



# Short Form Contract

## Contract for Population Viability Analysis Modelling Tool for Seabird Species

Contract Reference ECM 52810

September 2018



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**THIS CONTRACT** is dated 17 September 2018

**BETWEEN**

**NATURAL ENGLAND** of Foss House, Kings Pool, 1-2 Peasholme Green, York YO1 7PX (the “**Authority**”); and

**CENTRE FOR ECOLOGY & HYDROLOGY** of UK Research and Innovation, Polaris House, Swindon, SN2 1FL (the “**Supplier**”)

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

## **BACKGROUND**

- a) The Authority requires the services set out in Schedule 1.
- b) The Authority has awarded this contract for the services to the Supplier and the Supplier agrees to provide the services in accordance with the terms of the contract.

## **AGREED TERMS**

# **1. Definitions and Interpretation**

1.1 In the Contract, unless the context requires otherwise, the following terms shall have the meanings given to them below:

‘**Approval**’: the prior written consent of the Authority.

‘**Authority Website**’: [www.naturalengland.org.uk](http://www.naturalengland.org.uk)

‘**Contract Term**’: the period from the Commencement Date to the Expiry Date.

‘**Contracting Authority**’: an organisation defined as a contracting authority in Regulation 2 of the Public Contracts Regulations 2015.

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

‘**Default**’: a breach by the Supplier or Staff of its obligations under the Contract or any other default, negligence or negligent statement in connection with the Contract.

‘**Dispute Resolution Procedure**’: the dispute resolution procedure set out in Clause 20.

‘**DPA 2018**’: the Data Protection Act 2018.

**'Force Majeure'**: any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, its Staff or any other failure in the Supplier's supply chain.

**'Fraud'**: any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Authority or any other Contracting Authority.

**'GDPR'**: the General Data Protection Regulation (Regulation (EU) 2016/679).

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

**'Goods'**: all products, documents, and materials developed by the Supplier or its agents, Sub-contractors, consultants, suppliers and Staff in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**'Intellectual Property Rights'**: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**'IP Materials'**: all Intellectual Property Rights which are:

- a) furnished to or made available to the Supplier by or on behalf of the Authority; or
- b) created by the Supplier or Staff in the course of providing the Services or exclusively for the purpose of providing the Services.

**'Law'**: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the relevant Party is bound to comply.

**'LED'**: Law Enforcement Directive (Directive (EU) 2016/680).

**'Price'**: the price for the Services set out in Schedule 2.

**'Replacement Supplier'**: any third party supplier of services appointed by the Authority to replace the Supplier.

**'Services'**: the services to be performed by the Supplier as specified in Schedule 1.

**'Staff'**: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-contractors who are engaged in providing the Services from time to time.

**'Sub-contract'**: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**'Sub-contractor'**: third parties which enter into a Sub-contract with the Supplier.

**'Valid Invoice'**: an invoice containing the information set out in Clause 3.3.

**'VAT'**: Value Added Tax.

**'Working Day'**: Monday to Friday excluding any public holidays in England and Wales.

1.2 The interpretation and construction of the Contract is subject to the following provisions:

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) reference to any statutory provision, enactment, order, regulation or other similar instrument are construed as a reference to the statutory provision enactment, order regulation or instrument (including any instrument of the European Union) as amended, replaced, consolidated or re-enacted from time to time, and include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
- d) reference to any person includes natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) the headings are inserted for ease of reference only and do not affect the interpretation or construction of the Contract;
- f) references to the Services include references to the Goods;

- g) references to Clauses and Schedules are to clauses and schedules of the Contract; and
- h) the Schedules form part of the Contract and have effect as if set out in full in the body of the Contract and any reference to the Contract includes the Schedules.

## 2. Contract and Contract Term

- 2.1 The Supplier shall provide the Authority with the services set out in Schedule 1 (the “**Services**”) in accordance with the terms and conditions of the Contract.
- 2.2 The Contract is effective on 17 September 2018 (the “**Commencement Date**”) and ends on 31 March 2019 (the “**Expiry Date**”) unless terminated early or extended in accordance with the Contract.

## 3. Price and Payment

- 3.1 In consideration of the Supplier providing the Services in accordance with the Contract, the Authority shall pay the Price to the Supplier.
- 3.2 The Authority shall:
  - a) provide the Supplier with a purchase order number (“**PO Number**”); and
  - b) pay all undisputed sums due to the Supplier within 30 days of receipt of a Valid Invoice.
- 3.3 A Valid Invoice shall:
  - a) contain the correct PO Number;
  - b) express the sum invoiced in sterling; and
  - c) include VAT at the prevailing rate as a separate sum or a statement that the Supplier is not registered for VAT.
- 3.4 The Supplier shall submit invoices in line with payment schedule in Schedule 2 to the Authority at the following addresses: [Accounts-Payable.neg@sscl.gse.gov.uk](mailto:Accounts-Payable.neg@sscl.gse.gov.uk) or SSCL AP, Natural England, PO Box 790, Newport Gwent, NP10 8FZ
- 3.5 The Supplier acknowledges that:

- a) if the Supplier does not include VAT on an invoice or does not include VAT at the correct rate, the Authority will not be liable to pay the Supplier any additional VAT.
  - b) invoices which do not include the information set out in Clause 3.3 will be rejected.
- 3.6 Any late payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.7 The Supplier shall not suspend provision of the Services if any payment is overdue.
- 3.8 The Supplier indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract.
- 3.9 Fair Processing Notice: The processing of your personal data relating to financial transactions including data that relates to your interaction with us, and is necessary for us to meet our obligations, may be processed offshore by our services provider, Shared Services Connected Limited (SSCL). SSCL run our back office services through Centres of Excellence in the UK, and in India. For additional information click here (this needs to link to a separate page with the full content)

## 4. Extension of the Contract

- 4.1 The Authority may, by written notice to the Supplier, extend the Contract for a further period up to six (6) months.

## 5. Warranties and Representations

- 5.1 The Supplier warrants and represents for the Contract Term that:
- a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Contract and to provide the Services;
  - b) the Contract is executed by a duly authorised representative of the Supplier;
  - c) in entering the Contract it has not committed any Fraud;
  - d) as at the Commencement Date, all information contained in its tender or other offer made by the Supplier to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and that it will advise the Authority of any fact, matter or

circumstance of which it may become aware which would render such information false or misleading;

- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
- g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Supplier's assets or revenue;
- h) to the best of its knowledge and belief it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
- i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- j) it will comply with its obligations under the [Immigration, Asylum and Nationality Act 2006](#).

5.2 The Supplier warrants and represents that in the 3 years prior to the date of the Contract:

- a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
- b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and
- c) it has complied with all relevant tax Laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

## 6. Service Standards

6.1 The Supplier shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.

- 6.2 If the Services do not meet the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the Specification within such reasonable time as may be specified by the Authority.
- 6.3 The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of the Goods. If the Authority rejects any of the Goods it may (without prejudice to its other rights and remedies) either:
- a) have the Goods promptly either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until the repair or replacement has occurred; or
  - b) treat the Contract as discharged by the Supplier's breach and obtain a refund (if the Goods have already been paid for) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining replacements.
- 6.4 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 6.3.
- 6.5 If the Authority issues a receipt note for delivery of the Goods it shall not constitute any acknowledgement of the condition, quantity or nature of those Goods or the Authority's acceptance of them.
- 6.6 The Supplier hereby guarantees the Goods against faulty materials or workmanship for such period as may be specified in the Specification or, if no period is so specified, for 3 years from the date of acceptance. If the Authority shall within such guarantee period or within 30 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall choose) free of charge.
- 6.7 Any Goods rejected or returned by the Authority pursuant to this Clause 6 shall be returned to the Supplier at the Supplier's risk and expense.

## 7. Termination

- 7.1 The Authority may terminate the Contract at any time by giving 30 days written notice to the Supplier.
- 7.2 The Authority may terminate the Contract in whole or in part by notice to the Supplier with immediate effect and without compensation to the Supplier if:

- a) being an individual, the Supplier is the subject of a bankruptcy order; has made a composition or arrangement with his creditors; dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the [Mental Health Act 1983](#);
- b) being a company, the Supplier goes into compulsory winding up, or passes a resolution for voluntary winding up, or suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets, is dissolved; or has entered into a voluntary arrangement with its creditors under the [Insolvency Act 1986](#), or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985; or has been dissolved;
- c) being a partnership, limited liability partnership or unregistered company, the Supplier or an individual member of it goes into compulsory winding up; is dissolved; suffers an administrator or receiver or manager to be appointed over the whole or any part of its assets; or has entered into a composition or voluntary arrangement with its creditors;
- d) the Supplier is in any case affected by any similar occurrence to any of the above in any jurisdiction;
- e) subject to Clause 7.3, the Supplier commits a Default;
- f) there is a change of control of the Supplier; or
- g) the Supplier or Staff commits Fraud in relation to the Contract or any other contract with the Crown (including the Authority).

7.3 If the Supplier commits a Default which is capable of being remedied, the Authority may terminate the Contract pursuant to Clause 7.2(e) only if the Supplier has failed to remedy the Default within 20 Working Days of being notified of the Default by the Authority.

## 8. Consequences of Expiry or Termination

8.1 If the Authority terminates the Contract under Clause 7.2:

- a) and then makes other arrangements for the supply of the Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Term; and
- b) no further payments shall be payable by the Authority to the Supplier (for the Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under Clause 8.1(a).

8.2 On expiry or termination of the Contract the Supplier shall:

- a) co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier; and
- b) procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services) shall be delivered promptly to the Authority.

8.3 Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 3, 8 to 13, 17, 26 and 28.

## 9. Liability, Indemnity and Insurance

9.1 Notwithstanding any other provision in the Contract, neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence;
- b) Fraud or fraudulent misrepresentation; or
- c) Any other liability which by law, cannot be limited or excluded.

9.2 The Supplier shall indemnify and keep indemnified the Authority against all claims, proceedings, demands, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which arise in tort (including negligence) default or breach of the Contract to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or Fraud of itself or of Staff or Sub-contractors save to the extent that the same is directly caused by the negligence, breach of the Contract or applicable Law by the Authority.

