



Department  
for Environment  
Food & Rural Affairs

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[www.gov.uk/defra](http://www.gov.uk/defra)

[REDACTED]  
Anthesis (UK) Ltd,  
Unit J, Taper Studios  
175 Long Lane  
Bermondsey  
London SE1 4GT United Kingdom

**Your ref: TBC**

**Our ref: ECM no: 63714**

**Date: 24 January 2022**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Award of contract for the supply of a research project: WEEE  
Research to identify and address gaps in existing WEEE data  
relevant to the ongoing policy review**

Following your proposal for the supply of services on the research to identify and address gaps in existing WEEE data relevant to the ongoing policy review to The Department for Environment, Food and Rural Affairs (Defra), we are pleased to award this contract to you.

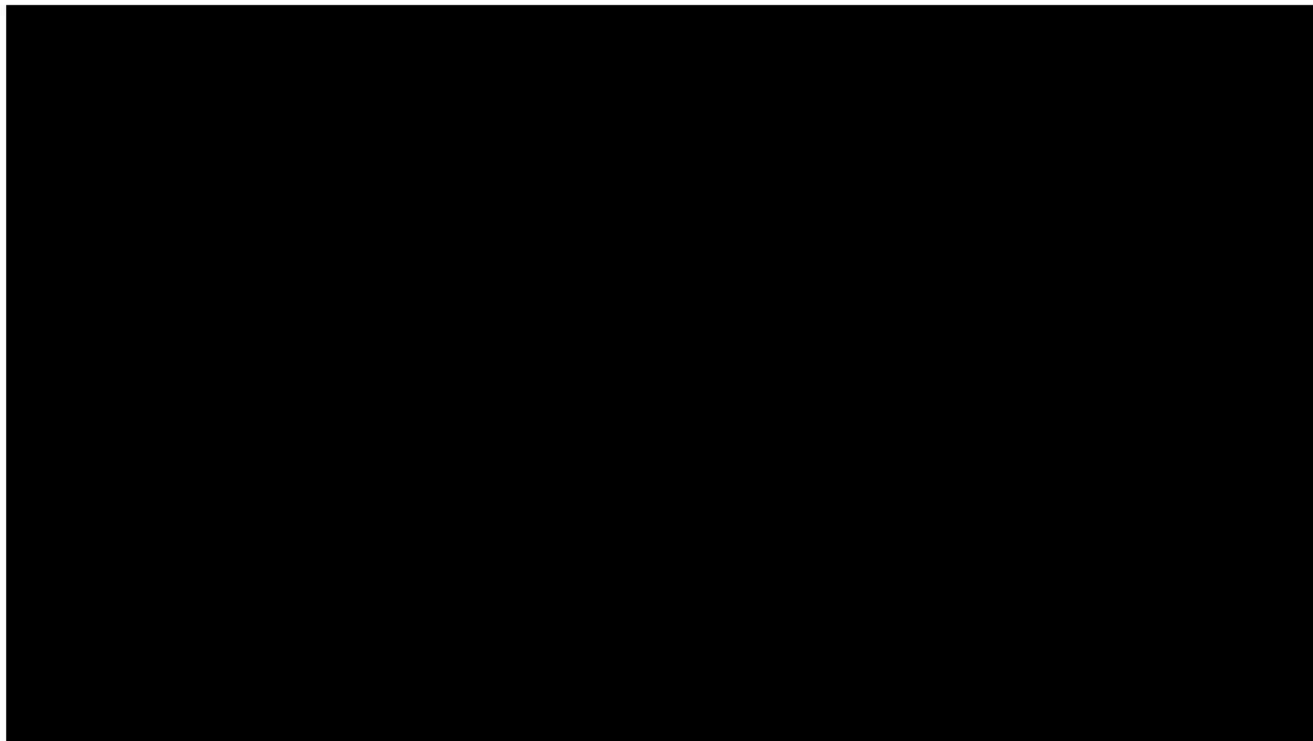
This will start with an inception meeting (**on Wednesday 26<sup>th</sup> January 2022**) and then delivery of research report to Defra.

This letter (Award Letter) and its Annexes set out the terms of the contract between The Department for Environment, Food and Rural Affairs (Defra) as the Authority and Anthesis (UK) Limited as the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall

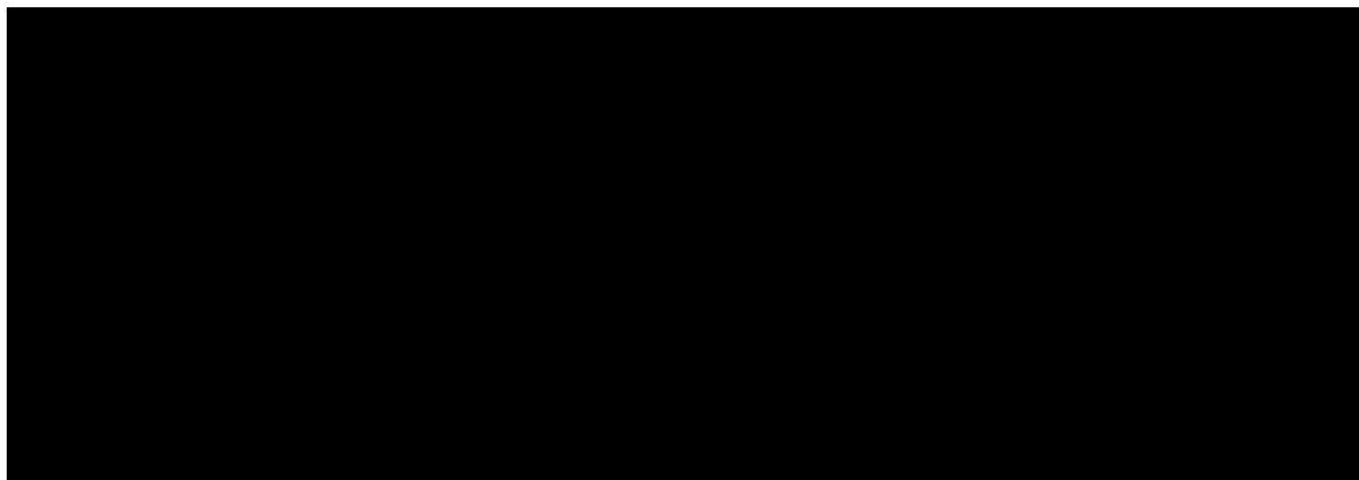
prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Authority and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Authority and the Supplier agree as follows:

1. The Services shall be performed at Anthesis (UK) Ltd, the Supplier's premises at Anthesis (UK) Ltd, Unit J, Taper Studios, 175 Long Lane, Bermondsey London, SE1 4GT, United Kingdom.
2. The charges for the Services shall be as set out in Annex 2.
3. The specification of the Services to be supplied is as set out in Annex 3 / the Supplier's tender dated 11th January 2022.
4. The Term shall commence on 26<sup>th</sup> January 2022 and the Expiry Date shall be 29th April 2022 unless extended or subject to early termination.
5. The address for notices of the Parties are:



1. The following persons are Key Personnel for the purposes of the Agreement:



1. For the purposes of the Agreement the [Staff Vetting Procedures/data security requirements/equality and diversity policy/ [and] environmental policy is.

<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>

The Authority may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Authority, or is of a type otherwise advised by the Authority (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## Payment

Our preference is for the invoice to be sent electronically, quoting a valid purchase order number (PO Number), to [Accounts-Payable.def@gov.sscl.com](mailto:Accounts-Payable.def@gov.sscl.com). Please also copy [REDACTED]. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Authority contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [ssd.ap@defra.gsi.gov.uk](mailto:ssd.ap@defra.gsi.gov.uk) (the Authority's preferred option); or SSCL AP, Defra, PO Box 790, Newport Gwent, NP10 8FZ between 09:00-17:00 Monday to Friday.

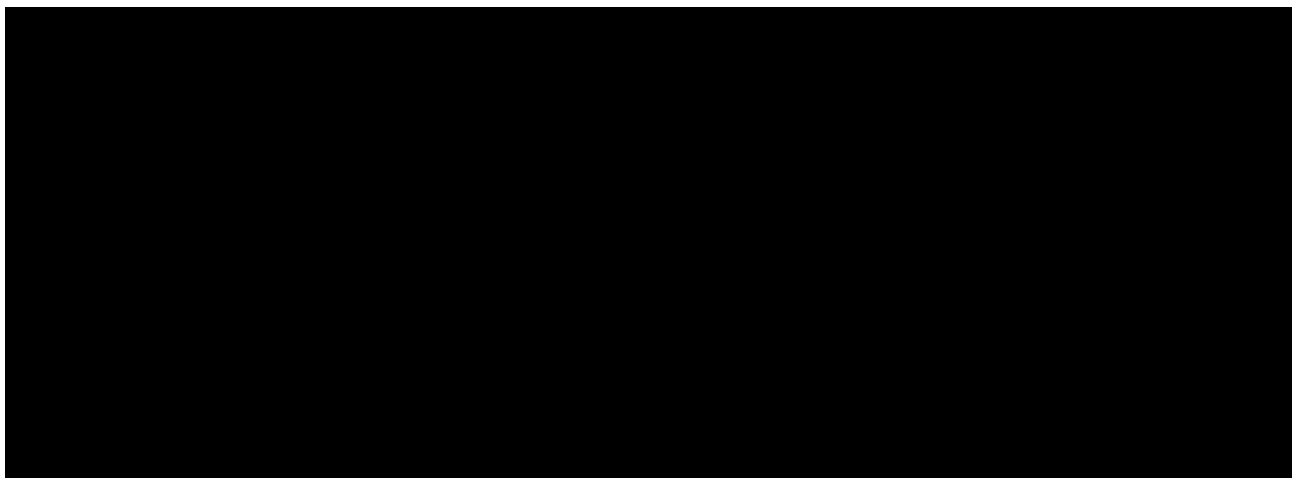
## Liaison

For general liaison your contact will continue to be [REDACTED]. The Authority thanks you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. The Authority would be grateful if you could arrange the contract to be executed, by way of electronic signature, on behalf of Anthesis (UK) Limited and within 7 days from date of contract issue.

Yours faithfully,

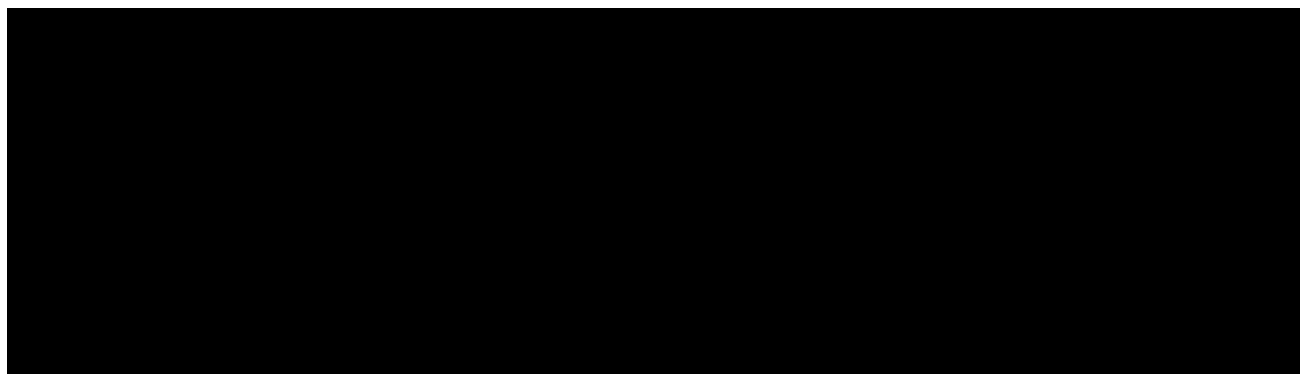
***Execution of this award notification letter is carried out in accordance with EU Directive 99/93 (Community framework for electronic signatures) and the Electronic Communications Act 2000. The Contract will be formed on the date on which both Parties communicate acceptance of its terms on the Authority's e-Sourcing System.***

Signed for and on behalf of DEFRA



We accept the terms set out in this Award letter and the annexed Conditions

Signed for and on behalf of Anthesis (UK) Limited





Department  
for Environment  
Food & Rural Affairs

# Conditions of Contract

## Short Form - Services

**Research to identify and address gaps in existing  
WEEE data relevant to the ongoing policy review**

**Ecm 63714**

**Annex: 1**  
**Terms and Conditions of Contract for Services**

# 1 Interpretation

## 1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter and Annexes;
“Award Letter”	means the letter from the Customer to the Supplier printed above these terms and conditions;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) Government Department;</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li><li>(c) Non-Ministerial Department; or</li><li>(d) Executive Agency;</li></ul>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means Defra in the Award Letter;
“DPA”	means the Data Protection Act 2018;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall



mean both of them;

“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

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

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

## **2 Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Award Letter countersigned by the Supplier within [7] days of the date of the Award Letter.

## **3 Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
  - 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

## **4 Term**

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

## **5 Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
  - 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
  - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
  - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6 Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

## **7 Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
  - 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
  - 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
  - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
  - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably

specified by the Customer.

- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8 Assignment and sub-contracting**

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **9 Intellectual Property Rights**

- 9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Supplier hereby grants the Customer:
  - 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services, including all data obtained, and any modelling produced by the project; and
  - 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
    - (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

- 9.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **10 Governance and Records**

### **10.1 The Supplier shall:**

- 10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11 Confidentiality, Transparency and Publicity**

### **11.1 Subject to clause 11.2, each Party shall:**

- 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

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

- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisers;
- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier

shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

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

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

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

## **12 Freedom of Information**

12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or

the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

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

### **13 Protection of Personal Data and Security of Data**

- 13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
- 13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;
  - 13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - 13.2.3 promptly notify the Customer of:
    - (a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
    - (b) any request for personal data; and
  - 13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.
- 13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

### **14 Liability**

- 14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
  - 14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the



Supplier be liable to the Customer for any:

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

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

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

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

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

14.4 The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

## **15 Force Majeure**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **16 Termination**

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

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

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

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

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

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

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

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

jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

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

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

16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement, the Supplier shall:

16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and

16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17 Compliance**

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

17.2 The Supplier shall:

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

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

17.3 The Supplier shall:

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

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

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

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

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or

reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

- 18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **19 Dispute Resolution**

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20 General**

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

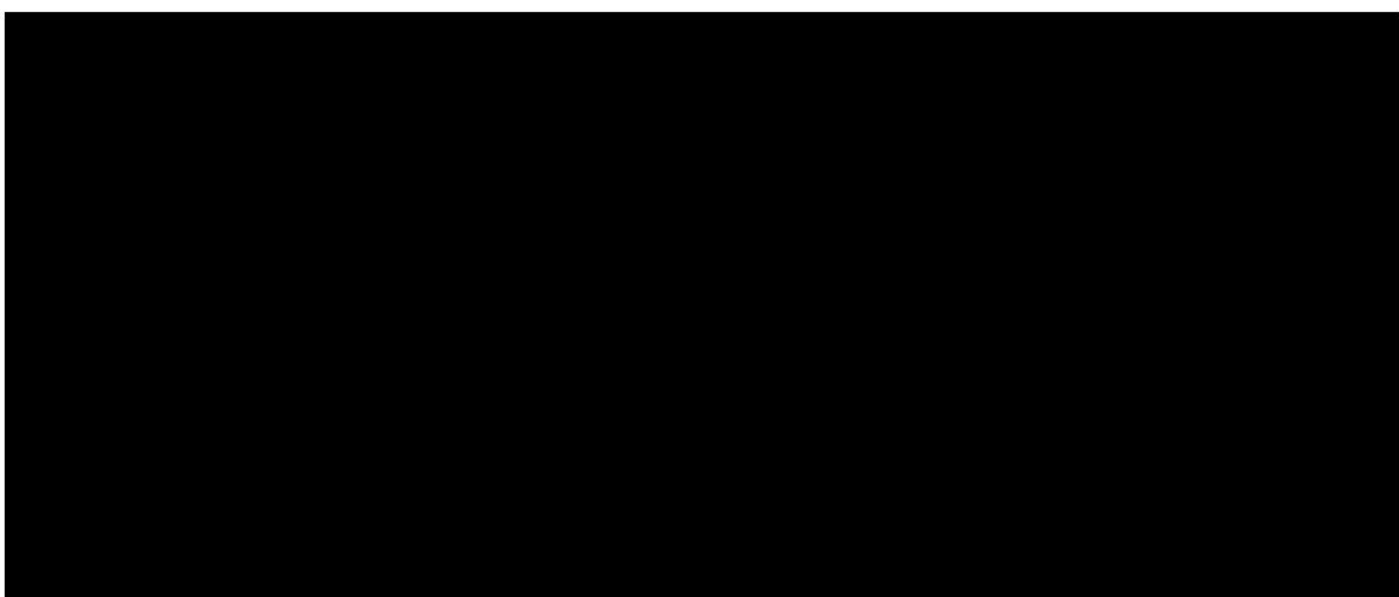
- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

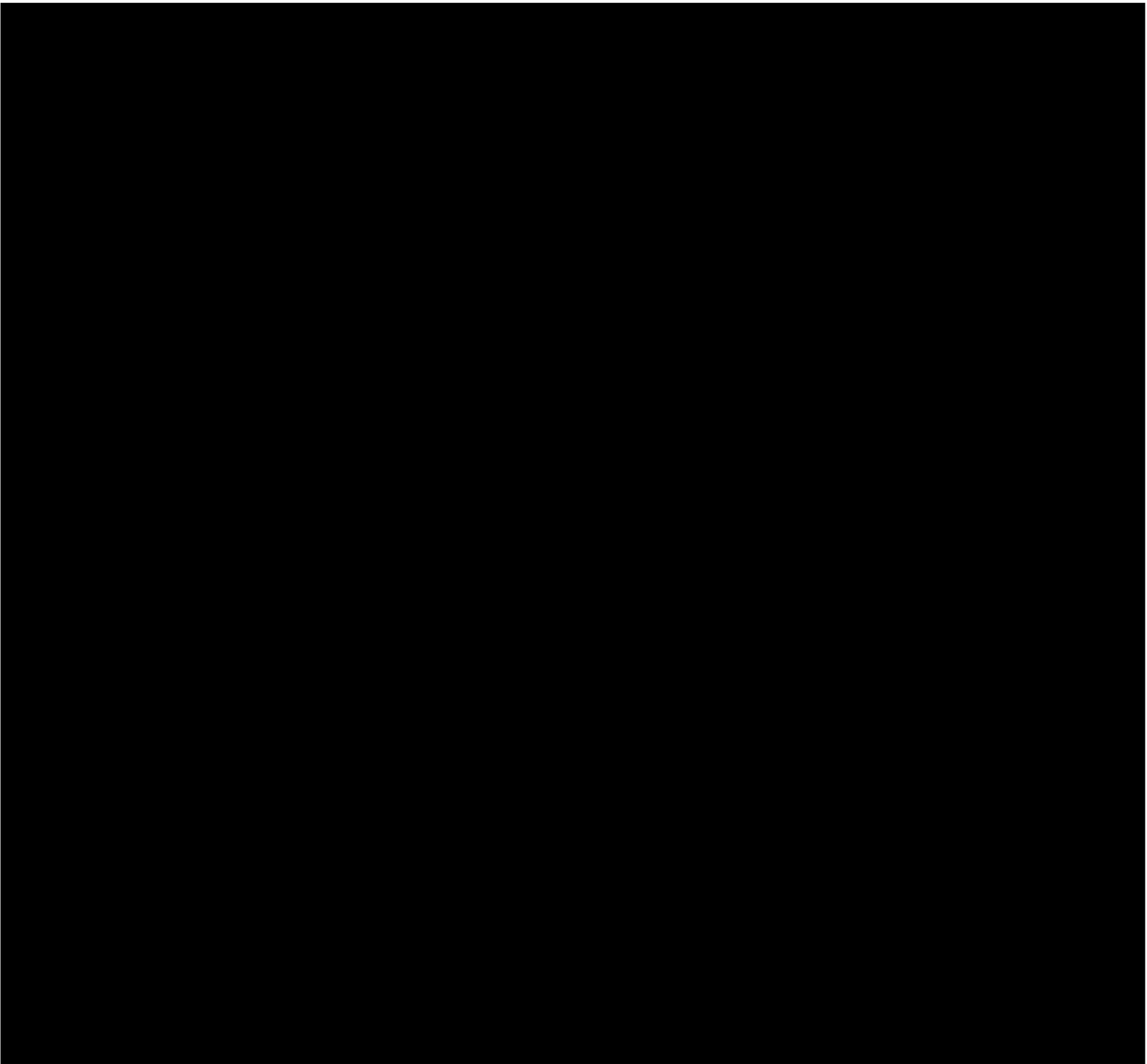
## **22 Governing Law and Jurisdiction**

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

## **Annex 2: Charges**

1. The Authority shall pay to the Contractor no more than the fixed sum identified in Table 3 below: **GBP £66,912.00 as the Price.**
2. Subject to any Variation agreed in accordance with the terms of this Contract as set out in Clause 3.3, the amounts in Table 1 shall remain firm throughout the duration of the Contract.
3. In the event that the Contract is varied, the amounts in Table 1 below may be adjusted as agreed in writing, between the Authority and the Contractor and added as an addendum to the Contract to reflect the amount in Table 3.
4. The payment arrangements shall be as follows:
  - 4.1. Upon completion, to the satisfaction of the Authority, of the Services described in the Specification for each of the milestones set out in Table 1 below and upon delivery, to the satisfaction of the Authority, to the Authority of the corresponding milestone deliverables set out in Table 2 below; the Contractor shall submit an invoice to the Authority for the amounts set out in Table 2 in respect of each such milestone;
  - 4.2. Any and all such invoices shall comply with the requirements in section C of the Contract and the Contractor shall provide all further reasonable information and/or evidence of completion as the Authority shall reasonably require to demonstrate the satisfactory completion of the agreed milestones;
  - 4.3. The Authority shall pay all Valid Invoices in accordance with the payment terms in Clause C of the Contract to the bank account nominated by the Contractor in the invoice.





## Annex 3: Specification

### 1.0 Introduction

All four nations of the UK are committed to protecting the environment. We all want to make our air purer, our water cleaner, our land greener and our food more sustainable. We want to restore and enhance the environment for the next generation, leaving it in a better state than we found it. A key part of the success of these ambitions will be how we tackle waste. The success of the plastic bag charge across each of the nations in reducing carrier bags in circulation by 83% demonstrates the difference that government can make but it also demonstrates we all have a role in protecting the environment. The following paragraphs sets out how each of the four nations strategies seek to move towards a more resource efficient and circular economy.

In 2017 Defra published its 25 Year Environment Plan which is a plan of action. It commits us to using resources efficiently and to keep them in use for longer to minimise waste and reduce its environmental impacts by promoting reuse and recycling. We will work towards eliminating all avoidable waste by 2050 and all avoidable plastic waste over the life-time of the 25 Year Environment Plan.

In 2018, Defra published its Resources and Waste Strategy for England sets out how we will preserve our stock of material resources by minimising waste, promoting resource efficiency, and moving towards a circular economy. At the same time Defra have committed to minimise the damage caused to our natural environment by reducing and managing waste safely and carefully, and by tackling waste crime. It combines actions Defra will take in the short term with firm commitments for the coming years and gives a clear longer-term policy direction in line with England's 25 Year Environment Plan.

Wales is already recognised as a global leader when it comes to recycling achieving some of the highest municipal recycling rates in the World. Beyond Recycling<sup>1</sup> – a strategy to make the circular economy in Wales a reality was published earlier this year by the Welsh Government with an aim to move to a circular, low carbon economy with a set of key actions to deliver the objective of zero waste and net zero carbon emissions by 2050. These actions are focused on changing how we use resources including promoting re-use, repair, remanufacture and recycling.

The Scottish Government's circular economy strategy, Making Things Last<sup>2</sup>, published in 2016, sets out a clear vision and priorities for action to move towards a more circular economy; and Scotland set a series of ambitious targets to drive circularity. To ensure the necessary legislation is in place, Scottish Government will bring forward a Circular Economy Bill, later in this parliamentary session, helping facilitate the development of an economy which reduces

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<sup>1</sup> Welsh Government (2021) Beyond Recycling – a strategy to make the circular economy in Wales a reality - <https://gov.wales/beyond-recycling>

<sup>2</sup> Scottish Government (2016): Making Things Last: a circular economy strategy for Scotland - [Making Things Last: a circular economy strategy for Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/making-things-last/pages/1-1-introduction.aspx)

demand for raw materials, designs products to last if possible and encourages reuse, repair, and recycling.

In Northern Ireland, the Department of Agriculture, Environment & Rural Affairs (DAERA) is currently developing the “Environment Strategy for Northern Ireland” which will consider the main long-term environmental priorities for Northern Ireland. DAERA took forward and introduced relevant amendments to environmental protection legislation, namely the Waste (Circular Economy) (Amendment) Regulations (Northern Ireland) 2020 ([legislation.gov.uk](https://legislation.gov.uk))<sup>3</sup> relating to the prevention, reduction and elimination of pollution caused by waste and in relation to the environment.

## **1.1. Net Zero**

In 2019, the UK became the first major nation to legislate for [net zero](#) carbon emissions by 2050. This means that the government must shape policies and regulations that influence the transition of the whole economy towards net zero.

Reducing electronic waste can help to cut carbon emissions. The rise in purchases of electronic goods is a significant driver of emissions globally. By 2040 and on current trends, it is estimated that worldwide emissions from the production and use of electronics could rise to a level exceeding half that associated with the global transportation sector today.

## **1.2. Driving up collections of waste electricals and gadgets**

The Resources and Waste Strategy for England published in 2018, adds detail the actions outlined in the 25 Year Environment Plan. It includes a commitment for the government to work with the devolved nations to consult on changing the waste electrical and electronic (WEEE) and batteries producer responsibility regimes to incentivise more sustainable design, increase recycling and ensure alignment with a common framework.

The Welsh Government’s Strategy contains several preventative actions to reduce a range of household waste arisings that include WEEE. It includes specific actions to collect and recycle more materials and to work with the other UK nations to improve the legislation to ensure a right to repair, encouraging durability and increasing access to modular parts in products is promoted.

The Northern Ireland DAERA minister has agreed to work alongside the rest of the UK on policy development for the introduction of Extended Producer Responsibility (EPR) regimes for

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<sup>3</sup> [The Waste \(Circular Economy\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)<sup>3</sup>



priority waste streams including packaging, textiles, waste electricals and a Deposit Return Scheme (DRS) for drinks containers.

