payment), the Supplier shall provide to the Buyer within 15 Working Days of submission of the latest Supply Chain Information Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- 2.2.1 (where relevant) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
  - 2.2.2 (where relevant) identification of the primary causes of failure to pay all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within an average of forty-five (45) days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment);
  - 2.2.3 actions to address each of the causes set out in Paragraph 2.2.1 and/or 2.2.2; and
  - 2.2.4 mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 2.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 2.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Buyer as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 2.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or pay all sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) within an average of forty-five (45) days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment), or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

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## Schedule 20 (Processing Data)

### 1. Status of the Controller

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- 1.1.1 "Controller" in respect of the other Party who is "Processor";
- 1.1.2 "Processor" in respect of the other Party who is "Controller";
- 1.1.3 "Joint Controller" with the other Party;
- 1.1.4 "Independent Controller" of the Personal Data where the other Party is also "Controller",

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### 2. Where one Party is Controller and the other Party its Processor

2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller and may not be determined by the Processor.

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

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

- 2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;
- 2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;
- 2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and assurance that those measures comply with any Security Requirements; and
- 2.3.5 providing assurance that the measures referred to in Paragraph 2.3.5 comply with the Security Requirements.

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

- 2.4.1 process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) unless the Processor is required to do

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otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in this Schedule 20, Clause 18 of the Core Terms and Schedule 16 (*Security*) (if used) (which the Controller may reasonably reject (including, where applicable, in accordance with its rights of rejection under those provisions) but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

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

2.4.3 ensure that:

- (a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Annex 1 (*Processing Personal Data*));
- (b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (i) are subject to any staff vetting required by this Contract, including the Security Requirements (if any) and Clauses 18 (*Data protection*), 19 (*What you must keep confidential*) and 20 (*When you can share information*);
  - (ii) are aware of and comply with the Processor's duties under this Schedule 20, the Security Requirements, and Clauses 18 (*Data protection*), 19 (*What you must keep confidential*) and 20 (*When you can share information*);
  - (iii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (iv) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (v) have undergone adequate training in the use, care, protection and handling of Personal Data (including any training required by the Security Requirements);

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

- (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
  - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;
  - (ii) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 2.4.4(a); and
  - (iii) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):
    - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 2.4.4(a);
    - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 2.4.4(a); and/or
    - (C) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 2.4.4(a)(ii) above,

the Buyer shall have the right to terminate this Contract with immediate effect; or

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- (b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:
    - (i) where the transfer is subject to UK GDPR:
      - (A) the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "**IDTA**"); or
      - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- 2.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 2.5.2 receives a request to rectify, block or erase any Personal Data;

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- 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
  - 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 2.5.6 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 2.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
- 2.8.1 the Controller determines that the Processing is not occasional;
  - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

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- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Subprocessor to Process any Personal Data related to this Contract, the Processor must:
- 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 2.11.2 obtain the written consent of the Controller;
  - 2.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
  - 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

### **3. Where the Parties are Joint Controllers of Personal Data**

In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 (*Joint Controller Agreement*) to this Schedule 20 (*Processing Data*).

### **4. Independent Controllers of Personal Data**

- 4.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 4.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 4.3 Where a Party has provided Personal Data to the other Party in accordance with Paragraph 4.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 4.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.
- 4.5 The Parties shall only provide Personal Data to each other:

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- 4.5.1 to the extent necessary to perform their respective obligations under this Contract;
- 4.5.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
- 4.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
  - (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
    - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Subcontractors and/or Subprocessors), the Supplier (and/or the applicable Subcontractor and/or Subprocessor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;
    - (ii) the Supplier shall notify the Buyer immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Subcontractor's or Subprocessor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Paragraph 4.5.3(a); and
    - (iii) in the event that the Supplier (and/or the applicable Subcontractor or Subprocessor):
      - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 4.5.3(a);
      - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Paragraph 4.5.3(a); and/or

- (C) fails to notify the Buyer of any changes to its certification status in accordance with Paragraph 4.5.3(a)(ii) above,  
the Buyer shall have the right to terminate this Contract with immediate effect; or
  - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:
    - (i) where the transfer is subject to UK GDPR:
      - (A) the International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
      - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
    - (ii) where the transfer is subject to EU GDPR, the EU SCCs,  
as well as any additional measures determined by the Controller being implemented by the importing party;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
  - (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
- 4.5.4 where it has recorded it in Annex 1 (*Processing Personal Data*).

