

Queen Elizabeth II National Memorial - Masterplan

Appointment of multidisciplinary design team

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# Award Form

This Contract is executed as a deed and is Dated: 07 October 2025

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.	Buyer	<p>The Minister for the Cabinet Office, acting as part of the Crown (the Buyer).</p> <p>Its offices are at: 70 Whitehall, London, SW1A 2AS</p>
2.	Supplier	<p>Name: Foster + Partners Limited</p> <p>Address: Riverside Three, Albert Wharf, 22 Hester Road, London SW11 4AN</p> <p>Registration number: 1644989</p> <p>SID4GOV ID: 227165685</p>
3.	Contract	<p>This Contract between the Buyer and the Supplier is for the supply of Services, being multidisciplinary design, planning consultancy, heritage consultancy, cost consultancy and project management services in connection with the master planning of the Queen Elizabeth II National Memorial - see Schedule 2 (Specification) for full details.</p> <p>This opportunity was advertised in Find A Tender, under Contract Notice reference 2025/S 000-001655 (FTS Contract Notice).</p>
4.	Contract reference	C3467
5.	Buyer Cause	<p>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.</p>

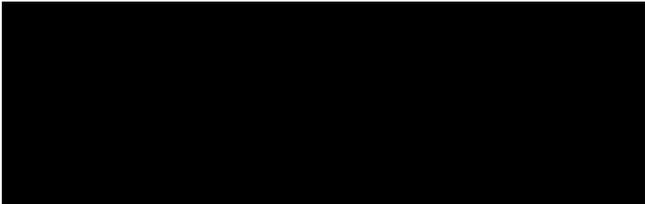
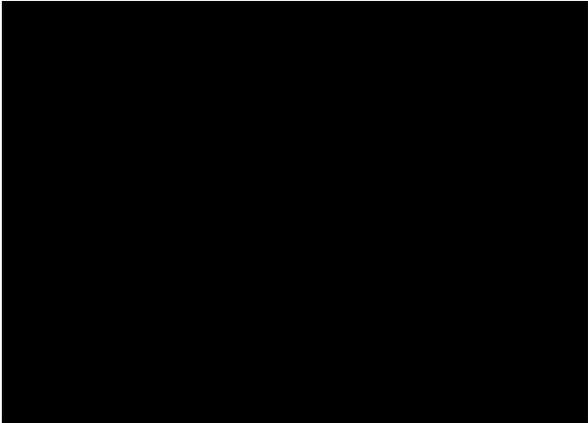
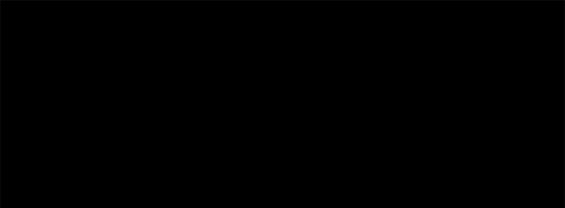
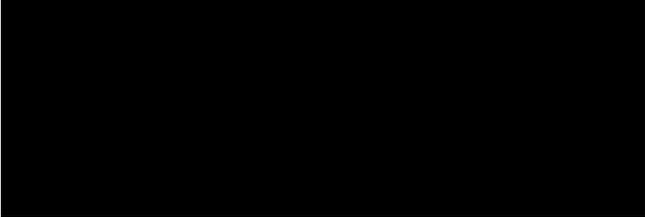
6.	Collaborative working principles	<p>The Collaborative Working Principles apply to this Contract.</p> <p>See Clause 3.1.3 for further details.</p>
7.	Financial Transparency Objectives	<p>The Financial Transparency Objectives apply to this Contract.</p> <p>See Clause 6.2A for further details.</p>
8.	Start Date	24 June 2025
9.	Ending this Contract without a reason	<p>The Buyer shall be able to terminate this Contract in accordance with Clause 14.3.</p>
10.	<p>Incorporated Terms</p> <p>(together these documents form the "this Contract")</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) The Core Terms</li> <li>(c) Schedule 36 (Intellectual Property Rights)</li> <li>(d) Schedule 1 (Definitions)</li> <li>(e) The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> <li>(i) Schedule 2 (Specification)</li> <li>(ii) Schedule 3 (Charges)</li> <li>(iii) Schedule 5 (Commercially Sensitive Information)</li> <li>(iv) Schedule 8 (Implementation Plan)</li> <li>(v) Schedule 13 (Contract Management)</li> <li>(vi) Schedule 14 (Business Continuity and Disaster Recovery)</li> <li>(vii) Schedule 16 (Security)</li> <li>(viii) Schedule 19 (Cyber Essentials)</li> <li>(ix) Schedule 21 (Variation Form)</li> </ul> </li> </ul>



REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS

		<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul> <p>The total of the Charges (inclusive of the provisional sum for the sculptor and assuming that no break clauses are exercised) is therefore £5,406,922.75 plus 4.72% of actual build costs for RIBA 5 and 0.94% of actual build costs for RIBA stages 6 &amp; 7.</p>
14.	Reimbursable expenses	Recoverable as set out in Schedule 3 (Charges)
15.	Liability	<p>In accordance with Clause 15.1 the Buyer's total aggregate liability to the Supplier (whether in tort, contract or otherwise) is no more than the total of the Charges.</p> <p>In accordance with Clause 15.2, the Supplier's liability to the Buyer under this Contract (whether in tort, contract or otherwise) is no more than ten million pounds (£10,000,000) sterling each and every claim.</p> <p>In accordance with Clause 15.7, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being ten million pounds (£10,000,000) sterling.</p>
16.	Cyber Essentials Certification	Cyber Essentials Scheme Basic Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)
17.	Progress Meetings and Progress Reports	<p>The Supplier shall attend Progress Meetings with the Buyer every calendar month</p> <p>The Supplier shall provide the Buyer with Progress Reports every calendar month, such reports to be provided to the Buyer no later than two Working Days before that calendar month's Progress Meeting.</p>
18.	Guarantor	Not applicable

REDACTED UNDER FOIA SECTION 40, PERSONAL INFORMATION

19.	Supplier's Contract Manager	   
20.	Supplier Authorised Representative	
21.	Supplier Compliance Officer	
22.	Supplier Data Protection Officer	
23.	Supplier Marketing Contact	
24.	Key Subcontractors	Key Subcontractor 1 Name: Sarl Michel Desvigne Paysagiste Registration Number: 49392790900017 Role: Landscape Architect  Key Subcontractor 2



25.	<b>Buyer Authorised Representative</b>	
26.	<b>Collateral Warranty Beneficiary</b>	The Royal Parks Limited Any other entity or entities that will have a responsibility for the maintenance or management of the Project

**In witness** whereof this appointment has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed** as a **Deed** by an attorney for **Foster+ Partners Limited** under a power of attorney dated 25 September 2023 in the presence of:

Signed by: 

Signature of attorney

Name of attorney

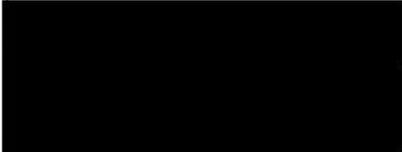
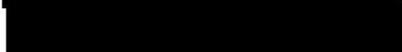
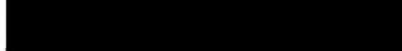
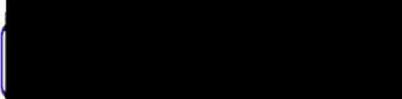
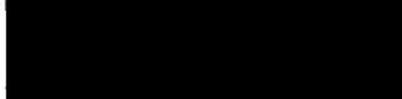
Signature of witness

Name of witness

Address of witness

**REDACTED UNDER FOIA SECTION 40, PERSONAL INFORMATION**

**Executed** as a **Deed** by an authorised signatory for and on behalf of the **Buyer** acting as part of the Crown in the presence of:

Signature of authorised signatory	<b>Signed by:</b> 	_____
Name of authorised signatory		_____
Role of authorised signatory		_____
Signature of witness		_____
Name of witness		_____
Address of witness		_____

**REDACTED UNDER FOIA SECTION 40, PERSONAL INFORMATION**

## The Core Terms

### 1. Definitions used in the contract

1.1 this Contract using Schedule 1 (Definitions).

### 2. How the contract works

2.1 The Buyer wishes to buy the Services under this Contract as stated in the Award Form to facilitate the carrying out of the Project, subject to clause 2.8. If allowed by the Regulations, the Buyer can:

2.1.1 make changes to the Award Form;

2.1.2 create new Schedules;

2.1.3 exclude optional template Schedules; and

2.1.4 use Special Terms in the Award Form to add or change terms.

2.2 The Contract:

2.2.1 is between the Supplier and the Buyer; and

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

2.3 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.

2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:

2.4.1 the Buyer's requirements for the Services;

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

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

2.4.4 and it has it has advised the Buyer in writing of:

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

(b) the actions needed to remedy each such unsuitable aspect; and

- (c) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and
  - (d) such actions, timetable and costs are fully reflected in this Contract.
- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
  - 2.5.1 verify the accuracy of the Due Diligence Information; and
  - 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of the Services are and remain true and accurate.
- 2.8 Approval Gateways
  - 2.8.1 Notwithstanding the generality of the other provisions of this Contract, the Supplier shall not proceed with (and the Buyer shall have no liability for payment in respect of) the provision of any elements of the Services beyond RIBA Stage 2 plus those set out in paragraphs 4.20 (Statutory (Planning and Listed Building) Applications) 4.26 (Appoint a Sculptor / Artist , Deliver a RIBA Stage 2 masterplan design), 4.27 (Manage the planning consent process and deliver planning consent for the masterplan design) and (as required) 4.28 (Additional advice and support) of Schedule 2 (Specification) unless instructed to do so in writing by the Employer (subject to clause 2.8.2).
  - 2.8.2 If an instruction is issued under clause 2.8.1, notwithstanding the generality of the other provisions of this Contract, the Supplier shall not proceed with (and the Buyer shall have no liability for payment in respect of) the provision of any elements of the Services beyond RIBA Stage 4 unless instructed to do so in writing by the Employer.
  - 2.8.3 Nothing within this clause 2.8 shall prejudice the Buyer's right to terminate this Contract at any time under clause 14.3.

### 3. What needs to be delivered

- 3.1 All Services

- 3.1.1 The Supplier must comply with this Contract and, exercising the Standard of Care, provide the Services:
- (a) in compliance with the Project Brief, the Specification, the Tender Response and this Contract;
  - (b) using Good Industry Practice;
  - (c) using its own policies, processes and internal quality control measures as long as they don't conflict with this Contract;
  - (e) (subject to clause 2.8) in accordance with such timescales as will facilitate the Buyer's programme for the carrying out and completion of the Project;
  - (f) with due regard to the Buyer's budget requirements for the Project (and if the Supplier becomes aware of any circumstances which may cause those budget requirements not to be met then the Supplier shall notify the Buyer as soon as reasonably practicable thereafter); and
  - (g) in compliance with Law and to see that any design or specification prepared by the Supplier as part of the Services is in compliance with Law and all Consents relating to the Project.
- 3.1.2 The Supplier shall not make or approve any significant alteration to any approved or settled design in relation to the Project without the consent of the Buyer. In the context of this clause, a "significant alteration" would include (but is not limited to) any alteration that would:
- (a) substantively change the design of the Project;
  - (b) have an impact upon listed elements of the Site or areas adjacent thereto;
  - (c) have an impact upon the flora and fauna of the Site or areas adjacent thereto;
  - (d) have an impact upon any ceremonial events at the Site or areas adjacent thereto;
  - (e) result in a change to the costs of delivering the Project; or
  - (f) affect the period required for the completion of the Project.
- 3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must 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) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- (b) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- (c) 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
- (d) identifying, implementing and capitalising on opportunities to improve Services and deliver better solutions and performance throughout the relationship lifecycle.

### 3.2 Contract Administrator Role

- 3.2.1 As at the Effective Date, it is not anticipated that the Supplier shall be obliged to carry out the role of Contract Administrator in respect of any construction contract to be entered into by the Buyer in respect of the delivery of the Project. The Parties, however, agree that the Buyer may instruct the Supplier to carry out such role. Should such instruction be issued, the Supplier shall be obliged to perform those services identified as being related to the role of Contract Administrator in Schedule 2 (Specification) and the Supplier shall be entitled to payment of the fee identified in Schedule 3 (Charges) in respect of the discharge of such role.
- 3.2.2 For the avoidance of doubt, the Supplier shall not be obliged to perform those services identified as being related to the role of Contract Administrator in Schedule 2 (Specification) and the Supplier shall not be entitled to payment of the fee identified in Schedule 3 (Charges) in respect of the discharge of such role unless the Buyer issues an instruction in terms of clause 3.2.1.

### 3.3 Services clauses

- 3.3.1 The Supplier must co-operate with the Buyer, Buyer Third Parties 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.
- 3.3.2 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.

- 3.3.3 The Supplier must allocate sufficient resources and appropriate expertise to this Contract.
  - 3.3.4 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's or the Buyer Third Parties' operations, employees or other contractors.
  - 3.3.5 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition after any use of such Buyer Premises by the Supplier in connection with this Contract, and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.
  - 3.3.6 The Supplier must ensure that anything used to Deliver the Services, are of good quality and free from defects.
  - 3.3.7 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.
- 3.4 Collateral Warranties
- 3.4.1 In addition to the Supplier's obligations to procure Collateral Warranties from each Key Subcontractor in terms of clause 8.6.2, the Supplier shall, within 10 Working Days of a request from the Buyer, execute and deliver to the Buyer Collateral Warranties granted by the Supplier themselves in favour of each Collateral Warranty Beneficiary.

#### 4. Pricing and payments

- 4.1 In exchange for the Services, the Supplier must invoice the Buyer for the Charges as stated in the Award Form, such invoice to be compliant with clause 4.4 . The Supplier shall submit invoices on completion of Milestones.
- 4.2 All Charges:
  - 4.2.1 exclude VAT, which is, where applicable, payable on provision of a valid VAT invoice; and
  - 4.2.2 include all costs connected with the Supply of Services.
- 4.3 The due date for payment of the relevant element of the Charges shall be the date upon which the Supplier issues the relevant invoice to the Buyer ("the due date") and the final date for payment shall be the date occurring thirty (30) days thereafter ("the final date for payment"). The Buyer must pay the Supplier the notified sum (as defined in clause 4.4.1), subject to clauses 4.5

and 4.8, no later than the final date for payment in cleared funds using the payment method agreed between the Parties.

- 4.4 A Supplier invoice is only valid if it:
  - 4.4.1 sets out the sum the Supplier considers is due to the Supplier as at the due date ("the notified sum") and the basis upon which that sum is calculated;
  - 4.4.2 includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and
  - 4.4.3 includes a detailed breakdown of Delivered Services and Milestone(s) (if any).
- 4.5 If the Buyer intends to pay less than the notified sum, the Buyer must issue a notice to the Supplier specifying the sum that the Buyer considers to be due to the Supplier as at the date the Buyer serves such notice and the basis upon which that sum is calculated. It is immaterial for the purposes of this clause 4.5 that the sum considered by the Buyer to be due to the Supplier may be zero. Such notice must be given by the Buyer (or on the Buyer's behalf) no later than one day before the final date for payment. Unless the sum specified in the Buyer's notice issued under this clause 4.5 is zero, the Buyer must pay the sum specified as due in that notice no later than the final date for payment.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.
- 4.8 Notwithstanding the generality of clause 4.3, the Buyer need not pay any sum due in respect of an invoice issued by the Supplier if the Supplier has become insolvent in terms of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended).

## **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 any liability and Deduction under this Contract in

respect of Supplier Non-Performance in so far as it attributable to such Buyer Cause;

5.1.3 the Supplier is entitled to additional time needed to perform the Services;

5.1.4 the Supplier cannot suspend the ongoing supply of Services except to the extent permitted in terms of clause 14.7.5.

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 of the occurrence of such Buyer Cause;

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

5.2.3 has 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.

6.2A 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 whenever a change to the Charges and / or the Contract Value is being sought by either Party (including but not limited to a requested Variation) and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.

6.3 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:

Supplier's currently incurred or forecast future Costs; and

forecast Charges for the remainder of this Contract,

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

- 6.4 The Buyer or an Auditor can Audit the Supplier.
- 6.5 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
  - 6.5.1 complies with the Supplier's operating procedures; and
  - 6.5.2 does not unreasonably disrupt the Supplier or its provision of the Services.
- 6.6 During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
  - 6.6.1 all information within the permitted scope of the Audit;
  - 6.6.2 any Sites, equipment and the Supplier's ICT system used in the performance of this Contract; and
  - 6.6.3 the Supplier Staff.
- 6.7 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.
- 6.8 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
  - 6.8.1 correcting any identified Default;
  - 6.8.2 rectifying any error identified in a Financial Report; and
  - 6.8.3 repaying any Charges that the Buyer has overpaid.
- 6.9 If the Supplier is not providing any of the Services, or is unable to provide them, it must immediately:
  - 6.9.1 tell the Buyer and give reasons;
  - 6.9.2 propose corrective action; and
  - 6.9.3 provide a deadline for completing the corrective action.
- 6.10 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.

## 7. Supplier staff

- 7.1 The Supplier Staff involved in the performance of this Contract must:
  - 7.1.1 be appropriately trained and qualified;
  - 7.1.2 be vetted using Good Industry Practice and in accordance with the Security Policy; and
  - 7.1.3 comply with all conduct requirements when on the Buyer 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 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.

## 8. Supply chain

- 8.1 Appointing Subcontractors
  - 8.1.1 The Supplier must exercise the Standard of Care when it selects and appoints Subcontractors to see that the Supplier is able to:
    - (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 Should the Buyer identify that, delivery of the Services fully in accordance with the Specification requires knowledge and / or skills that the Supplier (including any of its Subcontractors) does not have, the Buyer may require the Supplier to appoint a Key Subcontractor to provide such knowledge and / or skills.
- 8.2 Mandatory provisions in Sub-Contracts

8.2.1 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:

i. where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions

or

ii. 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:

(a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;

(b) require the Supplier to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and

(c) allow the Buyer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

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;

(c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer or the Project;

(d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or

(e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

8.4 Clause not used

8.5 Ongoing responsibility of the Supplier

- 8.5.1 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.
- 8.6 Professional Indemnity Insurance and Collateral Warranties
  - 8.6.1 Unless otherwise agreed by the Buyer, the Supplier shall ensure that the Key Subcontractor is required to maintain professional indemnity insurance for the same level of indemnity, the same period of time and on the same commercial terms as the Supplier is required as set out in Annex Part C of Schedule 22 (Insurance).
  - 8.6.2 Unless otherwise agreed by the Buyer, the Supplier shall ensure that each Key Subcontractor executes and delivers to the Buyer a Collateral Warranty in favour of the Buyer and each Collateral Warranty Beneficiary within 14 days of a request to do so.
- 8.7 Sculptor Appointment
  - 8.7.1 Without prejudice to the generality of clause 9.1, when selecting the Sculptor, the Supplier shall follow the selection process set out in the Specification.
  - 8.7.2 For the avoidance of doubt, the Sculptor, once appointed, shall be a Subcontractor to the Supplier.
  - 8.7.3 Once appointed, the provisional sum included within the Charges in relation to the Sculptor's fee shall be deleted and replaced with the actual fee agreed between the Supplier and the Sculptor.

## 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 Services;
  - 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;
  - 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and
  - 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Effective Date or been subject to an investigation relating to a Prohibited Act.
- 9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Services 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 clause 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.

## 10. Intellectual Property Rights (IPRs)

- 10.1 The Parties agree that the terms set out in Schedule 36 (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:

- 10.4 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
- 10.5 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Services.
- 10.6 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.

## 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:
  - 11.3 reject the Rectification Plan or revised Rectification Plan giving reasons; or
  - 11.4 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.
- 11.5 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
  - 11.6 will give reasonable grounds for its decision; and
  - 11.7 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

## 12. Escalating issues

- 12.1 If
  - 12.1.1 the Supplier fails to:
    - (a) submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
    - (b) adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default or

12.1.2 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.

### 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 Services.

13.2 For as long as the Required Action is taking place:

13.2.1 the Supplier will not have to provide the Services that are the subject of the Required Action;

13.2.2 no Deductions will be applicable in respect of Charges relating to the Services 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).

## 14. Ending the contract

- 14.1 The Contract takes effect on the Effective Date and ends (with the exception of any obligations and liabilities that are to survive termination of this Contract) on the earlier of the date upon which the Supplier completes the Services they have authorisation to proceed with in terms of clause 2.8 or, the date on which this Contract is terminated under this Clause 14 or if required by Law ("the End Date").
- 14.2 clause not used.
- 14.3 Ending the contract without a reason
  - 14.3.1 The Buyer has the right to terminate this Contract (with exception of any obligations and liabilities that are to survive termination of this Contract) at any time without reason by giving the Supplier not less than ninety (90) 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 (excepting any obligations and liabilities that are to survive termination of this Contract) by issuing a

Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

- (a) the Supplier is the subject of an Insolvency Event;
- (b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance or fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Buyer, are acceptable;
- (c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- (e) there's any Material Default of this Contract;
- (f) there's any Material Default of any Joint Controller Agreement relating to this Contract;
- (g) there's a Default of Clauses 2.7, 12, or 31 (where applicable);
- (h) the performance of the Supplier causes a Critical Service Level Failure to occur;
- (i) Clause not used
- (j) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (k) the Buyer discovers that the Supplier was in one of the situations in regulations 57 (1), 57(2) or 73(1)(b) of the Regulations at the time this Contract was awarded;
- (l) the Supplier or its Affiliates embarrass or bring the Buyer or the Project into disrepute or diminish the public trust in either of them; or
- (m) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Services.

14.4.2 If any of the events in regulation 73 (1) (a) of the Regulations happen, the Buyer has the right to immediately terminate this Contract (excepting any obligations and liabilities that are to survive termination of this Contract) and Clauses 14.5.1(b) to 14.5.1(g) apply.

14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates this Contract under Clauses 10.6, 12.3

or 14.4.1, Paragraph 7 of Schedule 24 (Financial Difficulties) (where

applicable) or Paragraphs 3.1.12 (b) or 3.3.2 of Part A of Schedule 26 (Sustainability) all of the following apply:

- (a) The Supplier is responsible for the Buyer's reasonable additional costs of procuring Replacement Services.
- (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.
- (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 handover and re-procurement of the performance of the Services (including to a Replacement Supplier).
- (g) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Services that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates this Contract under Clause 24.5:

- (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: 4, 6, 7.4, 7.5, 9.3, 10, 14.5, 14.6.3, 15, 16.2, 16.3, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27.1, 27.3, 29, 30, 35.3.2, 39, 40, Schedule 1 (Definitions), Schedule 3 (Charges), Schedule 7 (Staff Transfer), Schedule 22 (Insurance), Schedule 36 (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 24.5 and 27.8.

- 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 27.8:
- (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 Services itself or buy them from a third party without liability to the Supplier.
- 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.
- 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.
- 14.7.5 The Supplier may suspend the performance of any or all of its obligations under this Contract (including the performance of the Services) where:
- (a) the Buyer has failed to make payment to the Supplier of any notified sum (or, if the Buyer has issued a notice in response to that notified sum in terms of clause 4.5, the sum specified in that notice) by the final date for payment in respect of that sum;
  - (b) the Supplier has, after such failure of the Buyer to make payment as referred to in paragraph (a), issued a notice to the Buyer of its intention to suspend such performance; and

- (c) the Buyer has still failed to make payment of the sum referred to in paragraph (a) seven days after served the notice upon the Buyer in terms of paragraph (b).

15. How much can a Party be held responsible for?

- 15.1 The Buyer's total aggregate liability to the Supplier under this Contract (whether in tort, contract or otherwise) is no more than the total of the Charges.
- 15.2 The Supplier's liability to the Buyer under this Contract (whether in tort, contract or otherwise) is no more than ten million (£10,000,000) for each and every claim.
- 15.3 Neither Party is liable to the other for:
  - 15.3.1 any indirect Losses; and/or
  - 15.3.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 15.4 In spite of Clauses 15.1 and 15.2, neither Party limits or excludes any of the following:
  - 15.4.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
  - 15.4.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
  - 15.4.3 any liability that cannot be excluded or limited by Law.
- 15.5 In spite of Clause 15.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, 9.3.2, 10.2 or 35.3.2 of this Contract.
- 15.6 [Clause not used].
- 15.7 In spite of Clause 15.2, but subject to Clauses 15.3 and 15.4, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.8 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.
- 15.9 When calculating the Supplier's liability under Clause 15.2 the following items will not be taken into consideration:

15.9.1 Deductions; and

15.9.2 any items specified in Clause 15.5.

15.10 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 compliance with the relevant Data Protection Legislation.<sup>1</sup>

18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

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<sup>1</sup> Note, depending upon the nature of the Supplier's design proposal (particularly in relation to any digital visitor experience elements) additional contract conditions relating to Processing Data may need to be added to clarify the roles of both Parties in respect of such processing under the relevant legislation.

- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via a secure encrypted method upon reasonable request.
- 18.4 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 Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy and the security requirements specified in the Award Form and otherwise as required by Data Protection Legislation.
- 18.5 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.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
  - 18.6.1 tell the Supplier 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
  - 18.6.2 restore the Government Data itself or using a third party.
- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is at fault.
- 18.8 The Supplier:
  - 18.8.1 must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;
  - 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
  - 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
  - 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in

relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and

18.8.5 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

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;

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.
- 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 4.6 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 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 exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise this Contract or any part of it 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.

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 FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

## 21. Invalid parts of the contract

21.1 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

22.1 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 Clause not used.

23.2 No third parties may use the Contracts (Rights of Third Parties) Act 1999 ("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 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 by the Parties without the consent of any Third Party Beneficiary.

## 24. Circumstances beyond your control

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 Services 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 Services 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; and/or

- 27.2.3 the proposed Subcontractor employs unfit persons.
- 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 if 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; and
  - 27.7.4 a copy of the Sub-Contract.

## 28. Changing the contract

- 28.1 The Buyer may request a Variation to this Contract by issuing a Variation Form to the Supplier.
- 28.2 The Supplier must provide an Impact Assessment within the time limits included in a Variation Form issued by the Buyer.
- 28.3 If the Impact Assessment provided by the Supplier cannot be agreed or resolved by the Parties, the Buyer can either:
  - 28.3.1 agree that this Contract continues without the Variation; or
  - 28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).
- 28.4 The Supplier may only refuse to comply with a Variation requested by the Buyer if the Supplier:
  - 28.4.1 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 Services being provided in a way that infringes any Law; or

28.4.2 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.

28.5 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.

28.6 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 Services, the Charges or this Contract and provide evidence:

28.6.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and

28.6.2 of how it has affected the Supplier's costs.

28.7 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.

28.8 Without prejudice to the generality of Clause 3.3.1 and this Clause 28, the Buyer shall be specifically entitled to instruct the Supplier to make modifications to its designs prepared in terms of the Services in so far as such modifications relate to:

(a) aesthetic elements of the Project (including architectural, horticultural, lighting and decorative elements); and/or

(b) the layout of the Project.

The Buyer need not issue such instructions via a Variation Form, and the terms of this clause 28 shall not be deemed to apply, where the Supplier, acting in good faith, agrees that the instruction will have no substantive impact upon the Implementation Plan or the costs to the Consultant of providing the Services.

## 29. How to communicate about the contract

29.1 All notices under this Contract must be in writing and are considered effective on the 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. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.

- 29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3 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 or (where no notice of Claim is issued to the Beneficiary) incurs a loss relative to an indemnity granted under this Contract, then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days following receipt of such Claim or, (where no notice of Claim is issued to the Beneficiary) it has become reasonably obvious to the Beneficiary that a loss has been incurred.
- 30.2 At the Indemnifier's cost the Beneficiary must, subject to clause 30.8, 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.

30.8 Where the Indemnifier is in breach of clauses 30.4 or 30.5 or the Beneficiary has a reasonable belief that the Indemnifier may, in the future, be in breach of clauses 30.4 or 30.5, the Beneficiary may withdraw the Indemnifier's mandate to conduct any negotiations and proceedings relative to a Claim and the Beneficiary shall conduct such negotiations and proceedings relative to a Claim. Where the Beneficiary has elected to conduct any negotiations or proceedings relative to a Claim, the Beneficiary must consider and defend the Claim diligently using competent legal advisers.

## 31. Preventing fraud, bribery and corruption

31.1 The Supplier must not during the Contract Period:

31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or

31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

31.2 The Supplier must during the Contract Period:

31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;

31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and

31.2.3 if required by the Buyer, within twenty (20) Working Days of the Effective Date of this Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

31.3 The Supplier must immediately notify the Buyer if it becomes aware of any Default of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:

31.3.1 been investigated or prosecuted for an alleged Prohibited Act;

31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes

or contracts because of a Prohibited Act by any government department or agency;

31.3.3 received a request or demand for any undue financial or other advantage of any kind related to this Contract; and

31.3.4 suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.

31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:

31.5.1 require the Supplier to remove any Supplier Staff from providing the Services if their acts or omissions have caused the Default; and

31.5.2 immediately terminate this agreement in accordance with Clause 14.4.1 and the consequences of termination in Clauses 14.5.1 shall apply.

31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:

31.6.1 Prohibited Act;

31.6.2 identity of the Party who it thinks has committed the Prohibited Act; and

31.6.3 action it has decided to take.

## 32. Equality, diversity and human rights

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:

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 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; 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 Services by the Supplier or any of the Supplier Staff.
- 35.4 If any of the Supplier Staff are Workers who receive payment relating to the Services, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- 35.4.1 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;
  - 35.4.2 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;
  - 35.4.3 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
  - 35.4.4 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, potential or perceived Conflict of Interest.
- 36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of

Interest. If, in the reasonable opinion of the Buyer, such measures 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 Clauses 14.5.1(b) to 14.5.1(g) shall apply.

### 37. Reporting a breach of the contract

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 Nothing in this clause 39 shall prejudice either Party's rights to refer a Dispute to Adjudication.

39.2 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.

39.3 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, subject to Clause 39.1, the Dispute shall be resolved using Clauses 39.4 to 39.6.

39.4 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:

- 39.4.1 determine the Dispute;
  - 39.4.2 grant interim remedies; and
  - 39.4.3 grant any other provisional or protective relief.
- 39.5 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.
- 39.6 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 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.
- 39.7 The Supplier cannot suspend the performance of this Contract during any Dispute except to the extent it is permitted to do so in terms of Section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended).
- 39.8 Notwithstanding any other provision of this Contract either Party may refer a dispute arising under this Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.
- 39.9 Irrespective of the manner in which this Contract is executed or made, neither the Buyer nor the Supplier shall rely on any limitation defence that might otherwise be available in defence of proceedings commenced less than 12 years after practical completion of the Project, or, if earlier, less than 12 years from the completion of the Services or termination of the Supplier's employment under this Contract.

#### 40. Which law applies

This Contract and any issues or 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 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);
  - 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;

1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the clause 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; and

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.