9.3 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

9.4 Subject to Clause 9.1:

- a) neither Party is liable to the other for any:
  - (i) loss of profits, business, revenue or goodwill;
  - (ii) loss of savings (whether anticipated or otherwise); and/or

(iii) indirect or consequential loss or damage

- b) each Party's total aggregate liability in respect of all claims, losses damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall not exceed £1,000,000 (one million pounds) or 2x the value of the Contract whichever is the lower amount.
- 9.5 The Supplier shall, with effect from the Commencement Date and for such period as necessary to enable the Supplier to comply with its obligations under the Contract, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Term and for a minimum of 6 years following the end of the Contract.
- 9.6 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 9.7 If the Supplier fails to comply with Clauses 9.5 and 9.6 the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 9.8 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 9.9 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## 10. Confidentiality and Data Protection

- 10.1. Subject to Clause 10.2, unless agreed otherwise in writing, the Supplier shall, and shall procure that Staff shall, keep confidential all matters relating to the Contract.
- 10.2. Clause 10.1 shall not apply to any disclosure of information:
- a) required by any applicable Law;
- b) that is reasonably required by persons engaged by the Supplier in performing the Supplier's obligations under the Contract;

- c) where the Supplier can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 10.1; or
  - d) which is already lawfully in the Supplier's possession prior to its disclosure by the Authority; or
  - e) which has been independently developed by the Supplier without access to the information
- 10.3. Parties shall, and shall procure that their Staff and employees shall, comply at all times with Data Protection Legislation

## 11. Freedom of Information

- 11.1. Both Parties acknowledge that they are subject to the [Freedom of Information Act 2000](#) and the [Environmental Information Regulations 2004](#) (the "**Information Acts**") and may be required to disclose certain information to third parties including information relating to this Contract pursuant to the Information Acts.
- 11.2. If either Party receives a request for information relating to the Contract pursuant to either of the Information Acts, then they will notify and consult with the other, but both the Authority and the Supplier acknowledge that whichever party receives the request for information may, acting in accordance with the legislation, disclose such information as necessary in order to comply with its duties under the Information Acts. For the avoidance of doubt the party which receives the request for information under the Information Acts shall retain complete discretion in determining whether or not an exemption applies or whether information should be released in accordance with a request for information it receives.

## 12. Intellectual Property Rights

- 12.1 Any Intellectual Property Rights owned or controlled by the Supplier prior to the commencement of or independently from the Services, and which the Supplier uses or contributes in the course of performing the Services ("Background Intellectual Property Rights") shall remain the property of the Supplier.
- 12.2 The IP Materials shall vest in the Authority. Once the Authority has approved the IP Materials and that Approval has been received by the Supplier, the Authority hereby grants the Supplier a perpetual, only to the extent this licence shall automatically expire once the IP Materials have been made publicly available under the terms of an Open Government Licence ("OGL"), irrevocable, sub-licensable, royalty-free right to use the IP Materials for academic and research purposes, including but not limited to research involving projects funded by third parties provided that those parties gain or claim no rights to such IP Materials. For

avoidance of doubt the Supplier shall not have the right to commercially exploit the IP Materials until such time as the IP Materials have been made available under the terms of an OGL.

- 12.3 The Supplier shall indemnify and keep indemnified the Authority and the Crown against all actions, claims, demands, losses, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur arising from any infringement or alleged infringement of any Intellectual Property Rights by the availability of the Services except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## 13. Prevention of Corruption and Fraud

- 13.1. The Supplier shall act within the provisions of the [Bribery Act 2010](#).
- 13.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of money from the Authority.
- 13.3. The Supplier shall notify the Authority immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

## 14. Discrimination

- 14.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination in employment.
- 14.2 The Supplier shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

## 15. Environmental and Ethical Policies

- 15.1 The Supplier shall provide the Services in accordance with the Authority's policies on the environment, sustainable and ethical procurement and timber and wood derived products, details of which are available on the Authority Website.

## 16. Health and Safety

- 16.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.

- 16.2 While on the Authority's premises, the Supplier shall comply with the Authority's health and safety policies.
- 16.3 The Supplier shall notify the Authority immediately if any incident occurs in providing the Services on the Authority's premises which causes or may cause personal injury.
- 16.4 The Supplier shall comply with the requirements of the [Health and Safety at Work etc Act 1974](#), and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises when providing the Services.
- 16.5 The Supplier's health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) shall be made available to the Authority on request.

## 17. Monitoring and Audit

- 17.1 The Authority may monitor the provision of the Services and the Supplier shall co-operate, and shall procure that Staff and any Sub-contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.
- 17.2 The Supplier shall keep and maintain until 6 years after the end of the Contract Term full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority, the National Audit Office and the Comptroller and Auditor General reasonable access to those records and on such terms as they may request.
- 17.3 The Supplier agrees to provide, free of charge, whenever requested, copies of audit reports obtained by the Supplier in relation to the Services.

## 18. Transfer and Sub-Contracting

- 18.1 The Supplier shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- 18.2 If the Supplier enters into any Sub-contract in connection with the Contract it shall:
- a) remain responsible to the Authority for the performance of its obligations under the Contract;
  - b) be responsible for the acts and/or omissions of its Sub-contractors as though they are its own;
  - c) impose obligations on its Sub-contractors in the same terms as those imposed on it pursuant to the Contract and shall procure that the Sub-Supplier complies with such terms;

- d) pay its Sub-contractors' undisputed invoices within 30 days of receipt.
- 18.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- a) any Contracting Authority or any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - b) any private sector body which performs substantially any of the functions of the Authority.
- 18.4 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.

## 19. Variation

- 19.1 Subject to the provisions of this Clause 19, the Authority may change the Specification provided that such change is not a material change to the Specification (a "**Variation**").
- 19.2 The Authority may request a Variation by notifying the Supplier with sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement it. Variations agreed by the Parties shall be made in writing.
- 19.3 If the Supplier is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:
- a) allow the Supplier to fulfil its obligations under the Contract without the Variation; or
  - b) refer the request to be dealt with under the Dispute Resolution Procedure.

## 20. Dispute Resolution

- 20.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Contract within 10 Working Days of either Party notifying the other of the dispute and such efforts shall include the escalation of the dispute to the Supplier's representative and the Authority's commercial director or equivalent.
- 20.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 20.3 If the dispute cannot be resolved by the Parties pursuant to Clause 20.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clauses 20.5 to 20.10.
- 20.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Supplier and Staff shall comply fully with the requirements of the Contract at all times.
- 20.5 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree a Mediator within 10 Working Days after a request by one Party or if the chosen Mediator is unable to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 20.6 The Parties shall, within 10 Working Days of the appointment of the Mediator, meet the Mediator to agree a programme for the disclosure of information and the structure to be adopted for negotiations. The Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 20.7 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 20.8 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 20.9 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 20.10 If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to the Courts.
- 20.11 Subject to Clause 20.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 20.1 and 20.5 to 20.10 have been completed.

## 21. Supplier’s Status

- 21.1 Nothing in the Contract shall be construed as constituting a partnership between the Parties or as constituting either Party as the agent for the other for any purposes except as specified by the terms of the Contract.

- 21.2 The Supplier shall not (and shall ensure that Staff shall not) say or do anything that might lead any person to believe that the Supplier is acting as the agent, partner or employee of the Authority.

## 22. Notices

- 22.1 Notices shall be in writing and in English and shall be deemed given if signed by or on behalf of a duly authorised officer of the Party giving the notice and if left at, or sent by first class mail to the address of the receiving Party as specified in the Contract (or as amended from time to time by notice in writing to the other Party).

## 23. Entire Agreement

- 23.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, arrangements and undertakings.

## 24. Third Party Rights

- 24.1 No term of the Contract is intended to confer a benefit on, or be enforceable by, any person who is not a Party other than the Crown.

## 25. Waiver

- 25.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.
- 25.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## 26. Publicity

- 26.1 The Supplier shall not without Approval:

- a) make any press announcements or publicise the Contract or its contents in any way; or
  - b) use the Authority's name or logo in any promotion or marketing or announcement.
- 26.2 The Authority may publish the Contract on the Authority Website or another website at its discretion.

## 27. Force Majeure

- 27.1 Except to the extent that the Supplier has not complied with any business continuity plan agreed with the Authority, neither Party shall be liable for any failure to perform its obligations under the Contract if, and to the extent, that the failure is caused by act of God, war, riots, acts of terrorism, fire, flood, storm or earthquake and any disaster but excluding any industrial dispute relating to the Supplier, Staff or Sub-contractors.
- 27.2 If there is an event of Force Majeure, the affected Party shall use all reasonable endeavours to mitigate the effect of the event of Force Majeure on the performance of its obligations.

## 28. Governing Law and Jurisdiction

- 28.1 The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 28.2 The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Supplier in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## 29. Electronic Signature

- 29.1 Acceptance of the award of this contract will be made by electronic signature carried out in accordance with the 1999 EU Directive 99/93 (Community framework for electronic signatures) and the UK Electronic Communications Act 2000.
- 29.2 Acceptance of the offer comprised in this Agreement must be made **within 7 days** from the date of this Award Letter and the Agreement is formed on the date on which the Contractor communicates acceptance on the Customer's electronic contract management system ("**Bravo**").
- 29.3 No other form of acknowledgement will be accepted.

## 30. Use of Confidential Information

The Authority may disclose the Confidential Information of the Supplier:

- a) on a confidential basis to any central Government body for any proper purpose of the Authority or of the relevant central Government body;
- b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- c) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by the Authority for any purpose relating to or connected with this Agreement;
- d) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- e) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement

## 31. Research and Development

### 31.1 Supplier's Obligations

The Supplier shall:

- a) commence the performance of the Services promptly after the commencement date of the Contract Term and in accordance with the agreed timetable;
- b) in providing the Services, co-operate fully, and procure that its Staff co-operate fully with the Authority's employees, agents and sub-contractors; and
- c) in the event of the Supplier not being able to perform the Services, or any part thereof, immediately inform the duly authorised officer giving details of the circumstances, reasons and likely duration. Nothing in this clause 1(c) shall in any way alter, modify, relieve or in any other way vary the Supplier's obligation to provide the Services.

### 31.2 Publications

In accordance with clause 26.1 if the Supplier wishes to use, present or publish the methods and results of the Services it shall provide the Authority with a copy of any intended publication for review and comment at least thirty days prior to its

submission for publication and or release into the public domain, as the case may be, and the Authority shall have the right to approve or reject all such publications prior to their submission and/or release, such approval not to be unreasonably withheld. If such publication or release is permitted in accordance with this clause the Supplier shall acknowledge the Authority's support in any such publications or presentations containing the results or methods of the Services.

### **31.3 IP Material**

Notwithstanding clause 12 of the main agreement, the Supplier shall do such further acts and execute such further deeds and documents as the Authority may request from time to time as may be necessary or desirable to ensure that all such rights in IP Material fully and effectively vest in the Authority and to assist the Authority in applying for and obtaining registered protection for any such rights in the IP Material.