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- 4.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 4.7 A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 4.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**Request Recipient**"):
- 4.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 4.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 4.9 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to this Contract and shall:
- 4.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;
- 4.9.2 implement any measures necessary to restore the security of any compromised Personal Data;
- 4.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

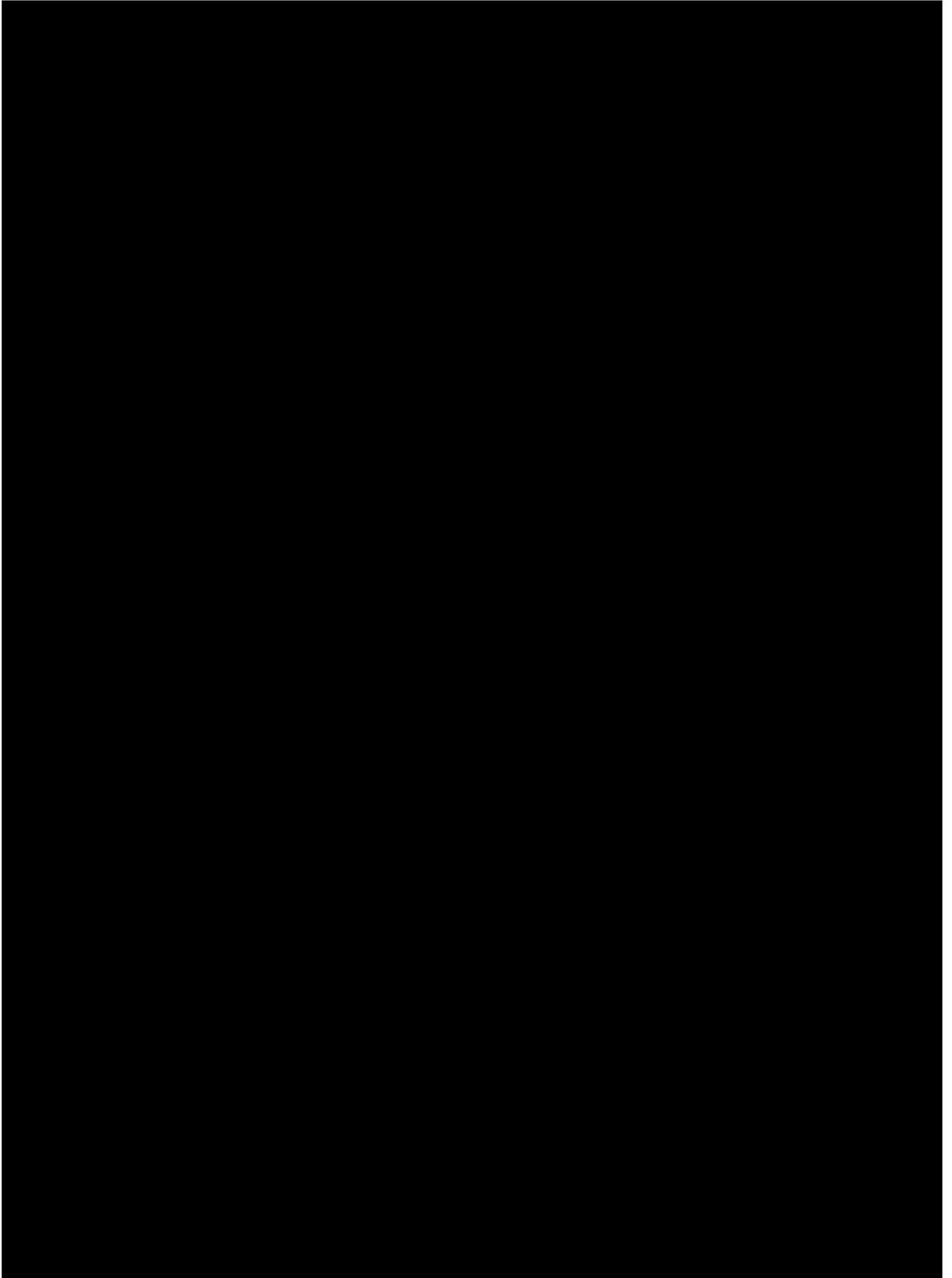
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- 4.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 4.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (*Processing Personal Data*).
- 4.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Contract which is specified in Annex 1 (*Processing Personal Data*).
- 4.12 Notwithstanding the general application of Paragraphs 2.1 to 2.13 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 4.2 to 4.12 of this Schedule 20.