The proposals are part of an ambitious, co-ordinated programme of waste reform which places the principle of producer responsibility at its heart.

The current system for collection and proper treatment of WEEE is based on 'collective producer responsibility'. In other words, producers pay, based on their market share in specified equipment categories, but do not have to reprocess their own equipment, unlike in an individual producer responsibility scheme. Regulations have led to separate collections of household WEEE, primarily via Household Waste Recycling Centres (HWRCs) and retailer with industry financing the cost of collection and proper treatment since 2007.

Unlike some countries the UK does not have a system of "fees" payable by producers based on the number of units of a product they place on the market of a given product type. Rather, producers (via Producer Compliance Schemes) are set a target to collect an amount of WEEE in each category in which they place products on the market. The amount they are required to finance is based on their market share which is then applied to the collection targets set annually by government. A similar approach applies to portable batteries where producers, through membership of compliance schemes, are required to fund and collect a 45% share of batteries placed on the market, calculated on a rolling three-year average.

While the collection of larger items such as washing machines and fridges amounts to about 800,000 tonnes collected annually<sup>4</sup>, we believe there is much more that must be done particularly to tackle an estimated 155,000 tonnes across the UK of smaller household WEEE that is simply thrown in the bin each year<sup>5</sup>.

A recent study<sup>6</sup> on public attitudes and behaviours found that around 86% of people, think that recycling is worth doing and is worth taking the time to do it properly.

Crucially DEFRA will be seeking views on how to roll out a service of doorstep collections that is funded by producers of that equipment rather than by local taxpayers and how that could include bulkier items such as large appliances, fridges, and TVs. We want to examine the role played by online marketplaces, internet sellers and retailers in the provision of take-back services for unwanted items and seeking views on whether heavy items such as fridges and dish washers should be taken away free of charge when a new item is delivered. We want to extend these principles to WEEE arising by businesses and public sector organisations.

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<sup>4</sup> <https://www.gov.uk/government/statistical-data-sets/waste-electrical-and-electronic-equipment-weee-in-the-uk>

<sup>5</sup> Anthesis (2019) Electrical waste – challenges and opportunities:

[https://eprints.lancs.ac.uk/id/eprint/145741/1/Material\\_Focus\\_Electrical\\_waste\\_challenges\\_and\\_opportunities.pdf](https://eprints.lancs.ac.uk/id/eprint/145741/1/Material_Focus_Electrical_waste_challenges_and_opportunities.pdf).

<sup>6</sup> Eunomia (2019) Ingredients for Successful WEEE EPR system:

<http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=20257&FromSearch=Y&Publisher=1&SearchText=EV0278&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

### **1.3. Embracing the Circular Economy**

All four nations of the UK are committed to moving towards a more circular economy which will keep resources in use if possible, extract maximum value from them, minimising waste and promoting resource efficiency. It requires focusing not just on managing waste responsibly but on preventing its creation in the first place. This lifecycle approach includes considering how decisions are made at the design stage.

A circular economy is one that it is designed to reduce the demand for raw material in products; to encourage reuse, repair, and manufacture by designing and selling products and materials to last as long as possible.

Such an approach will contribute towards our goal of net zero carbon emissions by 2050. To achieve this ambition, we want your views on how producer responsibility legislation can incentivise manufactures to design better products that last longer and consume less carbon during their manufacture, for example, by using more recycled materials such as plastic.

The Scottish Government recognise that there are significant economic opportunities in building a circular economy including job creation, steps towards a wellbeing economy as well as reduction in litter on our beaches and streets. Scotland have launched a £70m fund in March this year for local authorities to use to improve their recycling systems.

By incorporating resource efficiency principles and providing a financial incentive through extended responsibility reform we can encourage more waste prevention and other actions higher up the waste hierarchy such as more re-use of unwanted equipment.

### **1.4. The Environment Act 2021**

The Environment Act of the [Parliament of the United Kingdom](#) received Royal Assent in the autumn of 2021 and aims to improve [air](#) and [water quality](#), [protect wildlife](#), increase [recycling](#) and reduce [plastic waste](#). This piece of legislation is part of a new legal framework for [environmental protection](#), given the UK no longer comes under EU law post-[Brexit](#).

### **1.5. The Waste Electrical and Electronic Equipment Regulations**

The 2006 Waste Electrical and Electronic Equipment Regulations established the principle of producer responsibility for waste electricals and sought to reduce the volume of WEEE sent to landfill and drive up the separate collection of WEEE. It placed a responsibility on

manufacturers and importers to finance the collection and proper treatment of WEEE collected at household waste recycling centres and retailers through membership of Producer Compliance Schemes. A separate system was introduced for non-household WEEE collections.

New regulations were introduced in 2013 that set annual UK-wide targets, set by the Secretary of State. Those targets were handed down to compliance schemes based on the market share of their members, across 14 categories of equipment. A “compliance fee” was introduced payable by schemes that had been unable to meet their collection targets. Funds raised by producers have been used to commission research, support increased levels of local authority collections for re-use and recycling and to support a consumer awareness campaign.

## **1.6. Case for change**

DEFRA will use the WEEE Review to explore ways to avoid WEEE going to landfill, encourage collection and treatment of WEEE (re-use, recycle, safe disposal) through EPR, to correct the inequal treatment of producers selling in the UK with those selling through online market platforms, maximise value from our resources and minimise waste through the circular use of materials and to retain Critical Raw Materials (CRMs).

DEFRA aims to reset the level of ambition to increase levels of collection for re-use and recycling and ensure future regulations play a full part in embracing the circular economy and net zero carbon emissions by 2050.

DEFRA believes that online marketplaces and fulfilment houses should have financial obligations since they play such a significant role in the marketing and supply of equipment – often on behalf of overseas sellers. Defra is also considering the same in the case of batteries.

## **2.0 Aim of the research**

To gather quantitative evidence needed for the Impact Assessment about;

1. New obligation in which online marketplaces take on new “producer obligations”
2. Strengthen retailer/seller/ (internet sellers) obligations (take-back) and re-use
3. New obligation in which producers finance the cost of bulky waste collections currently undertaken by local authorities

## **3.0 Project Objectives**

### **3.1. New obligations on online marketplaces**

Defra is considering imposing new financial obligations on online marketplaces and fulfilment houses since they play such a significant role in the marketing and supply of equipment – often on behalf of overseas sellers.

Significant amounts of equipment are sold via Online Marketplaces and this amount is set to increase, with the coronavirus pandemic further accelerating the trend towards online shopping. This significant growth can be attributed to the fact that leading distributors and retailers have expanded their internet presence in recent years as well as overseas players using the internet to access the UK market, Transactional websites, and the move towards 'omni-channel' services are commonplace. A significant proportion of this equipment will contain batteries and, of course, batteries can also be purchased directly through online marketplaces.

Under the WEEE Regulations, a producer is defined as a business who places equipment on the UK market and is either:

- manufactured and sold EEE under your own brand in the UK;
- resold equipment made by someone else under your own brand (if a company's own brand appears exclusively on the equipment, they are the producer);
- imported equipment on a commercial basis to the UK;
- established outside of the UK and supply directly to the UK market by distance selling (for example, online, mail order or by phone).

However, online sales enable a producer to place equipment on the UK market from anywhere in the world. Irrespective of whether the business has a UK presence they have a legal obligation to register with the relevant environment agency and join a Producer Compliance Scheme (PCS) to meet their financial obligations. In many cases, these overseas sellers will use a recognised Online Market Place brand in the UK to sell their products relying heavily on the brand reputation of that company to appeal to the customer. In many cases, that marketplace will also carry stock and fulfil orders on behalf of the overseas seller thereby providing for rapid delivery of orders that otherwise would not be possible.

Whilst facilitating UK sales, the online marketplace has no obligations under the current WEEE Regulations since they would not meet the definition of a "producer" or "distributor". It is the overseas seller that would be classified as both the producer and distributor and consequently have legal obligations under the regulations.

The producer obligations set out in the WEEE regulations are enforced by the environment agencies of the four nations of the UK. Within the Waste Batteries and Accumulators Regulations 2009, the same enforcement split applies for portable batteries. Distributor obligations are regulated across the UK by the Office of Product Standards and Safety (OPSS). However, those regulators do not have any jurisdiction overseas. There is a high level of non-compliance amongst those online sellers that do not have a UK presence. Those businesses are not meeting their financial obligations. The consequence of this is that UK registered producers are financing the cost of collection and proper treatment of a significant volume of equipment that is placed on the UK market by overseas sellers when it becomes waste. This creates an unlevel playing field between producers of equipment who are registered with PCSs in the UK and therefore meet their financial obligations under the WEEE Regulations and those, often based overseas, who sell via online platforms and do not. Some reports have estimated that as much as 46,000 tonnes of equipment are placed on

the UK market each year by online platforms whose sellers are not meeting their financial obligations.<sup>7</sup>

Distributors placing more than 32kg of portable batteries a year on the market are required to provide a free take-back service at any place they provide these batteries. Many online sellers do not have a physical presence, and it is not possible to offer a postal return service for waste batteries.

### **3.2. Case for Change**

Defra is considering imposing new financial obligations on online marketplaces and fulfilment houses. The underlying principle and requirement will be that Online Marketplaces contribute to the waste management cost obligations in a way that is equivalent to producers. A new category of producer could be created for online marketplaces and fulfilment houses. They would be required to meet producer obligations laid down in revised regulations on behalf of their overseas sellers. This would include the requirement to:

- Register with a Producer Compliance Scheme
- Submit data in relation to EEE placed on the market
- Pay registration fees to the Environment Agency
- Meet their financial obligations through their membership of a PCS

We would envisage it being necessary for the current charging regimes for producers and PCSs to be reviewed to recognise that a new category of producer had been created with different compliance monitoring costs incurred by the regulator for that new category. Revised charging would appear to range from either a new fee category for Online Marketplaces to charging them the cost of all the producer fees that would have been payable by their individual sellers for whom the platform submit data and received an obligation.

Defra will consult on how on-line sellers should be defined in the provision recognising that we want obligations to be fairly applied across different types of businesses. For example, businesses selling most goods online, but also having one or more shops should not be able to meet their collection obligations at those stores alone. We would also like to seek views on whether obligations should rest with the fulfilment house where the product has been supplied from overseas, with no UK based distributor.

### **3.3. Strengthen retailer/seller/ (internet sellers) obligations (take-back) and re-use**

Retailers and internet sellers, known as distributors in the regulations, already have several obligations in relation to the take back of unwanted electrical equipment from householders. These are:

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<sup>7</sup> Material Focus (2019): 'Electrical waste – challenges and opportunities'  
[https://eprints.lancs.ac.uk/id/eprint/145741/1/Material\\_Focus\\_Electrical\\_waste\\_challenges\\_and\\_opportunities.pdf](https://eprints.lancs.ac.uk/id/eprint/145741/1/Material_Focus_Electrical_waste_challenges_and_opportunities.pdf)

- To provide a free one-for-one take back service for unwanted electrical equipment from householders on the purchase of a new item of a similar function<sup>1</sup>.
- To provide free take back of very small electricals if their store sales area is more than 400m<sup>2</sup><sup>2</sup>
- To provide customers with information about their role in the take back of electrical items and options available to the customer for the disposal of their unwanted WEEE.<sup>3</sup>
- To require retailers to keep a record of the amount of WEEE they collect from private households<sup>4</sup>.

Under the current system, retailers and internet sellers can discharge their obligations by joining the Distributor Takeback Scheme (DTS)<sup>5</sup> as an alternative to providing take-back facilities themselves. This scheme has raised over £13 million from retailers and internet sellers since 2007 and has provided £9 million of funding to Local Authorities to establish separate collection facilities for WEEE at household waste and recycling centres (HWRC) and £1 million of subsequent site maintenance funding. Every local authority across the UK that operates HWRCs has benefitted from this scheme.

### 3.4. Case for change

At present, the UK has one of the lowest collection rates from retailers in Europe. Our research<sup>6</sup> further indicates that the UK is currently the only country in Europe that provides an alternative to retailers and internet sellers from providing take-back facilities themselves. There is evidence that mandating retailers to do physical take back can have benefits in terms of increasing collections, given their proximity to householders, particularly where that is supported by effective communication to consumers.

Research by Ipsos Mori<sup>8</sup> has shown that convenience plays a large factor in ensuring householders dispose of their unwanted electrical items properly and 42% of consumers surveyed said they would use collection points at supermarkets if they were available. Several countries, including Belgium and Ireland, already have more comprehensive requirements for retailer take-back than European legislation<sup>9</sup> requires, with free take-back on delivery of new products and take-back of small items in store without the requirement to purchase a similar item, irrespective of store size. Retailers take-back has been shown to be most effective in countries where there is a strong emphasis on communications campaigns, such as in France and the Republic of Ireland<sup>10</sup>.

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<sup>8</sup> Waste electricals and electronic equipment: Public attitudes and consumer behaviour in the UK (2021), Material Focus, January 2021. [The public and waste electricals - Recycle Your Electricals](#)

<sup>9</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012L0019-20180704>

<sup>10</sup> Eunomia (2019): Ingredients for a successful WEEE EPR

System, <http://sciencesearch.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=20257&FromSearch=Y&Publisher=1&SearchText=EV0278&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>

Recognising the important role retailers can play in enhancing the collection network, the government, since January 2021, has required large retailers to provide in store take back on a one-for-one, like-for-like basis on the sale of a new item. Those retailers are no longer able to fulfil their obligations via membership of the Distributor Take-back Scheme. Online only retailers and small retailers with an annual turnover of less than £100k per annum can continue to fulfil their obligations by membership of the current DTS. Defra is considering further options for increasing collections through retailers and online sellers.