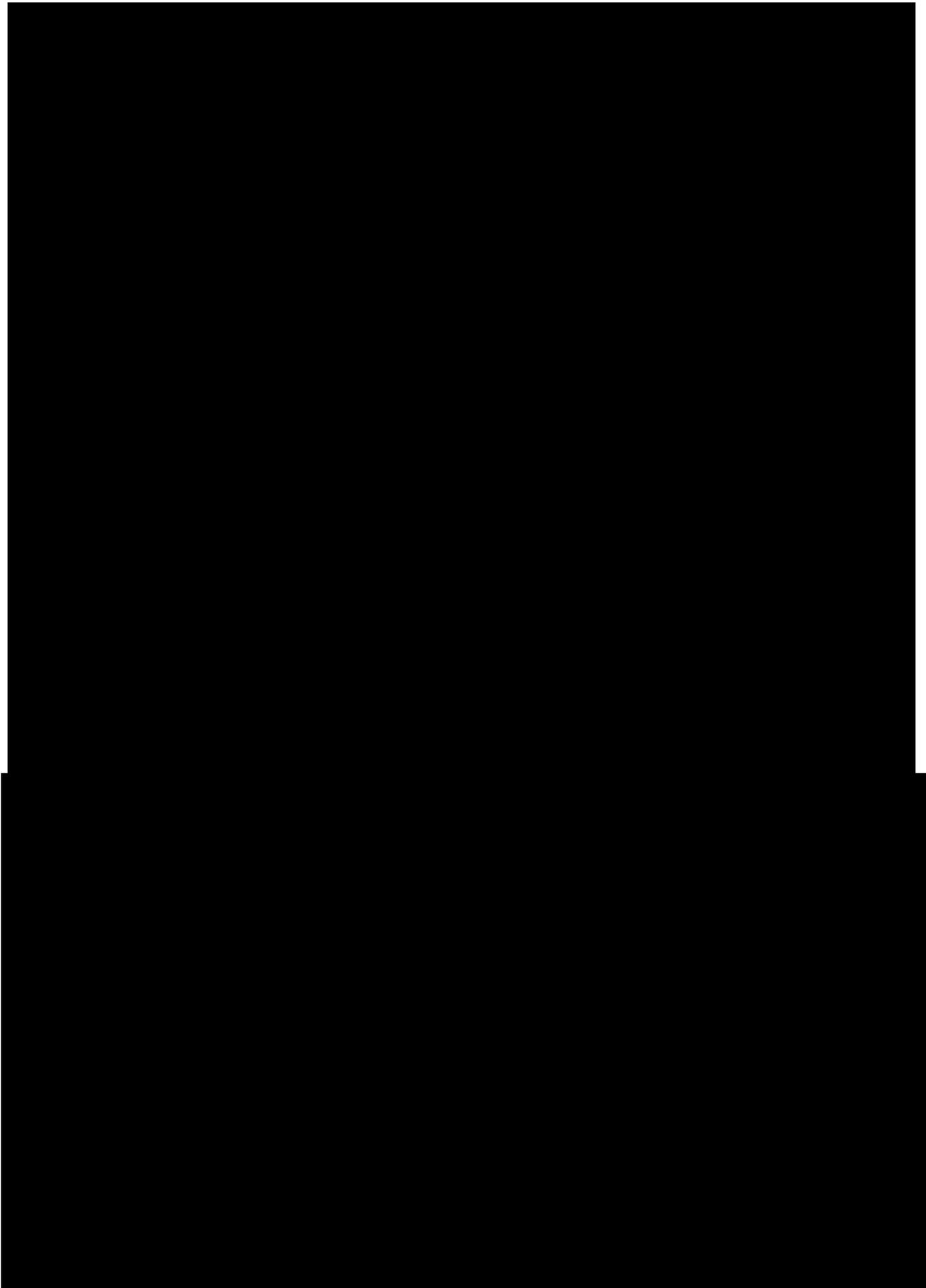
# SCHEDULE 1 - SPECIFICATION OF SERVICES

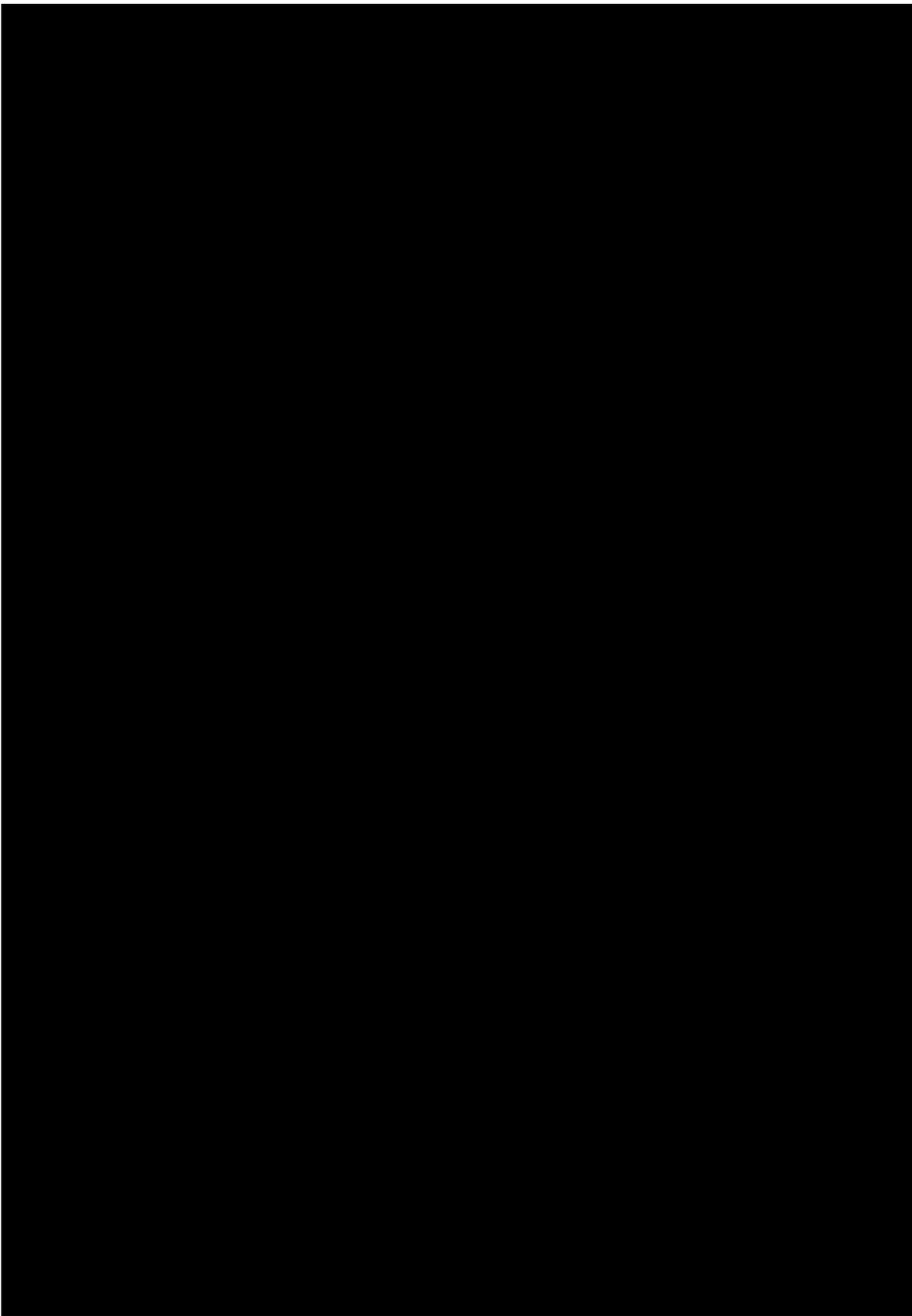
## Requirements

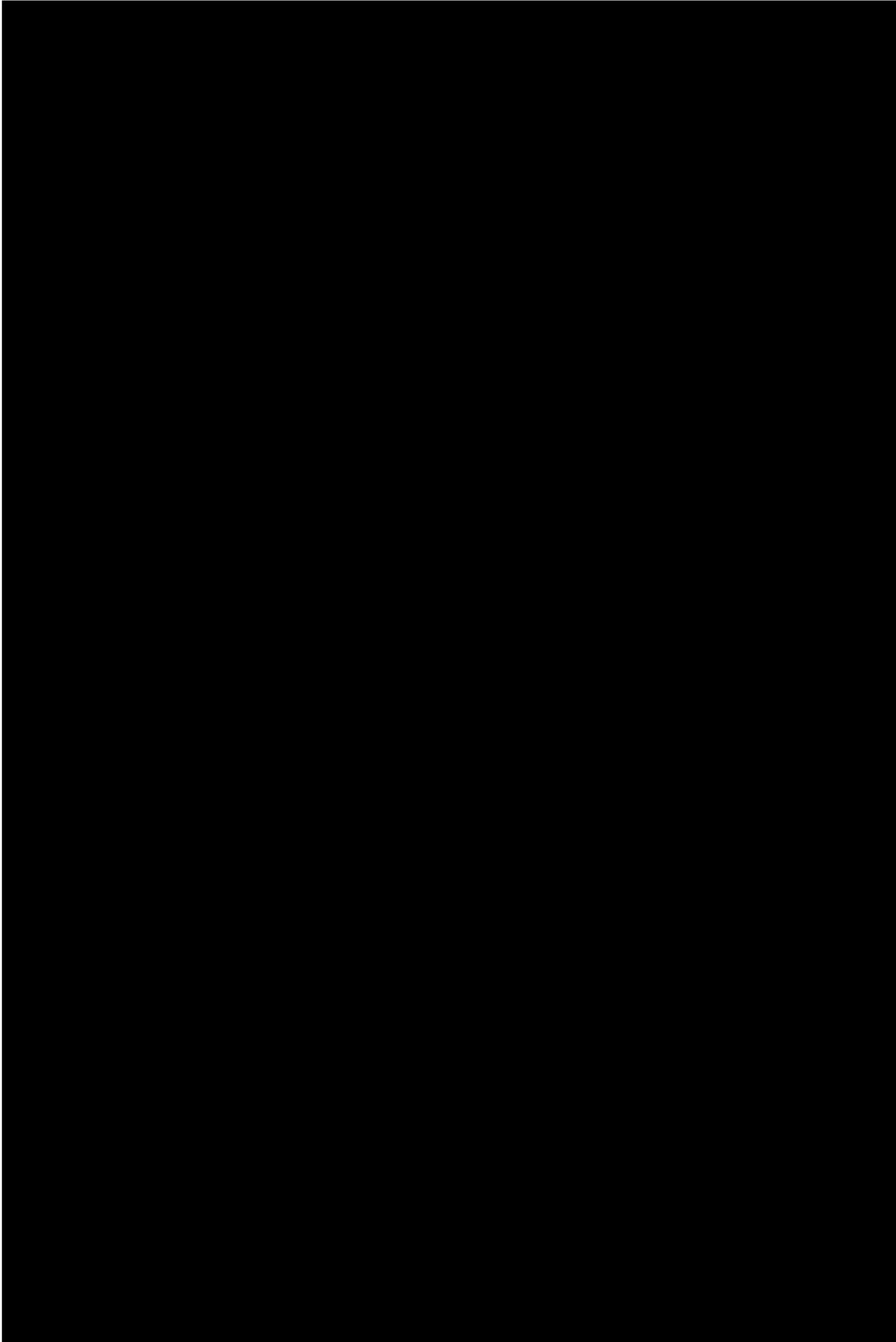
Develop generic PVA models applicable to seabirds, at a variety of scales (from a single SPA breeding colony to regional or biogeographic scales) that are integrated into an interactive tool with which informed, but non-expert users can specify model inputs as well as the nature of the outputs that will be generated. The basic project requirement is to develop a modelling framework within the R statistical programme (R Core Team (2017) based on a stage/age structured demographic model with a Shiny App (R StudioTeam (2016); <https://shiny.rstudio.com/>) front end tool that allows users to input parameters to the model and to specify outputs in various forms. This will allow, for example, different demographic parameters, stochasticity, density dependence functions, population impact levels, model sensitivity etc. to be easily explored, interrogated and visualised.