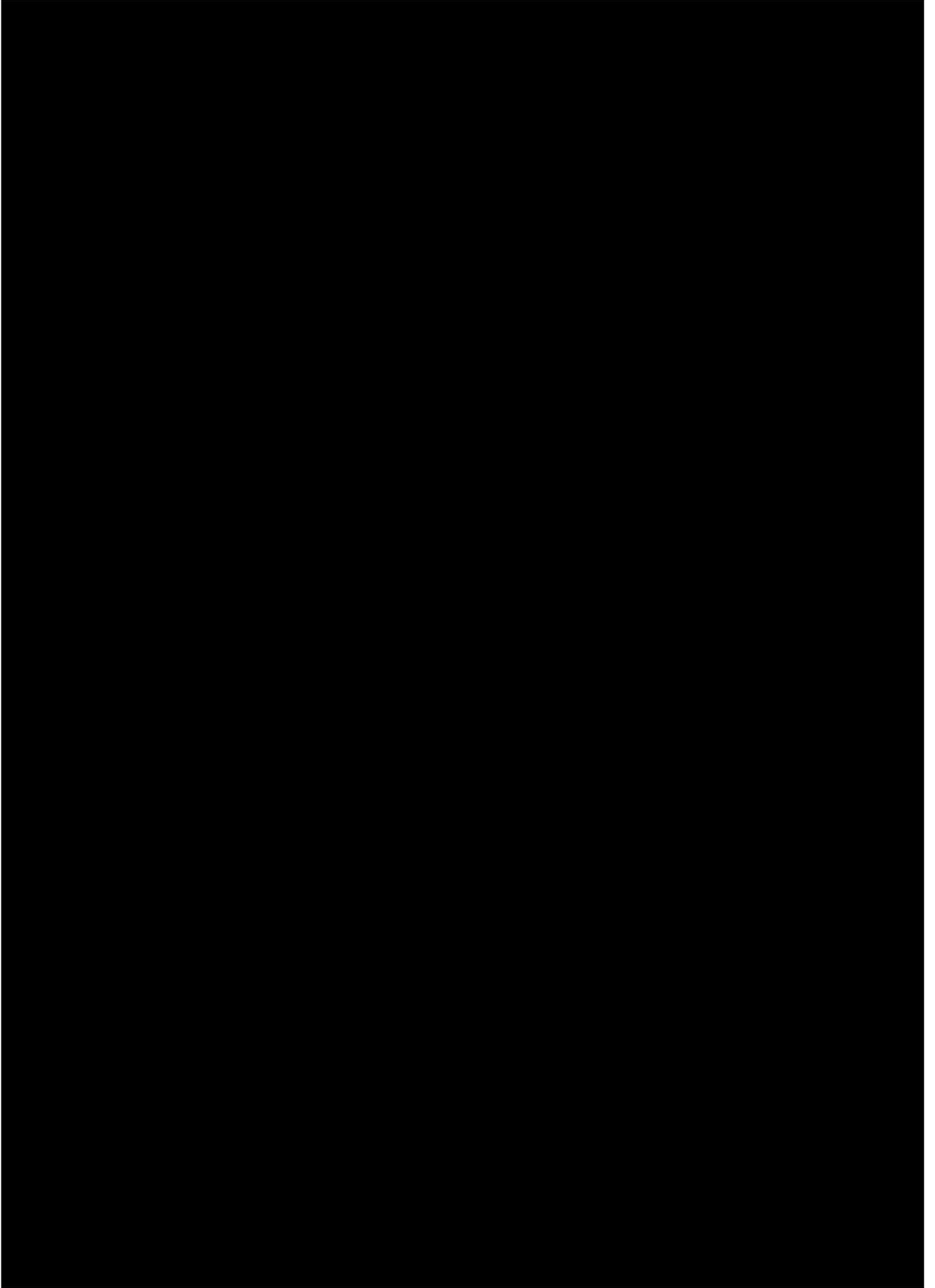
## Annex 1 - Processing Personal Data

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
  - 1.1 [REDACTED] The contact details of the Buyer's Data Protection Officer are: [REDACTED]  
[REDACTED]
  - 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]  
[REDACTED]
  - 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
  - 1.4 Any such further instructions shall be incorporated into this Annex.