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 completion of all elements of the Services and delivery of all Deliverables, to the Buyers reasonable satisfaction, relative to a Milestone and "Achieved", "Achieving" and "Achievement" shall be construed accordingly;

"Additional FDE Group Member" means 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"	means 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"	means, 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: <ul style="list-style-type: none"> <li>(a) verify the integrity and content of any Financial Report;</li> <li>(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);</li> <li>(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;</li> <li>(d) verify the Open Book Data;</li> <li>(e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;</li> <li>(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;</li> </ul>

(g) identify or investigate any circumstances which

may impact upon the financial stability of the Supplier, and/or any Subcontractors or their ability to provide the Services;

- (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including 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 section of this 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 Award 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 Services which remain the property of the Buyer throughout the term of this Contract;
"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
"Buyer Cause"	has the meaning given to it in the Award Form;
"Buyer Existing IPR"	means 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);
"Buyer Premises"	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 Services (or any of them) including the site at which the Project is to be constructed;
"Buyer Property"	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 Services;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;
"Buyer Third"	means any supplier to the Buyer (other than the

Party"	Supplier), which is notified to the Supplier from time to time;
"Buyer's Confidential Information"	<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>
"Change in Law"	any change in Law which impacts on the supply of the Services and performance of this Contract which comes into force after the Effective Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	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;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Collateral Warranty"	a collateral warranty agreement in the relevant form set out in Schedule 38 (form A to be used where the warranty is to be granted by the Supplier in favour of a Collateral Warranty Beneficiary and Form B to be used where the warranty is granted by a Subcontractor subject to such amendments thereto as the Buyer may agree.
"Collateral	Warranty

means  
each  
party  
referred  
to as such  
in the  
Award  
Form

Beneficiary"	
"Commercially Sensitive Information"	the Confidential Information listed in Schedule 5 (Commercially Sensitive Information) (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 disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Services to another Buyer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means 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 "confidential") or which ought reasonably to be considered to be confidential;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
"Consents"	any statutory provisions and any decisions of a relevant authority thereunder which control the right to development of the Project
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the term of this Contract from the earlier of the: <ul style="list-style-type: none"> <li>(a) Start Date; or</li> <li>(b) the Effective Date, until the End Date;</li> </ul>
"Contract Value"	the total Charges payable under this Contract where all obligations are met by the Supplier;

"Contract Year"	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"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 as set out in this Contract;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> <li>(a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: <ul style="list-style-type: none"> <li>(i) base salary paid to the Supplier Staff;</li> <li>(ii) employer's National Insurance contributions;</li> <li>(iii) pension contributions;</li> <li>(iv) car allowances;</li> <li>(v) any other contractual employment benefits;</li> <li>(vi) staff training;</li> <li>(vii) work place accommodation;</li> <li>(viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</li> <li>(ix) reasonable recruitment costs, as agreed with the Buyer;</li> </ul> </li> <li>(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</li> </ul>

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 such costs are necessary and properly incurred by the Supplier in the provision of the Services; and
- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Services;

but excluding:

- (a) Overhead;
- (b) financing or similar costs;
- (c) maintenance and support costs to the extent that these relate to maintenance and/or support Services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) taxation;
- (e) fines and penalties; and
- (f) 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 Service Level 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"	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Loss Event"	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.
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
"Data Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	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;
"Deductions"	all deductions which the Buyer is paid or is payable to the Buyer under this Contract;
"Default"	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 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 element of the Services, the performance thereof or any deliverable thereunder that is not in accordance with the Specification;
"Services"	the services to be performed by the Supplier in connection with this Contract as more particularly described in the Specification;
"Deliverable"	an item to be delivered to the Buyer by the Supplier, identified as such in the Schedule 2 (Specification)
"Delivery"	delivery of the relevant Services in accordance with the terms of this Contract as confirmed and accepted by the Buyer in writing to the Supplier. "Deliver" and "Delivered" shall be construed accordingly;
"Dependent Parent Undertaking"	means 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;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that it is impossible to perform the Services (or could reasonably be anticipated to be impossible to be performed);
"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);
"Documentation"	<p>any drawings, 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) required to be supplied by the Supplier to the Buyer under this Contract as:</p> <ul style="list-style-type: none"> <li>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer as part of the performance of the Services</li> <li>(c) is required by the Supplier in order to provide the Services; and/or</li> <li>(d) has been or shall be generated for the purpose of providing the Services;</li> </ul>
"DOTAS"	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;
"DPA 2018"	The Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
"Effective Date"	the date on which the final Party has signed this Contract;

"EIR"

the Environmental Information Regulations 2004;

"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"End Date"	the earlier of: <ul style="list-style-type: none"> <li>(a) the date on which the Supplier completes the Services they have authorisation to proceed with in terms of clause 2.8; or</li> <li>(b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;</li> </ul>
"End User"	means a party that is accessing the Services provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
"Environmental Policy"	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;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
"EU GDPR"	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;
"Existing IPR"	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);

"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	<p>The occurrence of one or more the following events:</p> <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> <li>(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;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> <li>(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;</li> </ul>

- (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;
  - (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, in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Services in accordance with this Contract; or
- (j) any one of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 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;

and

- (b) to the extent permitted by Law, provides a detailed, true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);

"Financial Transparency Objectives"

means:

- (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 change to the Contract Value and / or the Charges sought by the Supplier;
- (b) 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;
- (c) the Parties challenging each other with ideas for efficiency and improvements; and
- (d) enabling the Buyer to demonstrate that, in relation to any change to the Contract Value and / or the Charges 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;
- (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 and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced consultant performing services the same or equivalent to the Services in connection with projects of a similar nature, size, value and complexity to the Project;
"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"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is Controller;</p>
"Government Procurement Card"	the Government's preferred method of purchasing and payment for low value goods or services <a href="https://www.gov.uk/government/publications/government-procurement-card--2">https://www.gov.uk/government/publications/government-procurement-card--2</a> ;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	His Majesty's Revenue and Customs;
"ICT"	the Buyer System and the Supplier System;

Environment"

"ICT Policy"

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;

"Impact Assessment"

an assessment of the impact of a Variation request by the Buyer completed in good faith, including:

- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Contract;
- (b) details of the cost of implementing the proposed Variation, such costs to be calculated on a fair and reasonable basis and in accordance with the Financial Transparency Objectives (whether or not the Award Form states that they are to apply);
- (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, such costs to be calculated on a fair and reasonable basis and in accordance with the Financial Transparency Objectives (whether or not the Award Form states that they are to apply);
- (d) a timetable for the implementation of the Variation; and
- (e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;

"Implementation Plan"

the plan for provision of the Services set out in Schedule 8 (Implementation Plan) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;

"Incorporated"

the contractual terms applicable to this Contract

Terms"	specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Independent Controller"	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;
"Information Commissioner"	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;
"Insolvency Event"	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 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;</li> <li>(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</li> </ul>

- 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
    - (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;
"Intellectual Property Rights" or "IPR"	<p>(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;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"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 36 (Intellectual Property Rights) is used), used to provide the Services 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"	the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);
"Joint Control"	where two (2) or more Controllers jointly determine the

purposes and means of Processing;

"Joint Controllers"	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
"Key Staff"	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>(i) any Subcontractor listed as a Key Subcontractor in the Award Form, (ii) the Sculptor (once appointed) and any other Subcontractor:</p> <ul style="list-style-type: none"> <li>(a) which is relied upon to deliver any work package within the Services 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 Services; 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>provided always that all other sub-consultants approved by the Buyer as at the date of this contract that are not listed in the Award Form as "Key Subcontractors" shall not be considered a Key Subcontractor.</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services 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;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	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);
"New IPR"	(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

- (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;

but shall not include the Supplier's Existing IPR

"New IPR Item"

means a deliverable, document, product or other item within which New IPR subsists;

"Notifiable Default"

means:

- (a) the Supplier commits a Material Default; and/or
- (b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;

"Object Code"

software and/or data in machine-readable compiled object code form;

"Occasion of Tax Non-Compliance"

where:

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

Date or to a civil penalty for fraud or evasion;

"Open Book Data"

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:

- (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Services;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
  - (i) the unit costs and quantity of Goods and any other consumables and bought-in Services;
  - (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;
  - (iv) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
  - (v) 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 Services;
- (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 Services, including the amount of money attributed to each risk and/or contingency; and

(h) the actual Costs profile for each Service Period;

"Open Licence"	means 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 <a href="http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> 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;
"Open Source"	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;
"Open Licence Publication Material"	means 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;
"Overhead"	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";
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Prescribed Person"	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-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
"Processing"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor Personnel"	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;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Prohibited Acts"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; or</p>

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

"Project"	the design, procurement and construction of the Queen Elizabeth II National Memorial
"Project Brief"	means the Buyer's brief for the Project as such brief may be developed from time to time
"Protective Measures"	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;
"Public Sector Body "	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
"Recall"	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;
"Recipient Party"	the Party which receives or obtains directly or indirectly Confidential Information;

"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) 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>
"Rectification Plan Process"	<p>the process set out in Clause 11;</p>
"Regulations"	<p>the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);</p>
"Reimbursable Expenses"	<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>
"Relevant Requirements"	<p>all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;</p>

"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	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;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services, whether those services are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"	any third party provider of Replacement Services appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Services for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to this Contract for the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
"Required Action"	means the action the Buyer will take and what Services it will control during the Step-In Process;
"Required Insurances"	the insurances required by Schedule 22 (Insurance Requirements);
"Schedules"	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
"Sculptor"	the artist / sculptor to be appointed by the Supplier (as required in terms of the Specification) to create a figurative representation of Queen Elizabeth II as part of the Project
"Security Policy"	the Buyer's security policy, referred to in the Award Form (if used), in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;

"Serious Fraud  
Office"

the UK Government body named as such as may be  
renamed or replaced by an equivalent body from time

	to time;
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>(a) the Services are (or are to be) provided; or</li> <li>(b) the Supplier manages, organises or otherwise directs the provision or the use of the Services;</li> <li>(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);</li> </ul>
"SME"	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;
"Social Value"	the additional social benefits that can be achieved in the delivery of this Contract set out in the Competition Conditions the Supplier's Tender was issued in response to;
"Social Value KPIs"	the Social Value priorities set out in Schedule 2 (Specification);
"Social Value Report"	the report the Supplier is required to provide to the Buyer pursuant to Schedule 2 (Specification);
"Software"	any software including Specially Written Software, COTS Software and software that is not COTS Software;
"Software Supporting Materials"	has the meaning given to it in Schedule 36 (Intellectual Property Rights);

"Source Code"

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;
"Special Terms"	any additional terms and conditions set out in the Award Form incorporated into this Contract;
"Specially Written Software"	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;
"Specific Change in Law"	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 Services is not reasonably foreseeable at the Effective Date;
"Specification"	the specification set out in Schedule 2 (Specification);
"Standard of Care"	means the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced consultant performing services the same or equivalent to the Services in connection with projects of a similar nature, size, value and complexity to the Project;
"Standards"	any: <ul style="list-style-type: none"> <li>(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;</li> </ul>

	<ul style="list-style-type: none"> <li>(b) standards detailed in the specification in Schedule 2 (Specification);</li> <li>(c) standards agreed between the Parties from time to time;</li> <li>(d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13;
"Step-In Trigger Event"	<p>means:</p> <ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Service Level Failure;</li> <li>(b) the Supplier committing a Material Default which is irremediable;</li> <li>(c) where a right of termination is expressly reserved in this Contract;</li> <li>(d) an Insolvency Event occurring in respect of the Supplier;</li> <li>(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Services or any material part of them;</li> <li>(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;</li> <li>(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;</li> <li>(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or</li> <li>(i) a need by the Buyer to take action to discharge a statutory duty;</li> </ul>
"Step-Out Plan"	means the Supplier's plan that sets out how the Supplier will resume the provision of the Services and perform all its obligations under this Contract following the completion of the Step-In Process;

"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party: <ul style="list-style-type: none"> <li>(a) provides the Services (or any part of them);</li> <li>(b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or</li> <li>(c) is responsible for the management, direction or control of the provision of the Services (or any part of them);</li> </ul>
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
"Supplier Existing IPR"	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);
"Supplier Existing IPR Licence"	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier New and Existing IPR Licence"	means a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
"Supplier Non-Performance"	where the Supplier has failed to: <ul style="list-style-type: none"> <li>(a) Achieve a Milestone by its Milestone Date; ; and/or</li> <li>(b) comply with an obligation under this Contract;</li> </ul>
"Supplier Profit"	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;
"Supplier Profit Margin"	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;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under this Contract;
"Supplier System"	the information and communications technology system used by the Supplier in supplying the Services, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);
"Supplier's Confidential"	(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR

Information"	<p>of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>(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;</p> <p>(c) information derived from any of (a) and (b) above;</p>
"Supplier's Contract Manager"	<p>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;</p>
"Supporting Documentation"	<p>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;</p>
"Tender Response"	<p>the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);</p>
"Termination Assistance"	<p>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;</p>
"Termination Notice"	<p>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;</p>
"Test Issue"	<p>any variance or non-conformity of the Services or Services from their requirements as set out in this Contract;</p>
"Test Plan"	<p>a plan:</p> <p>(a) for the Testing of the Services; and</p>

	(b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;
"Third Party IPR Licence"	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 (Intellectual Property Rights);
"Transparency Information"	the content of this Contract, including any changes to this Contract agreed from time to time, except for – <ol style="list-style-type: none"> <li>1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and</li> <li>2. Commercially Sensitive Information;</li> </ol>
"UK GDPR"	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
"Variation"	means a variation to this Contract;
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 28 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);

"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Worker"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Services; and
"Working Day"	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.

COMMERCIAL - RECIPIENTS ONLY

## Schedule 2 (Specification)

COMMERCIAL - RECIPIENTS ONLY

## **Scope of Services**

# **Queen Elizabeth II National Memorial Masterplan Design Competition**

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1. PROJECT TITLE
2. INTRODUCTION & BACKGROUND
3. SCOPE OF THE CONTRACT
4. DETAILED REQUIREMENTS
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1. Project Title

*The Queen Elizabeth II National Memorial Masterplan Design Competition*

2. Introduction & Background

- 2.1 The Queen Elizabeth Memorial Committee (QEMC), chaired by Lord Janvrin, is a joint UK Government and Royal Household body set up to develop plans for the national commemoration of Queen Elizabeth II. Its remit is to recommend proposals to the Prime Minister and His Majesty The King for a permanent memorial and a legacy programme by 2026 - the centenary of the Queen's birth. The national memorial and legacy programme are two distinct projects, although opportunities to highlight links between them will be explored as part of their development. For example, the Search Statement for the national memorial asks that the memorial site be a place for people to gather, contemplate and celebrate, which may complement the legacy programme's aim to bring people together, and champion green space. The legacy programme will be progressed by the Committee and the Secretariat and it is not intended that the Supplier will require to provide any Services in connection with that programme.
- 2.2 The Committee is a joint HM Government and Royal Household project, supported by a Secretariat staffed by the Buyer (referred to in this Specification as "the Cabinet Office"). There are eight members of the Committee drawn from various parts of public life in the UK. The initial meeting was in February 2024 and further details can be found on the official website <https://www.gov.uk/government/organisations/the-queen-elizabeth-memorial-committee>.
- 2.3 The memorialisation project has received cross-party support and has been entrusted to the Cabinet Office's Constitution, Honours, Information and Major Events (CHIME) Directorate to deliver. The Cabinet Office's memorialisation team within the CHIME Directorate has been appointed to deliver the project and staff the Secretariat supporting the Queen Elizabeth Memorial Committee.
- 2.4 As part of the project, a formal, costed proposal for a permanent national memorial to Queen Elizabeth II in London is to be created. The site traverses London's Grade I listed St James's Park from Marlborough Gate on The Mall covering land surrounding the pathway to, and including, the Blue Bridge and across to Birdcage Walk.
- 2.5 The Cabinet Office is procuring the masterplan design and requires design services to develop the masterplan design initially through to RIBA stage 2 and secure planning consent for the design (with any services beyond RIBA Stage 2 as maybe required to secure such planning consent) with the option to continue the appointment to the end of RIBA Stage 4 and then to the end of RIBA Stage 7 if the relevant approvals (internal and external (including planning consent)) are obtained.. The design services will be focused on the

permanent memorial project only. The legacy programme will be progressed separately by the QEMC's Secretariat.

- 2.6 The Cabinet Office will hold the contractual relationship with the Supplier. The Cabinet Office will also serve as the conduit to the Queen Elizabeth Memorial Committee. Consequently, approvals, agreements or decisions pertaining to the advice or actions required under this contract will be reviewed and approved by the Cabinet Office in consultation with the QEMC. This ensures that the QEMC's oversight and input are integrated into the project and the project is delivered in line with the objectives and terms of reference set for the QEMC. The QEMC wishes to present its recommendation on a memorial design in time for an announcement in 2026, the centenary of Queen Elizabeth II's birth. If required by the Buyer, the winning masterplan design may require planning permission to be granted and internal approvals to be secured before it can be formally recommended to the Prime Minister and The King as a suitable design. For the avoidance of doubt, the project (and therefore the Supplier's appointment) will only progress to RIBA Stage 4 if such recommendation is accepted by the Prime Minister and the King.
- 2.7 Fees payable under the contract will be on the basis of a fixed fee (inclusive of all travel costs, printing and disbursements). Fees will be paid in arrears to the Supplier in line with outputs delivered against an agreed work stage activity schedule on a monthly basis (see tender pricing schedule).
- 2.8 Any additional services to the activity schedule or a change in the Buyer's requirements will be managed in accordance with the contract.
- 2.9 The Supplier will be responsible for the selection, engagement and payment of all sub-consultants and specialist advisors unless otherwise agreed.
- 2.10 As Buyer, the Cabinet Office will be closely involved in the development of design proposals to ensure that a high quality of design is achieved. The Buyer will require the Supplier to prepare detailed sets of robust proposals to RIBA work stages 4 / 5 for the appointment of the Contractor.
- 2.11 The Buyer will require the Supplier, sub-consultants and specialist advisors to provide their services with reasonable skill and care. The Buyer has outlined the summary schedule of services it would expect from the Supplier and all sub-consultants at Part 4.
- 2.12 The Supplier shall procure that each Sub-Consultant executes Collateral Warranties in favour of the Buyer and other beneficiaries as required in terms of clause 8.6.2 of the Contract.
- 2.13 All formal communications, instructions and approvals will be in writing, and issued by the Buyer's appointed project officer to the Supplier.
- 2.14 All requests for information and clarifications to support production of design proposals, specifications and tender documents from the Supplier and, or members of the sub-consultant multi-disciplinary team shall be issued in writing by the Supplier to the Buyer's

appointed project officer. All requests for information and clarification shall be made in good time providing the Buyer's project officer with up to 5 working days to respond.

### 3. Deliverables required of the Supplier

- 3.1 The Cabinet Office on behalf of the Queen Elizabeth Memorial Committee (QEMC), has appointed the Supplier to develop an overarching strategy for the commissioning of the memorial project and, if the relevant approvals are obtained, to thereafter provide design, project management and contract management services (if required) through to the projects ultimate completion. As part of this, the Supplier must develop the winning masterplan design through to RIBA stage 2+, i.e. to a sufficient level of detail to enable planning consent to be obtained. The Supplier will be responsible for making the planning application and managing the process to secure planning consent.
- 3.2 The Supplier will be required to facilitate the appointment process for the artist/sculptor of the figurative element (anticipated to be on or adjacent to The Mall by Marlborough Gate). The artist/sculptor will be appointed as a sub-consultant to the Supplier and will join the team, enabling their work to be fully absorbed into the overall memorial masterplan. To assist this process, the Committee and the Cabinet Office will provide a shortlist of no more than five candidates and will oversee the selection process. The artist / sculptor is to carry out their design in accordance with the Technical Design Considerations as set out in the Competition Conditions issued to the Supplier at tender stage.
- 3.3 In terms of deliverables, the Cabinet Office requires a Supplier to deliver the following:
  - 3.3.1 appointment of an artist/sculptor for the figurative element of the memorial anticipated to be on or adjacent to The Mall by Marlborough Gate, in line with the Cabinet Office and the Committee's recommended shortlist;
  - 3.3.2 production of a masterplan design (up to the level of detail required for RIBA Stage 2) for a memorial to Queen Elizabeth II;
  - 3.3.3 the procurement of planning consent for the masterplan design on terms acceptable to Cabinet Office;
  - 3.3.4 any additional site related activities including feasibility assessments;
  - 3.3.5 engagement as required with public engagement exercises;
  - 3.3.6 once approval has been granted, delivery of all services relevant to RIBA Stages 3 and 4 as set out in section 4.21 and 4.22 of this Specification;
  - 3.3.7 following further approval stage, delivery of all services relevant to RIBA Stages 5 to 6/7 as set out in section 4.23 to 4.25 of this Specification;; and

- 3.3.8 support to any further activities necessary to the successful execution of the project.
- 3.4 The Services the Supplier is currently authorised to perform are those up to the point at which the recommendation on a memorial design is made to the Prime Minister and The King in 2026. It is anticipated that this stage should be reached within 11 months from commencement of the Services, but it is recognised that a longer period may be required.
- 3.5 The Supplier will be expected to have assembled a design team with expertise in relevant sectors including a heritage consultant, and planning consultants that will enable them to deliver the full set of requirements set out in section 4 below.
- 3.6 All financial information must be provided in pounds sterling (£) and must be converted using the European Central Bank Euro foreign exchange reference rates at the date the Tender is submitted.
- 3.7 At main contractor tender stage for each build project, the Buyer will require the Supplier, and sub consultant Cost Consultant (with the Buyer's health and safety advisor / principal designer) to support the procurement, in accordance with the Public Contract Regulations 2015 for the appointment of a building contractor.
- 3.8 Detailed technical specifications and/or outputs for all products delivered through the contract shall be prepared by the Supplier using their specialist knowledge and experience for approval by the Buyer as Buyer.
- 3.9 The Buyer will require the Supplier and multi-disciplinary design team to coordinate all design and construction information based on a consistent Building Information Modelling protocol. The Buyer will require compliance with all relevant British Standards, and UK Legislation (as adopted), and information exchange protocols, to enable collaborative design modelling and working.

#### 4. Detailed Services Requirements (Schedule of Services and List of Deliverables)

- 4.1 General Requirements. The integrated multi-disciplinary design team – The Supplier – is required to provide the following services to the Buyer:
  - 4.1.1 Creative Lead (Lead Designer)
  - 4.1.2 Contractual Lead (registered in the UK)
  - 4.1.3 Architect\*
  - 4.1.4 Artist\*
  - 4.1.5 Landscape Architect
  - 4.1.6 Planning Consultant

- 4.1.7 Heritage Consultant
- 4.1.8 Structural and M/E/P Engineer
- 4.1.9 Digital Designer (may be integrated above)
- 4.1.10 Project Manager
- 4.1.11 Cost Consultant

\*Potential creative lead

In addition, if instructed to do so by the Buyer, the Supplier should also provide the role of Contract Administrator in relation to the construction contract to be entered into with the Contractor for the physical delivery of the Project.

- 4.2 In addition to the core team noted above, the Supplier is being appointed to perform the role of Principal Designer in terms of Construction (Design and Management) (CDM) Regulations 2015 and the Building Regulations 2010 (as amended).
- 4.3 In addition, competitors may include other disciplines central to the design approach, including:
  - 4.3.1 Lighting Design
  - 4.3.2 Interpretation and Curation
  - 4.3.3 Horticulture and Ecology
  - 4.3.4 Accessibility
  - 4.3.5 Wayfinding
  - 4.3.6 Sustainability
  - 4.3.7 Logistics
  - 4.3.8 Security
- 4.4 Some or all of the disciplines noted above may be provided by one company and are not required to be proposed by individual companies.
- 4.5 Post-competition, an artist/sculptor for the figurative element will be appointed by the winning Contractual Lead as a sub-consultant.
- 4.6 The winning team will be required to include an architect registered in the United Kingdom as part of the design team for the project.

- 4.7 Please note, the team operates under the Contractual Lead (The Supplier). The Schedule of Services covers all design disciplines delivered by the Supplier.
- 4.8 Duties required will be broadly in line with the Royal Institute of British Architects (RIBA) Plan of Work 2020, providing full design team services across all RIBA Stages 0 to 7. Full design team services includes covering all sub-consultancy disciplines needed for the project as required.
- 4.9 Suppliers are asked to submit their full proposal up to RIBA Stage 7, and the winning Supplier will be contracted for all stages but with break points where further approvals are required in order to proceed to each subsequent stage.
- 4.10 There are two primary break points; firstly, after RIBA Stage 2 and submission of the statutory applications (planning and listed building consent) and secondly at the end of RIBA Stage 4.
- 4.11 Not Used
- 4.12 To note, this initial contract covers a commitment by the Buyer to fund the design services up to RIBA Stage 2 (including the completion of planning and listed building approvals).
- 4.13 Following statutory applications (planning and listed building consent) approvals, should the project receive the necessary internal approvals, the procurement of technical design and construction services (including the appointment) will transition / be novated to another designated government department, yet to be confirmed, which will oversee the project's completion.
- 4.14 Note, that full design team services – and related deliverables – should be provided throughout all RIBA work stages whether specifically mentioned below or not.
- 4.15 Throughout the project, the Supplier will:
- 4.15.1 Undertake role of lead consultant, to include design co-ordination of sub-consultants and also design co-ordination of other design professionals directly appointed by the Buyer (if applicable).
  - 4.15.2 Report to the Buyer on a regular basis, attending Buyer/Supplier project team meetings on a monthly basis or at any other time as required by the Buyer.
  - 4.15.3 Convene and minute Design Team meetings.
  - 4.15.4 Provide information to present to the Queen Elizabeth Memorial Committee (QEMC) (and, when requested, attend meetings with the QEMC) as and when required and otherwise at least on a quarterly basis.
  - 4.15.5 Provide any budgetary and fee information required by the Buyer to support internal government funding discussions, gateway approvals and/or applications for payment by the Supplier or any Contractor.

- 4.15.6 Liaise and negotiate with stakeholders, including local authorities and other statutory bodies on all matters related to production of design information (and primarily the planning information) for the project
  - 4.15.7 Lead on risk management processes.
  - 4.15.8 Lead on Value Management and Value Engineering processes.
  - 4.15.9 Work in accordance with the agreed project programme, notifying the Buyer of events likely to adversely affect the project programme, advise on actions to mitigate.
  - 4.15.10 Notify the Buyer of any instances that may cause budget overruns, advise on actions to mitigate.
  - 4.15.11 Provide information to contribute to development of the Buyer's Outline and Full Business Case in accordance with Treasury Green Book requirements.
  - 4.15.12 There is potential for further wider review points required during the contract and around break points which may include OGC gateways. Provide information to enable review and approval at key OGC Project Gateways if implemented.
  - 4.15.13 Perform all duties of Principal Designer under the Construction (Design and Management) Regulations 2015 and the Building Regulations 2010 (as amended).
  - 4.15.14 Allow for all regulatory requirements and applications.
  - 4.15.15 Lead the development of drawing protocols including production of a fully coordinated, federated BIM model, produced with level of detail relevant to each work stage
  - 4.15.16 Follow the guidelines of the Government's Soft Landings policy.
  - 4.15.17 Provide design and presentation information to support a public exhibition for the project, both through the design stages as well as to support the planning process.
  - 4.15.18 The Supplier is to appoint (as a sub-consultant) and coordinate the work of the artist/sculptor of the figurative element. This includes all services and deliverables by the artist/sculptor, whether specifically noted in the schedule of services or not.
- 4.16 See the RIBA Plan of Works 2020 for further details on work stages and related scope.
- 4.17 Detailed services requirements by RIBA work stages. The below requirements for Suppliers responding to this tender include the full scope of services anticipated from this contract. Any required alterations will be discussed and confirmed by the Cabinet Office and the Supplier at the outset of the contract.
- 4.18 RIBA Stage 0 Strategic Definition

- 4.18.1 Following the competition, incorporate in the design, the Buyer's comments on the competition winning design.
- 4.18.2 Prepare the project programme.
- 4.18.3 Visit Site

RIBA Stage 0 Deliverables
Input into the Buyer's business case
Input into the Buyer's strategic brief

#### RIBA Stage 1 Preparation and Brief

- 4.18.4 Lead on development of the Initial Project Brief in association with the Buyer to include Project Objectives, Quality and Sustainability Standards.
- 4.18.5 Provide information to develop the Project budget.
- 4.18.6 Undertake option appraisal of elements of the project to inform decision making
- 4.18.7 Review Site and other information and advise on any requirements for further investigations.
- 4.18.8 Prepare and agree design responsibility matrix and information requirements.
- 4.18.9 Develop all required project strategies.
- 4.18.10 Define processes for design co-ordination to include any common standards to be used.
- 4.18.11 Undertake such work as necessary to progress the Buyer's project feasibility study and revise and progress the design to confirm and agree the project brief.
- 4.18.12 Undertake interviews in tandem with the Buyer and assist in the appointment process for the shortlisted artists/sculptors for the figurate element.
- 4.18.13 Appoint the selected artist/sculptor to the Supplier Team. The Provisional Sum for fee of the artist/sculptor will be adjusted to reflect the agreed fee.
- 4.18.14 Arrange, chair and document all design team meetings and progress meetings with the Buyer.

- 4.18.15 Ensure a common standard for CAD, BIM and electronic data transfer is agreed with the Buyer.
- 4.18.16 Prepare handover strategy, risk assessments. up-dates of the Implementation Plan and a plan for the delivery of the Project as a whole (hereinafter referred to as the Project Execution Plan).
- 4.18.17 Prepare site information report.
- 4.18.18 Collate all information from statutory undertakers and further information relating to above and below ground services.
- 4.18.19 Provide a full site topographical survey.
- 4.18.20 Provide all conceptual and non-intrusive geotechnical and environmental site investigations and reports together with the intrusive Surface Water Drainage and intrusive Sustainable Drainage System (including Unexploded Ordnance Surveys as part of the Sustainable Drainage System), including adjoining land as necessary.
- 4.18.21 Prepare project budget with the Buyer taking account of designs, specifications, schedules, programme, inflation, and cash flow forecasts.
- 4.18.22 Advise on comparative costs of alternative designs and methods of construction.
- 4.18.23 On-board the artist/sculptor for the figurative element into the design team from the ratified shortlist drawn up by the Queen Elizabeth Memorial Committee (the "Committee").
- 4.18.24 Prepare the Statutory Applications (Planning and Listed Building Consent) Strategy
- 4.18.25 Prepare the Project Execution Plan, including the project's master programme.
- 4.18.26 Prepare and present a presentation on the physical memorial and the concept design to stakeholders in Wales, Scotland and Northern Ireland, seeking insights to inform the design development. The presentation should set out the concept design and the inspiration for it, and refer to the changes under discussion particularly how and what changes could be incorporated into the design to better reflect all four nations.