A key requirement is for the modelling tool to provide graphical and tabular outputs and interactive visualisations in a variety of formats according to the selected, or user defined input parameters applied to the underlying population model/s. A key objective of the tool is to allow users to explore population management-oriented objectives (e.g. assessment of impacts, evaluation of management options etc.) as well as being able to explicitly highlight the effects on model outputs of different assumptions about the model, data, species and populations concerned.

While the main project objective is to develop a PVA model framework and Shiny App that can be used to model populations of a range of seabird species, and allow exploration of the effects of different assumptions and model parameters on the predicted population level impacts, the generic nature of the tool envisaged is such that it should be sufficiently flexible to enable application to other groups of birds. Given this aspiration, and the likelihood that the level of detail of the available population data will differ widely between different groups of species (and even different species of seabird), the modelling framework developed under this contract will need to have the flexibility to accommodate input data across a spectrum of simplicity-complexity. The extent to which the population models can be applied, or extended to apply to other UK bird species (e.g. terrestrial species) should therefore be considered.



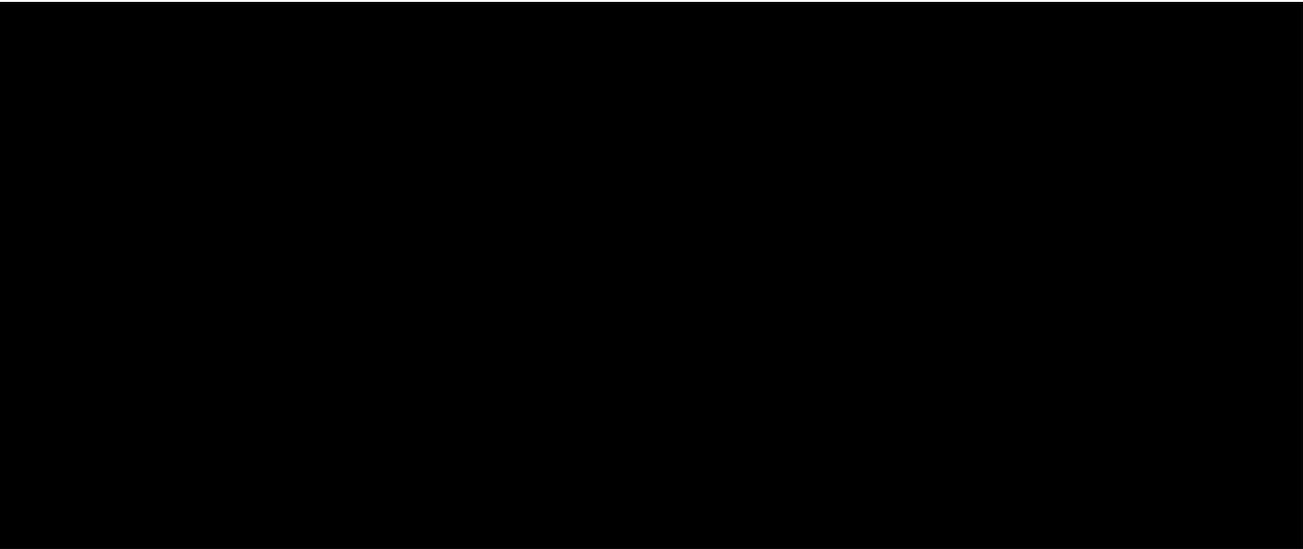
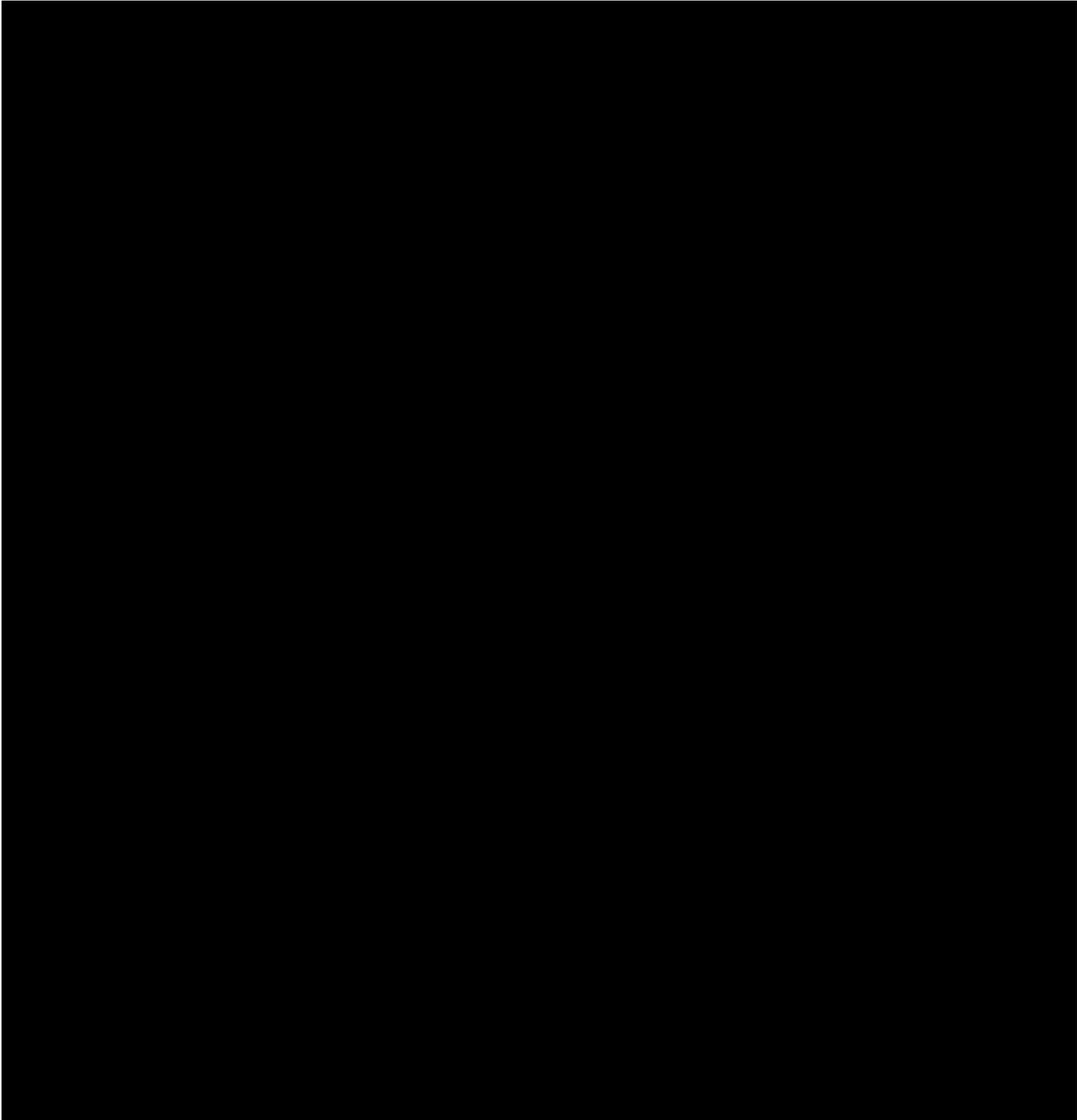