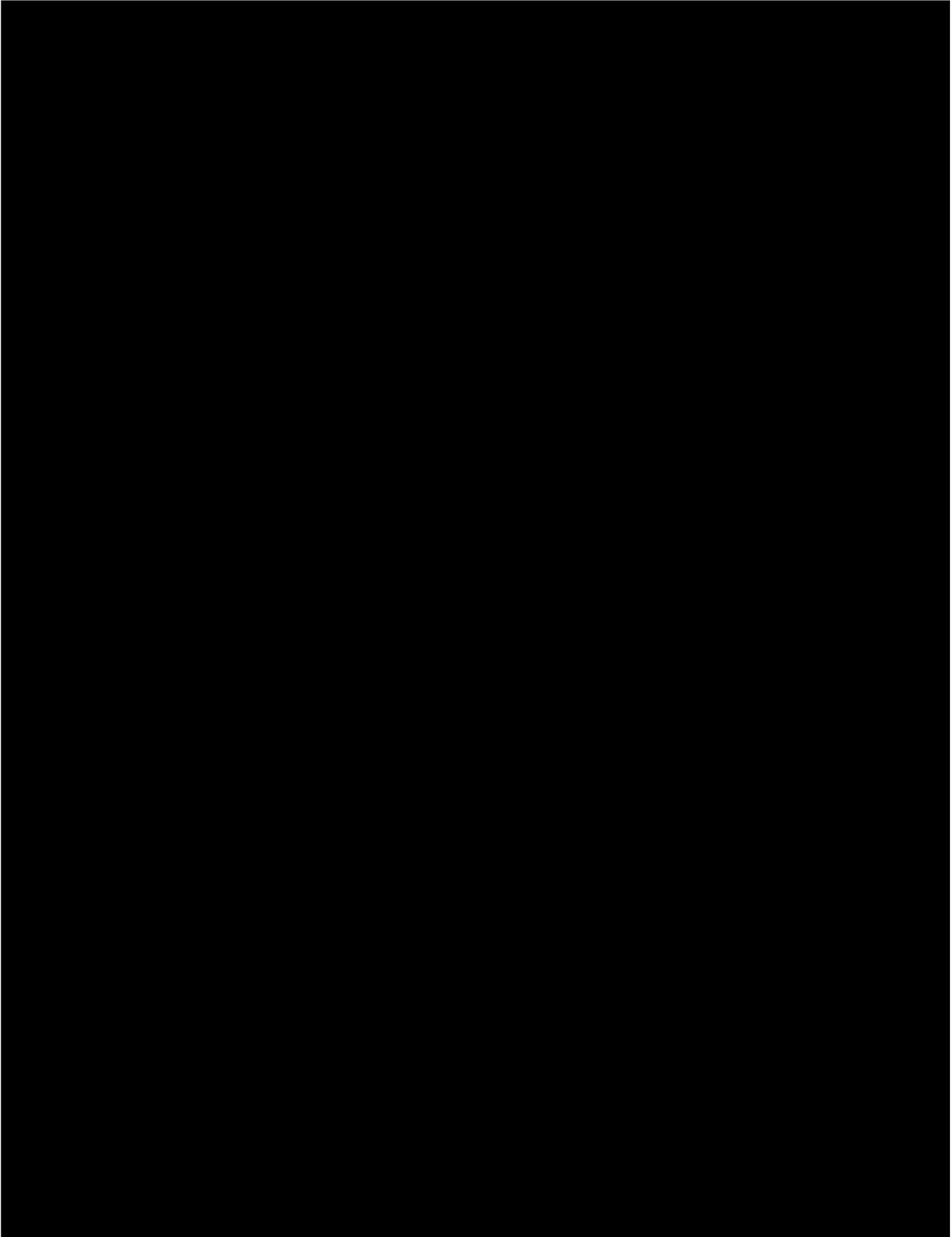
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