RIBA Stage 1 Deliverables
Input into the Buyer's initial project brief
Design Responsibility Matrix
Project Execution Plan
Outline Project Programme (detailed to statutory applications process)
Statutory Applications Strategy

#### 4.19 RIBA Stage 2 Concept Design

- 4.19.1 Develop Concept Design to RIBA Stage 2, including outline proposals for structural and civil design, services systems, landscape, access and wayfinding, digital activation and interpretation, and the Memorial.
- 4.19.2 Allow for submission of a 50% and 100% RIBA Stage 2 Report milestones within the work stage.
- 4.19.3 Prepare the fully coordinated and federated BIM Model to a level of detail appropriate for RIBA Stage 2.
- 4.19.4 Provide initial information to the cost consultant to prepare the stage cost plan.
- 4.19.5 Develop Project Brief and issue Final Brief for sign off by the Buyer.
- 4.19.6 Prepare data sheets (outline specifications) for the Buyer's consideration. These should include all services, lighting levels, environmental control parameters, occupancy rates / numbers, fixtures and fittings and finishes etc.
- 4.19.7 Develop the materials palette for Buyer's approval and produce mood boards.
- 4.19.8 Prepare outline specifications for materials and components.
- 4.19.9 Undertake initial consultation with the relevant stakeholders for the project provided by the Buyer. Consider any feedback from stakeholders and provide the Buyer with advice as to the appropriateness, feasibility and likely impact (including impact upon cost and programme) of reflecting such feedback into the development of the design for the Project.
- 4.19.10 Provide visual and design information for, and participate in, stakeholder / third party consultation as required. Consider any feedback from stakeholders / third parties and provide the Buyer with advice as to the appropriateness, feasibility and likely impact (including impact upon cost and programme) of reflecting such feedback into the development of the design for the Project.
- 4.19.11 Advise on the need for further site investigation.
- 4.19.12 Coordinate design information required for the statutory (planning and listed building consent) application.
- 4.19.13 Prepare design strategies, including: Sustainability Strategy; and Conservation/Heritage Strategy

- 4.19.14 Develop the Digital and Interpretation Strategies.
- 4.19.15 Develop H&S strategy including statutory requirements.
- 4.19.16 Arrange, chair and document all design team meetings and progress meetings with the Buyer.
- 4.19.17 Review handover strategy and risk assessments with project team.
- 4.19.18 Review and update the Implementation Plan and the Project Execution Plan.
- 4.19.19 Monitor and control project programme.
- 4.19.20 Comment on stage design and cost information.
- 4.19.21 Monitor, and as necessary expedite performance of project team including Artist/Sculptor..
- 4.19.22 Prepare operational strategies including management and maintenance options.
- 4.19.23 Provide advice and information as required in relation to services and way leaves etc.
- 4.19.24 Chair and attend stakeholder consultation meetings. Consider any feedback from stakeholders and provide the Buyer with advice as to the appropriateness, feasibility and likely impact (including impact upon cost and programme) of reflecting such feedback into the development of the design for the Project.
- 4.19.25 Undertake 3<sup>rd</sup> party research and development as required.
- 4.19.26 Co-ordinate all consultants' inputs to determine built form and construction standards.
- 4.19.27 Co-ordinate with the artist/sculptor following appointment to develop the design brief, submit proposals and adopt any feedback provided in a timely manner for integration into the wider design.
- 4.19.28 Consider security in the design proposals to minimise opportunities for crime.
- 4.19.29 Consider environmental and lifecycle cost implications and minimise such impact during construction and use.
- 4.19.30 Provide information for cost information exercises and project strategies.
- 4.19.31 Provide; drawings, 'walk-throughs', sample boards and presentation materials to support stakeholder meetings.
- 4.19.32 Provide inflation/index linked estimates of cost and cash flow forecasts to enable the Buyer to decide how to proceed.

- 4.19.33 Provide advice in relation to alternative design solutions and methods of construction to ensure financial viability.
- 4.19.34 Support the selection of a contractor on behalf of the Buyer.
- 4.19.35 The Buyer will require the Supplier, and the sub-consultant multi-disciplinary team to attend regular progress meetings with the Buyer's project officer; fortnightly until the completion of RIBA Stage 2 (Preparation and Brief), and monthly thereafter until the completion of the project stated RIBA stage.
- 4.19.36 The Buyer will require the Supplier and Cost Consultant to attend tender workshops and evaluation meetings for the selection and appointment of the Contractor.
- 4.19.37 The Buyer will require the Supplier and Cost Consultant to attend regular, monthly site progress meetings.
- 4.19.38 The Buyer will require the Supplier and Architect to attend up to five stakeholder and public consultation workshops to provide opportunity for interested parties to review and comment on the RIBA Stage 2 Concept Design. At no additional cost to the contract the Supplier and, or Architect will provide all presentation materials and a computer generated 'walk-through'. The Supplier shall consider feedback from stakeholders / the public and provide the Buyer with advice as to the appropriateness, feasibility and likely impact (including impact upon cost and programme) of reflecting such feedback into the development of the design for the Project.
- 4.19.39 The Buyer will require the Supplier to submit a detailed method statement, schedule of services, activity schedule and project plan for delivery of the project.
- 4.19.40 Upon receipt of the required stage reports, should the Buyer consider that the design proposal outputs no longer meet the requirements of the Buyer's outline facilities requirements or the estimated capital cost is significantly greater than the budget then the Buyer reserves the right to terminate the contract and pay fees applicable only up to the completion of the appropriate RIBA work stage.
- 4.19.41 The Buyer will require formal stage progress reports for formal sign off by its senior management at completion of each RIBA work stage.

For the approval of these formal stage reports the Buyer will require a minimum of 10 working days. At a minimum sign off reports shall include:

- Record of work completed and fees expended to date.
- Commentary of project progress to project programme and budget, including recommendations for corrective action should work achieved be behind programme or over budget.
- Review of the project risk register, including; risk identification and assessment, ownership and mitigation.

- Summary of design and specification proposals, including floor plans, site plans, elevations and sections, and building services strategy.
- Capital cost estimate taking account of uplifts for inflation and comparisons of estimated construction cost to budget, along with recommendations for corrective action should estimate exceed budget cost.

4.19.42 Prepare the Construction Strategy, including any requirements for offsite fabrication, specialist subcontractor design. In particular, fabrication of the Bridge and Memorial elements.

4.19.43 Make an outline planning application to the relevant statutory authority (if agreed and applicable).

4.19.44 Prepare a coordinated RIBA Stage 2 design report, including the cost estimate.

4.19.45 Obtain Buyer sign-off to RIBA Stage 2 Report.

RIBA Stage 2 Deliverables
<i>RIBA Stage 2 Report (including, but not limited to, the following):</i>
Final Project Brief
Project Execution Plan
Discipline Section Reports/Strategies/Drawings, including: Architecture; Landscape Architecture; Structural and Civil Engineering; MEP Engineering
CDM Regulations and Responsibilities
Other Specialist Design Services Reports/Strategies/Drawings (where/if relevant)
Summary of discussions with statutory authorities
Heritage and Conservation Strategy
Environmental Strategy
Digital and Interpretation Strategy
RIBA Stage 2 (preliminary) construction cost estimate
Project and Design programme
Procurement Strategy
Risk Register
Health and Safety Strategy
Operations and Maintenance Strategy
Key Performance Indicators (KPIs) for the project

<i>Note:</i> Drawings to include, but not limited to the following (either integrated in Report, or included as Appendices – recommended scales included, but to be determined based on design response):
Location Plan (1:1,250)
Overall Site Plan/Masterplan (1:500)
Plans (1:200)
Elevations (1:200)
Sections (1:200)
Sketches and Render Views
Model views
Model analysis diagrams (where relevant)
Indicative Materials and Finishes
Outline specifications

#### 4.20 Statutory (Planning and Listed Building) Applications (completed in conjunction with RIBA Stage 2)

- 4.20.1 Prepare design documents, models and reports as required and advise on other technical reports, studies and investigations required to support the statutory applications (planning and listed building consent) process including the artist/sculptor's figurative piece. This includes preparation of the environmental impact assessment, heritage statement, design and access statement and supporting planning documents.
- 4.20.2 Undertake consultation with statutory consultees as required and submit applications in line with their approval procedures.
- 4.20.3 Work with the Buyer in order to submit a planning and listed building application.
- 4.20.4 Assist the Buyer in order to respond to any comments or updates required on the statutory application materials and within the planning process.
- 4.20.5 Handover final RIBA Stage 2 design information, including the federated BIM model prepared in accordance with paragraph 4.19.3, and the full planning package.

Statutory Applications (Planning and Listed Building Consent) Deliverables
Application Form(s)
Certification of ownership
Location Plan

Site Plan
Design and Access Statement
Heritage Statement
Archaeological Assessment (if required)
Sustainable Design Statement
Structural Methodology Statement
Schedule of Works
Scaled Plans and Drawings (relevant to describe the proposal)
Photographs
Verified Computer-generated Images (as requested in stakeholder engagement)

#### 4.21 RIBA Stage 3 Detailed Design

- 4.21.1 Reviewed planning conditions following granting of consent and, where possible, discharge prior to starting on site.
- 4.21.2 Prepare Detailed Designs to RIBA Stage 3, including coordinated and updated proposals for structural and civil design, services systems, landscape, lighting, access and wayfinding, digital activation and interpretation, and the Memorial.
- 4.21.3 Allow for submission of a 50% and 100% RIBA Stage 3 Report milestones within the work stage.
- 4.21.4 Prepare the fully coordinated and federated BIM Model to a level of detail appropriate for RIBA Stage 3.
- 4.21.5 Develop specifications for material and components.
- 4.21.6 Provide information to prepare detailed cost plan.
- 4.21.7 Prepare design documents and reports as required and advise on other technical reports, studies and investigations required to support the RIBA Stage 3 design
- 4.21.8 Undertake consultation with statutory consultees as required.
- 4.21.9 Work with other consultants and lead on Co-ordination of design information required for Building Regulations full plans application.
- 4.21.10 Provide advice on appropriate means to procure elements of the project.
- 4.21.11 Provide advice on design management and any strategies for contractor / subcontractor design.

- 4.21.12 Prepare Sustainability Strategy, Maintenance and Operational and Handover Strategies and Risk Assessments.
- 4.21.13 Undertake third party consultations as required.
- 4.21.14 Manage change control process, advising the Buyer of impacts to project programme, budget or brief.
- 4.21.15 Arrange, chair and document all design team meetings and progress meetings with the Buyer.
- 4.21.16 Review updated handover strategy and risk assessments with project team.
- 4.21.17 Review and update the Implementation Plan and the Project Execution Plan.
- 4.21.18 Monitor and control project programme.
- 4.21.19 Monitor, and as necessary expedite performance of project team.
- 4.21.20 Take reasonable skill and care that materials or products specified do not contravene British or EU standards, or are generally considered to be deleterious.
- 4.21.21 Provide inflation/index linked estimates of cost and cash flow forecasts to enable the Buyer to decide how to proceed.
- 4.21.22 Consult with planning authorities as required during post-approval.
- 4.21.23 Consult with building control authorities.
- 4.21.24 Consult with statutory authorities.
- 4.21.25 Consult with environmental authorities.
- 4.21.26 Develop landscaping information including :-
  - i. Site sections
  - ii. Landscape general arrangement plan
  - iii. Planting strategy, including proposed list of species, tree sizes, pot sizes, and planting densities.
  - iv. Vegetation to be removed/retained plan, including details of tree protection measures
  - v. Plans, sections and elevations to illustrate key details
  - vi. Materials palette for paving, street furniture, lighting and planting
  - vii. Reference Images identifying character of spaces
  - viii. Stage design development report for landscape elements
- 4.21.27 Review and update the Implementation Plan and the Project Execution Plan, including Change Control Procedures.

- 4.21.28 Review and update Construction and Health and Safety Strategies.
- 4.21.29 Review and update Digital and Interpretation Strategies.
- 4.21.30 Prepare a coordinated Stage 3 design report incorporating information from other design team consultants, including the cost estimate.
- 4.21.31 Obtain Buyer sign-off to RIBA Stage 3 Report.

RIBA Stage 3 Deliverables
<i>RIBA Stage 3 Report (including, but not limited to, the following):</i>
Summarised Final Project Brief
Summarised Project Execution Plan
Schedule of key decisions from Stage 2, tracker of decisions and Information Request Schedule
Discipline Section Reports/Strategies/Drawings, including: Architecture; Landscape Architecture; Structural and Civil Engineering; MEP Engineering
CDM Regulations and Responsibilities
Other Specialist Design Services Reports/Strategies/Drawings (where/if relevant). For example: Sustainability; Ecology; Lighting; Access and Wayfinding; Digital and Interpretation
Heritage and Conservation Strategy
Environmental Strategy
Digital and Interpretation Strategy
RIBA Stage 3 cost plan
Project and Design programme
Construction Procurement Strategy
Risk Register
Health and Safety Strategy
Operations and Maintenance Strategy
Tracker of Key Performance Indicators (KPIs) targets
Discharge of conditions from the statutory applications (planning and listed building consent) approvals (if required)
<i>Note: Drawings to include, but not limited to the following (either integrated in Report, or included as Appendices - recommended scales included, but to be determined based on design response):</i>
Location Plan (1:1,250)
Overall Site Plan/Masterplan (1:500)
Plans (1:100)
Elevations (1:100)
Sections (1:100)
Sketches and Render Views

Model views
Model analysis diagrams (where relevant)
Indicative Materials and Finishes
Outline specifications
Building Control Full Plans application to the statutory authority

#### 4.22 RIBA Stage 4 Technical Design

- 4.22.1 Reviewed planning conditions following granting of consent and, where possible, discharge prior to starting on site.
- 4.22.2 Prepare Technical Design information to include all architectural, structural and services, digital and interpretation design, lighting and a strategy for furniture, fittings and equipment.
- 4.22.3 Allow for submission of a 50% and 100% RIBA Stage 4 Technical Design information milestones within the work stage. In addition, allow for information to be issued for tender issue and construction issue.
- 4.22.4 Arrange, chair and document all design team meetings and progress meetings with the Buyer
- 4.22.5 Carry out re-design work as required with the sub consultant team to bring estimated construction costs within the Buyer's budget.
- 4.22.6 Review updated handover strategy and risk assessments with project team.
- 4.22.7 Monitor and control project programme.
- 4.22.8 Comment on stage design and cost information.
- 4.22.9 Monitor, and as necessary expedite performance of project team.
- 4.22.10 Provide revised contractual documents as required to adjust tender sums.
- 4.22.11 Agree the information release schedule with the Supplier on behalf of the Buyer.
- 4.22.12 Provide the Principle Designer with information required for inclusion in the construction phase plan.
- 4.22.13 Liaise with planning authority.
- 4.22.14 Liaise with proposed specialist subcontractors as required.

4.22.15 Prepare detailed design specifications for mechanical and electrical services installations as part of the proposals.

- 4.22.16 Prepare a final cost plan in relation to detailed design proposals; taking account of outline proposals produced by other consultants and provide inflation/index linked estimates of cost and cash flow forecasts to enable the Buyer to decide how to proceed.
- 4.22.17 Examine sub-contractors' and suppliers' drawings and details with particular reference to tolerances and dimensional co-ordination, finish, durability, appearance and performance criteria and report to Buyer.
- 4.22.18 Submit details to assist the Buyer with the discharge conditions attached to full planning permission as necessary.
- 4.22.19 Advise the Buyer on revisions to the design and the Proposals to deal with requirements of the planning authorities.
- 4.22.20 Develop landscaping information including :-
- i. Landscape general arrangement plan
  - ii. Levels plan, showing key spot heights and falls for paving (excluding highways) and contours for earthworks and planting areas
  - iii. Planting plan, with all plants labelled and numbered, plant schedule with pot size, NBS specification, and reserved trees security tag numbers,
  - iv. Detailed site sections showing existing and proposed ground profile
  - v. NBS specification for materials and workmanship, covering all landscape elements
  - vi. Plans, sections and elevations to illustrate both typical & bespoke details
  - vii. Soils plan, denoting the various types of soil profiles and depths to be used across the site,
  - viii. Street furniture details of bespoke street furniture or other items including signage
- 4.22.21 Prepare the fully coordinated and federated BIM Model to a level of detail appropriate for RIBA Stage 4.
- 4.22.22 Prepare building specification document.
- 4.22.23 Prepare specification information to enable specialist subcontractor design.
- 4.22.24 Provide other design information required to enable procurement of a building contractor.
- 4.22.25 Answer design queries during the tender process.
- 4.22.26 Input into evaluation of developers' proposals and costs.

- 4.22.27 Provide services or assistance with tender procurement e.g. preparation of tender documentation and drawings, tendering in accordance with the UK Public Procurement 2024 requirements, tender appraisal and action
- 4.22.28 Analyse Tenders received and provide an evaluation of preferred contractor, and produce and issue contract documents.
- 4.22.29 Review and update Sustainability, Operational and Maintenance and Handover Strategies.
- 4.22.30 Prepare and submit Building Regulations application and any other third party submissions requiring consent. Include coordination with building control, and make any revisions to the application that may be needed in response.
- 4.22.31 Review and update the Implementation Plan and the Project Execution Plan.
- 4.22.32 Review Construction Strategy, including sequencing.
- 4.22.33 Update Health and Safety Strategy.
- 4.22.34 Handover final RIBA Stage 4 design information, including the federated BIM model prepared in accordance with paragraph 4.22.21.

RIBA Stage 4 Deliverables
Stage Report scheduling changes and impact on cost plan
Drawings, schedules and specifications to include, but not limited to the following:
Location Information, including General Arrangement Plans, Sections and Elevations
Assembly Information, including setting out and details at appropriate scales (eg 1:50/1:20)
Component Information, including key construction and finishing details at appropriate scales (e.g., 1:5/1:2)
Schedules, including FF&E and Reports, including Maintenance Report and Fire Strategy Report
Coordinated additional project information, such as landscape, structural and civils and MEP engineering drawings, schedules and reports
Specifications
If required, fabricate a mock-up of the figurative sculpture and its plinth
Production of Tender Documents
Tender exercise, analysis, interviews and recommendation for Buyer Appointment

Input into preparation of Contract Documents

#### 4.23 RIBA Stage 5 Construction

Note: It is currently anticipated that the role of Contract Administrator of the construction contract will be undertaken by a construction stage project manager directly appointed by the Buyer. The Buyer, however, reserves the right to instruct the Supplier to perform this role.

- 4.23.1 Attend pre-contract meeting.
- 4.23.2 Issue construction drawings and specification.
- 4.23.3 Amend drawing and specification as required and reissue.
- 4.23.4 Provide design information to enable change control process.
- 4.23.5 Inspect the on-site and off-site works at regular intervals to ensure compliance with construction drawings and specification.
- 4.23.6 Work with the Contract Administrator to ensure that the project is constructed in accordance with the agreed design.
- 4.23.7 Resolve Design queries from site as they arise.
- 4.23.8 Review and comment on contractor prepared information, such as construction programme, change control procedures and risk assessments.
- 4.23.9 Comment on any design information prepared by any specialist subcontractors.
- 4.23.10 Update the Health and Safety strategy including statutory requirements.
- 4.23.11 Review 'as constructed information'.
- 4.23.12 Manage implementation of handover strategy, and advise the Buyer that construction activity should commence in line with project budget, programme and scope of works.
- 4.23.13 Review and update the Implementation Plan and the Project Execution Plan.
- 4.23.14 Comment on construction programme.
- 4.23.15 Monitor performance of project team.
- 4.23.16 Where instructed by the Buyer to perform the role of Contract Administrator, administer the construction contract for each element of the project on behalf of the Buyer and discharge all duties associated with the role.
- 4.23.17 Provide information on behalf of the Buyer as required under the Building Contract.

- 4.23.18 Where instructed by the Buyer to perform the role of Contract Administrator, arrange, chair and document monthly progress meetings with the Contractor.
- 4.23.19 Respond to site queries as they arise and liaise with the Buyer.
- 4.23.20 As required attend site to monitor progress to programme and inspect materials, completed work and instruct / inspect sample panels of work.
- 4.23.21 Assist the Contract Administrator to manage change control process, advising the Buyer of impacts to project programme, budget or brief.
- 4.23.22 Assist as necessary in the preparation of agreements with highways authorities, and review specifications and contract conditions put forward for the delivery of highways works.
- 4.23.23 Prepare valuations in accordance with the construction contract.
- 4.23.24 Provide regular monthly reports as to the actual and projected construction costs.
- 4.23.25 Provide cost information to support compensation events.
- 4.23.26 Keep records of the activities of the contractor, including labour levels, productivity, usage and deployment of plant and machinery, the effects of weather and other potentially disruptive factors.
- 4.23.27 Where instructed by the Buyer to perform the role of Contract Administrator, assist in the procuring and completion of collateral warranties from the Contractor and key sub-contractors.
- 4.23.28 For the purposes of buildings insurance, and if required inherent defects insurance prepare estimates of reconstruction costs.
- 4.23.29 Assist if necessary in the settlement of claims in connection with the development dealt with under the Buyer's insurance policies.
- 4.23.30 Advise the Buyer as appropriate on requirement for sample taking and carrying out tests of materials, components, techniques and workmanship.
- 4.23.31 Assist the Buyer if required in investigating any defects and proposing appropriate remedial strategies.
- 4.23.32 Make regular site visits to ensure compliance of construction with design requirements.
- 4.23.33 Respond to contractor requests for information, and notify the Contract Administrator of all written responses.

- 4.23.34 Advise on any changes or responses to site queries that require confirming under formal instruction by the Contract Administrator.
- 4.23.35 Lead on-going coordination of design as revisions are made to ensure all design information issued to the contractor/s continues to be coordinated.
- 4.23.36 Provide information to prepare handover file to include as built drawings and any information on operation and maintenance.
- 4.23.37 Make final site inspections and produce lists of snags as required. Re-visit to de-snag and inform the project manager of the status of completion of the works and of any areas of deficient work requiring rectification as defects.
- 4.23.38 Attend handover meeting and site inspection.

RIBA Stage 5 Deliverables
<i>(Indicative only; RIBA Stage 5 Deliverables will depend on procurement strategy,)</i>
If instructed by the Buyer to perform the role of Contract Administrator, Administration of Building Contract
Discharge of planning, heritage and other statutory conditions
If instructed by the Buyer to perform the role of Contract Administrator, procure completion and delivery of contractor collateral warranties
Facilitate handover of completed Project
Ensure completion of Health and Safety File, Operation and Maintenance Manuals

#### 4.24 RIBA Stage 6 Handover and Close Out

- 4.24.1 Continue to support the Project in the final fit-out, snagging and post-handover phase by compiling lists of defects.
- 4.24.2 Attend any meetings during the first three months following handover that may be required to resolve any minor disputes, or non-conforming works.
- 4.24.3 Be pro-active in supporting the entity responsible for the maintenance of the completed Project in familiarisation with the Project's design aspects.
- 4.24.4 Oversee preparation and submission to the Buyer of 'as built' information to the Buyer by the main contractor.
- 4.24.5 Manage completion of all tasks listed in the handover strategy.
- 4.24.6 Monitor performance of project team.
- 4.24.7 Provide all services required to support rectification of defects under the construction contract.
- 4.24.8 Arrange for any suppliers guarantee's to be put in place on behalf of the Buyer.
- 4.24.9 Provide a planned maintenance programme for the completed works.
- 4.24.10 Oversee preparation and submission to the Buyer of information required under the CDM Regulations 2015.
- 4.24.11 Where instructed by the Buyer to perform the role of Contract Administrator, agree final account in accordance with the building contract (and where not so instructed, provide such support to the Contract Administrator as may be required).
- 4.24.12 Prepare As-Constructed (final construction) project information including the building manuals and drawings (as required by the contract).
- 4.24.13 Assist in preparing relevant building maintenance information.
- 4.24.14 Prepare and issue health and safety information related to the design of the Project.
- 4.24.15 Provide such editable design information to the Contractor as would be reasonably required by the Contractor to enable them to prepare as built design information including a final federated BIM Model.
- 4.24.16 Provide all services required to support rectification of snags / defects under the construction contract.
- 4.24.17 Attend press and public relations events as required.

4.24.18 Carry out 12 months defects inspections, produce the necessary defects lists and attend site to re-inspect and confirm that they have been rectified or otherwise.

RIBA Stage 6 Deliverables
<i>(Indicative only; RIBA Stage 6 Deliverables will depend on procurement strategy,)</i>
As-constructed drawings, schedules and specifications (where relevant)
Health & Safety File (as required by CDM Regulations)
Any other information, where relevant, to support the development of the Operations and Maintenance Manuals (O&M Manuals) – by others

#### 4.25 RIBA Stage 7 In-Use

- 4.25.1 Support the Buyer in obtaining post-completion feedback from end users so that data can be gathered on the performance of the building, the design.
- 4.25.2 Attend a post occupancy evaluation workshop, with a representative selection of individuals from your team.
- 4.25.3 Review performance over the course of the project and look at things done well and those not performed so well and assemble a list of lessons learnt to review with the Buyer.
- 4.25.4 Prepare information for and attend a post project evaluation / lesson's learned workshop (if required) with the Suppliers, contractor, Buyer and users to review project, performance of all the participants.
- 4.25.5 Oversee completion of Making Good Defects / Defects Correction identified within the liability period and final payment following conclusion.

RIBA Stage 7 Deliverables
<i>(Indicative only; RIBA Stage 7 Deliverables will depend on procurement strategy,)</i>
Input into the Post-Occupation Evaluation and Government Soft Landings Reports (by others)

#### 4.26 Appoint an artist/sculptor

- 4.26.1 Using a design brief and a shortlist of up to 5 candidates provided by the Cabinet Office, lead the interview and appointment process for the artist/sculptor to join the

design team and deliver the figurative element of the memorial anticipated to be on or adjacent to The Mall by Marlborough Gate.

- 4.26.2 Work with the Cabinet Office to ensure that the appointment process and conclusion is aligned with the QEMC's expectations.
- 4.26.3 Ensure planning consent for the sculpture is also included as part of wider site planning consent.
- 4.26.4 Once a Supplier has been selected, the Buyer will provide the Supplier with a shortlist of up to five artists/sculptors and an artist's brief. The Supplier will be required to interview and contract with one of these artists/sculptors to join the Supplier's team and produce a design for a figurative representation of Queen Elizabeth II. The figurative design will also need to be submitted for planning approval. Schedule 2 must include the following deliverables in relation to the artist/sculptor that will be added to the team post-competition (to avoid having to amend the contract post-competition).
- 4.26.5 The Supplier will be responsible for appointing, integrating and managing all deliverables relating to the artist/sculptor.

i. The Supplier will need to make use of the design brief that the Committee has ratified in setting the brief to the artist/sculptor (noting that some additions/changes may need to be discussed with the Committee to ensure the brief is appropriately integrated into the wider design)

ii. In addition to the planning consent for the concept masterplan design, the Supplier will be responsible for ensuring the artist/sculptor's design for the figurative piece also goes through planning and approvals

Deliver a RIBA stage 2 masterplan design

- 4.26.6 Develop the winning masterplan design up to at least RIBA stage 2.
- 4.26.7 Fully integrate the figurative design from the artist/sculptor appointed post-competition into the masterplan design.
- 4.26.8 Completion of a detailed feasibility study to RIBA stage 2. The following elements are expected to be included as a minimum:-
- Impact upon/necessary works to the neighbouring highway network including access and egress points to the site

- Availability and suitability of all mains services required for the operation of the completed project together with installation costs
- Phase 1 geotechnical survey
- Ecological survey and potential impacts
- Landscape and Visual impact Assessment
- Establishment of constraints on each site to establish the most suitable location within each site for development
- Analysis of spatial requirements and site massing analysis
- Suitability in terms of setting, outlook, surrounding land use
- Landscaping and screening requirements
- Land costs (provided by the Buyer)
- Cost estimates for construction

#### 4.27 Manage the planning consent process and deliver planning consent for the masterplan design:

- 4.27.1 Ensure a fitting and feasible design announcement with planning permission can be made by April 2026. The intent of the Buyer is that planning consent is to be secured prior to such announcement being made. The Buyer shall, however, have the discretion to proceed with the announcement prior to planning consent having been secured. Planning consent should cover both the memorial site and the sculpture.

#### 4.28 Additional advice and support:

- 4.28.1 All designs submitted by tenderers prior to award of this Contract to the Supplier should resonate with the British public across the UK. The QEMC through the Buyer will therefore have implemented a public engagement strategy to gather views on those designs (including the Supplier's masterplan design) post the tender competition. For the avoidance of doubt, this strategy will also involve engagement with the public, as appropriate, after award of this Contract.
- 4.28.2 The Supplier is not expected to directly gather views from the public and other stakeholder groups on the appearance, form and appropriateness of its masterplan design. Instead, the Supplier may be required to support the Cabinet Office's public engagement strategy so as to ensure feedback on the design is obtained and considered appropriately and at the most suitable time(s). The public engagement strategy will aim to provide assurances that the masterplan design will be for the most part well received by the public ahead of the QEMC making its recommendation to the Prime Minister and his Majesty the King.
- 4.28.3 The Supplier shall consider feedback on the masterplan design procured via the public engagement strategy and provide the Buyer with advice as to the appropriateness, feasibility and likely impact (including impact upon cost and programme) of reflecting such feedback into the development of the design for the

Project.

4.28.4 The Supplier will be expected to support any other activity that is demonstrated to be necessary to the successful execution of the projects.

## 5. Milestones

a) Unless the Buyer agrees otherwise, the Supplier shall ensure that the Implementation Plan includes the following Milestones. Milestone review meetings will be held regularly to review and confirm the delivery of milestones in their totality.