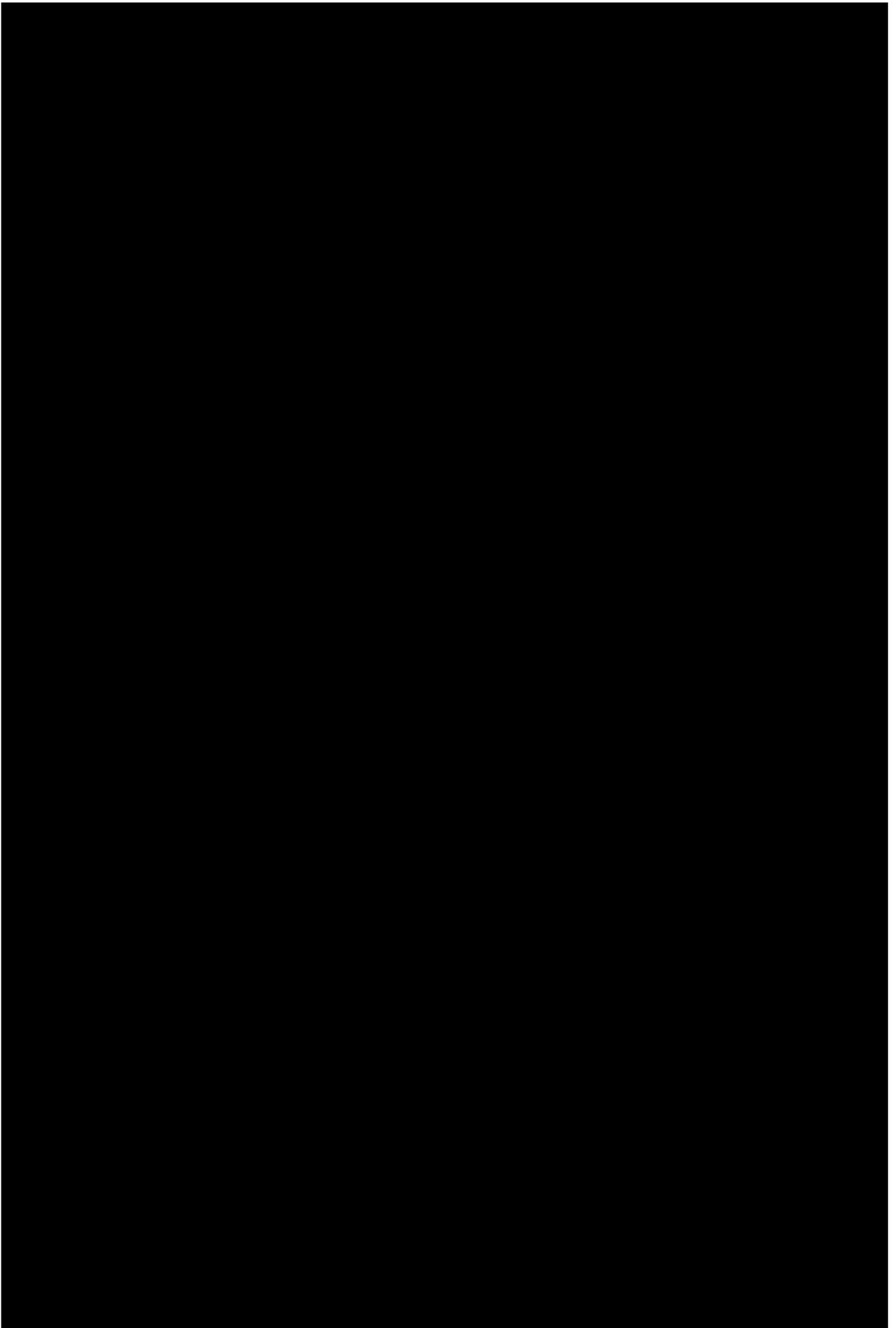


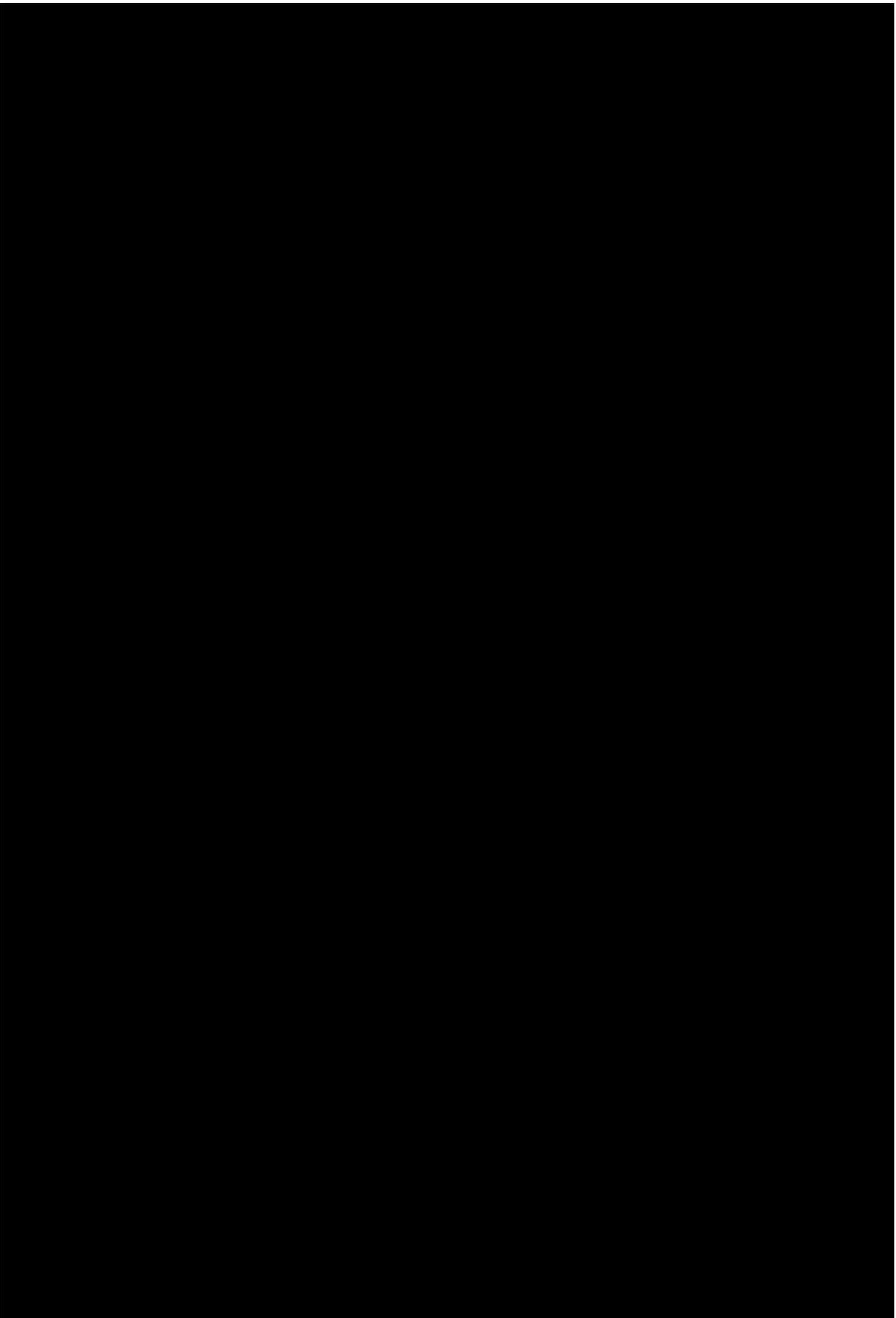
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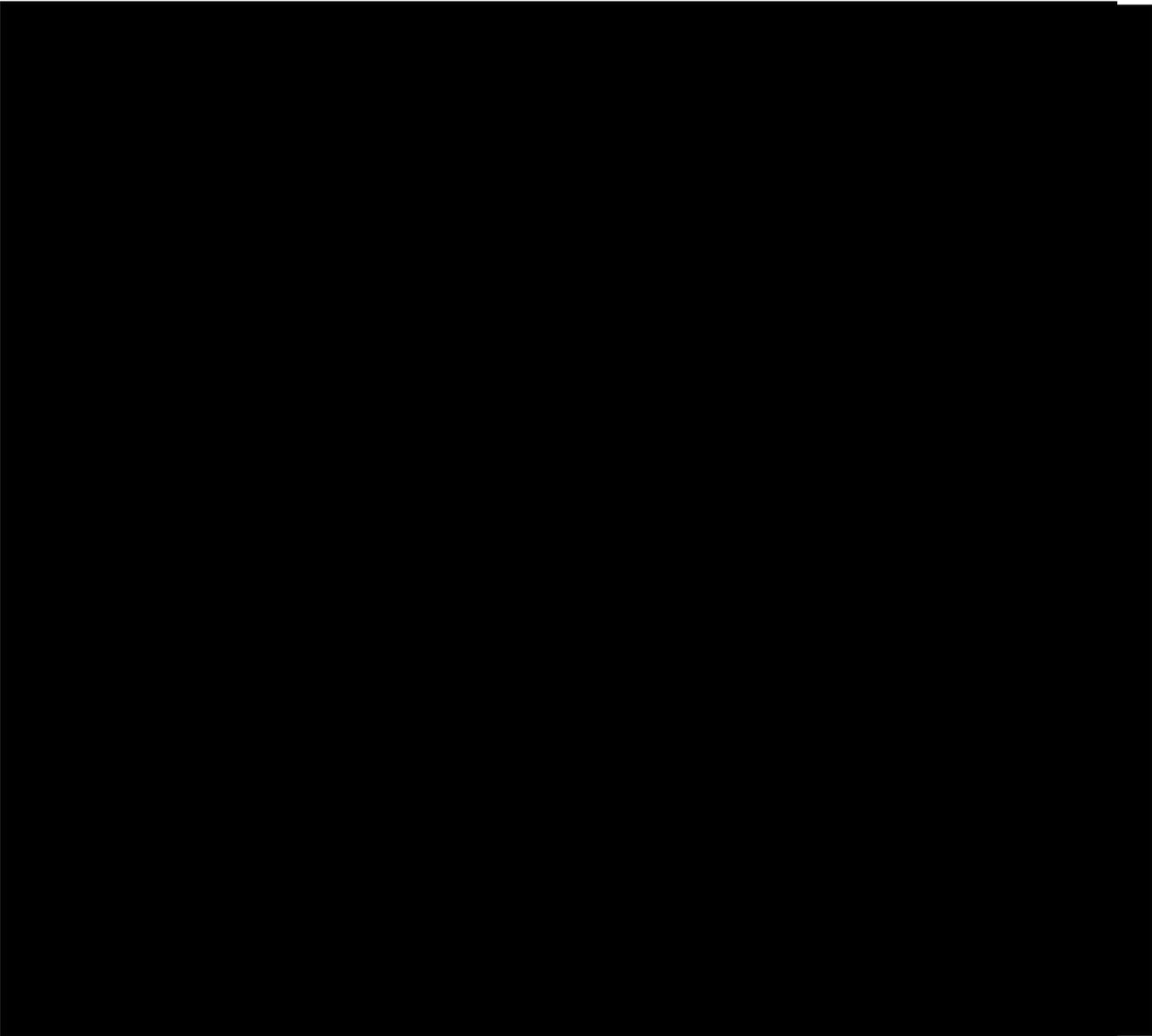