Encouraging greater levels of collection of unwanted equipment in the retail take-back system has several benefits beyond driving higher levels of collection for recycling. Taking back unwanted material from the home by sellers ensures it is likely to be handled in a similar fashion to new equipment and is not exposed to the elements as is typical at HWRCs. This leads to an increase in the re-use potential of unwanted equipment and so supports our drive towards a circular economy. The value of re-usable equipment is already recognised by major retailers who often have strategic relationships with partner organisations for the supply of equipment that has re-use potential thus prioritising re-use over recycling.

We define 1:1 take back as the obligation to take any WEEE item on a like-for-like one-to-one basis when buying an electric or electronic product. The provision offered by online sellers should be of at least equivalent convenience to that currently provided by businesses selling via stores. This could for example be offered via a collection on delivery service, access to local drop off points, a system of pre-paid or refundable returns akin to that provided for return of unwanted purchases. This would be in addition to their obligation outlined below where they are required to offer free collection on delivery for large domestic appliances.

We define 0:1 take back as the obligation to takeback WEEE without the need to purchase a similar item i.e., a seller of a toaster does not need to sell a toaster to be obligated to take back an old toaster. Such an approach could be applied to large stores (with a turnover of over £100k of electricals per year) that must currently offer 1:1 take-back and internet sellers, fulfilment houses and online marketplaces above that size.

Communications would play an important part of successful delivery of the measures outlined in these proposals. The Government believes retailers and internet sellers must ensure they make customers aware of the various options available to them for disposing their unwanted equipment, including the retailer takeback obligations at the point they purchase a new product.

At present, the PCS must provide a means for distributors to deliver WEEE into their network. However, this could be some distance from the distributors premises and could therefore act as a considerable disincentive for the distributor to proactively seek to drive up their collections from their customers. This proposal would remove the cost to retailers of moving the WEEE to a reuse or recycling facility and would perhaps incentivise retailers to innovate to collect more.

### **3.5. New obligation in which producers finance the cost of bulky waste collections currently undertaken by local authorities**

The existing WEEE Regulations ensure that producers, via membership of Producer Compliance Schemes, finance the cost collection and proper treatment WEEE that is deposited at those sites. Generally, this is likely to be WEEE directly deposited by householders but will also include WEEE collected via bulky waste collections, bring banks or through doorstep collection services. The cost of collection and proper treatment of any fly-tipped household WEEE that has been recovered by local authorities and taken to a DCF would also be met by a PCS.

Most local authorities offer a bulky waste collection service which may be used by residents for large equipment such as washing machines or fridges. There is typically a fee levied for this service which varies between local authorities.

### **3.6. Case for change**

For WEEE items that are considered too large to collect via integration with existing collection rounds, Defra is considering that local authorities should continue to collect via their existing bulky waste collection services. However, it is intended the consultation look at how the provision of this service could be free of charge to local taxpayers. Local authorities could be compensated by producers (and possibly distributors that did not provide take-back services). A modelled approach to compensation provided to local authorities rather than a system of reimbursement of actual costs would be one potential mechanism. If such a provision is introduced, householders will still have the option of taking their large electrical items to a household waste and recycling centre, if this is more convenient for them.

The Resources and Waste Strategy for England commits the Government to look at introducing the concept of Extended Producer Responsibility across all forms of bulky waste.

Defra is considering whether heavy items such as fridges and dish washers should be taken away free of charge when a new item is delivered by retailers and online sellers. A collection on delivery service is currently provided by suppliers but typically at a charge which acts as a disincentive to use that service for some householders.

In essence retailers and online sellers would in future be required to collect large appliances free of additional charge on delivery of the new item and producers would be required to fund the cost of equipment collected by LAs as part of their bulky waste services

Defra would need to consider how on-line sellers should be defined in such future provisions recognising that obligations should be fairly applied across different types of businesses. For example, businesses selling most goods online, but also having one or more shops should not be able to meet their collection obligations at those stores alone. Defra will also consider whether obligations should rest with the relevant fulfilment house or online marketplace where the product has been supplied from overseas, with no UK based distributor.



### 3.7. Categories of electric and electronic products

For reference, these are the 14 categories of electric and electronic products:

1. Large household appliances (e.g., fridges, washing machines)
2. Small household appliances (e.g., kettles, vacuum cleaners)
3. IT & telecoms equipment (e.g., computers, telephones)
4. Consumer equipment (e.g., radios, security systems)
5. Lighting equipment (e.g., luminaires)
6. Electrical & electronic tools (e.g., drills, pumps)
7. Toys, leisure & sports equipment (e.g., gaming, exercise equipment)
8. Medical devices (except implanted & infected products)
9. Monitoring & control equipment (e.g., meters, production control, smoke detectors)
10. Automatic dispensers (e.g., food and drink, photo booths)
11. Display equipment (e.g., TVs, monitors)
12. Appliances containing refrigerants (e.g., fridges, AC, heat pumps)
13. Gas discharge lamps & LED light sources
14. PV panels (e.g., solar panels)

### 3.8. Research Questions

#### 3.8.1. New obligation on online marketplaces

The key questions that the research would need to answer are:

- How should Online Marketplaces be defined in this provision recognising that we want obligations to be fairly applied across different types of businesses?
- **Provide evidence** to assess where the obligations should rest with the fulfilment house - where the product has been supplied from overseas with no UK based distributor. Provide evidence as to whether that should differ depending on whether the seller is based in the UK or overseas.
- **Provide evidence** that a new fee category for Online Marketplaces include the cost of all the producer fees that would have been payable by their individual sellers for whom the platform submit data and received an obligation? Should online marketplaces only be obligated on behalf of their overseas sellers? Please include estimates of what additional fees might be gathered on behalf of how many marketplaces and covering how many online sellers.
- **Provide evidence** that online marketplaces initially be able to use estimated weight data using a protocol agreed with the environment agencies? Or, alternatively, **provide evidence** that they should they use actual data?

- What other ways, if any, should government explore to tackle the issue of non-compliance with the WEEE Regulations by online sellers in UK and overseas? Please provide evidence to support your recommendations.
- **Provide evidence** that obligations should be set as a proportion of market share and apply as if the online marketplace were a producer? **Provide evidence** that they an alternative way be considered? If an alternative approach should be considered, please describe what it should look like.
- Assuming an obligation is set on a market share basis and is reflective of the volume of EEE placed on the UK market, **provide evidence** of the proportion of producer compliance costs that would in future be funded by online marketplaces in each category or equipment.
- **Estimate** what new costs online marketplaces will incur because of this measure and to what extend the new obligation would “displace” costs currently incurred by registered producers.

### 3.8.2. Strengthen retailer/seller/ (internet sellers) obligations (take-back) and re-use

#### Take back (1:1 and 0:1)

#### Online Sellers

- How much additional WEEE and batteries (in metric tonnes/units) is it likely to be captured/collected with a new obligation potentially falling on internet sellers and on online marketplaces to undertake take-back of WEEE and batteries? **Provide evidence** for each category of WEEE relative to each online seller type.
- Distributors with EEE turnover of under £100k per annum can currently meet their obligation by joining the DTS. Estimate the number of UK businesses defined as distributors that fall below that threshold.
- What requirement should be imposed on internet sellers to ensure they make-customers aware of the various options available to them for disposing their unwanted equipment, including the retailer takeback obligations at the point they purchase a new product?
- Communications would play an important part of successful delivery of take-back measures. Should the requirement by online sellers and online marketplaces to make customers aware of disposal of unwanted equipment and batteries be at the time of sale, e.g., via the sale receipt or digital communication at the time of purchase?
- Provide an estimate of WEEE that will be diverted away from landfill because of extending 1:1 take-back measures to online sellers with EEE sales above £100k and enhanced

communication obligations? This information should be provided for all categories WEEE and portable batteries.

### **Distributor take-back**

- Please consider the case of businesses selling most goods online but also selling through shops. Would they be able to meet their obligations at those stores alone? **Propose an estimate** of the number of retailers which sell predominantly online or predominantly in person and how this affects their take back ability.
- What requirement should be imposed on retailers to ensure they make-customers aware of the various options available to them for disposing their unwanted equipment, including the retailer takeback obligations at the point they purchase a new product?
- What is your estimate of WEEE (in metric tonnes/units) that could be diverted away from landfill because of 0:1 take-back measures applied to larger distributors? This information should be provided for all categories WEEE and portable batteries.
- What would the additional costs to business of imposing 0:1 take back to large retailers who are currently obliged to do 1:1 take-back? Provide estimates for each cost component (increase floor space or opportunity cost of shop-floor space, labour cost, communication etc.)
- What would be the additional communication costs for retailers of implementing take-back of WEEE? Do these costs change depending on whether the take back is 1:1 or 0:1?
- What would the additional costs to business of imposing 1:1 and separately 0:1 take back on online sellers/online marketplaces that was at least as convenient as instore take-back?
- Should the retailers and internet sellers/online and online marketplaces make customers aware at point of sale of disposal options/collection of WEEE? What will be the likely costs of this be?
- What's the carbon impact/assessment and benefits (of WEEE diverted away from landfill field due to the 1:1 and 0:1 take-back measures)?
- If the obligation of producer responsibility were to be moved to retailer's store, distributor centre or bulking store, would this proposal remove the cost to retailers of moving the WEEE to a reuse or recycling facility? Would it incentivise retailers to innovate to collect significantly more? What other incentives could be imposed?

- We are aware that there is an interaction between the amount of WEEE received through take-back from retailers and distributors and the amount of WEEE received through other channels (online marketplaces, Local Authorities). Please establish these interactions in the estimates you provide. Defra would be happy to provide data on the volumes channelled through LAs.
- What will be the estimated reduction in the volume of illegal WEEE due to the reforms on take-back (1:1 and 0:1)?
- Provide estimates of the increase in recycled material market (greater use of recycled materials in other markets)
- Are there currently any barriers to collecting WEEE and batteries from retailers?
- Are there currently any barriers to collecting WEEE and batteries from Local Authorities (LAs)

### **Collection on delivery service of white goods**

- What are the volumes (weight in metric tonnes and units) of large WEEE (white goods) that are collected **by retailers** (for example, Dixon's, John Lewis, etc.) now (2019 and how are these likely to change?
- What are the costs of collecting large WEEE **by retailers** now and how are these likely to change? (Cost data - Capital, overhead and operational costs)

The policy proposals to collect white goods waste on delivery free of charge from household is likely to affect the flows of bulky WEEE. This type of waste is currently collected from households by LAs at a charge. If there is more collection of WEEE white goods by LAs from householders, we would expect a reduction of fly-tipping of this type of WEEE. It is also possible that higher volumes of white goods WEEE are collected by retailers and less from LAs, or vice-versa. We would also expect a reduction in illegal exports of Bulky WEEE.

### **Re-use**

- What potential scope exists to add an obligation or target on retailers, internet sellers and online marketplaces, rather than producers to maximise re-use of WEEE returns? Provide an estimate of how much could be captured (in metric tons/units) for each category of WEEE.

- Should there be a de minimus threshold applied to small businesses?
- Provide estimates of the volume of WEEE likely to be diverted from landfill due to increase re-use of Electric and electronic equipment (EEE)?
- Provide estimates of how much money are LAs likely to save as cost of collection by increasing life of products through re-use?
- What would the carbon assessment and benefits of the above re-use measures be?

### 3.8.3. New obligation in which producers finance the cost of bulky waste collections currently undertaken by local authorities

- Should the rollout of producer financed bulky waste collections currently undertaken by LAs for large electricals happen ahead of wider plans for Extended Producer Responsibility?
- What are the volumes (weight and units) of collection – how much WEEE is currently (2019) collected **by LAs** (how many fridges, freezers, etc.) each year and how are these likely to change with if these were collected free of charge? Most local authorities also offer a bulky waste collection service which may be used by residents for large equipment such as washing machines or fridges. There is typically a fee levied for this service which varies between local authorities.
- What is the current cost of collection of large (bulky) WEEE from the doorstep **via a Local Authority** bulky waste collection service (cost data - Capital, overhead and operational costs) and how are these likely to change?
- Would the free collection of white goods by LAs incentivise retailers to innovate to collect significantly more?
- What will be the estimated reduction in the volume of illegal WEEE due to the reforms on bulky waste?
- What is the likely reduction in prices for consumers of buying bulky EEE caused by the free collection of bulky WEEE?
- What would the carbon assessment of reforms on bulky waste be?

## 4.0 Proposals

- The proposal should state your understanding of what the research proposal is, why you are suitable to carry out the work and a budget.
- You must supply a breakdown of the costings into project stages, with associated deliverables/milestones. The costs should reflect the value of work delivered in that stage.
- You must specify what measures you will put in place to ensure quality throughout the project, including in the outputs they send to Defra.

## 5.0 Deliverables/Outputs

The main deliverable will be a report with analysis of modulation criteria, as well as examples and concrete recommendations which will be written in a clear, non-technical way,

The report, addressing the questions laid out in Deliverables 1, 2 and 3 (see below) should give a comprehensive account of the methodologies and quality assurance processes used. Accompanying this report should be all relevant data sets in an agreed, accessible format (e.g., comma separated variable). Additionally, qualitative info that is used to inform the findings should be made available to Defra.