<b>Milestone</b>	<b>Description</b>	<b>Delivery date</b>
<b>Milestone 1</b>	Submission of the Implementation Plan, the Project Execution Plan, Project Programme and Statutory Applications Strategy	TBC
<b>Milestone 2</b>	Appointment of Artist/ Sculptor to Supplier Team	TBC
<b>Milestone 3</b>	RIBA Stage 2 Report Approval	TBC
<b>Milestone 4</b>	Submission of Statutory (Planning and Listed Building) Applications	TBC
<b>Milestone 5</b>	Discharge of conditions from the statutory applications (planning and listed building consent) approvals (if required)	TBC
<b>Milestone 6</b>	Building Control Full Plans application to the statutory authority	TBC
<b>Milestone 7</b>	RIBA Stage 3 Report Approval	TBC
<b>Milestone 8</b>	RIBA Stage 4 Report Approval	TBC
<b>Milestone 9</b>	Tender Exercise conclusion and Contract Documents	TBC
<b>Milestone 10</b>	Handover of completed project	TBC
<b>Milestone 11</b>	Completion of outstanding snags/ defects	TBC
<b>Milestone 12</b>	Completion of Making Good Defects and Final Payment	TBC

**REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS**

■ --- [REDACTED]

■ --- [REDACTED]

● [REDACTED]

[REDACTED]	[REDACTED]
<b>-level</b> summary of the Supplier's [REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]

Quarterly

The Supplier's full Social Value

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

[REDACTED]

Analysis & reporting – RIBA Stage 0-1

[REDACTED]

Recruitment pipeline – established by end of RIBA Stage 2

[REDACTED]

REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS

<p>[REDACTED]</p> <ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul> <p>[REDACTED]</p> <p>Timed project and process</p> <p>[REDACTED]</p> <ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul>	
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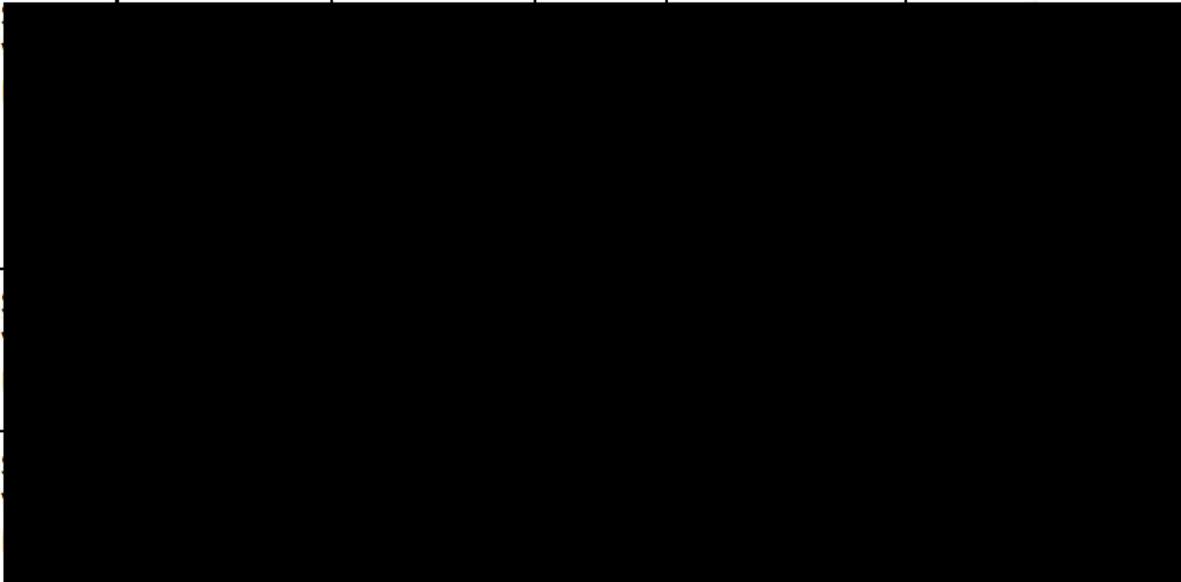


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43, COMMERCIAL INTERESTS**

**Table B: Social Value KPIs**

**To be agreed within 30 Working Days of Contract Start Date.**

<b>No.</b>	<b>Social Value Title</b>	<b>Description of Deliverable</b>	<b>Target</b>	<b>Frequency of Measurement</b>	<b>Publishable Performance Information</b>
					

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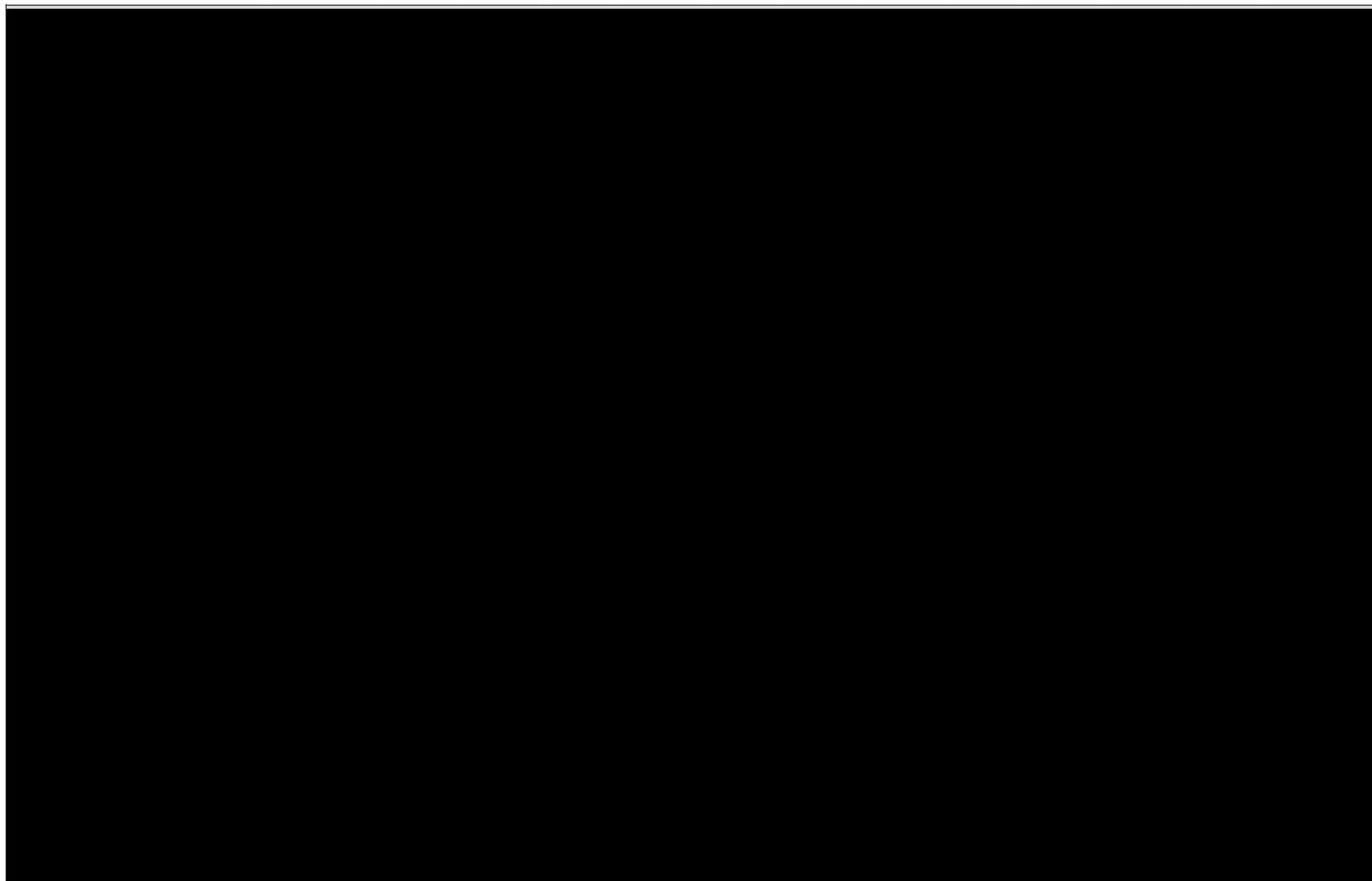
## Schedule 3 (Charges)

1. How Charges are calculated
  - 1.1 The Charges:
    - 1.1.1 shall be calculated in accordance with the terms of this Schedule; and
    - 1.1.2 cannot be increased except as specifically permitted by this Schedule.
  - 1.2 Any variation to the Charges payable under the Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.
2. The pricing mechanisms
  - 2.1 The pricing mechanisms and prices set out in Annex 1 (Pricing Schedule) shall be available for use in calculation of Charges in this Contract.
3. Are costs and expenses included in the Charges
  - 3.1 Except as expressly set out Annex 1 (Pricing Schedule), the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall (unless stated otherwise in Annex 1) be payable in respect of matters such as:
    - 3.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or
    - 3.1.2 costs incurred prior to the commencement of this Contract.
4. Events that allow the Supplier to change the Charges
  - 4.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
    - 4.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8; and
    - 4.1.2 a request from the Supplier, which it can make at any time, to decrease the Charges.

## Annex 1: Pricing Schedule

Pricing Matrix

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Time Charge Rates:

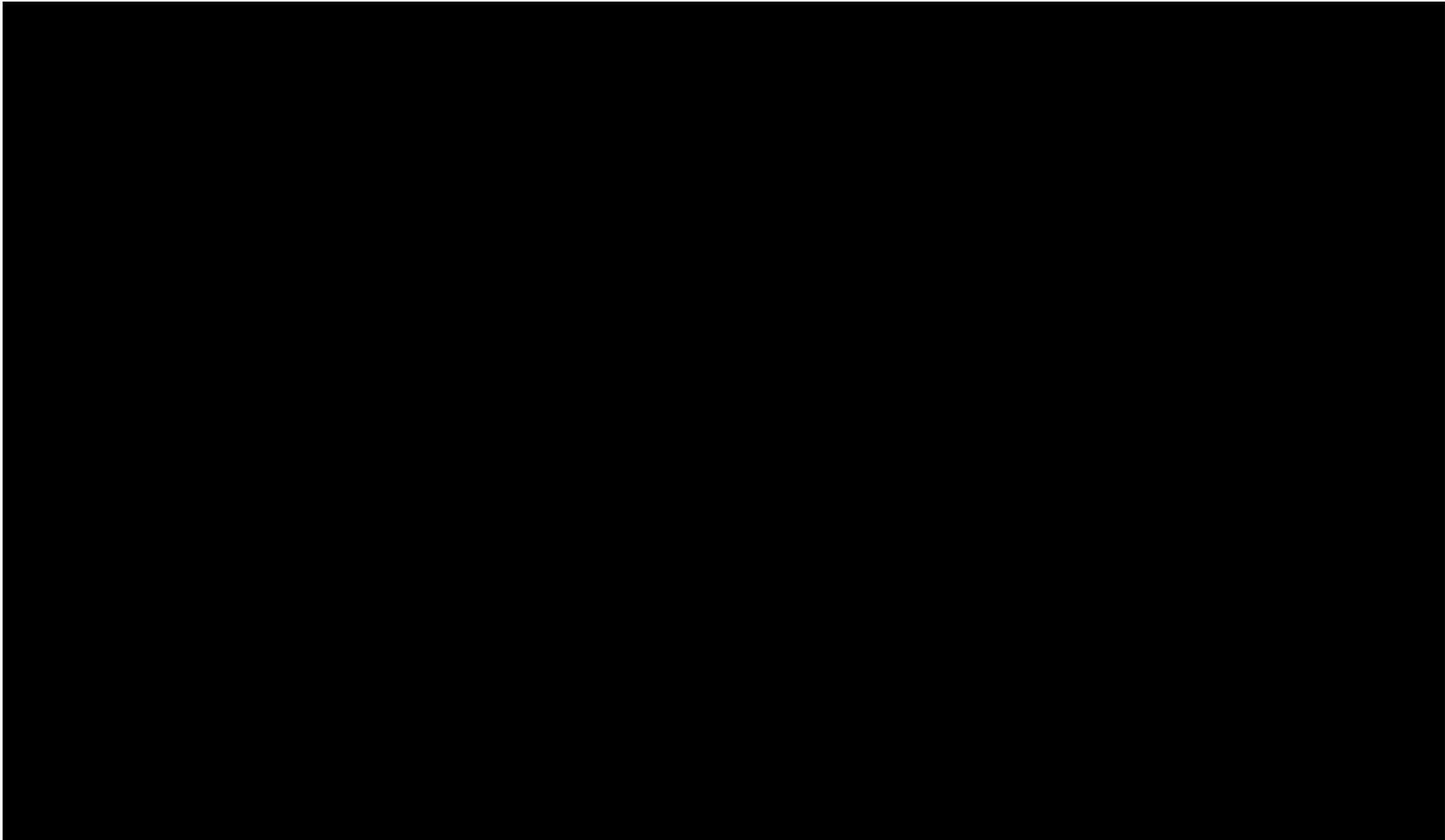


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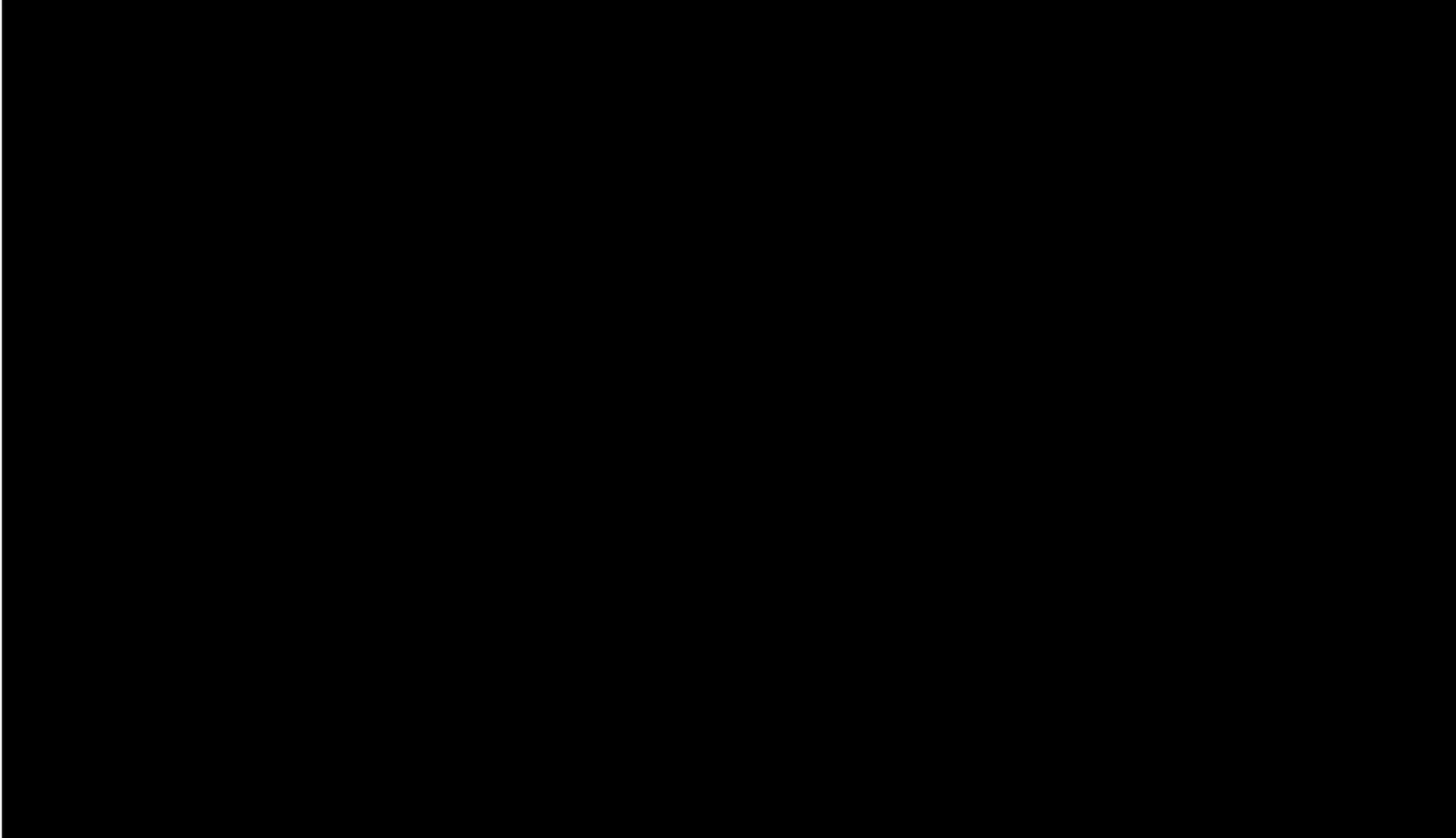
Expenses:

All expenses are deemed included within the Charges.