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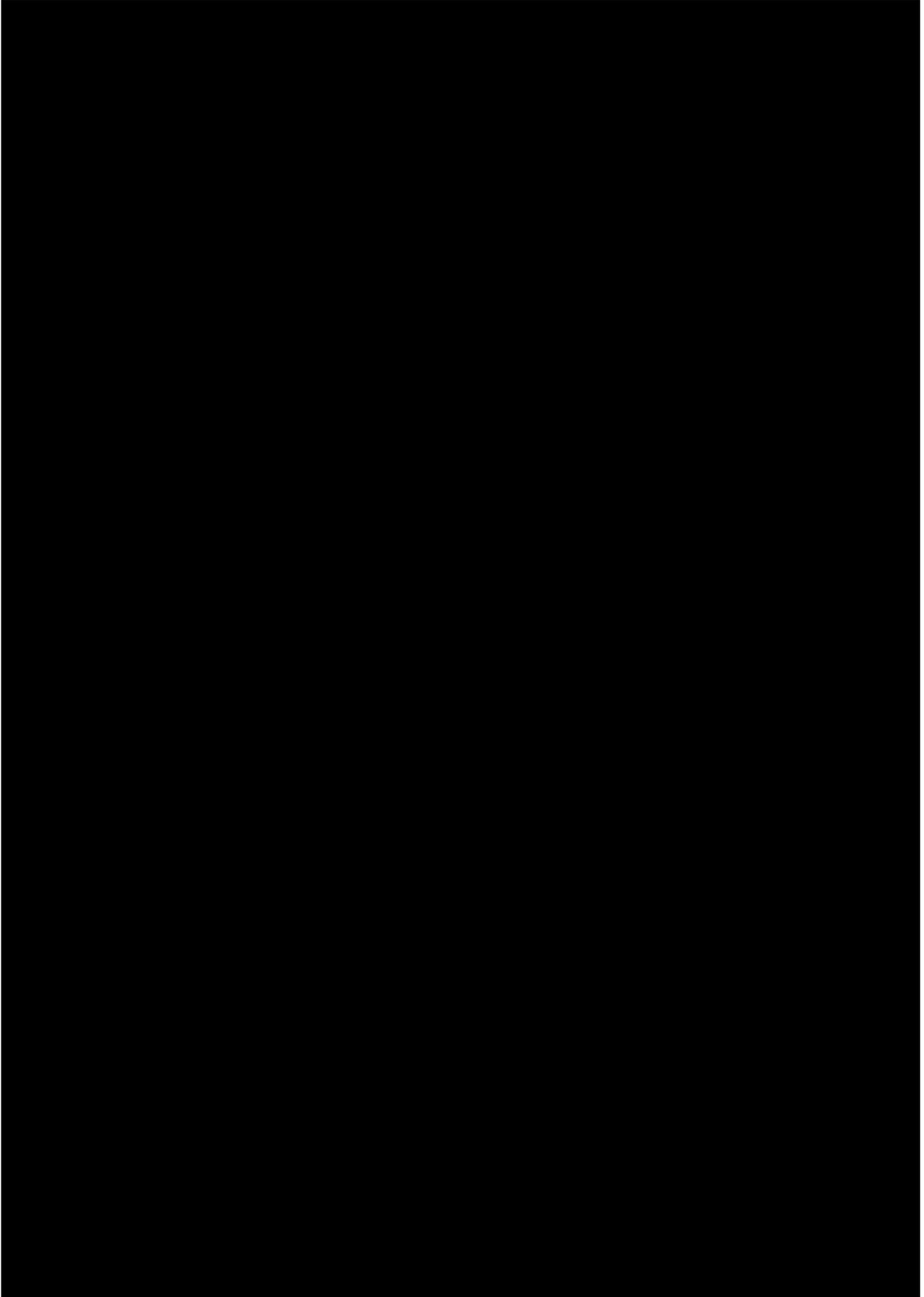
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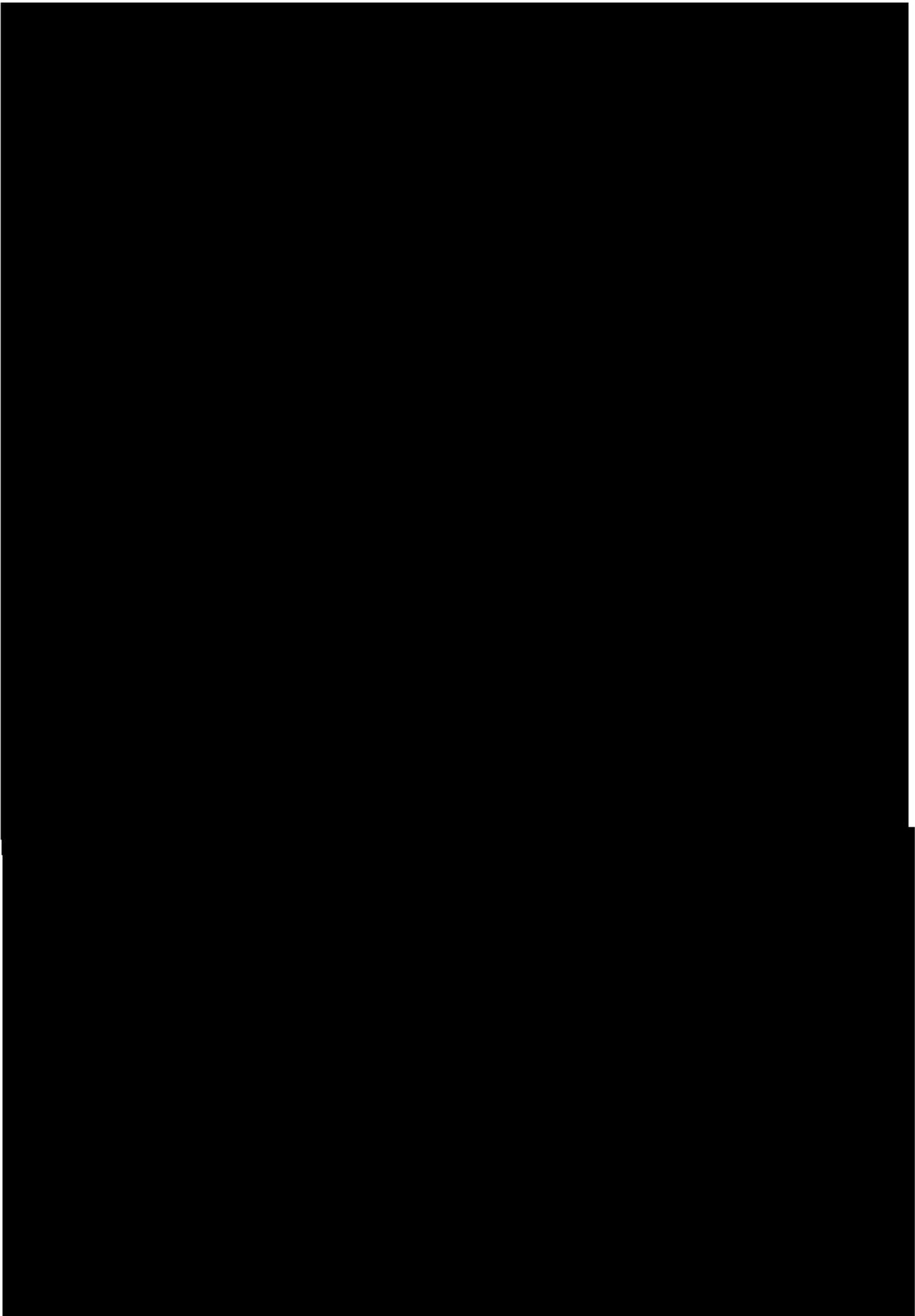