- **Interim Report with a summary of the findings**
- **Final Report covering recommendations for EPR for electrical and electronic equipment (EEE), and Executive summary with key recommendations**
- **Final 1-hour presentation of key findings in a webinar (seminar?) organised by DEFRA**

## 5.1 Expertise

- Knowledge of the waste management sector
- Knowledge of the electric and electronic equipment and waste production sector
- The Authority expects high quality outputs. All outputs will need to be reviewed and commented on by Defra, potentially resulting in several iterations needed.

- The contractors should plan their timings and costs to account for potential multiple iterations of outputs. They must put quality assurance in place before they send outputs to DEFRA.
- Although delivery of the final report by 29 April 2022 would meet the needs of the project, when assessing the technical quality of the tender, timeliness of delivery will be one of the criteria used by the evaluation panel. Therefore, all other things being equal, a higher score will be given to those tenders that can guarantee delivery by 29 April 2022.
- Defra requires published outputs to be of a high standard, in plain English and without grammar or spelling errors. We reserve the right to require the contractor to appoint, at their own expense, a proof-reader and/or copy editor if we can demonstrate that the standard falls well below similar previously published reports.
- The tables on *appendices C and D* should be provided summarising prices. The tables must be annotated to itemise any assumptions you have made, beyond those stated in this ITT.
- Suppliers must not include any reference to price in their technical submission. The table should be provided as an attachment to the commercial envelope in Bravo.

## 5.2. Summary timetable of deliverables

Number	Details of deliverable	Date 2022
<b>Deliverable 1</b>	Interim Report with a summary of the main findings	31/03/2022
<b>Deliverable 2</b>	Final Report covering recommendations for EPR for electrical and electronic equipment (EEE), and Executive summary with key recommendations	29/04/2021
<b>Deliverable 3</b>	Final 1-hour presentation of key findings in a webinar (seminar) organised by DEFRA	29/04/2022

## 6.0 Payment

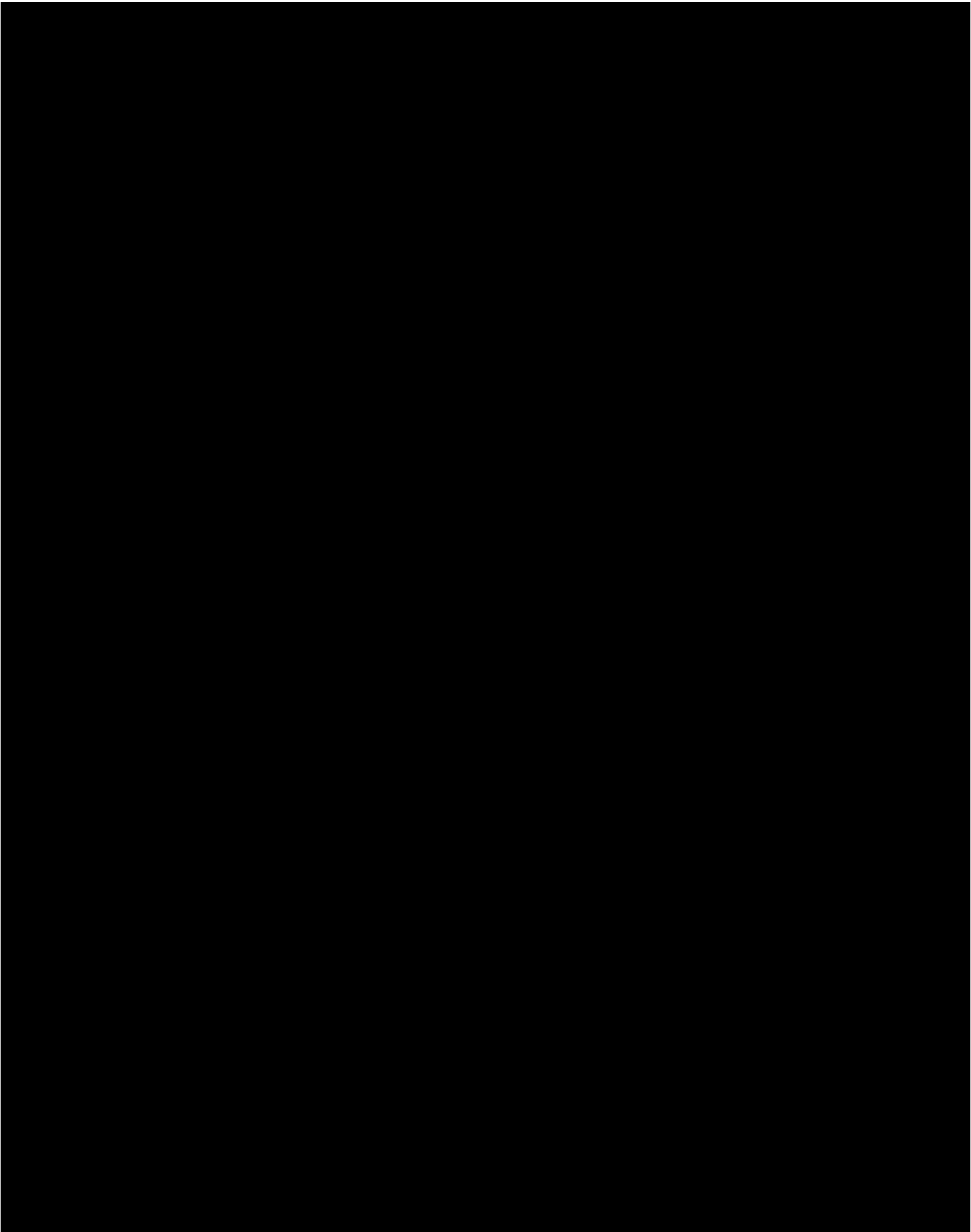
Please note payment will be made in three stages. The payment percentage split will be as below;

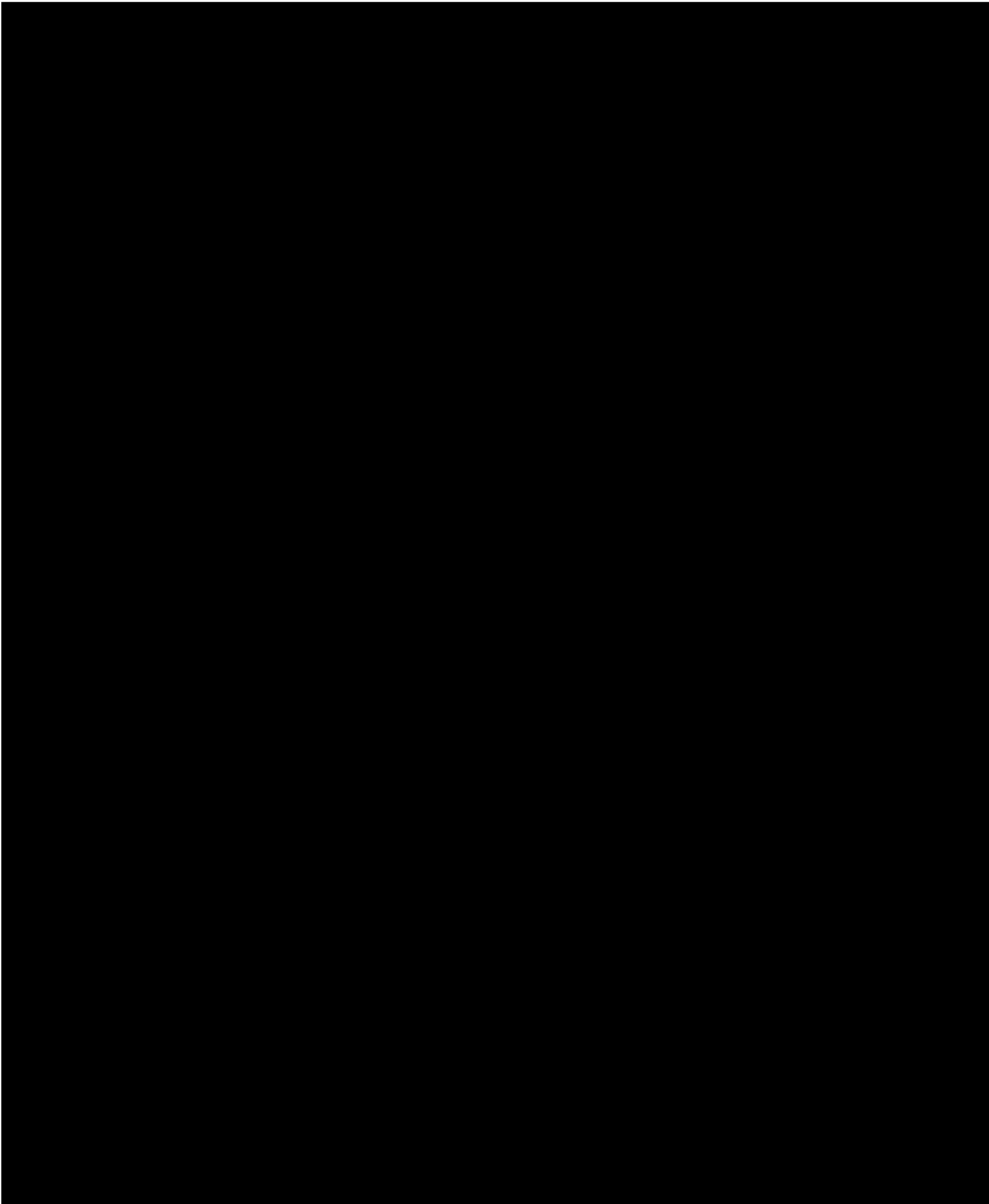
- Deliverable 1 – 50% of the total cost

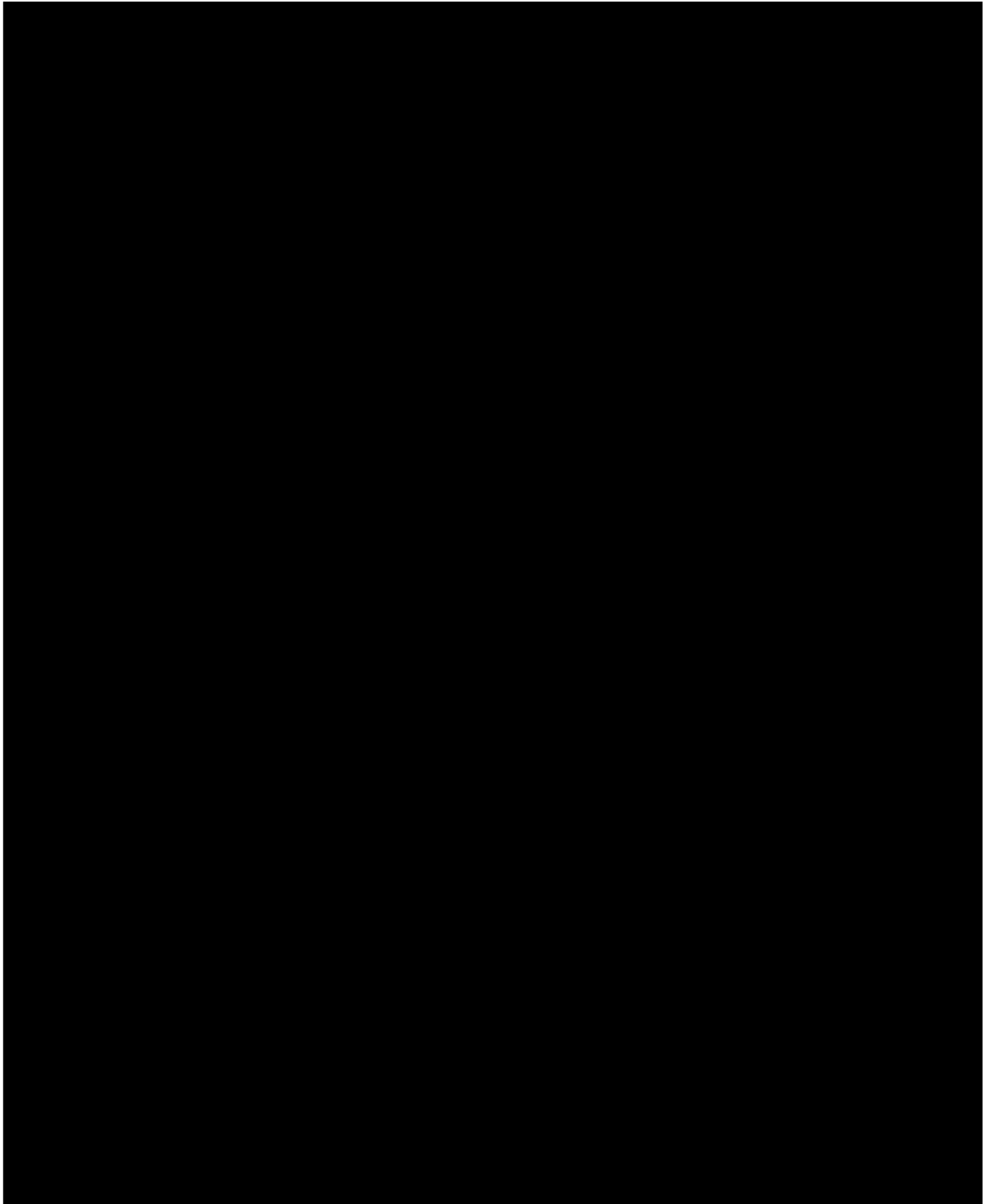
- Deliverable 2 – 35% of the total cost
- Deliverable 3 – 15% of the total cost