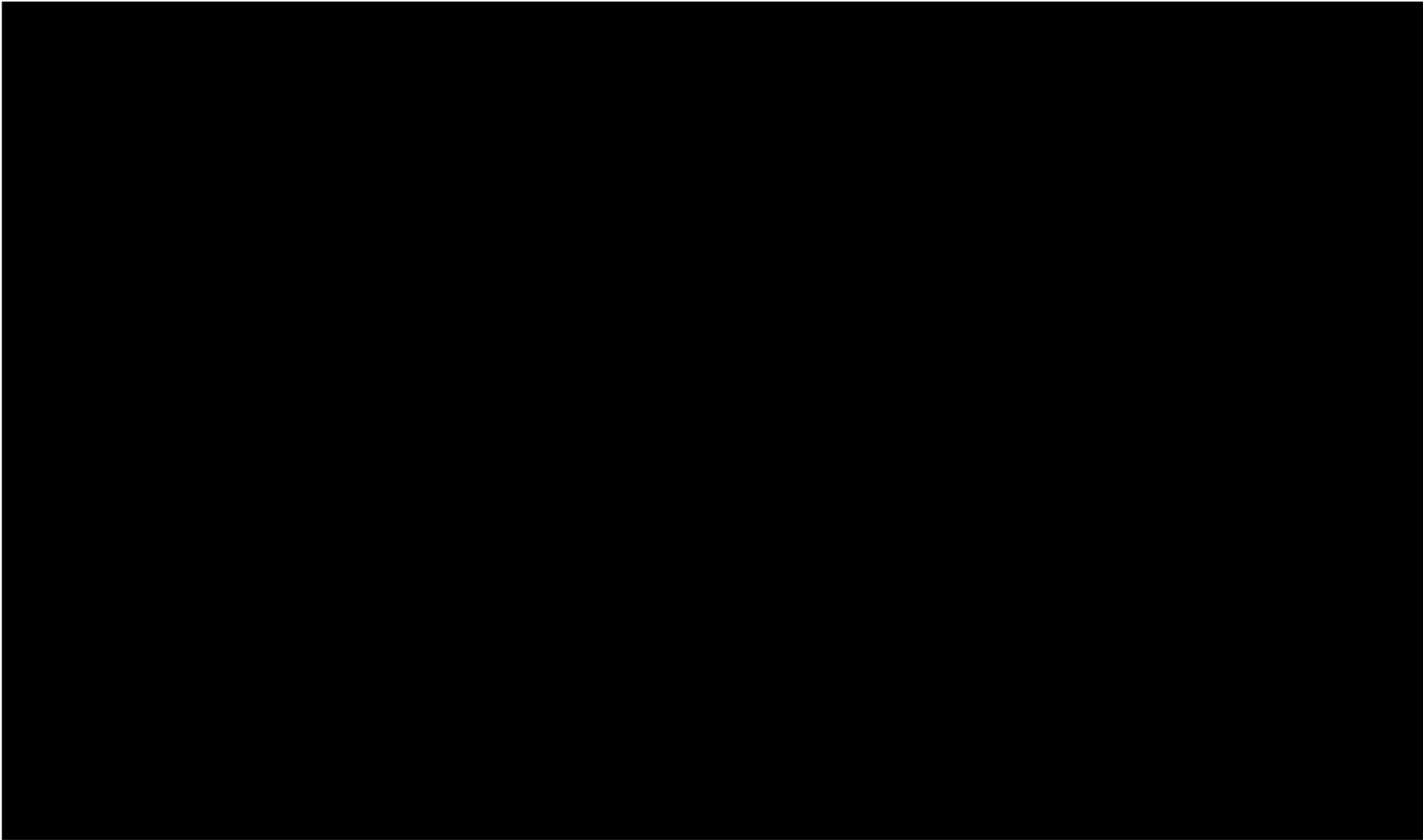
## Resource Schedule



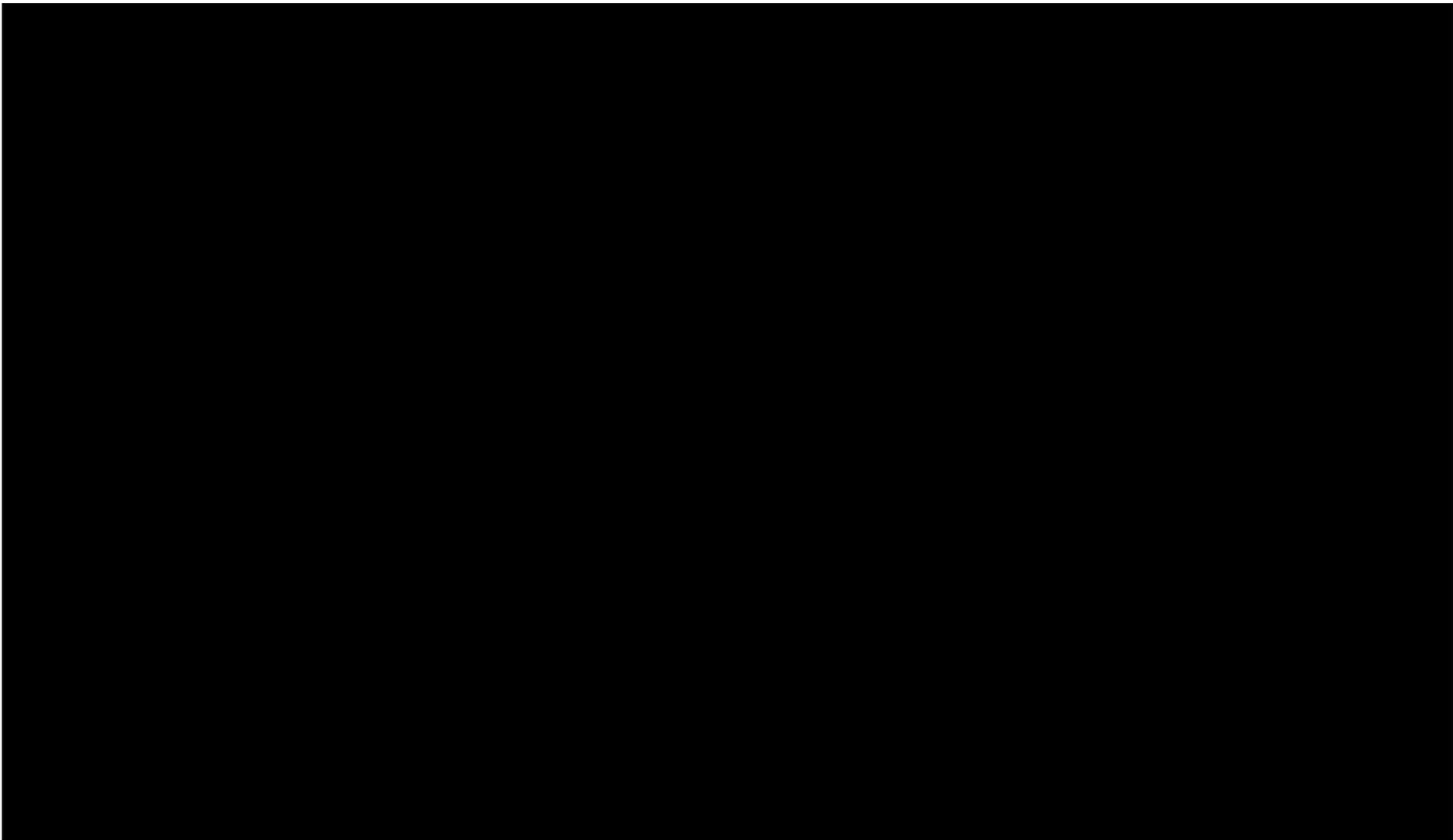
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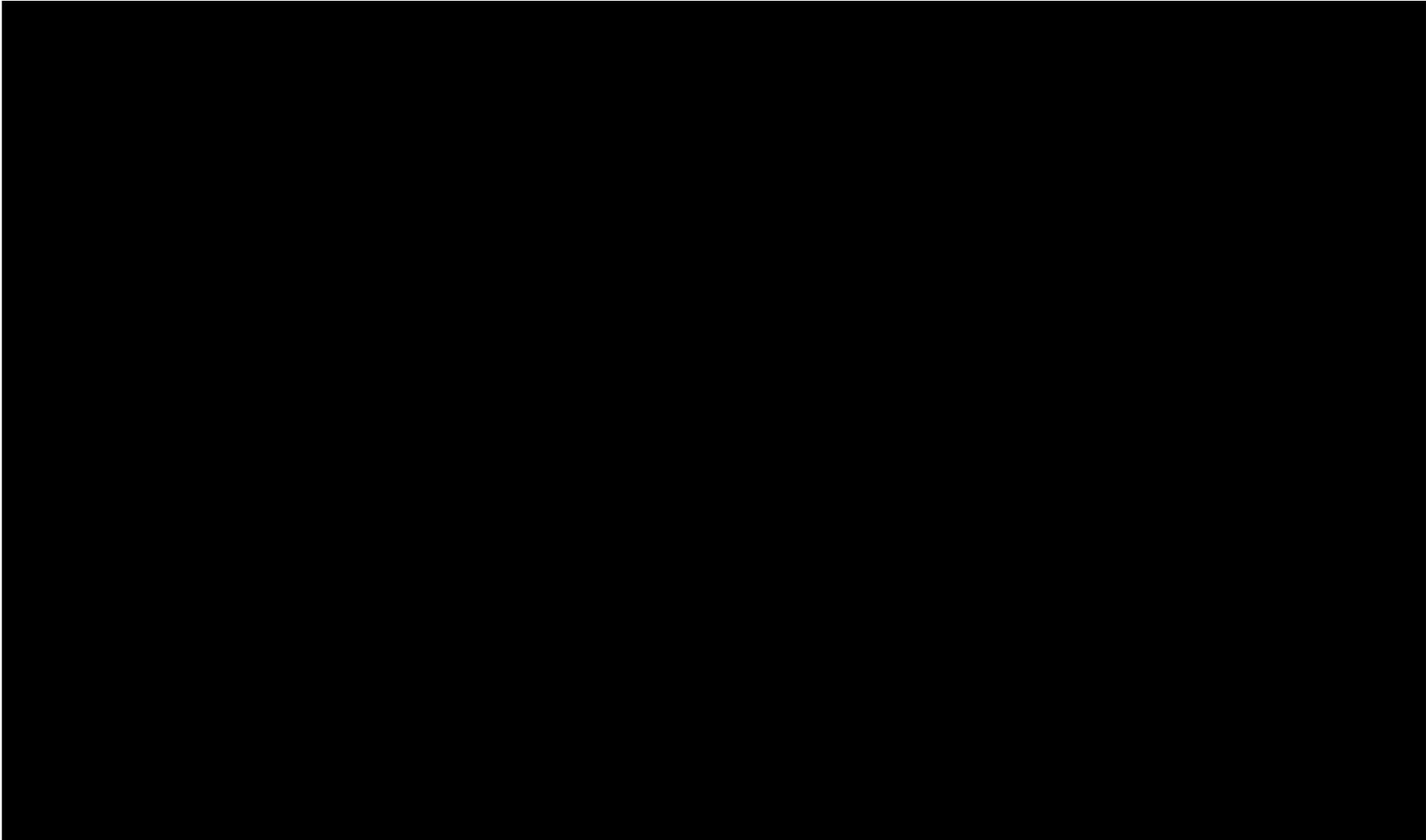
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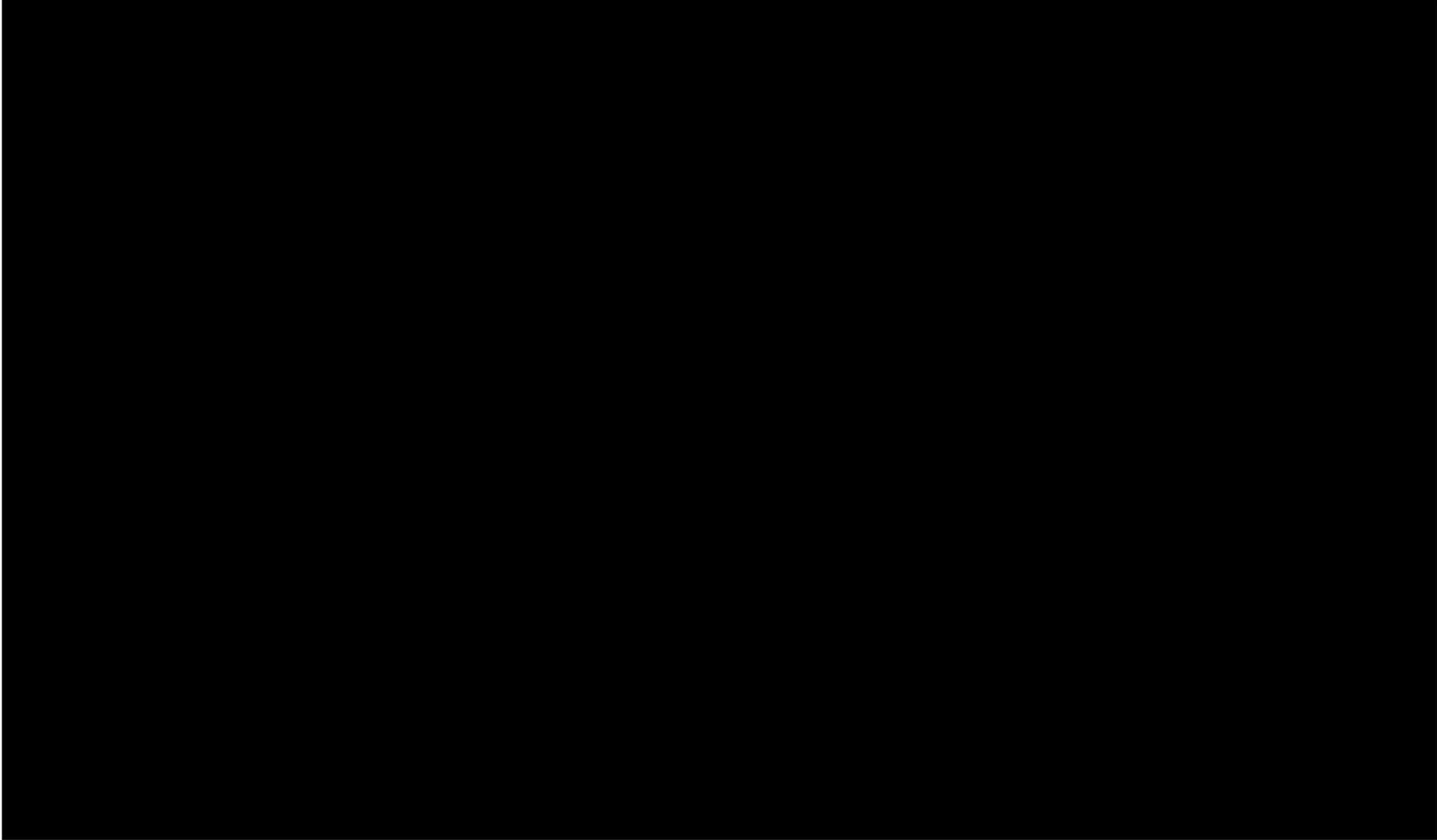
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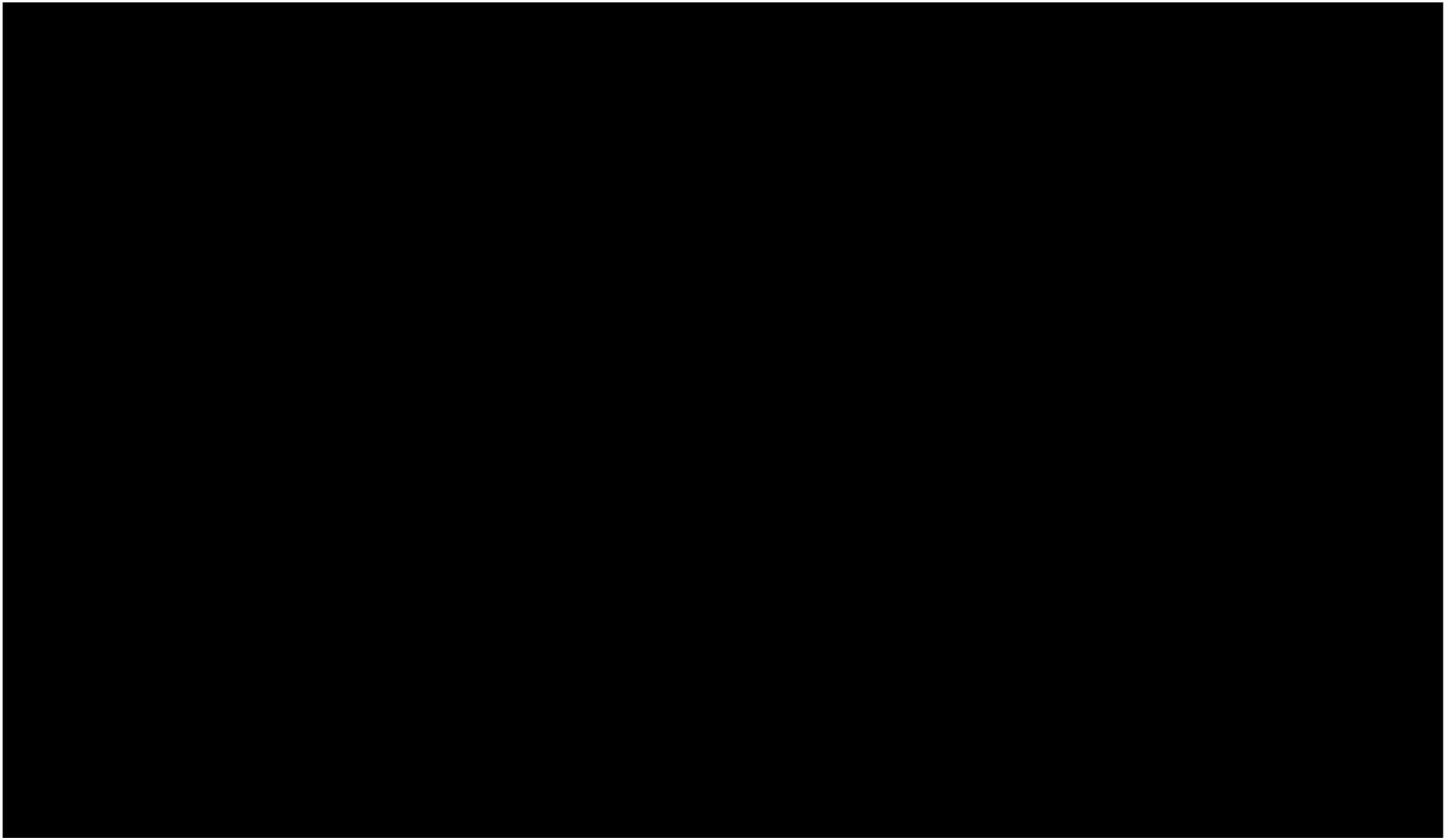
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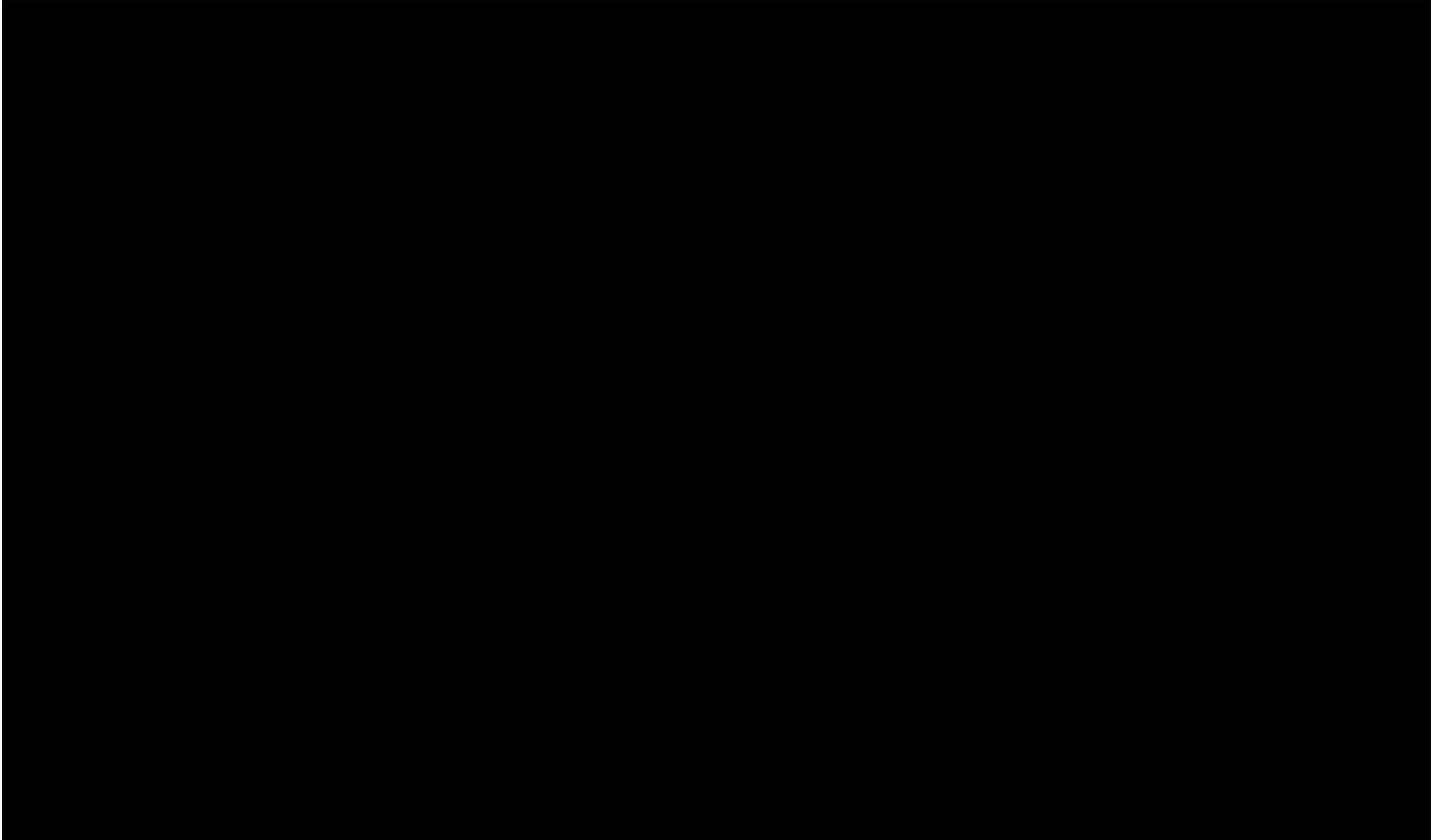
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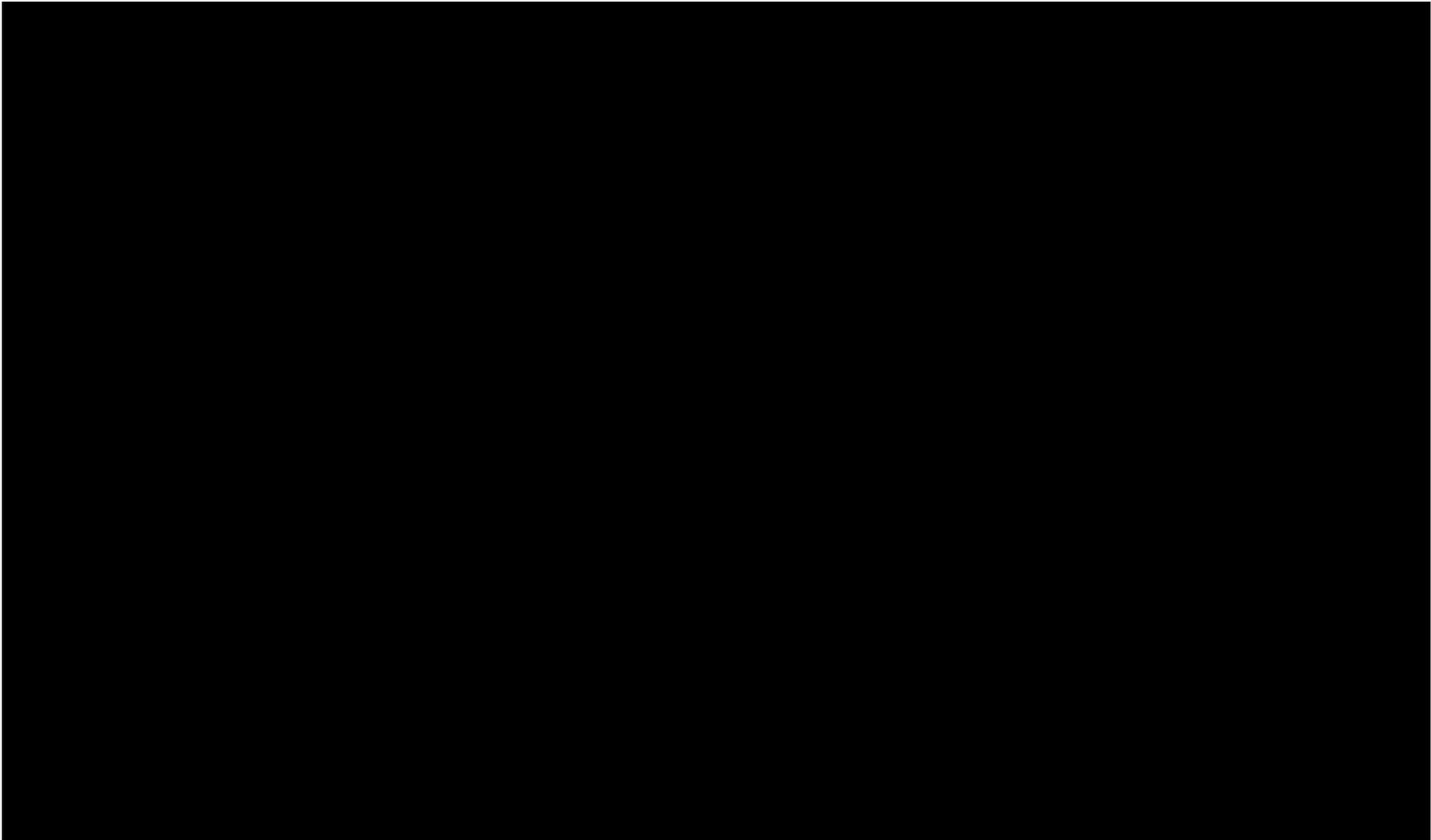
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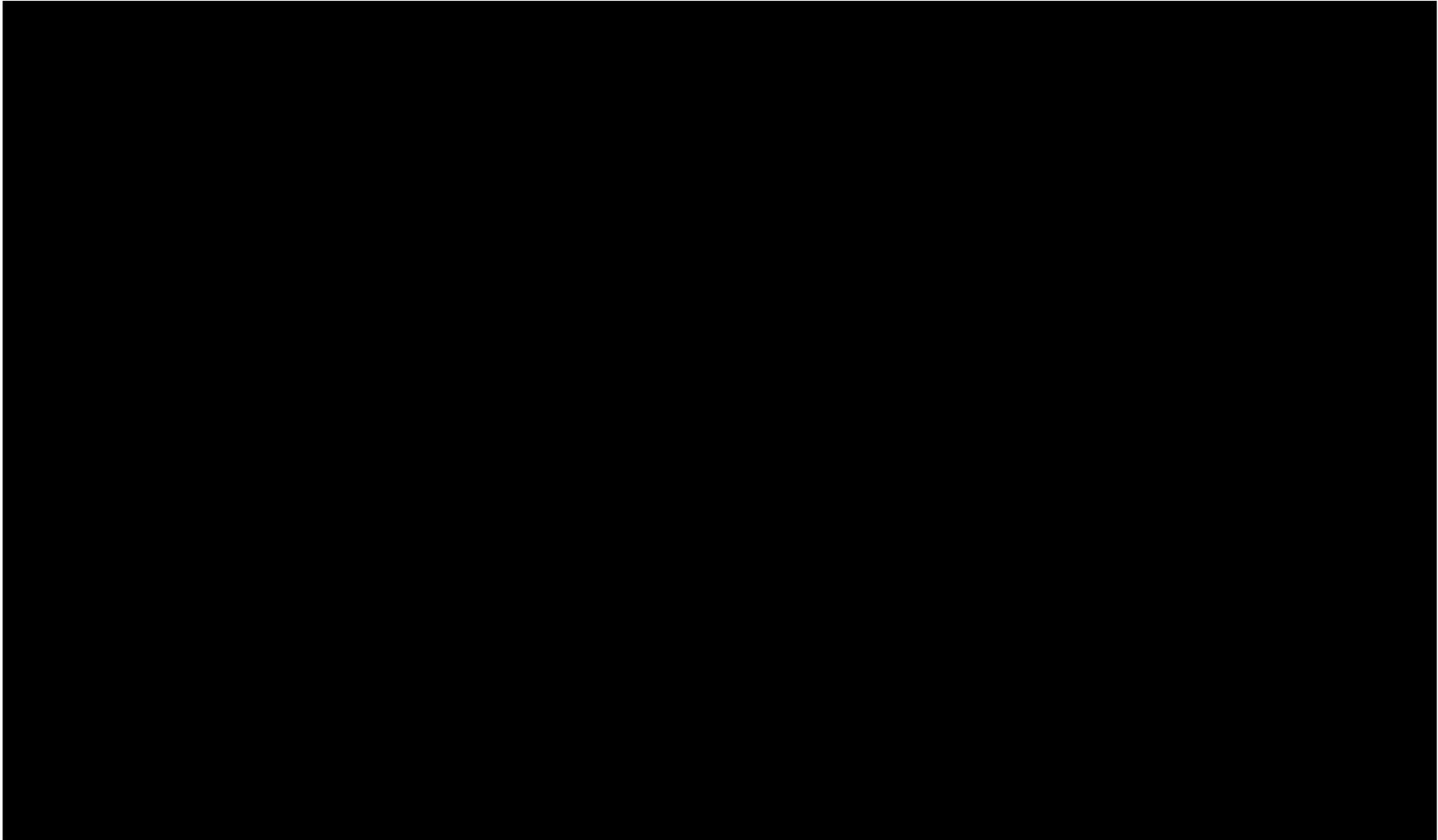
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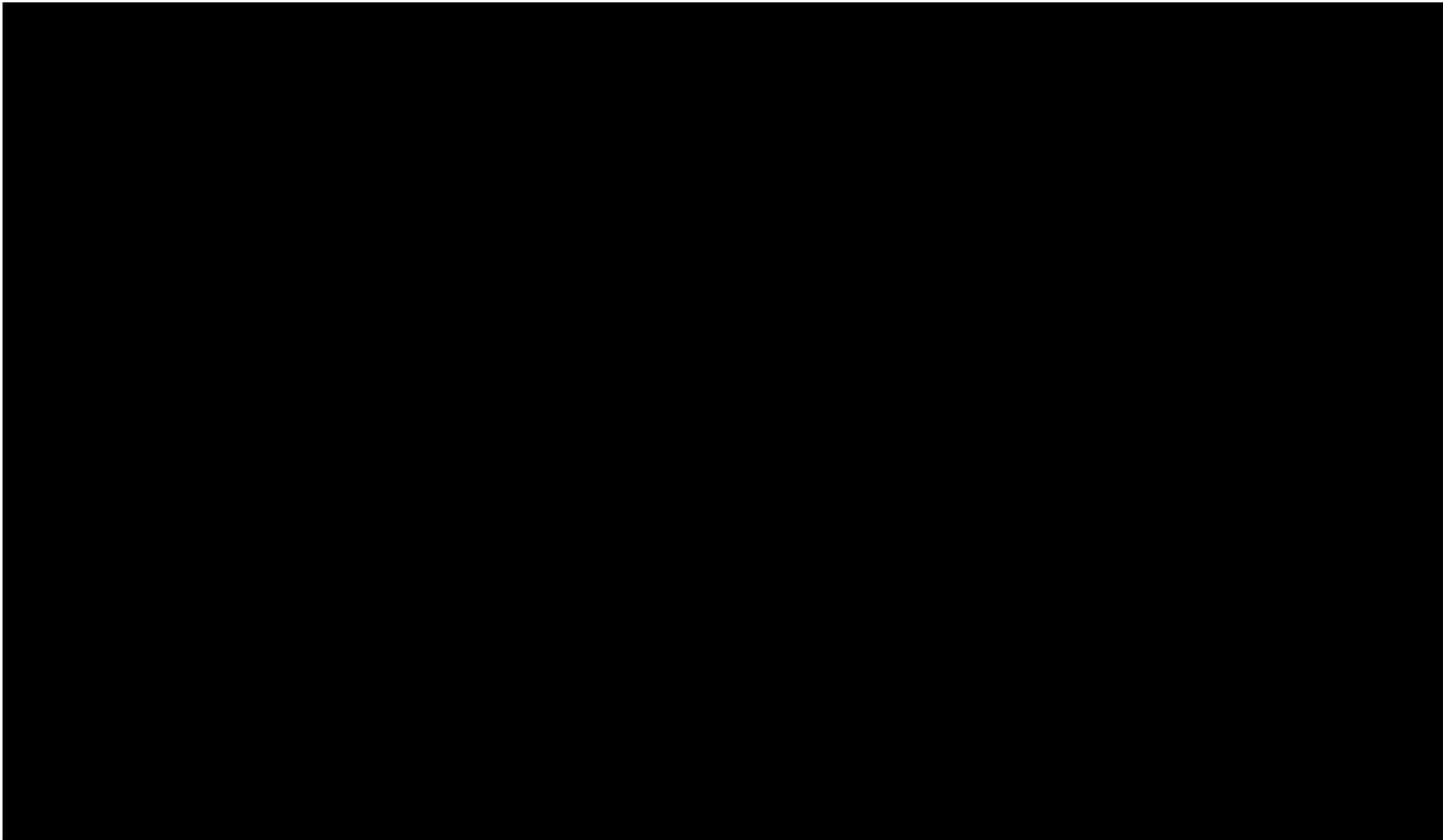
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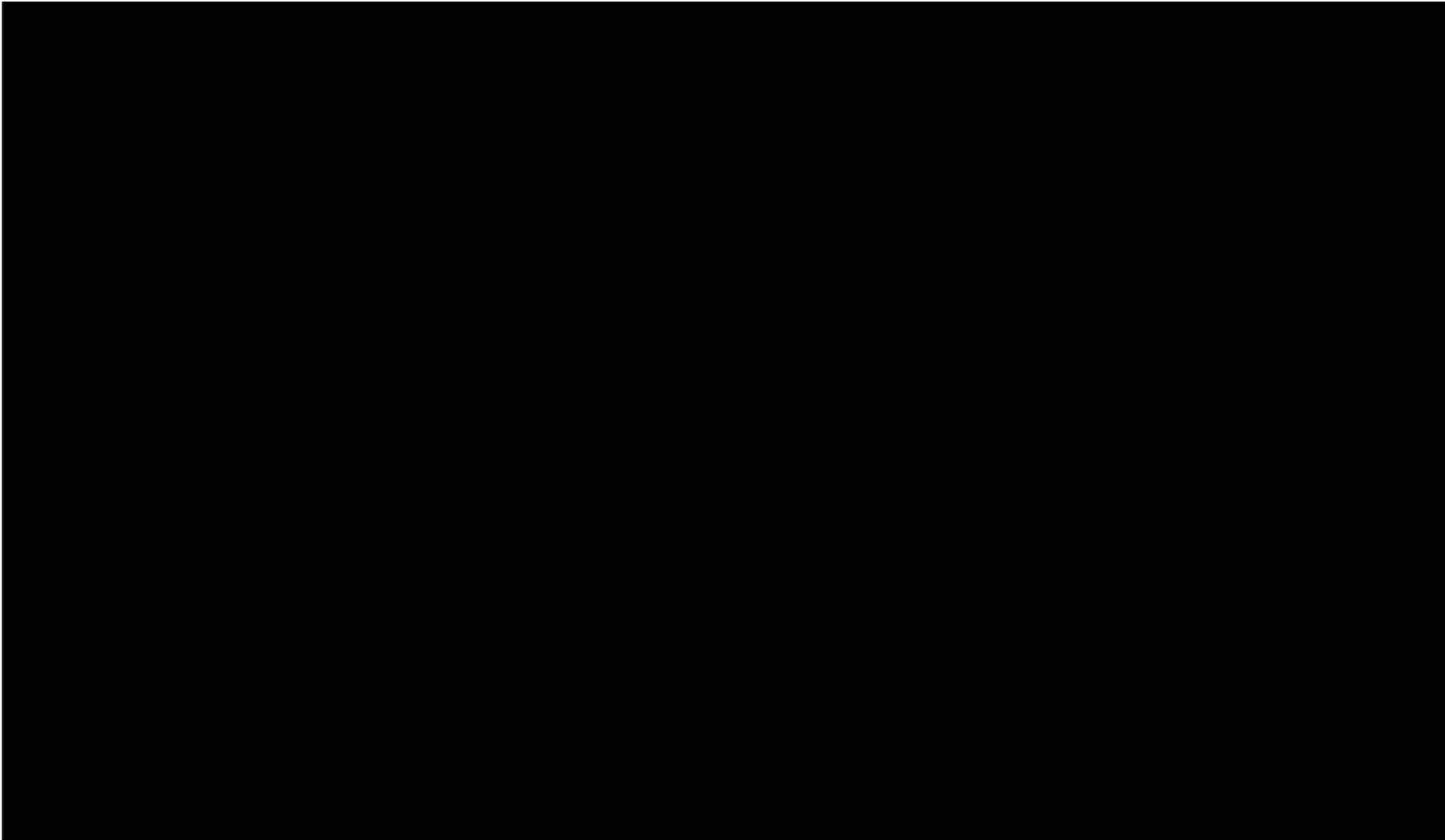
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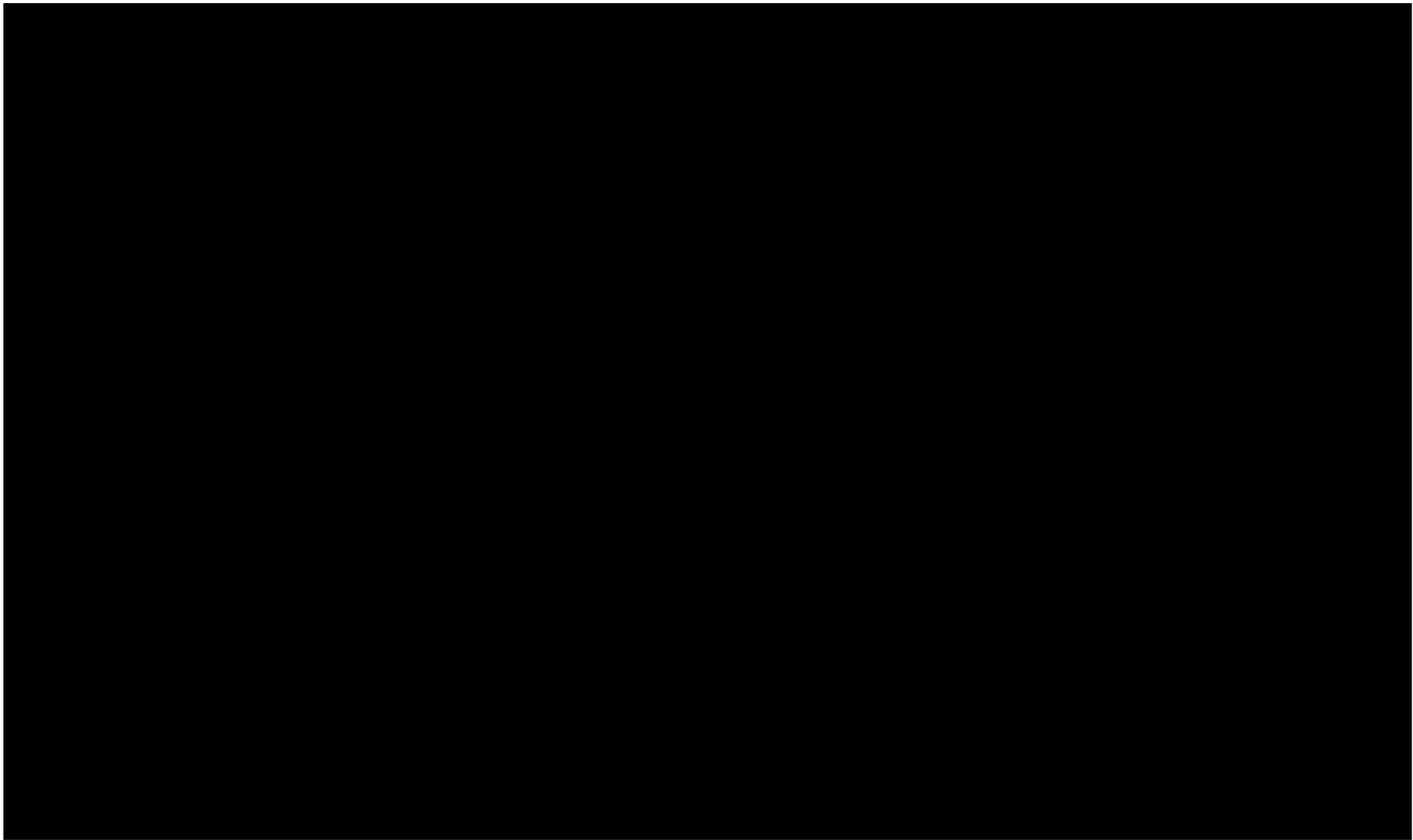
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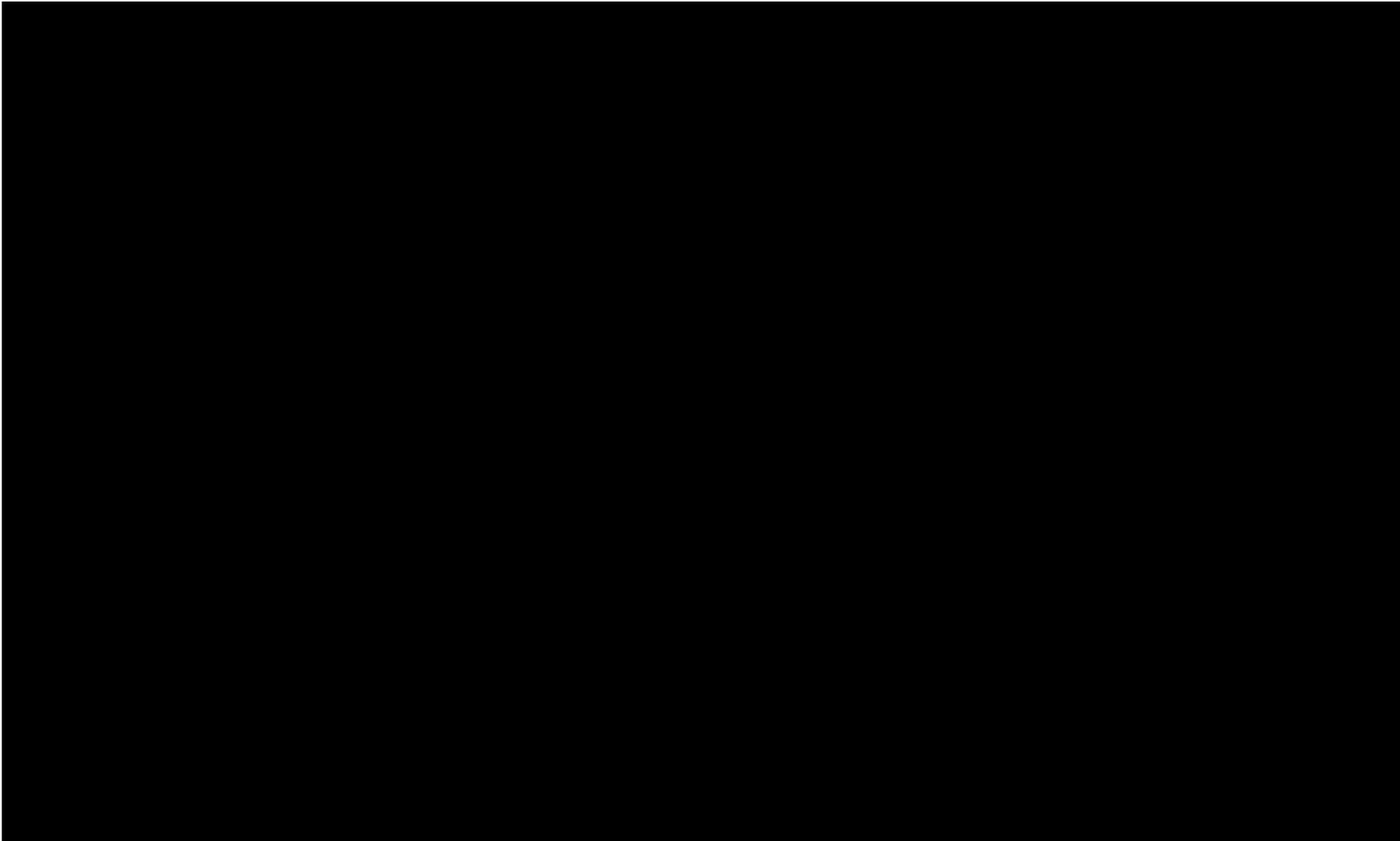
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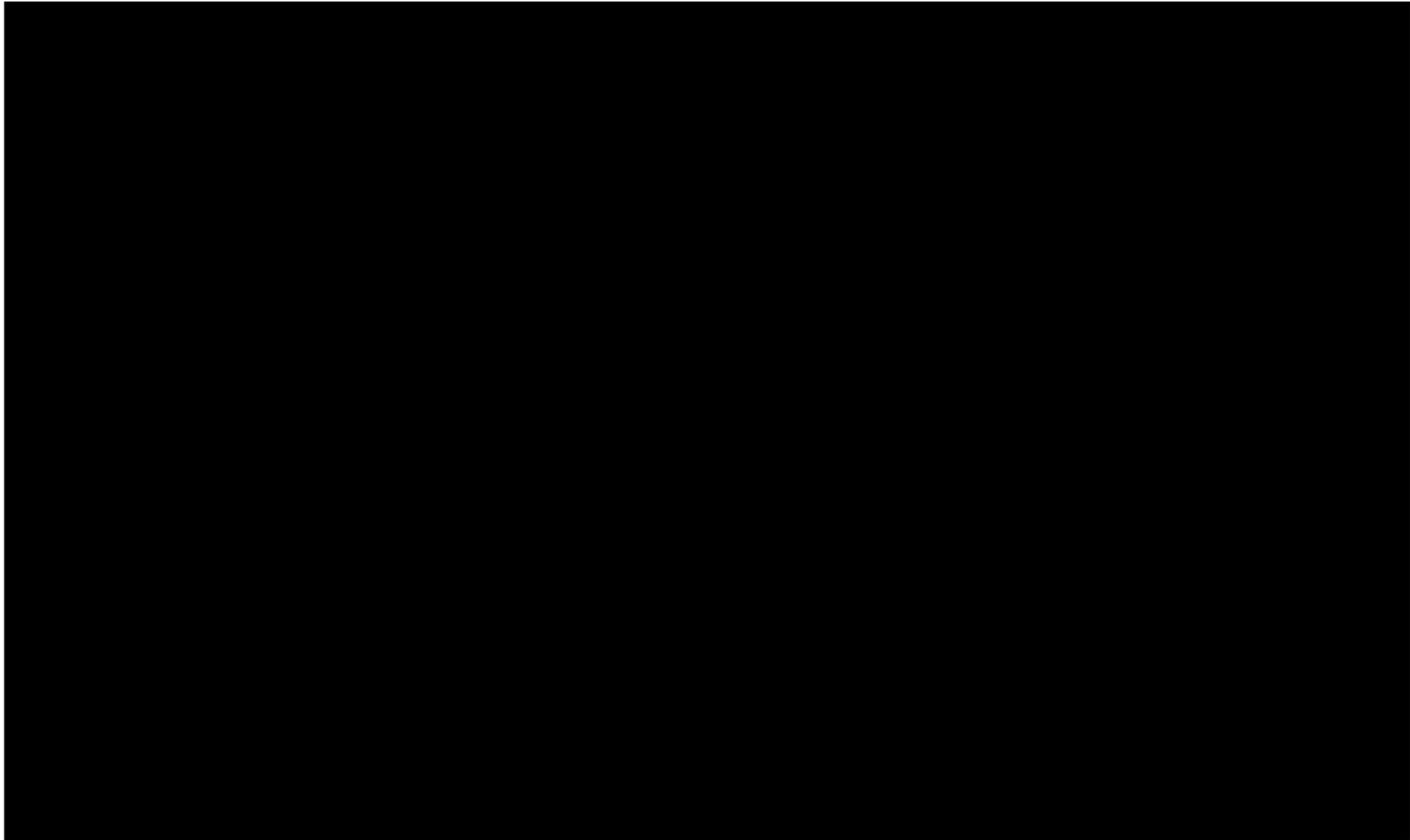
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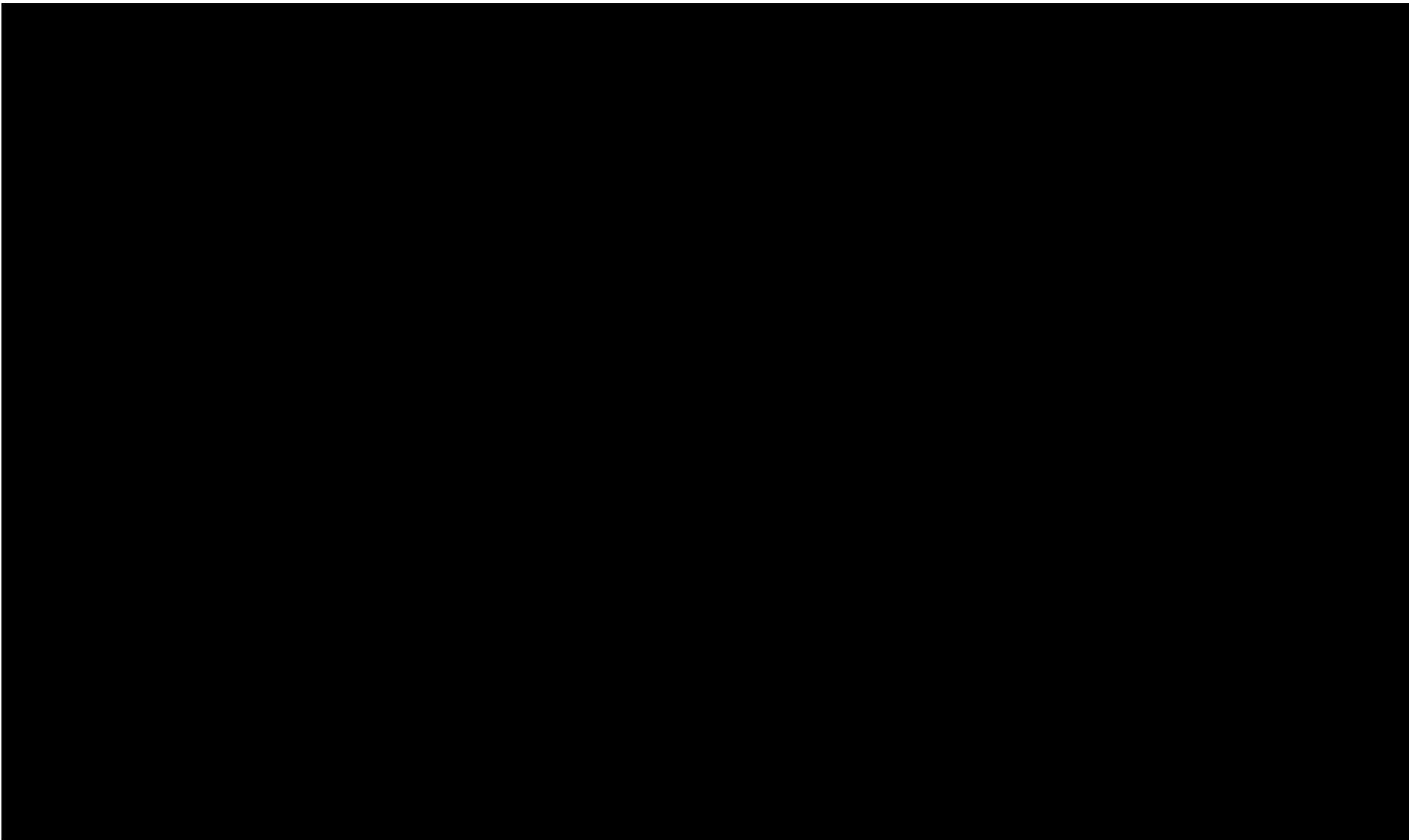
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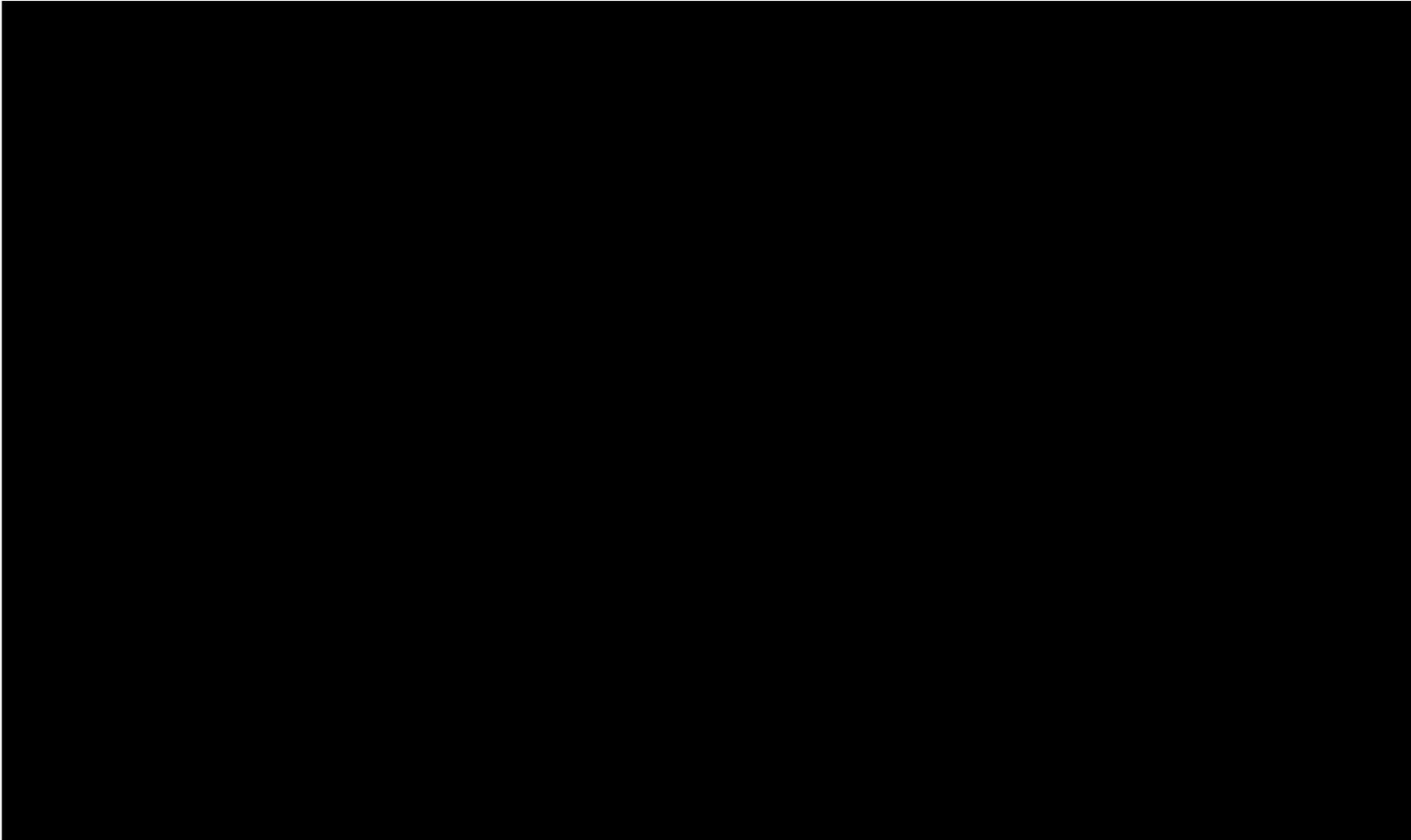
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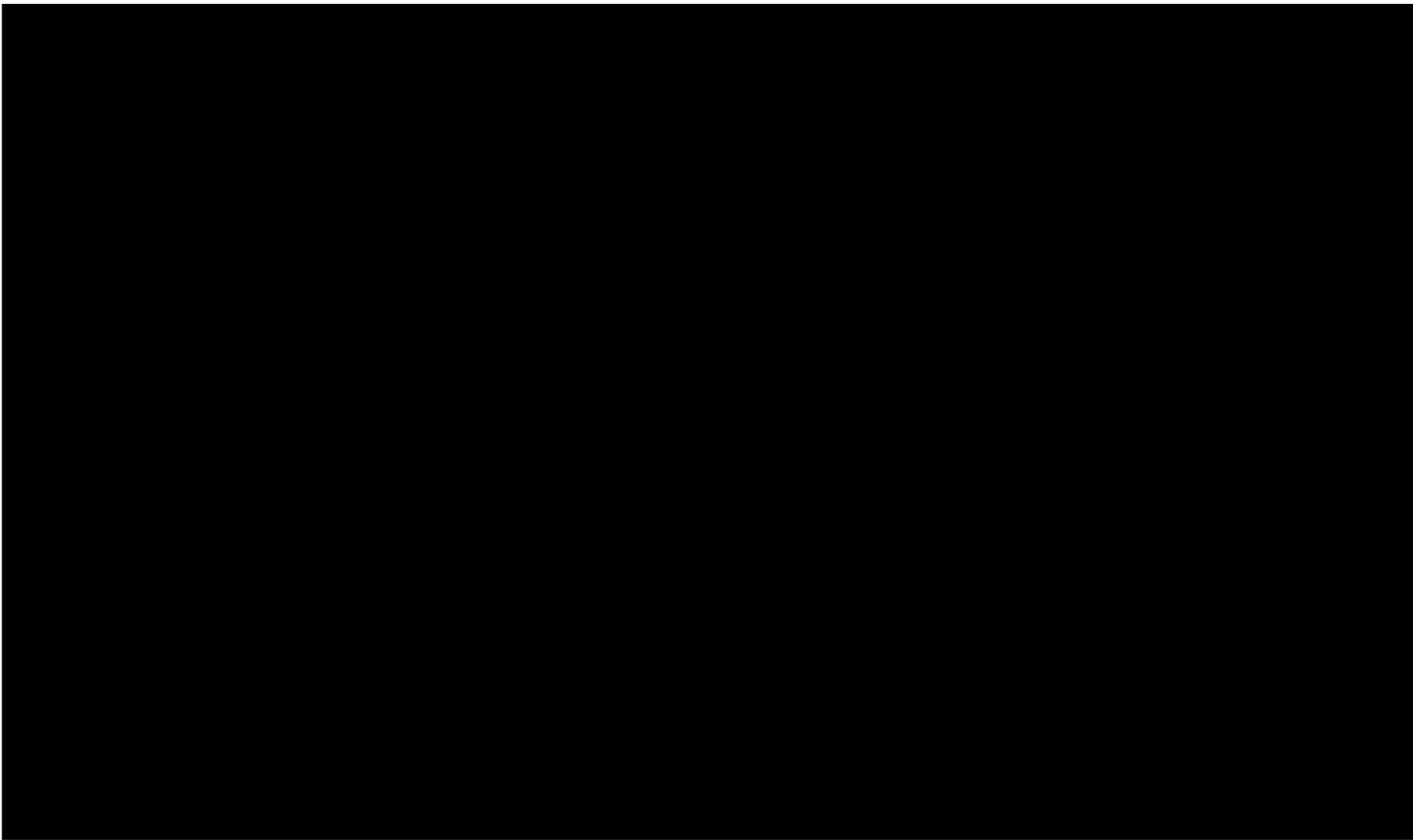
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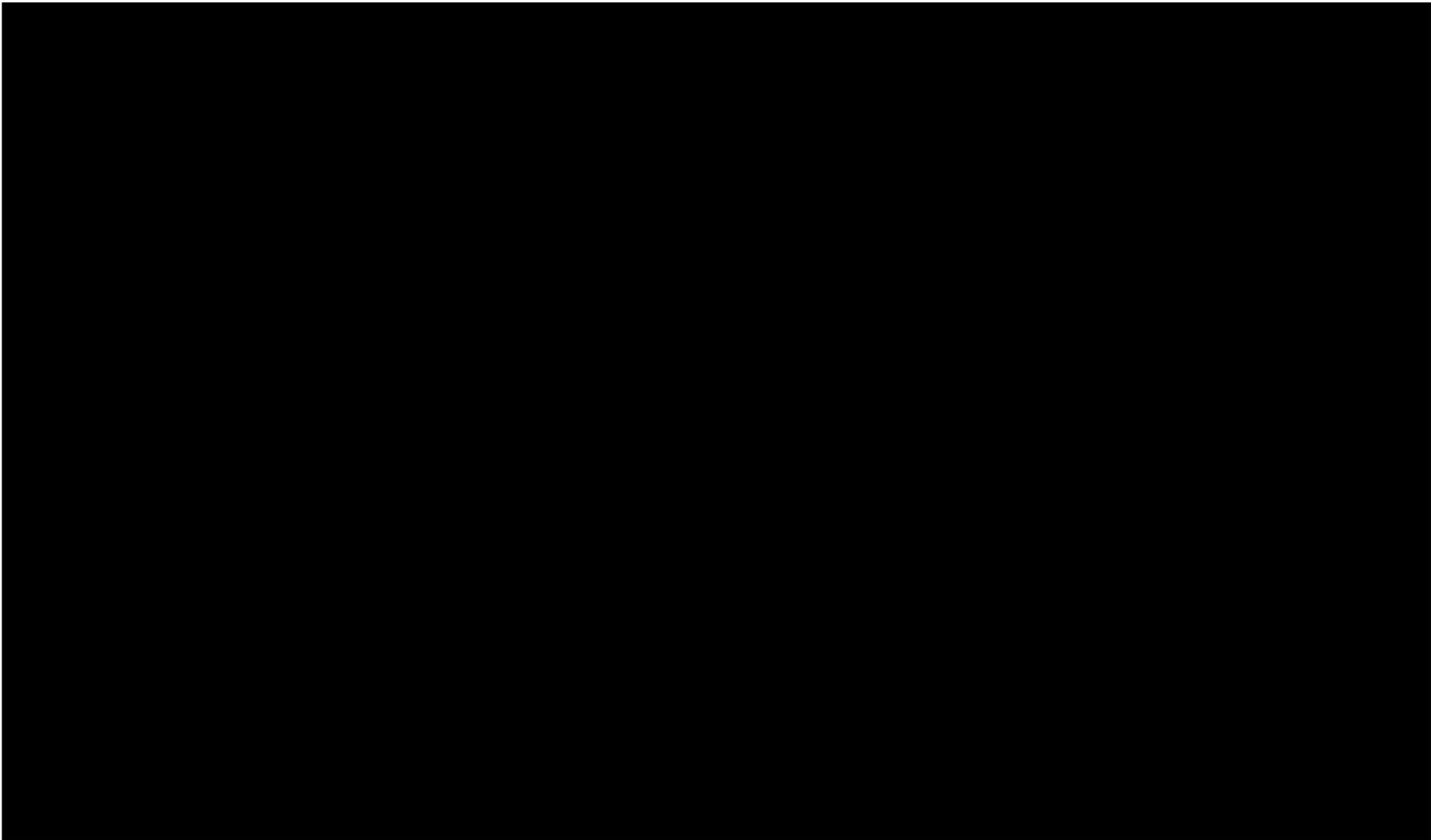
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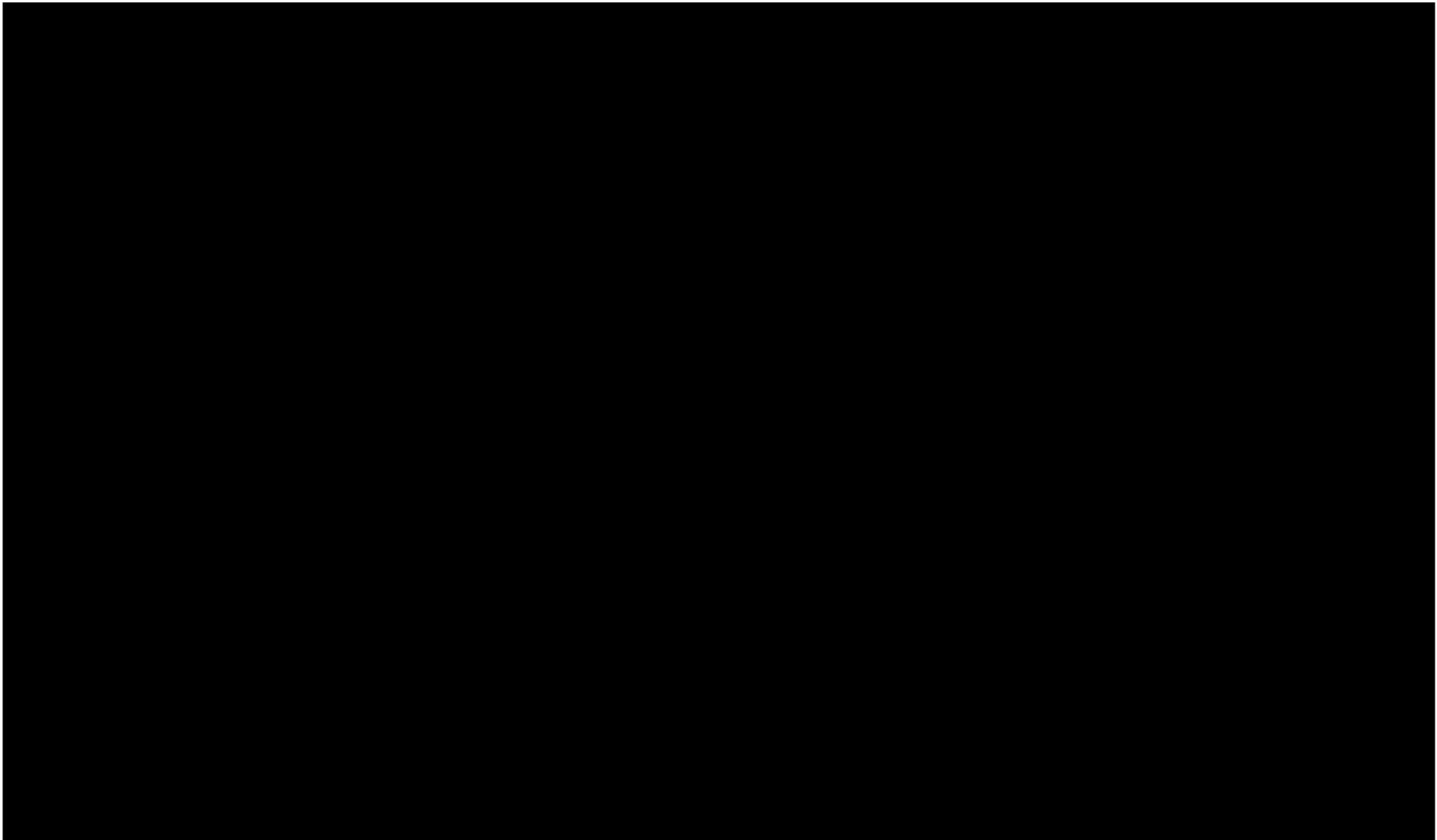
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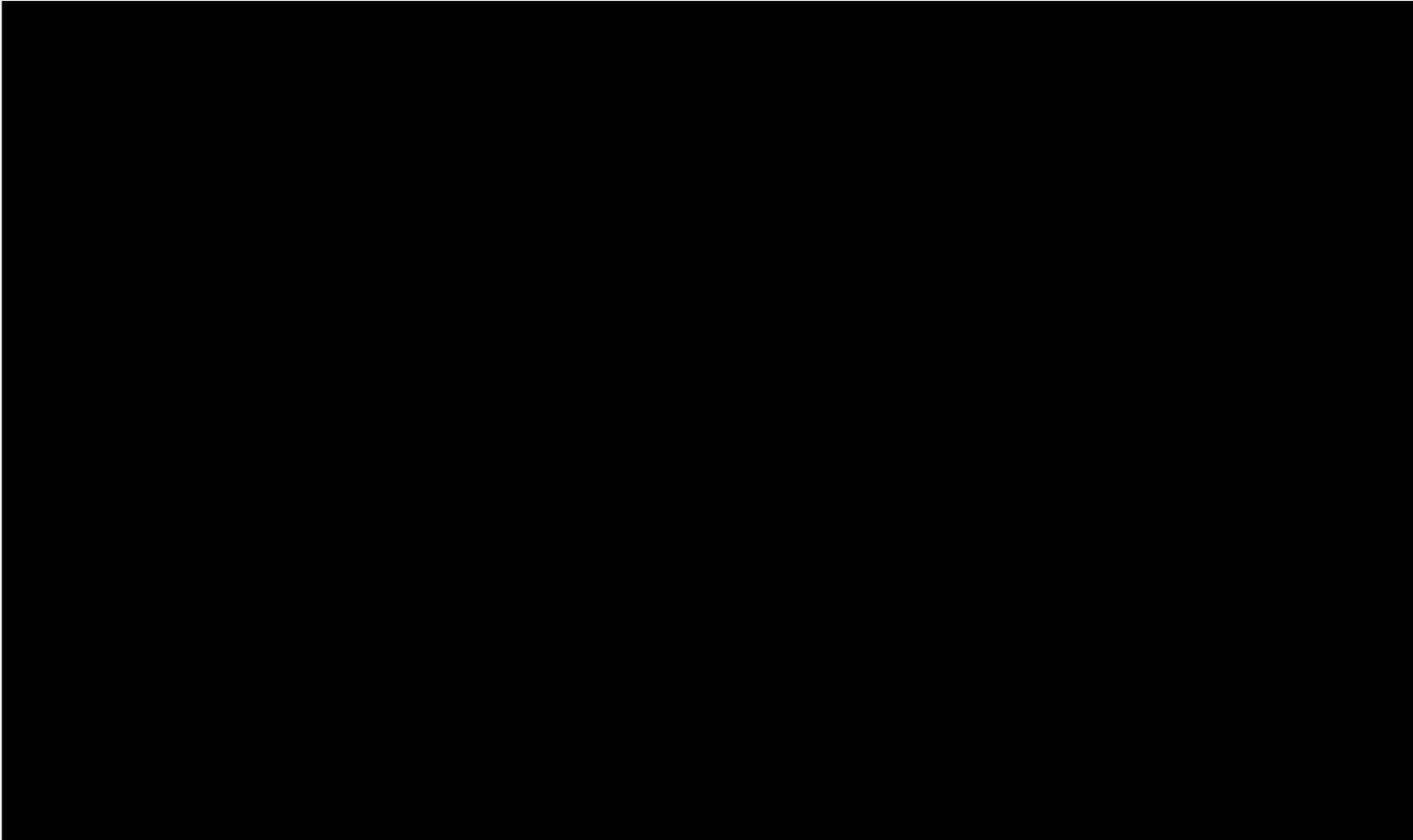
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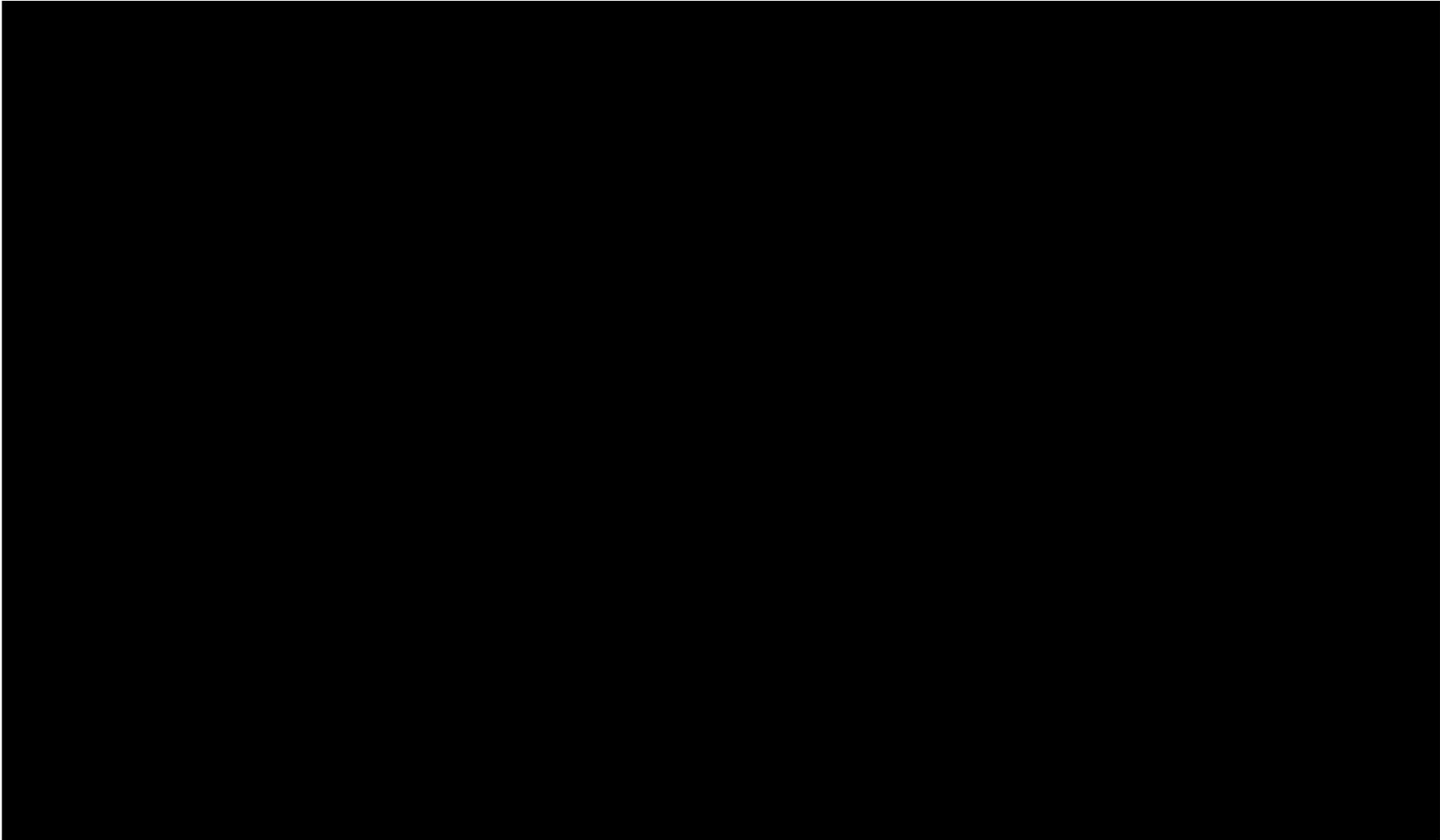
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**REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS**



REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS

## Schedule 4 (Tender)

REDACTED UNDER FOIA SECTION 43, COMMERCIAL INTERESTS

## Schedule 5 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following information:

N o.	Date	Item(s)	Duration of Confidentiality
1.	From Effective Date	Schedule 3 Annex 1 – Time Charge Rates	Perpetual

## Schedule 6 – Not used

## Schedule 7 – Not used

# Schedule 8 (Implementation Plan)

## 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):

"Delay"	(a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the performance of a Service by the relevant date set out in the Implementation Plan;
"Deliverable Item"	an item or feature in the performance of the Services by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Milestone Payment"	a payment identified in the Implementation Plan to be made following the Achievement of the relevant Milestone;

### 2. Agreeing and following the Implementation Plan

2.1 The Supplier shall provide a draft Implementation Plan seven days after the Effective Date.

2.2 The draft Implementation Plan:

2.2.1 must contain information at the level of detail necessary to demonstrate how the Supplier will deliver the Services and as the Buyer may otherwise require;

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

2.2.3 set out appropriate Milestones and Milestone Payments, such Milestones and Milestone Payments to reflect the resourcing schedule submitted by the Supplier as part of their Tender.

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

2.4 The Supplier shall use the Standard of Care to see that the relevant elements of the Services and each of the Deliverable Items identified in the Implementation

Plan is performed / delivered by the date assigned to that Deliverable Item in the Implementation Plan so as to see 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 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, including such changes to the Milestones and Milestone Payments as may be appropriate to reflect the actual progress of the Services.

3.3 Changes to any Milestones and Milestone Payments shall only be made in accordance with the Variation Procedure except that, any changes to the Implementation Plan (including any Milestones and Milestone Payments) that are necessary to reflect the actual progress of the Services shall not give rise to an entitlement to any change to the total of the Charges.

### 4. Paragraph not used

### 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.

Schedule 9 not used

Schedule 10 not used

Schedule 11 not used

Schedule 12 – not used

# Schedule 13 (Contract Management)

## 1. Definitions

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

"Project Manager"	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 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.

## 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 the 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 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. Paragraph not used.