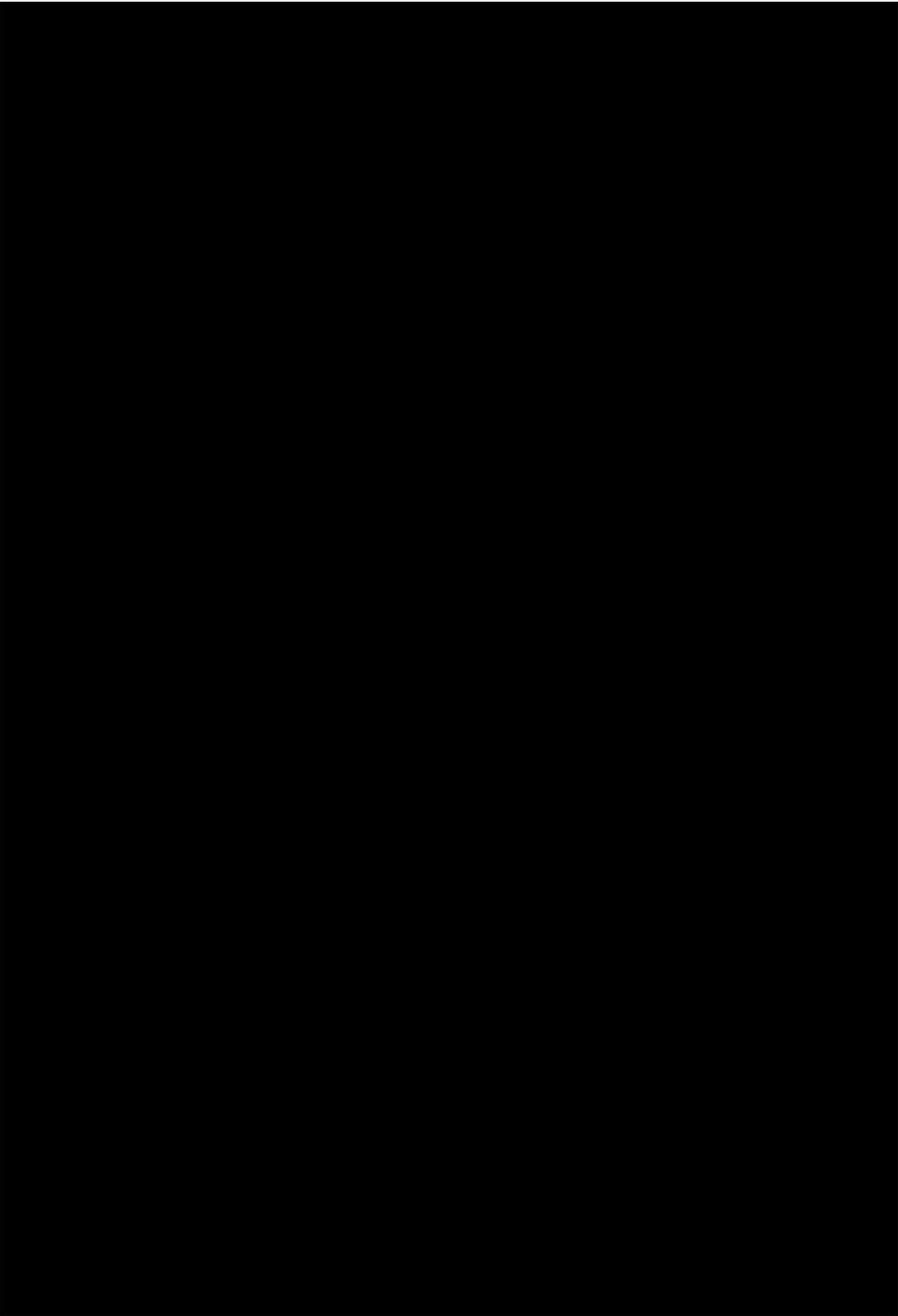


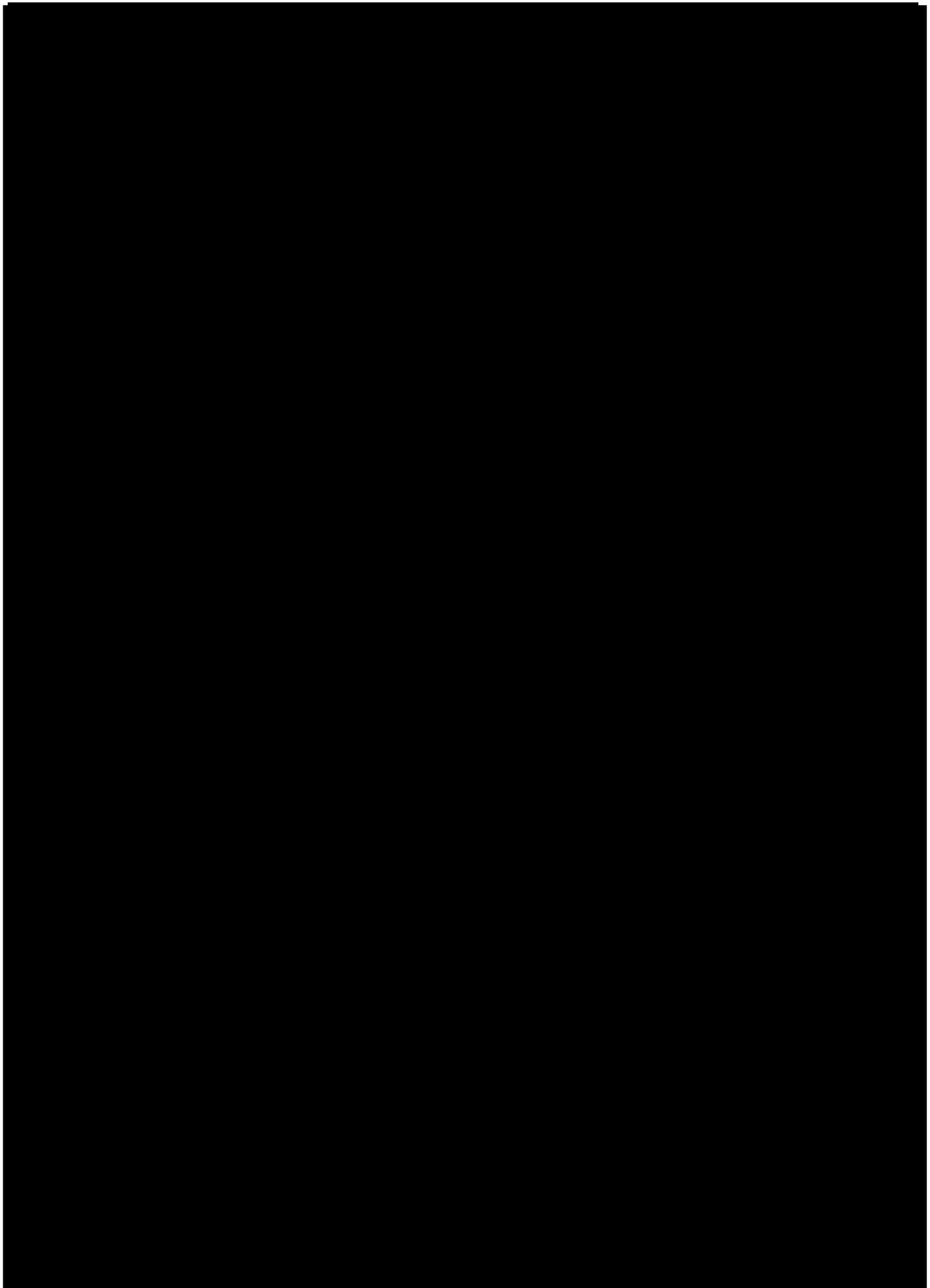


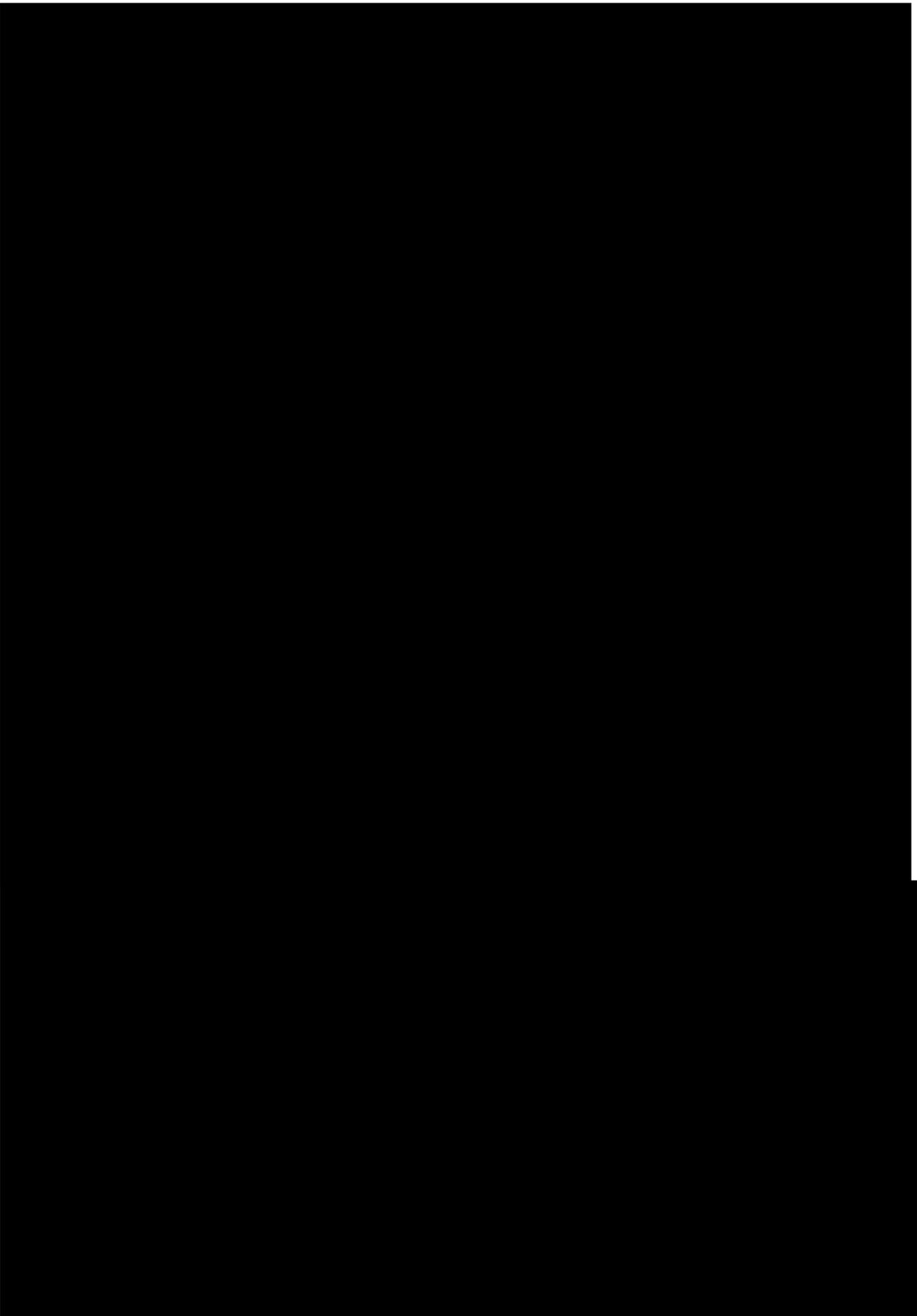


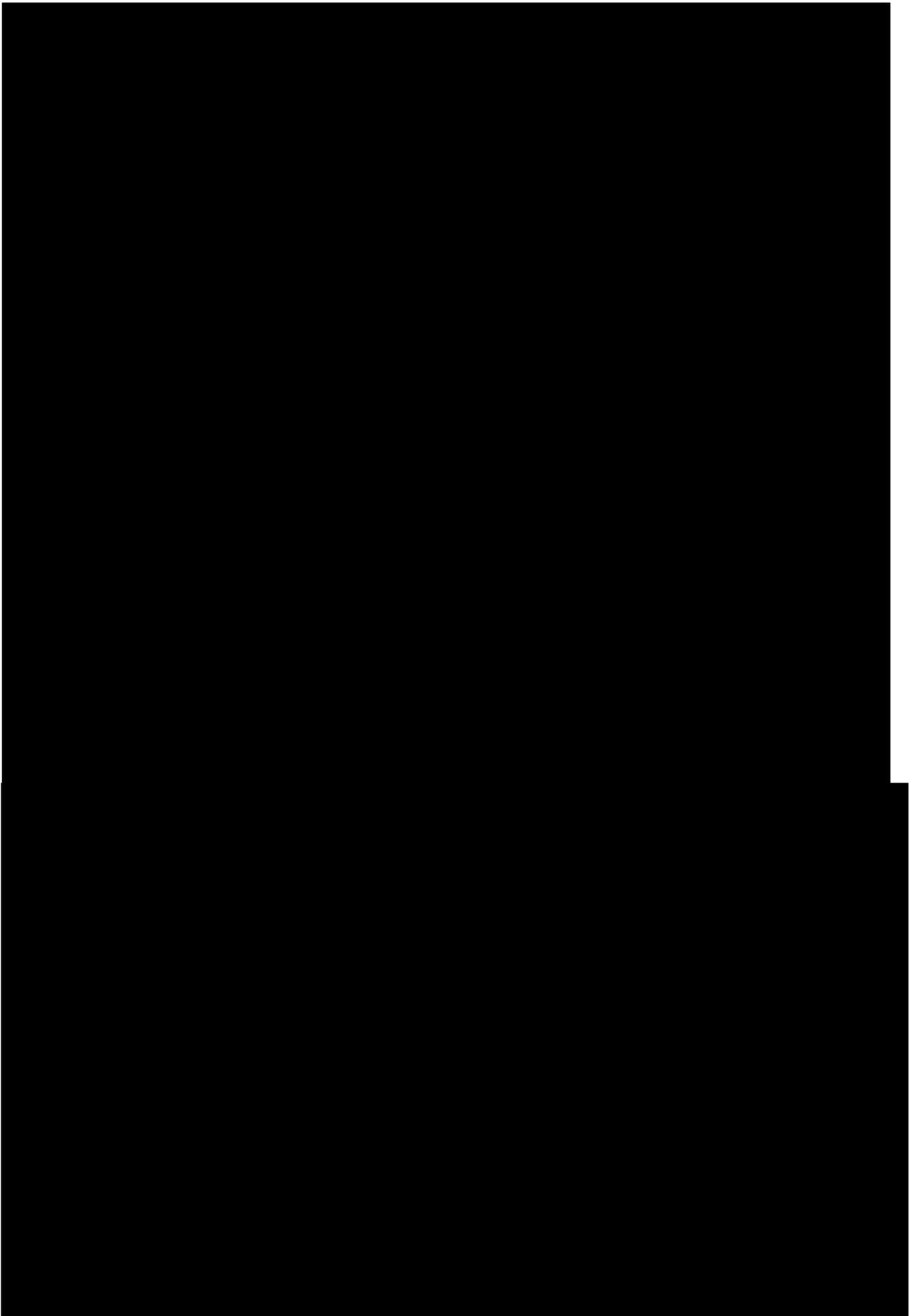


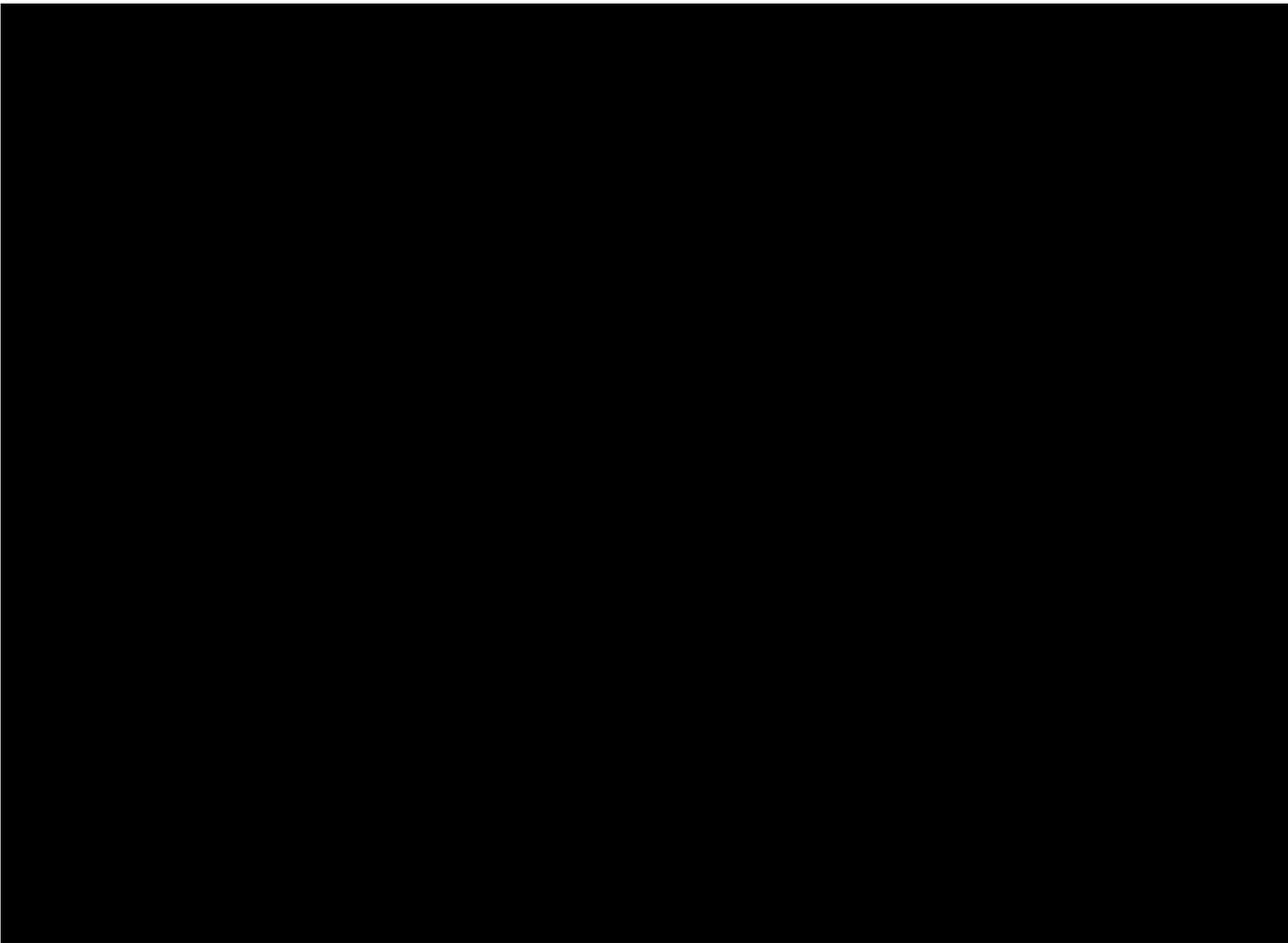




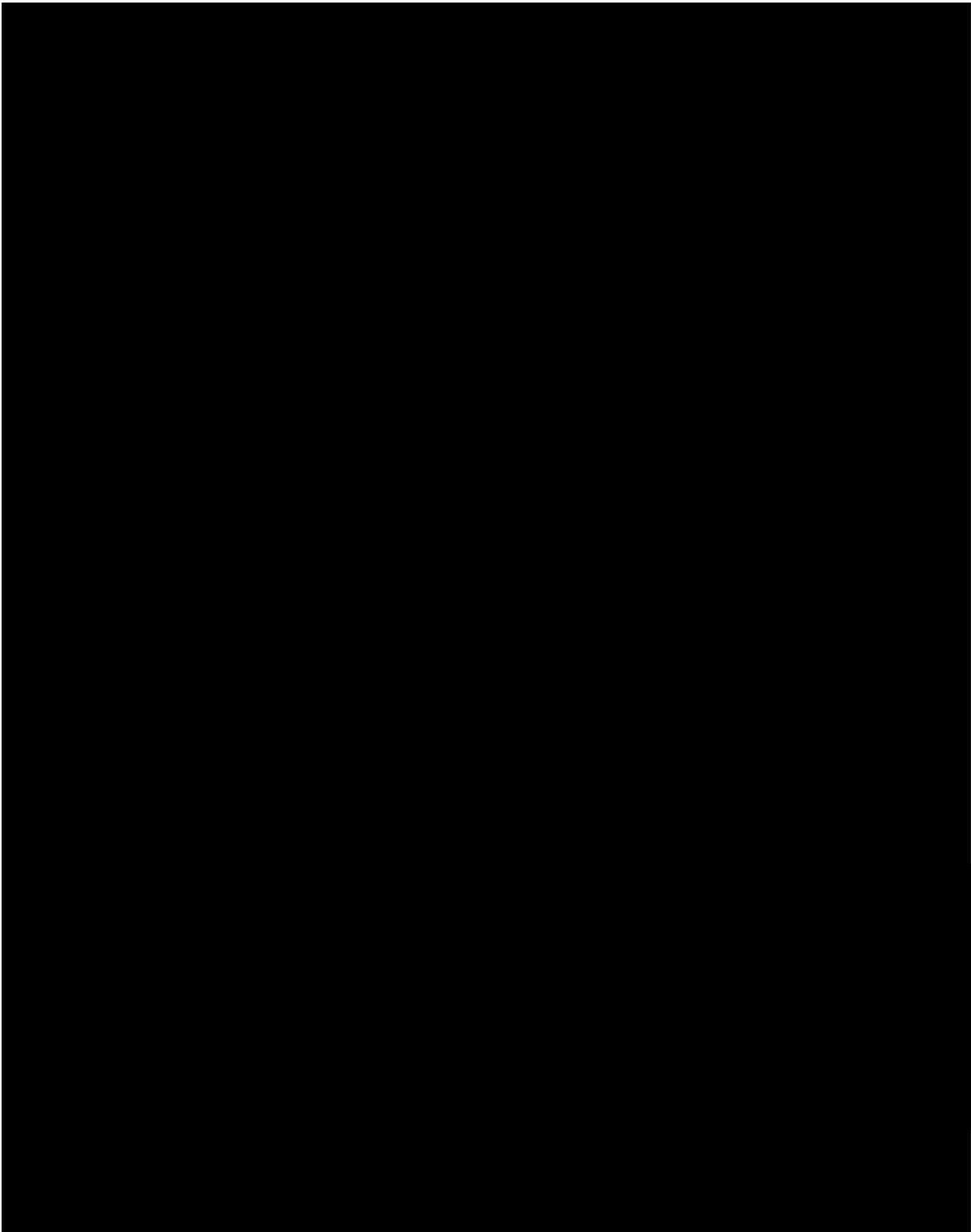


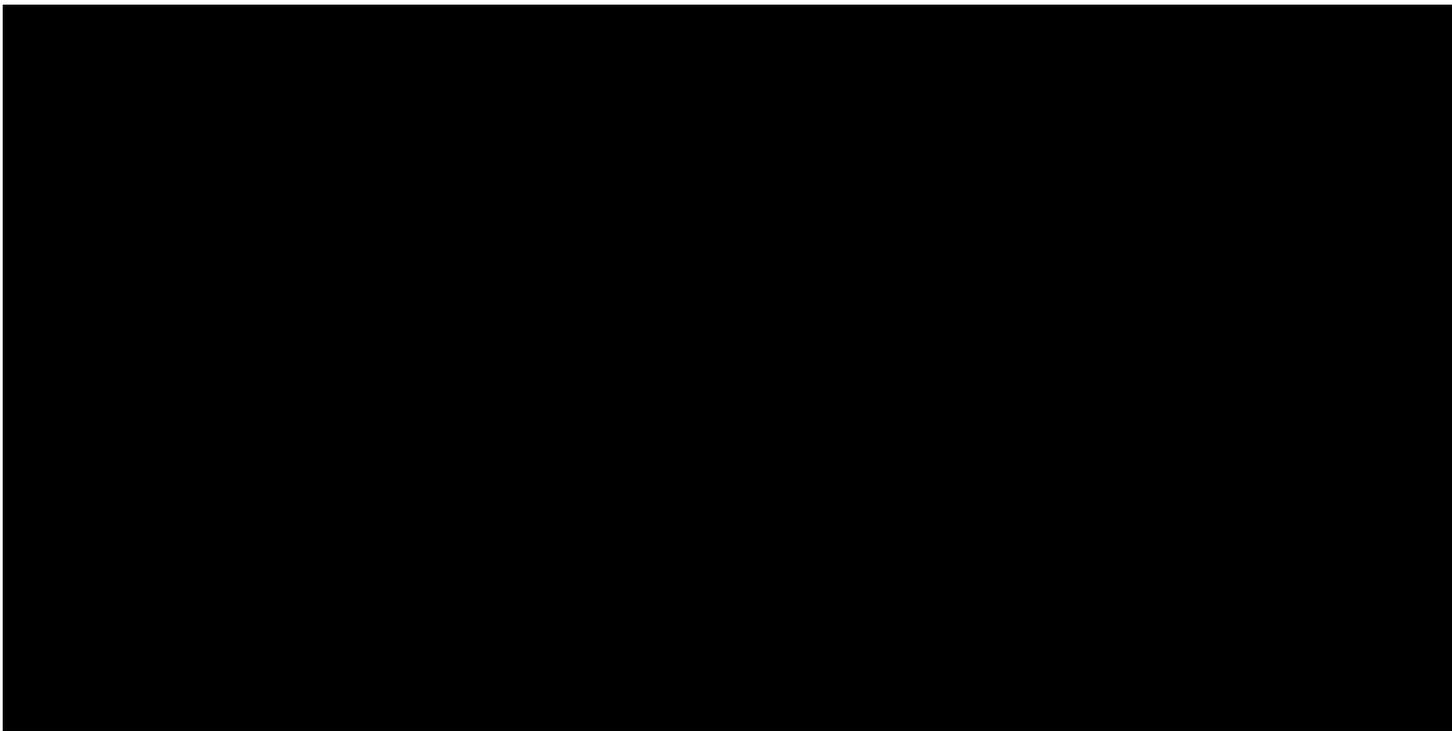












## SCHEDULE 2 - PRICES

1. The Authority will pay the Contractor no more than the fixed sum of £28,292.01 excluding VAT. The attachment below provides detailed information relating to the commercial proposal.

2. Below is a breakdown of costs;

| Description of milestone                                       |  |
|--|--|
| Project inception meeting                                      |  |
| Scoping Workshop for stakeholders                              |  |
| Contractor to produce summary of workshop findings             |  |
| Alpha version of tool  |  |
| Beta version of tool   |  |
| Workshop for demonstration and testing of beta version of tool |  |
| Draft final report   |  |
| Final report, tool and associated documentation                |  |

3. Payment schedule shall be as follows

- 20% on delivery of summary of key workshop findings, including user requirements for population models and Shiny app and contractors proposed design and detailed specification for population modelling tool;
- 20% on delivery of Alpha version of population modelling tool to Natural England;
- 20% on delivery of Beta version of population modelling tool to Natural England;

- 20% on completion of workshop for the project SG (and selected users specified by NE) including demonstration and testing of the Beta version of Population Modelling Tool;
- 10% on delivery of draft final report and Population Modelling Tool to Natural England;
- 10% on delivery of final report, Population Modelling Tool and associated products to Natural England incorporating additions/ amendments in light of comments provided by Natural England;