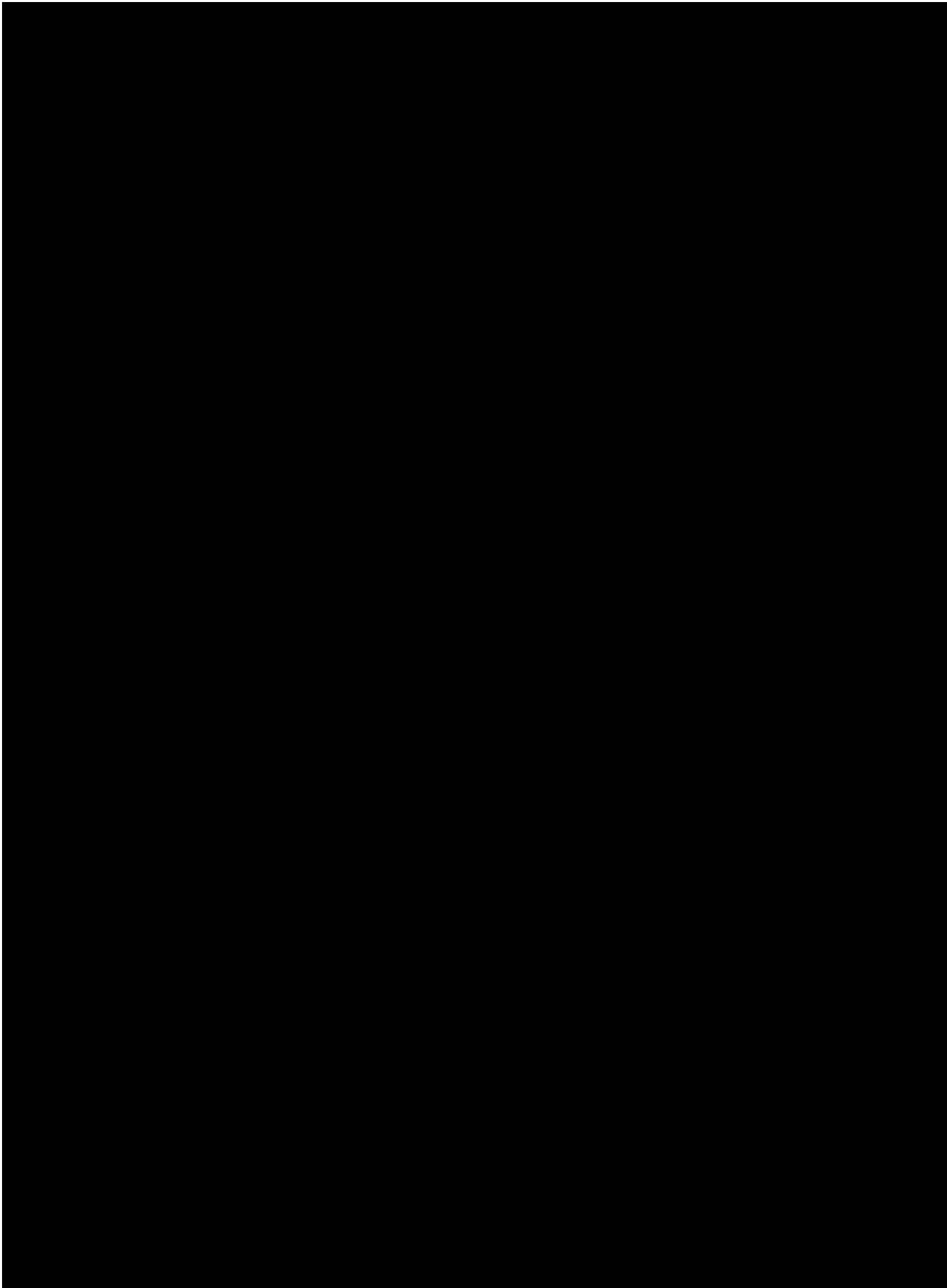
*All payments will be made to successful tenderer according to the agreed milestones and deliverables. However, where there has been an overpayment made by the Authority to the Contractor, such monies shall be a sum recoverable.*