## 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.

# 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):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;

## 2. BCDR Plan

2.1 At least forty (40) Working Days after 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 provision of the Services following any failure or disruption event; and

2.1.2 the recovery of the Deliverables in the event of a Disaster.

2.2 The BCDR Plan shall be divided into three sections:

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 Services;
  - 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 the Services and the 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 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer; and
  - 3.1.8 set out method(s) of recovering or updating information that may have been lost during a failure or disruption to minimise data loss.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 The Services and 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; and
  - 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.
- 3.3 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, 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 the Services and the Deliverables remain supported:

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 the Services; and

4.1.2 the steps to be taken by the Supplier upon resumption of the provision of the Services in order to address the effect of the failure or disruption.

#### 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 provision of the Services in connection with the Project following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact to the Project.

5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:

loss of a Subcontractor;

emergency notification and escalation process;

contact lists;

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; and

access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule.

#### 6. 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.

#### 7. 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 – not used

## Schedule 16 (Security)

### 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:

Certifications (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"/>
Locations (see Paragraph 5)		
The Supplier and Subcontractors may store, access or Handle Government Data in:	the United Kingdom only	<input 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"/>
Staff Vetting Procedure (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:

## 2. Definitions

<b>“BPSS”</b>	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;
<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>“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>“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-">https://www.gov.uk/government/publications/government-security-</a>

classifications;

<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;
<b>“Prohibition Notice”</b>	means the meaning given to that term by Paragraph 5.4.
<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>“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:

- (a) any individual engaged, directly or indirectly, or employed, by any Subcontractor; and
- (b) engaged in or likely to be engaged in:
  - (i) the performance or management of the Services;  
or
  - (ii) the provision of facilities or services that are necessary for the provision of the Services;

UKAS-recognised  
Certification  
Body

means:

- (a) an organisation accredited by UKAS to provide certification of ISO/IEC27001:2013 and/or ISO/IEC27001:2022; or
- (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.

(e) Part One: Core Requirements

3. Handling Government Data

3.1 The Supplier acknowledges that it:

3.1.1 must only Handle Government Data that is classified as OFFICIAL; and

3.1.2 must not Handle Government Data that is classified as SECRET or TOP SECRET.

3.2 The Supplier must:

3.2.1 not alter the classification of any Government Data

3.2.2 if it becomes aware that it has Handled any Government Data classified as SECRET or TOP SECRET the Supplier must:

(a) immediately inform the Buyer; and

(b) 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:

3.3.1 the Expected Behaviours; and

3.3.2 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:

4.2.1 it; and

4.2.2 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:

- 4.3.1 before the Supplier or any Subcontractor Handles Government Data; and
- 4.3.2 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:

5.1.1 the United Kingdom; or

5.1.2 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:

5.3.1 the entity has entered into a binding agreement with the Supplier or Subcontractor (as applicable);

5.3.2 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);

5.3.3 the Supplier or Subcontractor has taken reasonable steps to assure itself that:

(a) the entity complies with the binding agreement; and

(b) 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);

5.3.4 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:

6.1.1 has not completed the Staff Vetting Procedure; or

6.1.2 where no Staff Vetting Procedure is specified in the Order Form:

- (1) (a) has not undergone the checks required for the BPSS to verify:
  - (i) the individual's identity;
  - (ii) 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
  - (iii) the individual's previous employment history; and
  - (iv) that the individual has no Relevant Convictions; and
- (2) (b) 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:

6.2.1 as soon as practicable, and in any event within 20 Working Days of becoming aware of the issue, notify the Buyer;

6.2.2 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

6.2.3 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:

- 7.1.1 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;
- 7.1.2 it has fully complied with all requirements of this Schedule 16 (Security); and
- 7.1.3 all Subcontractors have complied with the requirements of this Schedule 16 (Security) with which the Supplier is required to ensure they comply;
- 7.1.4 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:
  - 8.2.1 at no cost to the Buyer;
  - 8.2.2 within 10 Working Days of a request by the Buyer;
  - 8.2.3 except in the case of original document, in the format and with the content and information required by the Buyer; and
  - 8.2.4 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).

Schedule 17 - not used

Schedule 18 – not used

## Schedule 19 (Cyber Essentials Scheme)

### 1. Definitions

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

"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

### 2. What Certification do you need

- 2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Services under this Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.

- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during this Contract Period of this Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data the Supplier shall deliver to the Buyer evidence of:
  - 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
  - 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for Material Default and the consequences of termination in Clause 14.5.1 shall apply.
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Scheme Data require the Subcontractor to provide a valid Cyber Essentials Certificate, at the equivalent level to that held by the Supplier. The Supplier cannot require the Subcontractor to commence the provision of Services under the Sub-Contract until the Subcontractor has evidenced to the Supplier that it holds a valid Cyber Essentials Certificate.
- 2.6 The Supplier must manage, and must ensure that all Subcontractors manage, all end-user devices used by the Supplier and the Subcontractor on which Cyber Essentials Scheme Data is processed by ensuring those devices are within the scope of the current Cyber Essentials Certificates held by the Supplier and the Subcontractor, or any ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Deliverables.
- 2.7 This Schedule shall survive termination or expiry of this Contract.

Schedule 20 - not used

## Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing this Contract).

Contract Details	
This variation is between:	The Minister for the Cabinet Office, acting as part of the Crown (the Buyer).  Its offices are at: 70 Whitehall, London, SW1A 2AS  And  [insert name of Supplier] ("the Supplier")
Contract name:	[insert name of contract to be changed] (" <b>this Contract</b> ")
Contract reference number:	[insert contract reference number]
Details of Proposed Variation	
Variation initiated by:	[delete as applicable: Buyer/Supplier]
Variation number:	[insert variation number]
Date variation is raised:	[insert date]
Proposed variation	
Reason for the variation:	[insert reason]
An Impact Assessment shall be provided within:	[insert number] days
Impact of Variation	
Likely impact of the	[Supplier to insert assessment of impact]

proposed variation:		
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: ☐ [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

This Variation must be agreed and signed by both Parties to this Contract and shall only be effective from the date it is signed by the Buyer.

Words and expressions in this Variation shall have the meanings given to them in this Contract.

- The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

.....  
 Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## Schedule 22 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the "Insurances "). The Supplier shall ensure that each of the Insurances is effective no later than the Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent consultant in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained until the End Date except in relation to Professional Indemnity under the Annex Part C which shall be maintained for at least twelve (12) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the performance of the Services as it would be reasonable to expect of a prudent consultant acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in this Schedule.
- 5.2 Where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Services and/or this Contract, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel,

rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## 7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services, the Project, or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of this Contract, the Project or the Services, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.3 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

# 1 ANNEX: REQUIRED INSURANCES

## PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

### 1. Insured

The Supplier

### 2. Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Contract.

### 3. Limit of indemnity

3.1 Not less than ten million pounds (£10,000,000) sterling in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period.

### 4. Territorial limits

United Kingdom

### 5. Period of insurance

From the date of this Contract for the period of this Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

### 6. Cover features and extensions

Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with this Contract and for which the Supplier is legally liable.

### 7. Principal exclusions

7.1 War and related perils.

- 7.2 Nuclear and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

## 8. Maximum deductible threshold

Not to exceed £ 10,000 for each and every third party property damage claim (personal injury claims to be paid in full).

### PART B: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

### PART C: PROFESSIONAL INDEMNITY INSURANCE

- 8.1 The Supplier shall to the extent that it has not already done so, forthwith effect and thereafter will maintain professional indemnity insurance upon commercially reasonable terms from the Effective Date until the date that is 12 years after the End Date, in an amount of not less than two million pounds (£2,000,000) sterling each and every claim (with the exception of claims relating to asbestos, pollution contamination and cladding and/or fire safety related issues, in which case such cover shall be in the annual aggregate), with reputable insurers authorised to carry on general insurance business (including the provision of general liability cover) in the United Kingdom who have an office in the United Kingdom, provided always that such insurance is available in the open market at commercially reasonable rates. In

determining whether or not insurance is available as aforesaid, the financial characteristics and claims record of the Supplier shall be ignored. For the purposes of this Clause, "commercially reasonable terms" means terms that an insurance broker experienced in advising upon professional indemnity insurance for consultants carrying out services similar to the Services and for members of the same profession as the Supplier, would, acting reasonably, consider to be standard and acceptable in the UK insurance market at the relevant time for consultants of the same profession as the Supplier and providing similar services to the Services.

- 8.2 Such professional indemnity insurance shall be maintained:
  - 8.2.1 on customary and usual terms and conditions prevailing for the time being in the professional indemnity insurance market;
  - 8.2.2 on terms that do not require the Supplier to discharge any liability before being entitled to recover from the insurers; and
  - 8.2.3 on terms that do not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010, as may be amended, supplemented or varied from time to time.

Schedule 23 (Guarantee) – Schedule Not Used

## Schedule 24 (Financial Difficulties)

### 1. Definitions

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

"Credit Rating Threshold"	the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;
"Credit Reference Agencies"	the credit reference agencies listed in Part B of Annex 1;
"Financial Distress Service Continuity Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
"Financial Indicators"	in respect of the Supplier and Key Sub-contractors, means each of the financial indicators set out at Part C of Annex 2;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;
"Primary Metric"	financial indicators pursuant to Paragraph 5.4
"Rating Agencies"	the rating agencies listed in Part A of Annex 1.

### 2. When this Schedule applies

2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.

2.2 The terms of this Schedule shall survive under this Contract until completion of the Services or the termination of this Contract.

### 3. Credit Ratings

3.1 The Supplier warrants and represents to the Buyer that as at the Effective Date the long term credit ratings issued for the Supplier by each of the Rating Agencies are as set out in Part A of Annex 2 and that the credit ratings issued

for all other FDE Group entities by each of the Rating Agencies as at the Effective Date is (or, in respect of any FDE Group entities engaged after the Effective Date, at the date of such engagement will be) above the Credit Rating Threshold.

3.2 The Supplier shall:

3.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and

3.2.2 promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.

3.3 Without prejudice to the generality of paragraphs 3.1 and 3.2 above, the Buyer shall review the credit ratings for each entity in the FDE Group issued by the Rating Agencies at each anniversary of the Effective Date and prior to the giving by the Buyer of any instruction to proceed under clauses 2.8.1 or 2.8.2.

3.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

4. Paragraph not used

5. Financial Indicators

5.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target at each anniversary of the Effective Date and prior to the giving by the Buyer of any instruction to proceed under clauses 2.8.1 or 2.8.2.

5.2 The Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: Standard Financial Ratios of *Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Effective Date can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987132/Assessing and monitoring the economic and financial standing of suppliers guidance note May 2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf)

5.3 Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:

- 5.3.1 be a single report with separate sections for each of the FDE Group entities;
  - 5.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
  - 5.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; and
  - 5.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable.
- 5.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
- 5.4.1 a report submitted by the Supplier pursuant to Paragraph 5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any one of the Financial Indicators set out in Part C of Annex 2 of this Schedule;
  - 5.4.2 a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 5.3; or
  - 5.4.3 the Supplier does not deliver a report pursuant to Paragraph 5.3 in accordance with the terms of Paragraph 5.1.

## 6. What happens if there is a financial distress event

- 6.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 6.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 6.4 to 6.6.

6.3 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 6.4 without first giving the Supplier ten (10) Working Days to:

6.3.1 rectify such late or non-payment; or

6.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.

6.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):

6.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of this Contract and delivery of the Services in accordance with this Contract; and

6.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of this Contract and delivery of the Services in accordance with this Contract:

(a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);

(b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and

(c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.

If the Buyer so requires, the Financial Distress Service Continuity Plan shall include a proposal that this Contract be novated from between the Buyer and the Supplier to between the Buyer and such Key Subcontractor as the Buyer may approve.

6.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to

the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:

- 6.5.1 Approved;
  - 6.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
  - 6.5.3 finally rejected by the Buyer.
- 6.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
- 6.6.1 on a regular basis (which shall not be less than Monthly unless otherwise agreed between the Parties), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance this Contract and delivery of the Services in accordance with this Contract;
  - 6.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Buyer;
  - 6.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
  - 6.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 6.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

## 7. When the Buyer can terminate for financial distress

- 7.1 The Buyer shall be entitled to terminate this Contract for Material Default if:
  - 7.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 6.1;

- 7.1.2 the Supplier fails to comply with any part of Paragraph 6.4;
- 7.1.3 subject to Paragraph 7.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
- 7.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 6.5.2;
- 7.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or
- 7.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.6.4,

and the consequences of termination in Clause 14.5.1 shall apply.

- 7.2 A Material Default may only occur under Paragraph 7.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

## 8. What happens If your Primary Metric is still good

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

- 8.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and
- 8.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 6.4.2(c)).

## 2 ANNEX 1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES

### Part A: Rating Agencies

Dunn and Bradstreet

### 3 ANNEX 2: CREDIT RATINGS AND FINANCIAL INDICATORS

#### Part A: Credit Rating

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier		10
Key Subcontractor		10

#### Part C: Financial Indicators

Financial Indicator	Calculation	Financial Target Threshold:
1 <b>Operating Margin</b>	<i>Operating Margin = Operating Profit / Revenue</i>	>2%
2 <b>Net Debt to EBITDA Ratio</b>	<i>Net Debt to EB/TOA ratio = Net Debt / EB/TOA</i>	< 3.5 times
3 <b>Net Debt + Net Pension Deficit to EBITDA ratio</b>	<i>Net Debt + Net Pension Deficit to EB/TOA Ratio = (Net Debt + Net Pension Deficit) / EB/TOA</i>	< 5 times
4 <b>Net Interest Paid Cover</b>	<i>Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid</i>	> 2 times
5 <b>Acid Ratio</b>	<i>Acid Ratio = (Current Assets - Inventories) / Current Liabilities</i>	> 1 times
6 <b>Net Asset value</b>	<i>Net Asset Value = Net Assets</i>	>£0
7	<i>Group Exposure /</i>	<50%

<b>Financial Indicator</b>	<b>Calculation</b>	<b>Financial Target Threshold:</b>
<b>Group Exposure Ratio</b>	<i>Gross Assets</i>	

Schedule 24 (Financial Difficulties), Crown Copyright 2023

## 4 ANNEX 3 – ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS

### Part A: Additional FDE Group Members

#### 1. Key-Subcontractors;

## Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Notifiable Default:	<i>[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]</i>	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer:	Date:	
Supplier [Revised] Rectification Plan		
Cause of the Notifiable Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Notifiable Default:	[add effect]	
Steps to be taken to rectification:	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Notifiable Default	[X] Working Days	
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]

	[...]	[date]	
Signed by the Supplier:		Date:	
<b>Review of Rectification Plan Buyer</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

## Schedule 26 (Sustainability)

### 1. Definitions

**“Modern Slavery Assessment Tool”**

means the modern slavery risk identification and management tool which can be found online at: <https://supplierregistration.cabinetoffice.gov.uk/msat>

**“Supply Chain Map”**

means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:

- (a) the name, registered office and company registration number of each entity in the supply chain;
- (b) the function of each entity in the supply chain; and
- (c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain.

**“Waste Hierarchy”**

means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:

- (a) Prevention;
- (b) Preparing for re-use;
- (c) Recycling;
- (d) Other Recovery; and
- (e) Disposal.

## Part A

### 1. Public Sector Equality Duty

1.1 In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2 advance:

(a) equality of opportunity; and

(b) good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 2. Employment Law

The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

### 3. Modern Slavery

3.1 The Supplier:

3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;

3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;

- 3.1.6 shall have and maintain, until the End Date, its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
  - 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
  - 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
  - 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
  - 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
  - 3.1.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Subcontractors to the Buyer and Modern Slavery Helpline and relevant national or local law enforcement agencies;
  - 3.1.12 if the Supplier is in Default under Paragraphs 3.1.1 to 3.1.11 of this Part A of Schedule 26 the Buyer may by notice:
    - (a) require the Supplier to remove from performance of this Contract any sub-contractor, Supplier Staff or other persons associated with it whose acts or omissions have caused the Default; or
    - (b) immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply; and
  - 3.1.13 shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).
- 3.2 If the Supplier notifies the Buyer pursuant to Clause 3.1.11 it shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and

allow the Buyer to audit any books, records and/or any other relevant documentation in accordance with this Contract.

- 3.3 If the Supplier is in Default under Paragraph 3.1 of this Part A of Schedule 26 the Buyer may by notice:
- 3.3.1 require the Supplier to remove from performance of this Contract any Subcontractor, Supplier Staff or other persons associated with it whose acts or omissions have caused the Default; or
  - 3.3.2 immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply.

#### 4. Environmental Requirements

- 4.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2 In performing its obligations under this Contract, the Supplier shall, where applicable to this Contract, to the reasonable satisfaction of the Buyer:
- 4.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
  - 4.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
  - 4.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

- 4.5 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

## 5. Supplier Code of Conduct

- 5.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163536/Supplier Code of Conduct v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

## 6. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, (provided that such requests are limited to two (2) per requirement per Contract Year).

## Schedule 27 (Key Subcontractors)

### 1. Restrictions on certain subcontractors

- 1.1 The Supplier is entitled to sub-contract its obligations under this Contract to the Key Subcontractors set out in the Award Form and to the Sculptor to be appointed in terms of clause 8.7.
- 1.2 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.3. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.2.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Services or may be contrary to its interests;
  - 1.2.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.2.3 the proposed Key Subcontractor employs unfit persons.
- 1.3 The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.3.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.3.2 the scope/description of any Services to be provided by the proposed Key Subcontractor;
  - 1.3.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.3.4 the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
  - 1.3.5 (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.

- 1.4 If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
  - 1.4.1 a copy of the proposed Key Sub-Contract; and
  - 1.4.2 any further information reasonably requested by the Buyer.
- 1.5 In addition to the requirements set out in clause 8.2, the Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.5.1 provisions which will enable the Supplier to discharge its obligations under the this Contract;
  - 1.5.2 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
  - 1.5.3 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.5.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
  - 1.5.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Contract in respect of:
    - (a) the data protection requirements set out in Clause 18 (Data protection);
    - (b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
    - (c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
    - (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - (e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.5.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 14.4 (When the Buyer can end this Contract) and 14.5 (What happens if this Contract ends) of this Contract;
  - 1.5.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided

to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and

- 1.5.8 a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
- 1.6 The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

Schedule 28 – not used.

## Schedule 29 (Key Supplier Staff)

### 1. Key Supplier Staff

- 1.1 The Annex 1 (Key Role) to this Schedule lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("Key Staff").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
  - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and

- 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom they have replaced.
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

ANNEX 1-KEY ROLES

Key Role	Key Staff	Contact Details
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]

ALL REDACTED UNDER FOIA SECTION 40, PERSONAL INFORMATION

Schedule 30 – not used

Schedule 31 – not used

Schedule 32 - not used

Schedule 33 – not used

Schedule 34 - not used

Schedule 35 – not used

## Schedule 36 (Intellectual Property Rights)

### 1. Intellectual Property Rights - General Provisions

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

BIM	means the building information modelling process and technology used to create Models.
BIM Level	means geometry, asset data and BIM documentation to be delivered in accordance with ISO 19650-2-2018 and is the level of completeness to which the Model Elements are to be developed in line with exchange information requirements to be agreed between the Supplier and the Buyer.
Final Design Model	means a Model of those aspects of the Project that have reached the stage of completion that would customarily be expressed in two-dimensional construction contract drawings and specifications from which construction may be undertaken. This shall not include analytical evaluations, preliminary designs, studies, or renderings.
Materials	means all Goods, Services, Deliverables, Documentation and software provided by Supplier (or any Affiliate or Subcontractor) to the Buyer under or pursuant to this Contract (but, for the avoidance of doubt, excluding the Sculpture).
Model	means a digital representation of the physical and functional configuration, characteristics or attributes of the Project or a portion of the Project and the term Models shall have the same meaning to describe a Model Element, a single Model or multiple Models used in the aggregate.
Model Element	means a part of the Model representing a portion of the Project or a system or assembly within the Project or the site of the Project as well as data sets.
Sculptor	shall have the meaning given to that term in Paragraph 12.2 of this Schedule 36.
Sculpture	shall have the meaning given to that term in Paragraph 1.3 of this Schedule 36.

Statutory Requirements	means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or performance of any of the obligations under this Deed and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regards to the Project or with those systems the Project is, or is to be, connected.
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- 1.2 Each Party keeps ownership of its own Existing IPR.
- 1.3 The Parties acknowledge and agree that the Project shall require the production of a sculpture which shall be designed and created to the Buyer's specifications and requirements (and the sculpture and all associated deliverables (including any moulds, sketches, drawings, plans, etc.) and/or documentation relating to the sculpture (in each case whether relating to the design, structure, creation, maintenance, or otherwise) shall be referred to as the Sculpture).
- 1.4 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the approach to ownership set out in this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the relevant party on that relevant party's request (whenever made).
- 1.5 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.
- 1.6 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.
- 1.7 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 Materials, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 4 and 5, the Supplier must, within ten (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 Materials affected.
- 1.8 For the avoidance of doubt:

- 1.8.1 except as provided for in Paragraphs (ii)(A) or 4.1.6(b) and 4.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 4 and 5;
- 1.8.2 the award of this Contract or the ordering of any Materials or the Sculpture does not constitute an authorisation by the Crown under:
  - (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. Ownership and delivery of IPR created under this Contract

- 2.1 Any New IPR and Specially Written Software (but, for the avoidance of doubt, excluding the Sculpture) is owned by the Supplier, including:
  - 2.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and
  - 2.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR.
- 2.2 Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software in the table at Annex 1 to this Schedule and keep this updated throughout this Contract Period.

## 3. Licence of New IPR and Specially Written Software

- 3.1 The Supplier grants the Buyer a New IPR and Specially Written Software Licence on the terms set out in Paragraph 3.3 in respect of each of the Materials where:
  - 3.1.1 the New IPR or Specially Written Software is embedded in each of the Materials;
  - 3.1.2 the New IPR or Specially Written Software is necessary for the Buyer to use each of the Materials; or
  - 3.1.3 the New IPR or Specially Written Software is used to provide each of the Materials.
- 3.2 The categories of New IPR or Specially Written Software set out in Paragraph 3.1 are mutually exclusive.

- 3.3 The New IPR and Specially Written Software Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
- 3.3.1 in the case of New IPR or Specially Written Software embedded in any of the Materials or is used to provide any of the Materials:
- (a) is sub-licensable;
  - (b) has no restriction on the identity of any transferee or sub-licensee;
  - (c) allows the Buyer and any transferee or sub-licensee to use, copy and adapt the New IPR or Specially Written Software for any of the purposes set out in Paragraph 3.4;
- 3.3.2 in the case of New IPR or Specially Written Software that is necessary for the Buyer to receive or use any of the Materials:
- (a) allows the Buyer and any transferee or sublicensee to use, copy and adapt, but not reverse engineer, the relevant New IPR or Specially Written Software for any of the purposes set out in Paragraph 3.4;
  - (b) is transferrable to only:
    - (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:
    - (i) any contractors and / or consultants engaged in connection with the design, construction and / or maintenance of the Project; and
    - (ii) the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier 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);
- 3.3.3 continues in effect following the expiry or earlier termination of this Contract; and
- 3.3.4 is subject to the restrictions that no sub-licence granted in relation to the New IPR or Specially Written Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.
- 3.4 For the purposes of Paragraphs 3.1 and 3.3, the relevant purpose is:
  - 3.4.1 to allow the Buyer or any End User to receive and use the Materials, including for the purposes of BIM;
  - 3.4.2 to enable the Buyer and any End User to deliver, construct and maintain the Project; and
  - 3.4.3 for any purpose whatsoever connected with the Project, including the construction, completion, maintenance, extension, letting, advertisement, reinstatement, repair and use of the Project (including use of the Project by the general public) and in any designs, data and information in connection with the Project.
- 3.5 Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:
  - 3.5.1 the New IPR and Specially Written Software Licence is unaffected; and
  - 3.5.2 any successor body of the Buyer that is a Crown Body shall have the benefit of the New IPR and Specially Written Software Licence.

#### 4. Use of Supplier Existing IPRs and Third Party IPRs

- 4.1 The Supplier must not:
  - 4.1.1 embed Supplier Existing IPRs or Third Party IPRs in any of the Materials;
  - 4.1.2 provide any Materials that requires Supplier Existing IPRs or Third Party IPRs to use that Material for its intended purpose; or

- 4.1.3 provide any Materials which are a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,
- ii) unless one or more of the following conditions apply:
- 4.1.4 for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Materials;
- 4.1.5 in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:
- (a) the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
  - (b) the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;
- 4.1.6 in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 4.1.4 and 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 3.3, as if:
    - (i) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and
    - (ii) the term "third party" were substituted for the term Supplier,in each place they occur; or
  - (b) if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 4.1.6(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 Approves 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.

4.2 Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

4.2.1 maintained or supported by the developer; or

4.2.2 made commercially available.

## 5. Licences in respect of Supplier Existing IPR that is not COTS Software

5.1 Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 4, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 5.3 in respect of each of the Materials where:

5.1.1 the Supplier Existing IPR that is not COTS Software is embedded in any of the Materials;

5.1.2 the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use any of the Materials for any of the purposes set out in Paragraph 5.4; or

5.1.3 any of the Materials are a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

5.2 The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 5.1 are mutually exclusive.

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

5.3.1 in the case of Supplier Existing IPR that is not COTS Software embedded in any of the Materials:

(a) has no restriction on the identity of any transferee or sub-licensee;

(b) is sub-licensable for any of the purposes set out in Paragraph 5.4;

- (c) allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 5.4; and
- (d) is subject to the restriction that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

5.3.2 in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use any of the Materials for their intended purpose or has been customised or adapted to provide any of the Materials:

- (a) allows the Buyer and any transferee or sublicensee to use, copy and adapt, but not reverse engineer, the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 5.4;
- (b) is transferrable to only:
  - (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:
  - (i) any contractors and / or consultants engaged in connection with the design, construction and / or maintenance of the Project; and
  - (ii) the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier 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);

- 5.3.3 is subject to the restrictions that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph.
- 5.3.4 unless otherwise agreed in writing between the Parties, continues in effect following the expiry or earlier termination of this Contract.
- 5.4 For the purposes of Paragraphs 5.1 and 5.3, the relevant purposes are:
  - 5.4.1 to allow the Buyer or any End User to receive and use the Materials, including for the purposes of BIM;
  - 5.4.2 to enable the Buyer and any End User to deliver, construct and maintain the Project; and
  - 5.4.3 for any purpose whatsoever connected with the Project, including the construction, completion, maintenance, extension, letting, advertisement, reinstatement, repair and use of the Project (including use of the Project by the general public) and in any designs, data and information in connection with the Project.

## 6. Licences to COTS software

- 6.1 The Supplier must provide the Authority with licences to Supplier Existing IRP and Third Party IPR that is, in each case, COTS software at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

## 7. Licences granted by the Buyer

- 7.1 Subject to Paragraph 8, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:
  - 7.1.1 is non-exclusive, royalty-free and non-transferable;
  - 7.1.2 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

- 7.1.3 allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:
  - (a) fulfilling its obligations under this Contract; and
  - (b) commercially exploiting the New IPR and Specially Written Software; and
- 7.1.4 unless otherwise agreed in accordance with Paragraph 8, terminates at the earlier of the End Date or date of termination of this Contract.

## 8. Buyer approval for Supplier to exploit Buyer Existing IPR

- 8.1 Before using Buyer existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.
- 8.2 The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.
- 8.3 The Supplier must provide a proposal setting out:
  - 8.3.1 the purpose for which it proposes to use the New IPR or Specially Written Software;
  - 8.3.2 the activities the Supplier proposes to undertake with or in respect of the New IPR or Specially Written Software;
  - 8.3.3 such further information as the Buyer may reasonably require to properly consider the proposal.
- 8.4 The Buyer may only refuse the Buyer's proposal where it considers that if the Supplier were to implement the proposal it would harm:
  - 8.4.1 the Buyer's reputation; or
  - 8.4.2 the Buyer's interests.
- 8.5 Where the Buyer has not:
  - 8.5.1 approved or declined the proposal; or
  - 8.5.2 required further information,
    - iii) within 20 Working Days of the later of:
      - (a) the date the proposal was first provided to the Buyer; or
      - (b) the date on which further information was provided to the

Buyer,

then the proposal is, for the purposes of this Contract, approved.

## 9. Provision of information on New IPR and Specially Written Software

- 9.1 The Buyer may, at any time, require the Supplier to provide information on:
  - 9.1.1 the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and
  - 9.1.2 the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.
- 9.2 The Supplier must provide the information required by the Buyer:
  - 9.2.1 within 20 Working Days of the date of the requirement; and
  - 9.2.2 in the form and with the content specified by the Buyer.

## 10. Patents

- 10.1 Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

## 11. BIM

- 11.1 Nothing in this Paragraph 11 shall relieve the obligations or diminish the role of the Supplier under the Statutory Requirements and pursuant to the terms of this Contract in respect of providing the Services for the Project.
- 11.2 The Parties agree that:
  - 11.2.1 BIM will be used for the Project in accordance with this Paragraph 11 and any BIM related protocol agreed between the Parties; and
  - 11.2.2 the Model content prepared by the Supplier shall be shared, used or relied on throughout the course of the Project in accordance with this Contract and any BIM related protocol agreed between the Parties;
- 11.3 In performing its obligations under this Contract, the Supplier shall:

- 11.3.1 be responsible for verifying and ensuring accuracy of all information and data (including design information) inputted into the Model by the Supplier;
- 11.3.2 comply with the Buyer's requirements in respect of BIM, as notified to the Supplier from time to time;
- 11.3.3 provide the Buyer with access (including any necessary access codes) to its elements of the Model to track progress and/or extract data and information.

## 12. Sculpture

- 12.1 The Parties acknowledge and agree that the Intellectual Property Rights relating to the Sculpture shall be as set out in this Paragraph 12, and that Paragraph 2 shall not apply in respect of the Intellectual Property Rights in the Sculpture.
- 12.2 In accordance with the terms of this Agreement and at all times subject to the Buyer's written instructions, the Supplier shall be responsible for commissioning the Sculpture, and shall enter into an agreement with the person (or persons) selected, in accordance with this Contract, to be responsible for the design and creation of the Sculpture (the Sculptor).
- 12.3 The Supplier shall ensure that it obtains from the Sculptor, with full title guarantee, all right, title and interest (whether legal or beneficial) in and relating to all present and future rights in the Sculpture and all Intellectual Property Rights in the Sculpture for the full duration thereof. Assignment to the Supplier from the Sculptor in accordance with this Paragraph 12.3 shall be by present assignment of future rights, and such assignment from the Sculptor to the Supplier shall take effect immediately upon the creation of the Sculpture (or any applicable part thereof).
- 12.4 Upon entering into a written agreement giving effect to the obligations set out in Paragraph 12.3 above, the Supplier shall provide a copy of that written agreement to the Buyer as soon as reasonably practicable (and in any event within five (5) Working Days from the date of execution of that written agreement).
- 12.5 The Supplier hereby assigns to the Buyer, with full title guarantee, all right, title and interest (whether legal or beneficial) in and relating to all present and future rights in the Sculpture and all Intellectual Property Rights in the Sculpture for the full duration thereof. Assignment to the Buyer pursuant to this Paragraph 12.5 shall be by present assignment of future rights, and such assignment from the Supplier to the Buyer shall take effect immediately upon the Supplier obtaining from the Sculptor the equivalent rights in the Sculpture in accordance with Paragraph 12.3 above.