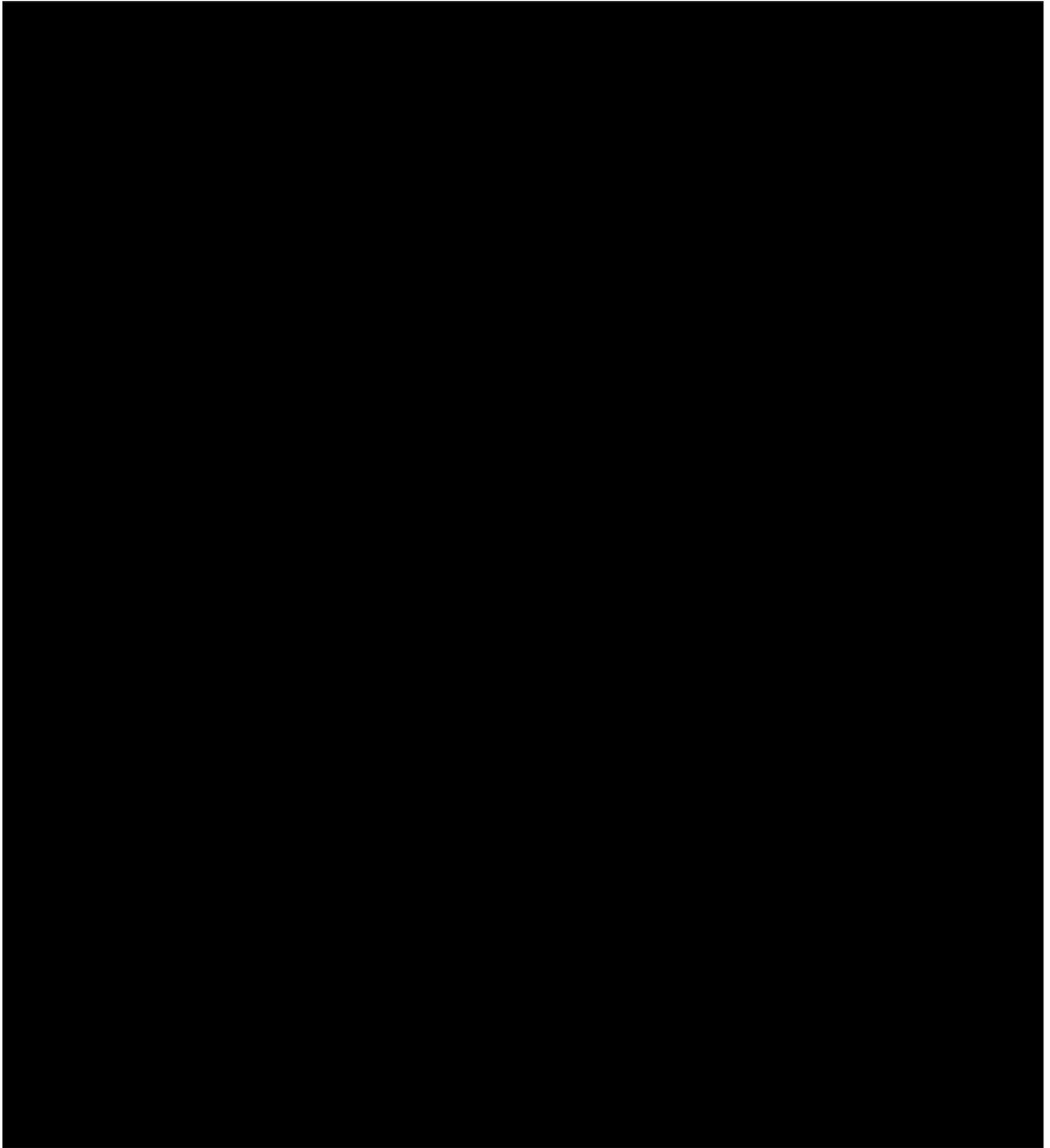
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