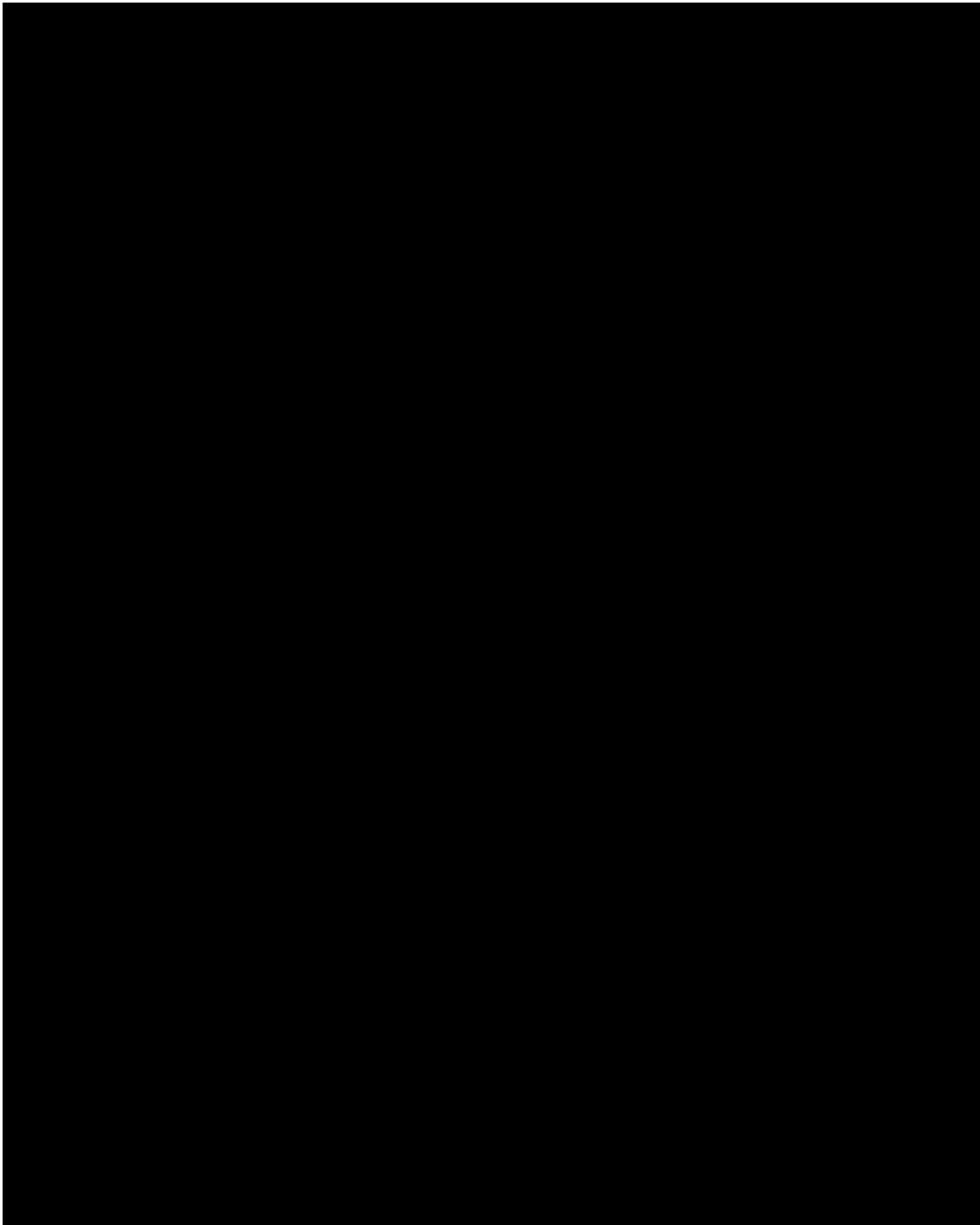


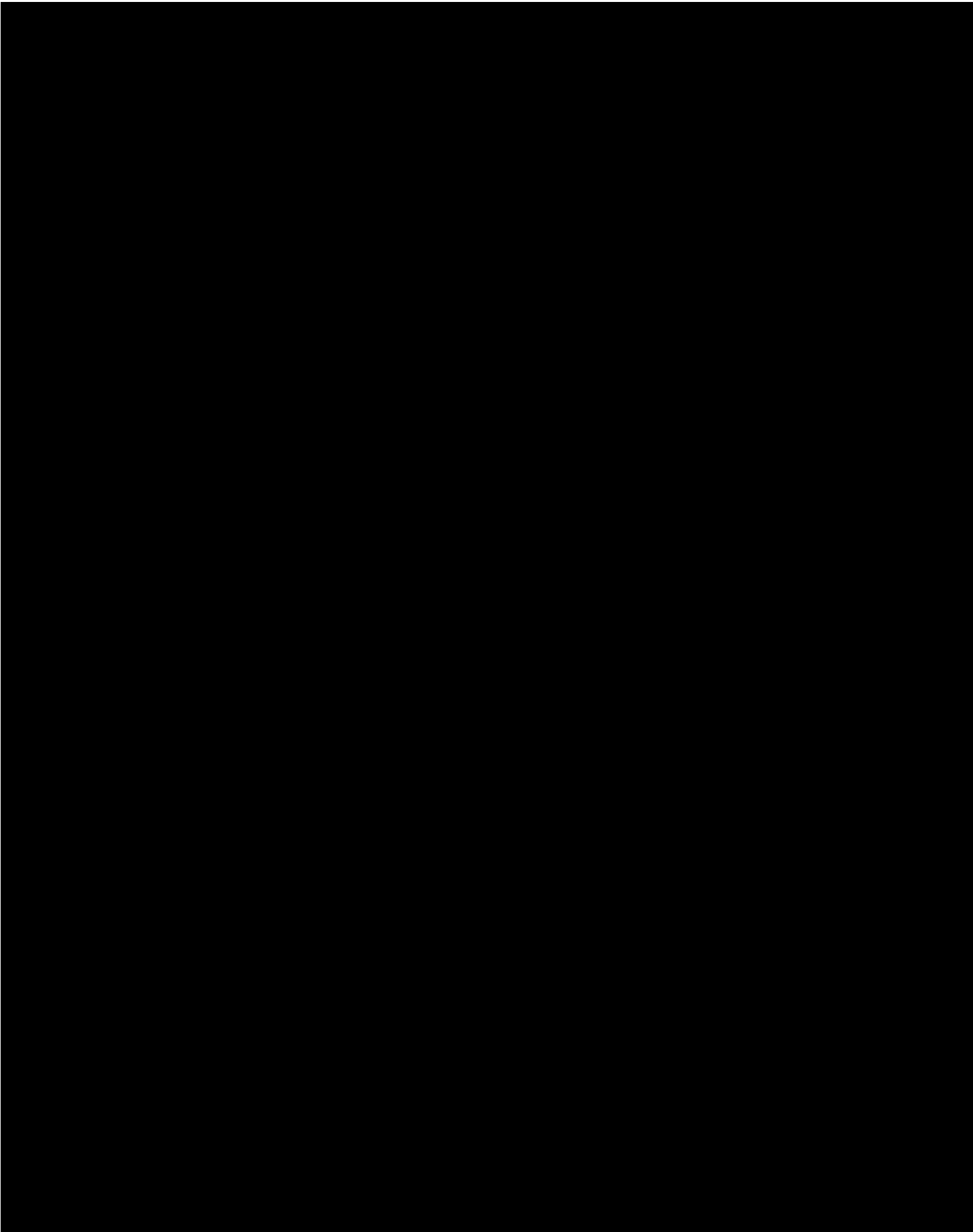


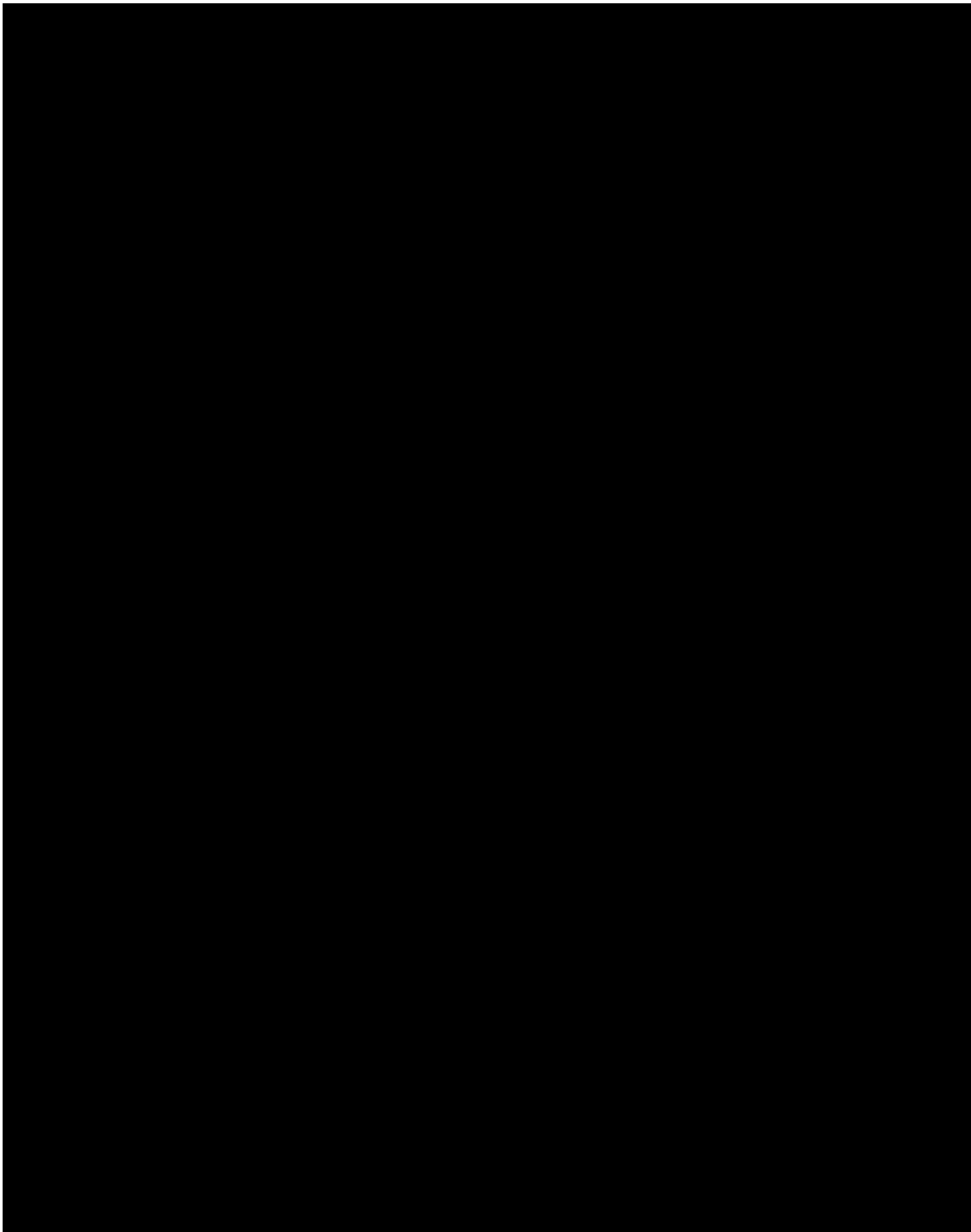


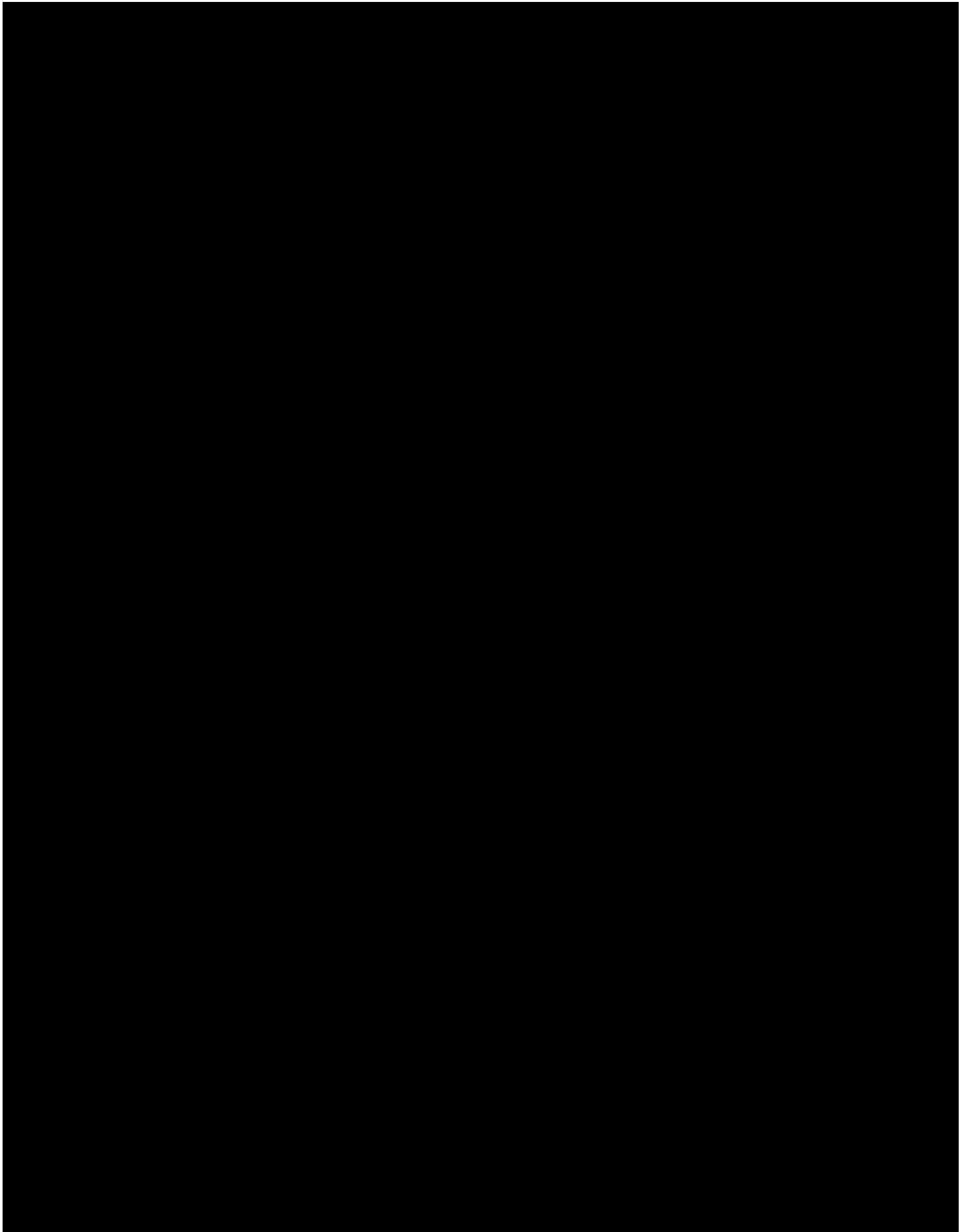




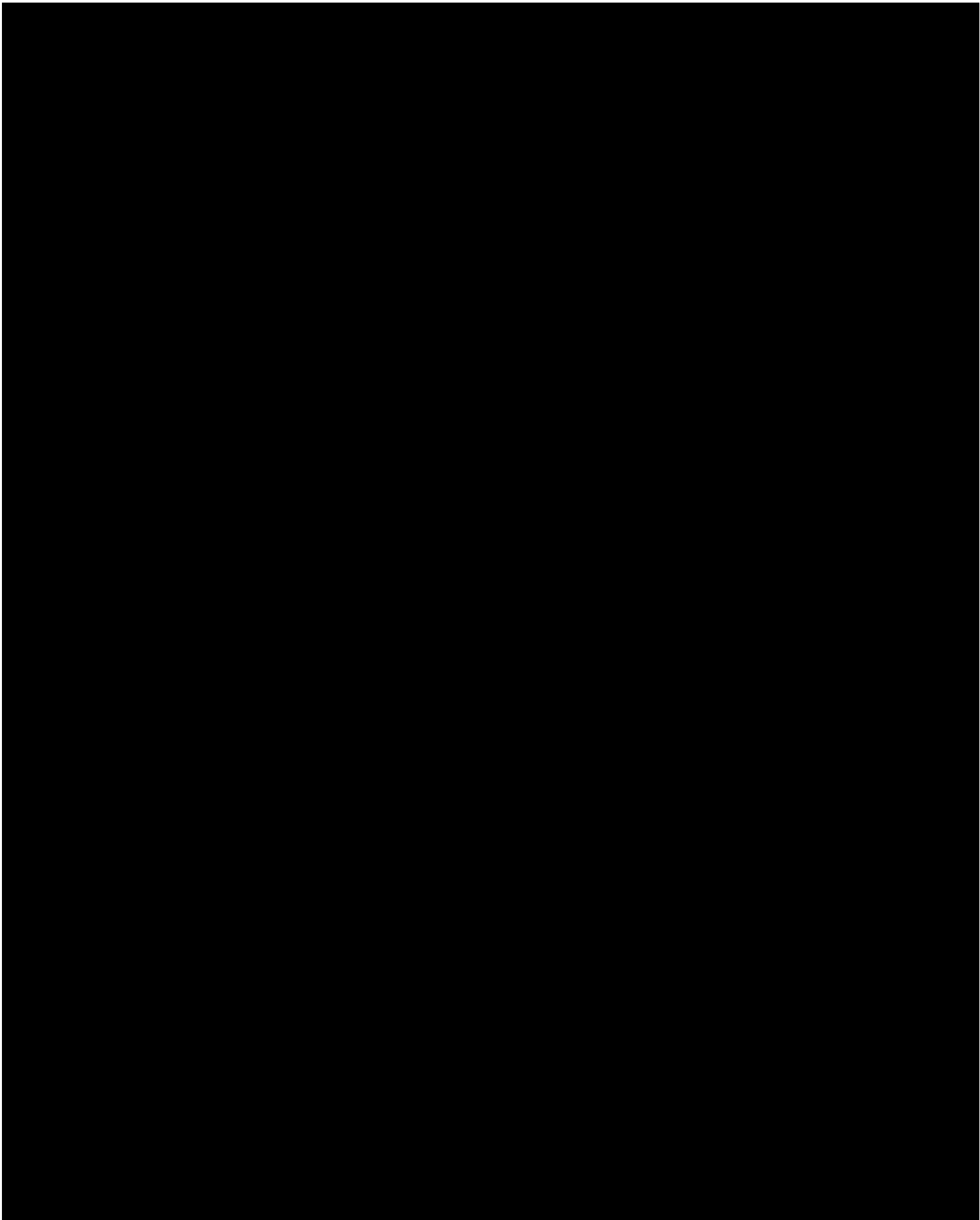


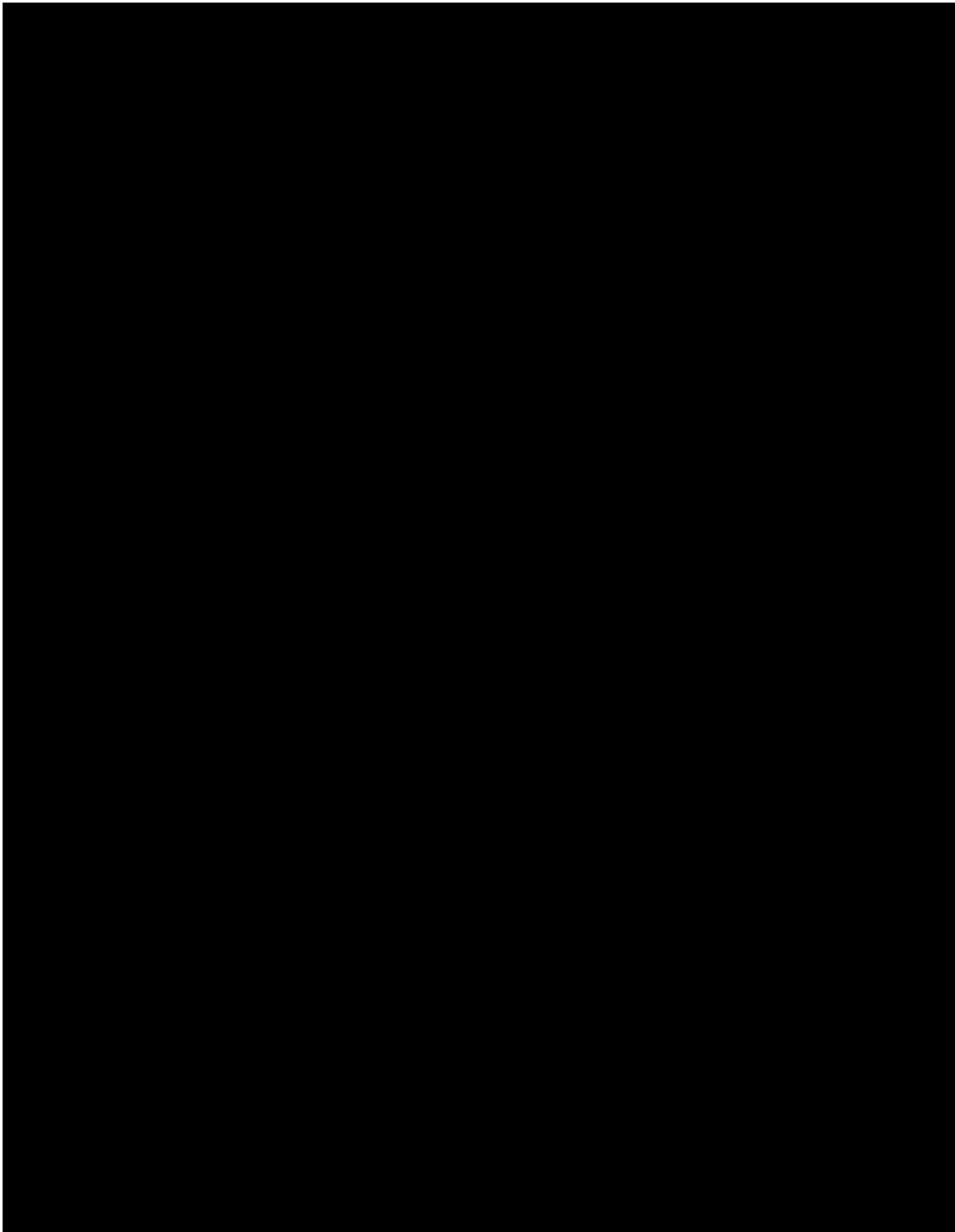


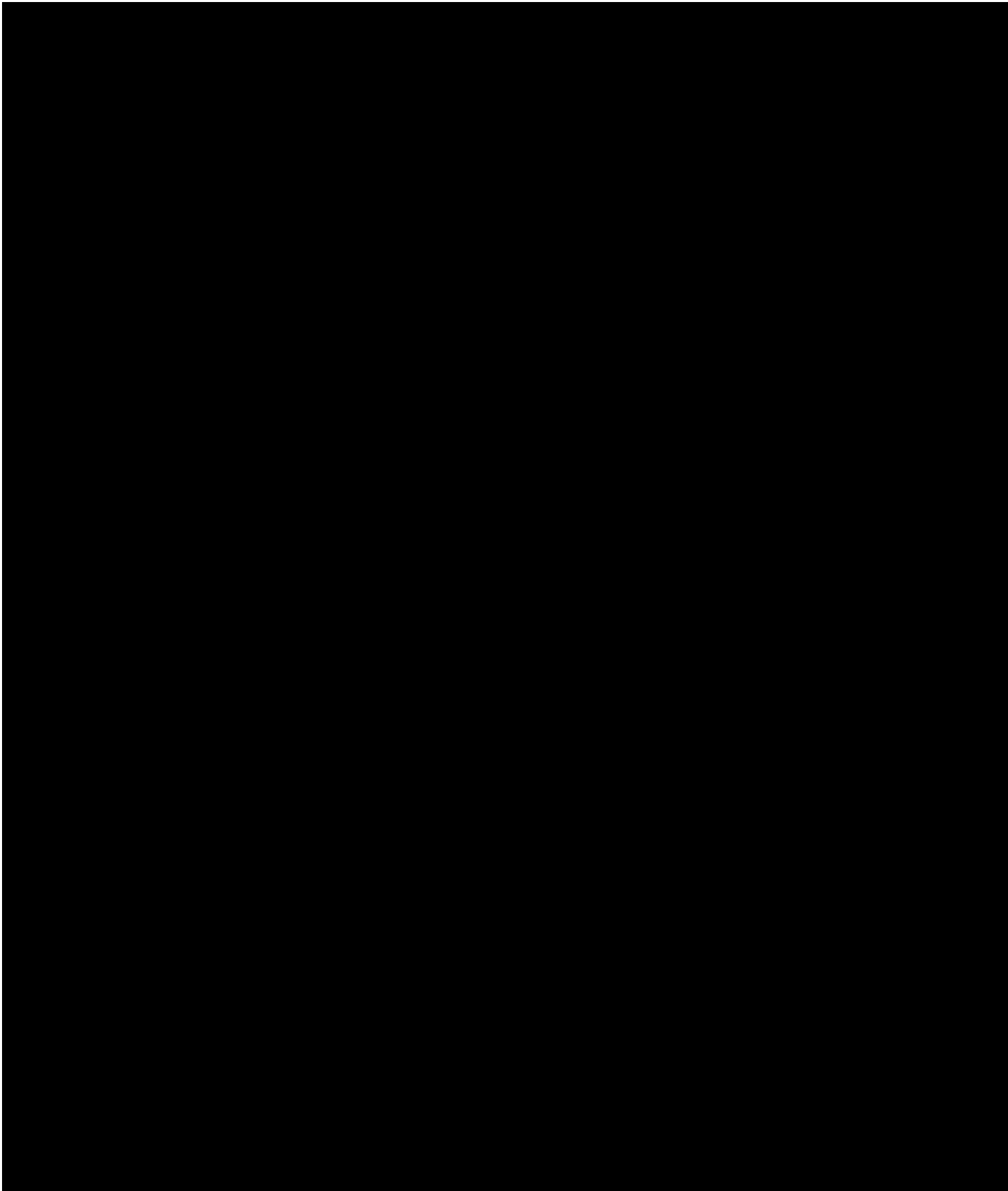


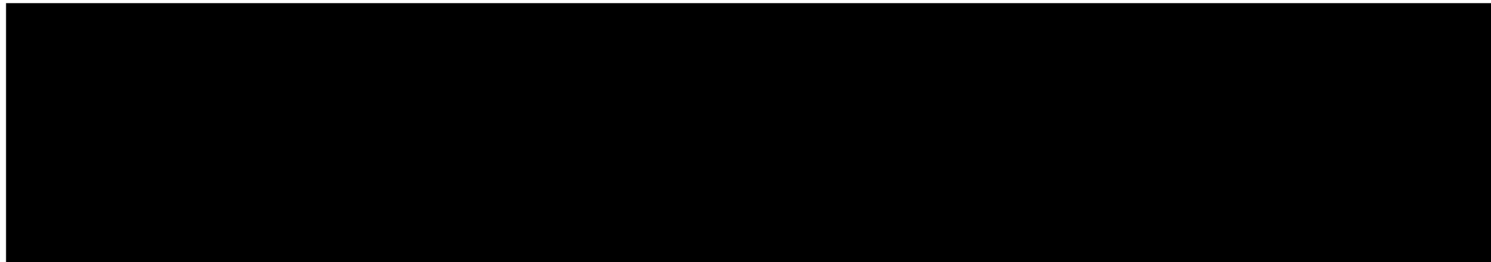




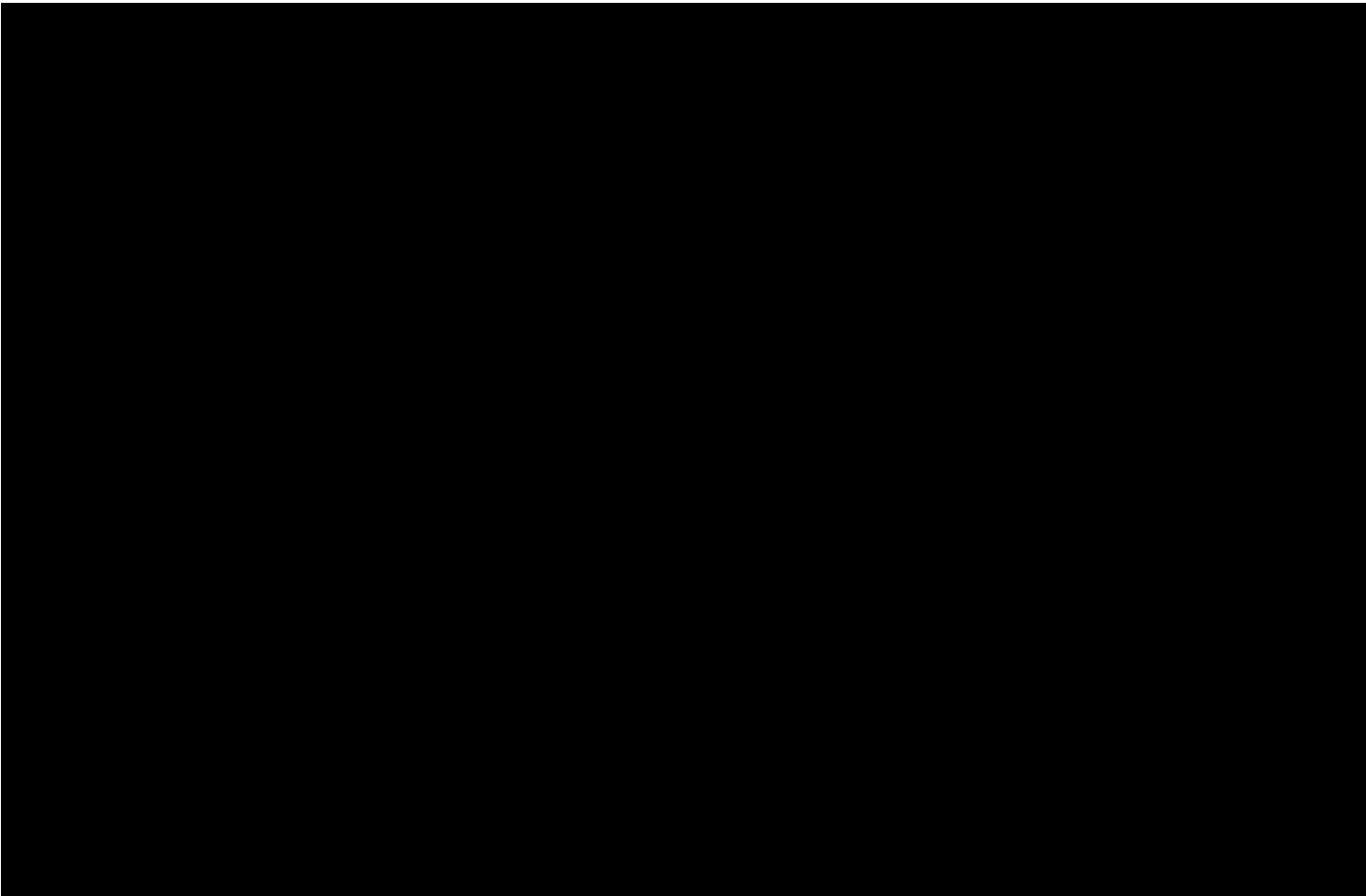