- 12.6 The Parties acknowledge and agree that all moral rights recognised under Law which arise in the Sculpture shall be at all times remain with the Sculptor, and nothing in this Paragraph 12 shall be deemed to be a waiver of the Sculptor's moral rights in the Sculpture.
- 12.7 The Buyer grants to the Supplier for the duration of the Term a non-exclusive, sub-licensable (where necessary to enable the provision of the Services), non-transferable, royalty-free licence to use, develop and maintain the Sculpture for the sole purpose of providing the Services.
- 12.8 The Supplier undertakes to the Buyer that it shall, and shall procure that the Sculptor shall, execute such documents, and take any such additional steps, that the Buyer may require to perfect (at the Buyer's sole discretion):
- 12.8.1 the Supplier's title in the Sculpture from the Sculptor (in accordance with Paragraph 12.3 above); and/or
  - 12.8.2 the Buyer's title in the Sculpture from the Seller (in accordance with Paragraph 12.5 above).

## ANNEX 1: SPECIALLY WRITTEN SOFTWARE

Name of Specially Written Software	Details
SSxGE	Space Syntax Limited Software to perform network analysis to measure levels of connectivity.
Depthmap	Depthmap-based software tool to recreate pedestrian movement through computer-based agent modelling

*Note: Further Specifically Written Software may be required during the development of the design and the Supplier reserves the right to update this Annex as required.*

## ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

- (1) [insert name] of [insert address] (the "Sub-licensee"); and
- (2) [insert name] of [insert address] (the "Supplier" and together with the Supplier, the "Parties").

WHEREAS:

- (A) [insert name of Buyer] (the "Buyer") and the Supplier are party to a contract dated [insert date] (the "Contract") for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the "Sub-licence").
- (C) It is a requirement of this Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Buyer.

IT IS AGREED as follows:

#### 1 Interpretation

##### 1.1 In this Agreement, unless the context otherwise requires:

**"Confidential Information"**

means:

Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

the Supplier; or

the operations, business, affairs, developments, intellectual property

rights, trade secrets, know-how  
and/or personnel of the Supplier;

the source code and the object code of the software  
sub-licensed to the Sub-licensee pursuant to  
the Sub-licence together with build  
information, relevant design and  
development information, technical  
specifications of all functionality including  
those not included in standard manuals (such  
as those that modify system performance and  
access levels), configuration details, test  
scripts, user manuals, operating manuals,  
process definitions and procedures, and all  
such other documentation supplied by the  
Supplier to the Buyer pursuant to or in  
connection with the Sub-licence;

other Information provided by the Buyer pursuant to  
this Agreement to the Sub-licensee that is  
clearly designated as being confidential or  
equivalent or that ought reasonably to be  
considered to be confidential which comes  
(or has come) to the Sub-licensee's attention  
or into the Sub-licensee's possession in  
connection with the Sub-licence; and

Information derived from any of the above,

but not including any Information that:

was in the possession of the Sub-licensee without  
obligation of confidentiality prior to its  
disclosure by the Buyer;

was already generally available and in the public  
domain at the time of disclosure otherwise  
than by a breach of this Agreement or breach  
of a duty of confidentiality; or

was independently developed without access to the  
Information;

**“Information”**

means all information of whatever nature,  
however conveyed and in whatever form,  
including in writing, orally, by  
demonstration, electronically and in a  
tangible, visual or machine-readable medium

(including CD-ROM, magnetic and digital form); and

**“Sub-licence”** has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:

- (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
- (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
- (c) make no further use of any Confidential Information.

### 3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and

3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

### 4 General

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

- 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub- licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub- licensee of any of the provisions of this Agreement. Accordingly, the Sub- licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub- licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
- 5 Notices
  - 5.1 Any notice to be given under this Agreement (each a "Notice") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
  - 5.2 Any Notice:
    - 5.2.1 if to be given to the Supplier shall be sent to:

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023,

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [

## 6 **Governing law**

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

**For and on behalf of** [name of Supplier]

Signature:

Date:

\_\_\_\_\_

Name:

Position:

**For and on behalf of** [name of Sub-licensee]

Signature:

Date:

\_\_\_\_\_

Name:

Position:



ANNEX 1: SPECIALLY WRITTEN SOFTWARE

Name of Specially Written Software	Details

## ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

### CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

- (3) [insert name] of [insert address] (the “Sub-licensee”); and
- (4) [insert name] of [insert address] (the “Supplier” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Buyer] (the “Buyer”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the “Sub-licence”).
- (C) It is a requirement of this Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Buyer.

IT IS AGREED as follows:

#### 1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information” means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
  - (iii) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical

specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;

(iv) other Information provided by the Buyer pursuant to this Agreement to the Sub- licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub- licensee's attention or into the Sub- licensee's possession in connection with the Sub- licence; and

(b) Information derived from any of the above, but not including any Information that:

- (i) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (ii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (iii) was independently developed without access to the Information;

**“Information”**

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and has the meaning given to that expression in recital (B) to this Agreement.

**“Sub-licence”**

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from

time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

## 2. Confidentiality Obligations

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub-licensee shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

2.1.7 upon the expiry or termination of the Sub-licence:

(a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(c) make no further use of any Confidential Information.

### 3. Permitted Disclosures

- 3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and
  - 3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
  - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
  - 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
  - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

### 4. General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
  - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023,

failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

## 5. Notices

- 5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

- 5.2 Any Notice:

- 5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

- 5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [ ]

6. Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

\_\_\_\_\_

—

Name:

Position:

For and on behalf of [name of Sub-licensee]

Signature:

Date:

\_\_\_\_\_

—

Name:

Position:

Schedule 37 – not used

## Schedule 38 – Forms of Collateral Warranty

Form A – Where Collateral Warranty is being granted by the Supplier in favour of a Collateral Warranty Beneficiary

Consultant's Collateral Warranty in relation to the provision of design services relating to the Queen Elizabeth II memorial

[NAME]  
(Consultant)

[NAME]  
(Beneficiary)

This Deed is dated the \_\_\_\_\_

And is entered into among

- (1) [INSERT DESIGNATION] (the Beneficiary, which expression shall include its legal successors and permitted assignees); and
- (2) [ ], incorporated in [ ] under the Companies Acts (Company No. [ ]) and having its registered office [ ] (the Consultant);

WHEREAS:

- A. The Employer is procuring the design and construction of a memorial to Queen Elizabeth II (the Project).
- B. The Consultant has been appointed by the Employer by an agreement dated [insert date] (the Appointment), under which the Consultant has agreed to carry out and complete certain services in connection with the Project.
- C. In respect of the Beneficiary's interest in the Project (which is [INSERT INTEREST]), the Consultant has agreed to enter into this Deed with the Beneficiary

IT IS HEREBY AGREED AS FOLLOWS:

## 1. Definitions

In this Deed the following words and expressions shall, where the context so admits, be deemed to have the following meanings:

Consultant Services: the services to be carried out by the Consultant pursuant to the terms of the Appointment;

Employer: means The Minister for the Cabinet Office, acting as part of the Crown having its offices are at: 70 Whitehall, London, SW1A 2AS

Expiry Date: means the date occurring twelve years after the earlier of the date on which the Consultant completes the Consultant Services or (if applicable) the termination of the Appointment;

Group Company: any of the Beneficiary or its subsidiary or subsidiaries (of any tier) or holding company or companies (of any tier) or any subsidiary (of any tier) of any such holding company or companies and subsidiary shall bear the meanings given to it in section 1159 Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or performance of any of the obligations under this Deed and any regulation

or bye-law of any local authority or statutory undertaker which has any jurisdiction with regards to the Project or with those systems the Project is, or is to be, connected; and

Working Day: any day Monday to Friday excluding public holidays.

## 2. Duty of Care

2.1 The Consultant hereby warrants and undertakes to and with the Beneficiary in relation to the Consultant Services that:

2.1.1 it has carried out or that it will carry out each and all of its obligations duties and undertakings expressed in or arising out of the Appointment when and if such obligations duties and undertakings shall become due and performable;

2.1.2 in the performance of the Consultant Services, it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of an appropriately qualified and competent consultant of the relevant discipline, experienced in carrying out services the same or equivalent to the Consultant Services in connection with works of a similar size scope and complexity to the Project;

2.1.3 it shall use the level of reasonable skill, care and diligence described in clause 2.1.2 to see that any design of the Project prepared by the Consultant complies with and satisfies the Statutory Requirements, the building regulations and any performance specification or requirement included or referred to in the Appointment;

PROVIDED THAT:

2.1.4 the Consultant shall have no greater obligation or liability to the Beneficiary under this Deed than it would have had to the Beneficiary under the Appointment if the Beneficiary had been named jointly with the Employer as employer under the Appointment and the Consultant shall have available to it all defences and limitations of liability as it would have under the Appointment all excluding any right of set-off, abatement or counterclaim.

## 3. Release and Waiver

3.1 The liability of the Consultant under this Deed shall not be released, diminished or in any other way affected by any approval or inspection by the Beneficiary of the Consultant Services or the Project or any part thereof or any documents or materials comprised therein nor by any attendance by the

Beneficiary at the Project nor by any independent inspection investigation or enquiry which may have been or may be made or carried out by or for the benefit of the Beneficiary nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress of the Consultant Services or otherwise report to the Beneficiary in respect of the Consultant Services or the Project nor by any action or omission of any such firm company or party whether or not such action or omission might give rise to some independent liability of such firm company or party to the Beneficiary to do any of the aforesaid things.

- 3.2 Nothing in the Appointment shall operate to exclude or limit the Consultant's liability for breach of any of the warranties and obligations contained in this Deed and no allowance of time by the Employer under the Appointment nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Appointment on the part of the Employer nor anything that the Employer may do or omit or neglect to do shall in any way release the Consultant from any liability under this Deed.

#### 4. Materials

- 4.1 The Consultant warrants to the Beneficiary that it has not and shall not (except with the prior written consent of the Employer) select, specify, authorise, use or suffer the use of, on or in relation to the Project, any work practice, product or material or combination of products and/or materials which at the date of selection, specification, authorisation or use are generally known or accepted as being harmful in themselves or becoming harmful when used in a particular situation or in combination with other materials or becoming harmful with the passage of time.
- 4.2 For the purpose of this Deed a work practice, product or material is harmful if, in the context of its use in the Project (whether alone or in combination with other materials / work practices), it:
- 4.2.1 poses a threat to health and safety and, in particular, to the health and safety of those involved in the construction, maintenance, repair or use of the Project;
  - 4.2.2 poses a threat to the structural stability or performance or the physical integrity of the completed Project or any part thereof or any component therein; or
  - 4.2.3 would or could have the effect of reducing the normal life expectancy of the completed Project or any part thereof or any component therein.
- 4.3 The Consultant further warrants to the Beneficiary that it has exercised and will continue to exercise the reasonable skill, care and diligence required

under the Appointment to see that it has not and shall not (except with the prior written consent of the Beneficiary) select, specify, authorise, use or suffer the use of, on or in relation to the Project any products or materials not in accordance with (a) British Standards and Codes of Practice (or EU equivalents where British Standards or Codes of Practice do not exist) (b) the Construction Products Regulations 2013 and (c) the current version of the British Council for Offices Report entitled "Good Practice in the Selection of Construction Materials".

- 4.4 The Consultant shall notify in writing the Beneficiary as soon as reasonably practicable upon it becoming aware that any work practice, product or material has been selected, specified, or authorised for use or used in the Project in contravention of the terms of the Appointment or clauses 4.1 to 4.3 above and upon the Consultant becoming aware of any other matter which might prejudice the interests of the Beneficiary in connection with the Project.

## 5. Licence

The Consultant as beneficial owner hereby grants to the Beneficiary an irrevocable, non-exclusive and royalty-free licence to copy and use all drawings, details, plans, photographs, specifications, bills of quantities, reports and other documentation, data and information (whether in written form or stored electronically or otherwise) prepared or provided, or to be prepared or provided, by or on behalf of the Consultant in relation to the Consultant Services (the Information) and to reproduce the designs contained in it for any purpose relating to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension, repair, and demolition of the Project. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties. However, the Consultant shall not be liable for the consequences of any use of the Information by the Beneficiary or its assignee or sub-licensee for any purpose other than in connection with the Project.

## 6. Professional Indemnity Insurance

- 6.1 The Consultant hereby warrants to the Beneficiary that it holds and undertakes to maintain, until the Expiry Date, professional indemnity insurance with cover to the sum of two million pounds (£2,000,000), for each and every claim (with the exception of claims relating to asbestos, pollution contamination and cladding and/or fire safety related issues, in which case such cover shall be in the annual aggregate) on customary and usual terms prevailing for the time being in the insurance market with insurers authorised to carry on general insurance business (including the provision of general liability cover) in the United Kingdom, provided always that such insurance is available in the open market at commercially reasonable rates.

- 6.2 As and when reasonably requested to do so by the Beneficiary, the Consultant shall produce documentary evidence (which may be an insurer's or broker's letter) that insurance is being maintained in accordance with clause 4.1 and that all premiums due have been paid.
- 6.3 If such insurance ceases to be so available at commercially reasonable rates, the Consultant will immediately notify the Beneficiary and will obtain such reduced and/or alternative insurance as is available and as would be reasonable in the circumstances for it to obtain. Any increased or additional premium required by insurers by reason of the Consultant's acts, defaults or omissions and/or due to matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

## 7. Assignment

- 7.1 The Beneficiary may at any time, without the consent of the Consultant, assign in whole or part the benefit of this Deed:
- 7.1.1 by absolute assignment on an unlimited number of occasions to any Group Company of the Beneficiary; and
- 7.1.2 by absolute assignment on a maximum of two other occasions.
- 7.2 The benefit of this Deed may not be assigned or dealt with further without the prior written consent of the Consultant, which consent shall not be unreasonably withheld or delayed.

## 8. Third Party Rights

The parties hereto acknowledge and agree that it is not their intention for any term or provision of this Deed to confer or purport to confer on any third party any benefit or any right to enforce any provision of this Agreement, whether pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 9. Notices

- 9.1 Any notice to be given under this Deed shall be deemed duly given if delivered by hand or sent by pre-paid special delivery post or by facsimile transmission to the party to be served, at or to that party's above address or to such other address in the United Kingdom as the party to be served may from time to time select by prior written notice to the other party.
- 9.2 A notice shall be deemed to have been received:
- 9.2.1 if delivered by hand, on the day when the notice is left at the address of the party to be served PROVIDED it is delivered on a Working Day between 9.00 a.m. and 3.00 p.m. failing which it shall be deemed to have been received the next Working Day;

- 9.2.2 if sent by pre-paid special delivery post, on the Working Day next following the day of posting; or
- 9.2.3 if sent by facsimile transmission, on the day when the notice is transmitted to the party to be served PROVIDED it is transmitted on a Working Day between 9.00 a.m. and 3.00 p.m. failing which it shall be deemed to have been received the next Working Day.

## 10. Law and Jurisdiction

This Deed shall be governed by and construed in accordance with the Law of England and the parties hereto hereby submit to the exclusive jurisdiction of the English Courts:

IN WITNESS WHEREOF these presents typewritten on this and the [ ] preceding pages are executed as follows



Form B Where Collateral Warranty is being granted by a Key Subcontractor  
Sub-Consultant's Collateral Warranty in relation to the provision of  
[DISCIPLINE] services relating to the Queen Elizabeth II memorial

[NAME]  
(Sub-Consultant)

[NAME]  
(Supplier)

[NAME]  
(Beneficiary)

This Deed is dated the \_\_\_\_\_

And is entered into among

- (1) [INSERT DESIGNATION] (the Beneficiary, which expression shall include its legal successors and permitted assignees);
- (2) [ ], incorporated in [ ] under the Companies Acts (Company No. [ ]) and having its registered office [ ] (the Sub-Consultant); [and
- (3) [ ], incorporated in [ ] under the Companies Acts (Company No. [ ]) and having its registered office at the [ ] (the Supplier).]<sup>2</sup>

WHEREAS:

- A. The Employer is procuring the design and construction of a memorial to Queen Elizabeth II (the Project).
- B. The Supplier has been appointed by the Employer by an agreement dated [insert date] (the Appointment), under which the Supplier has agreed to carry out and complete certain services in connection with the Project.
- C. By an agreement dated [insert date] made between the Supplier and the Sub-Consultant (the Sub-Consultant Agreement, which expression shall include any amendment thereto), the Sub-Consultant has agreed to carry out and complete the Sub-Consultant Services (as defined below).
- D. In respect of the Beneficiary's interest in the Project (which is [INSERT INTEREST]), the Consultant has agreed to enter into this Deed with the Beneficiary.

IT IS HEREBY AGREED AS FOLLOWS:

## 1. Definitions

In this Deed the following words and expressions shall, where the context so admits, be deemed to have the following meanings:

**Employer:** means The Minister for the Cabinet Office, acting as part of the Crown having its offices are at: 70 Whitehall, London, SW1A 2AS

**Expiry Date:** means the date occurring twelve years after the earlier of the date on which the Sub-Consultant completes the Sub-Consultant Services or (if applicable) the termination of the Sub-Consultant Agreement;

**Group Company:** any of the Beneficiary or its subsidiary or subsidiaries (of any tier) or holding company or companies (of any tier) or any subsidiary (of any tier) of any such holding company or companies and subsidiary shall bear the meanings given to it in section 1159 Companies Act 2006 but on the basis that the holding of not less

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<sup>2</sup> Supplier should only be a party where warranty is being granted in favour of Cabinet Office

than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a);

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or performance of any of the obligations under this Deed and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regards to the Project or with those systems the Project is, or is to be, connected;

Sub-Consultant Services: the services to be carried out by the Sub-Consultant pursuant to the terms of the Sub-Consultant Agreement; and

Working Day: any day Monday to Friday excluding public holidays.

## 2. Duty of Care

2.1 The Sub-Consultant hereby warrants and undertakes to and with the Beneficiary in relation to the Sub-Consultant Services that:

2.1.1 it has carried out or that it will carry out each and all of its obligations duties and undertakings expressed in or arising out of the Sub-Consultant Agreement when and if such obligations duties and undertakings shall become due and performable;

2.1.2 in the performance of the Sub-Consultant Services, it has exercised and shall continue to exercise all the reasonable skill, care and diligence to be expected of an appropriately qualified and competent consultant of the relevant discipline, experienced in carrying out services the same or equivalent to the Sub-Consultant Services in connection with works of a similar size scope and complexity to the Project;

2.1.3 it shall use the level of reasonable skill, care and diligence described in clause 2.1.2 to see that any design of the Project prepared by the Sub-Consultant complies with and satisfies the Statutory Requirements, the building regulations and any performance specification or requirement included or referred to in the Sub-Consultant Agreement;

PROVIDED THAT:

2.1.4 the Sub-Consultant shall have no greater obligation or liability to the Beneficiary under this Deed than it would have had to the Beneficiary under the Sub-Consultant Agreement if the Beneficiary had been named jointly with the Supplier as employer under the Sub-Consultant Agreement and the Sub-Consultant shall have available to it all defences and limitations of liability as it would have

under the Sub-Consultant Agreement all excluding any right of set-off, abatement or counterclaim.

### 3. Release and Waiver

- 3.1 The liability of the Sub-Consultant under this Deed shall not be released, diminished or in any other way affected by any approval or inspection by the Beneficiary of the Sub-Consultant Services or the Project or any part thereof or any documents or materials comprised therein nor by any attendance by the Beneficiary at the Project nor by any independent inspection investigation or enquiry which may have been or may be made or carried out by or for the benefit of the Beneficiary nor by the appointment by the Beneficiary of any independent firm company or party whatsoever to review the progress of the Sub-Consultant Services or otherwise report to the Beneficiary in respect of the Sub-Consultant Services or the Project nor by any action or omission of any such firm company or party whether or not such action or omission might give rise to some independent liability of such firm company or party to the Beneficiary to do any of the aforesaid things.
- 3.2 Nothing in the Sub-Consultant Agreement shall operate to exclude or limit the Sub-Consultant's liability for breach of any of the warranties and obligations contained in this Deed and no allowance of time by the Supplier under the Sub-Consultant Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Sub-Consultant Agreement on the part of the Supplier nor anything that the Supplier may do or omit or neglect to do shall in any way release the Sub-Consultant from any liability under this Deed.

### 4. Materials

- 4.1 The Sub-Consultant warrants to the Beneficiary that it has not and shall not (except with the prior written consent of the Beneficiary) select, specify, authorise, use or suffer the use of, on or in relation to the Project, any work practice, product or material or combination of products and/or materials which at the date of selection, specification, authorisation or use are generally known or accepted as being harmful in themselves or becoming harmful when used in a particular situation or in combination with other materials or becoming harmful with the passage of time.
- 4.2 For the purpose of this Deed a work practice, product or material is harmful if, in the context of its use in the Project (whether alone or in combination with other materials / work practices), it:
- 4.2.1 poses a threat to health and safety and, in particular, to the health and safety of those involved in the construction, maintenance, repair or use of the Project;

- 4.2.2 poses a threat to the structural stability or performance or the physical integrity of the completed Project or any part thereof or any component therein; or
  - 4.2.3 would or could have the effect of reducing the normal life expectancy of the completed Project or any part thereof or any component therein.
- 4.3 The Sub-Consultant further warrants to the Beneficiary that it has exercised and will continue to exercise the reasonable skill, care and diligence required under the Sub-Consultant Agreement to see that it has not and shall not (except with the prior written consent of the Beneficiary) select, specify, authorise, use or suffer the use of, on or in relation to the Project any products or materials not in accordance with (a) British Standards and Codes of Practice (or EU equivalents where British Standards or Codes of Practice do not exist) (b) the Construction Products Regulations 2013 and (c) the current version of the British Council for Offices Report entitled "Good Practice in the Selection of Construction Materials".
- 4.4 The Sub-Consultant shall notify in writing the Beneficiary as soon as reasonably practicable upon it becoming aware that any work practice, product or material has been selected, specified, or authorised for use or used in the Project in contravention of the terms of the Sub-Consultant Agreement or clauses 4.1 to 4.3 above and upon the Sub-Consultant becoming aware of any other matter which might prejudice the interests of the Beneficiary in connection with the Project.

## 5. Licence

The Sub-Consultant as beneficial owner hereby grants to the Beneficiary an irrevocable, non-exclusive and royalty-free licence to copy and use all drawings, details, plans, photographs, specifications, bills of quantities, reports and other documentation, data and information (whether in written form or stored electronically or otherwise) prepared or provided, or to be prepared or provided, by or on behalf of the Sub-Consultant in relation to the Sub-Consultant Services (the Information) and to reproduce the designs contained in it for any purpose relating to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension, repair, and demolition of the Project. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties. However, the Sub-Consultant shall not be liable for the consequences of any use of the Information by the Beneficiary or its assignee or sub-licensee for any purpose other than in connection with the Project.

## 6. Professional Indemnity Insurance

- 6.1 The Sub-Consultant hereby warrants to the Beneficiary that it holds and undertakes to maintain, until the Expiry Date, professional indemnity insurance with cover to the sum of two million pounds (£2,000,000), for each and every claim (with the exception of claims relating to asbestos, pollution contamination and cladding and/or fire safety related issues, in which case such cover shall be in the annual aggregate) on customary and usual terms prevailing for the time being in the insurance market with insurers authorised to carry on general insurance business (including the provision of general liability cover) in the United Kingdom, provided always that such insurance is available in the open market at commercially reasonable rates.
- 6.2 As and when reasonably requested to do so by the Beneficiary, the Sub-Consultant shall produce documentary evidence (which may be an insurer's or broker's letter) that insurance is being maintained in accordance with clause 4.1 and that all premiums due have been paid.
- 6.3 If such insurance ceases to be so available at commercially reasonable rates, the Sub-Consultant will immediately notify the Beneficiary and will obtain such reduced and/or alternative insurance as is available and as would be reasonable in the circumstances for it to obtain. Any increased or additional premium required by insurers by reason of the Sub-Consultant's acts, defaults or omissions and/or due to matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.

## 7. Assignment

- 7.1 The Beneficiary may at any time, without the consent of the Sub-Consultant, assign in whole or part the benefit of this Deed:
- 7.1.1 by absolute assignment on an unlimited number of occasions to any Group Company of the Beneficiary; and
- 7.1.2 by absolute assignment on a maximum of two other occasions.
- 7.2 The benefit of this Deed may not be assigned or dealt with further without the prior written consent of the Sub-Consultant, which consent shall not be unreasonably withheld or delayed.

## 8. Third Party Rights

The parties hereto acknowledge and agree that it is not their intention for any term or provision of this Deed to confer or purport to confer on any third party any benefit or any right to enforce any provision of this Agreement, whether pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 9. Notices

- 9.1 Any notice to be given under this Deed shall be deemed duly given if delivered by hand or sent by pre-paid special delivery post or by facsimile transmission to the party to be served, at or to that party's above address or to such other address in the United Kingdom as the party to be served may from time to time select by prior written notice to the other party.
- 9.2 A notice shall be deemed to have been received:
- 9.2.1 if delivered by hand, on the day when the notice is left at the address of the party to be served PROVIDED it is delivered on a Working Day between 9.00 a.m. and 3.00 p.m. failing which it shall be deemed to have been received the next Working Day;
- 9.2.2 if sent by pre-paid special delivery post, on the Working Day next following the day of posting; or
- 9.2.3 if sent by facsimile transmission, on the day when the notice is transmitted to the party to be served PROVIDED it is transmitted on a Working Day between 9.00 a.m. and 3.00 p.m. failing which it shall be deemed to have been received the next Working Day.

## 10. [Determination by Sub-Consultant

- 10.1 The Sub-Consultant covenants with the Beneficiary that it will not exercise nor seek to exercise any right to terminate the Sub-Consultant Agreement (or determine its employment thereunder) or discontinue the performance of any of its obligations in relation to the Sub-Consultant Services for any reason whatsoever, including any breach on the part of the Supplier, without giving to the Beneficiary not less than fifteen (15) Working Days' notice of its intention to do so and specifying the grounds for the proposed termination or determination or discontinuance.
- 10.2 Any period stipulated in the Sub-Consultant Agreement for the exercise by the Sub-Consultant of a right of determination shall be extended, as may be necessary, to take account of the period of notice required under clause 10.1.
- 10.3 Compliance by the Sub-Consultant with the provisions of this clause shall not be treated as a waiver of any breach on the part of the Supplier giving rise to the right of termination or determination, nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice, unless the right of termination or determination shall have ceased under the provisions of clause 11.]<sup>3</sup>

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<sup>3</sup> Clause 10 only to be included in collateral warranty in favour of Cabinet Office

## 11. [Step-in

- 11.1 The right of the Sub-Consultant to terminate the Sub-Consultant Agreement (or determine its employment thereunder) shall cease if, within the period of fifteen (15) Working Days referred to above, the Beneficiary (which expression shall for the purposes of this clause 11 include any appointee (a Nominee) appointed by the Beneficiary) shall give notice to the Sub-Consultant:
  - 11.1.1 requiring it to continue its obligations under the Sub-Consultant Agreement;
  - 11.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Supplier under the Sub-Consultant Agreement; and
  - 11.1.3 undertaking to the Sub-Consultant to discharge all payments which may subsequently become due to the Sub-Consultant under the terms of the Sub-Consultant Agreement and to pay to the Sub-Consultant any sums which have become properly due and payable to the Sub-Consultant in accordance with the Sub-Consultant Agreement but which remain unpaid.
- 11.2 Upon compliance by the Beneficiary with the requirements of clause 11.1, the Sub-Consultant Agreement shall continue as if the right of termination or determination on the part of the Sub-Consultant had not arisen and as if the Sub-Consultant Agreement had been entered into between the Sub-Consultant and the Beneficiary to the exclusion of the Consultant.
- 11.3 Notwithstanding that as between the Sub-Consultant and the Supplier, the Sub-Consultant's right to terminate the Sub-Consultant Agreement (or determine its employment thereunder) may not have arisen, the provisions of clause 11.1 shall nevertheless apply if the Beneficiary gives notice to the Sub-Consultant and the Supplier to that effect and the Beneficiary complies with the requirements on its part under clause 11.1.
- 11.4 The Sub-Consultant shall not be concerned or required to enquire whether and shall be bound to assume that as between the Supplier and the Beneficiary circumstances have occurred which permit the Beneficiary to give notice under clause 11.3.
- 11.5 The Sub-Consultant acting in accordance with the provisions of this clause 11 shall not incur any liability to the Supplier.
- 11.6 If the Beneficiary appoints a Nominee to exercise its rights under this clause 11, the Beneficiary and shall have no personal liability to the Sub-Consultant under the Sub-Consultant Agreement except that the Beneficiary shall be liable to the Sub-Consultant as guarantor for the payment of all sums from

time to time due to the Sub-Consultant from the Nominee under the Sub-Consultant Agreement.]<sup>4</sup>

## 12. Law and Jurisdiction

This Deed shall be governed by and construed in accordance with the Law of England and the parties hereto hereby submit to the exclusive jurisdiction of the English Courts:

IN WITNESS WHEREOF these presents typewritten on this and the [ ] preceding pages are executed as follows

They are signed for and on behalf of the Beneficiary

..... Signature of Director/ Member/Co Secretary/ Authorised Signatory	..... Signature of Director/ Member/Co Secretary/ Authorised Signatory/ Witness*
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..... Insert full name of above signatory (CAPITAL LETTERS)	..... Insert full name of above signatory (CAPITAL LETTERS)
---	---

Address of witness:(only required  
if a witness signs as a  
signatory)

.....  
.....  
.....

They are signed for and on behalf of [ ]

..... Signature of Director/ Member/Co Secretary/ Authorised Signatory	..... Signature of Director/ Member/Co Secretary/ Authorised Signatory/ Witness*
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..... Insert full name of above signatory (CAPITAL LETTERS)	..... Insert full name of above signatory (CAPITAL LETTERS)
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<sup>4</sup> Clause 11 only to be inserted where Collateral Warranty is being granted in favour of Cabinet Office

Address of witness:(only required .....  
if a witness signs as a .....  
signatory) .....

They are signed for and on behalf of [ ]

.....  
Signature of Director/ .....  
Member/Co Secretary/ .....  
Authorised Signatory .....  
Signature of Director/ .....  
Member/Co Secretary/ .....  
Authorised Signatory/ .....  
Witness\*

.....  
Insert full name of above .....  
signatory (CAPITAL LETTERS) .....  
Insert full name of above .....  
signatory (CAPITAL LETTERS)

Address of witness:(only required .....  
if a witness signs as a .....  
signatory) .....