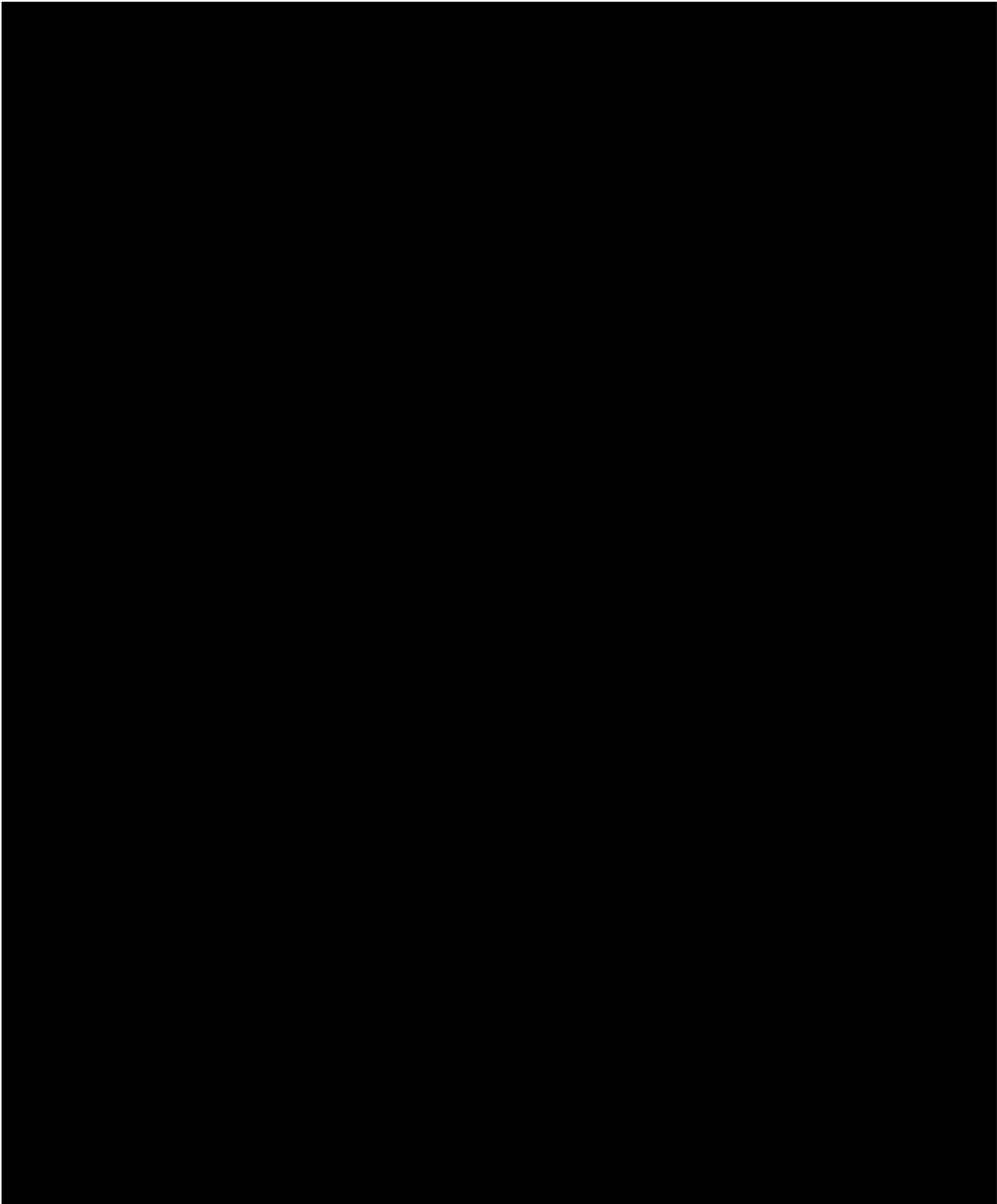
















## Annex 7:

# PROCESSING, PERSONAL DATA AND DATA SUBJECTS

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

2. The contact details of the Authority Data Protection Officer are:

The contact details of the Authority Data Protection Officer are:

[Dgc.gdpr@defra.gov.uk](mailto:Dgc.gdpr@defra.gov.uk)

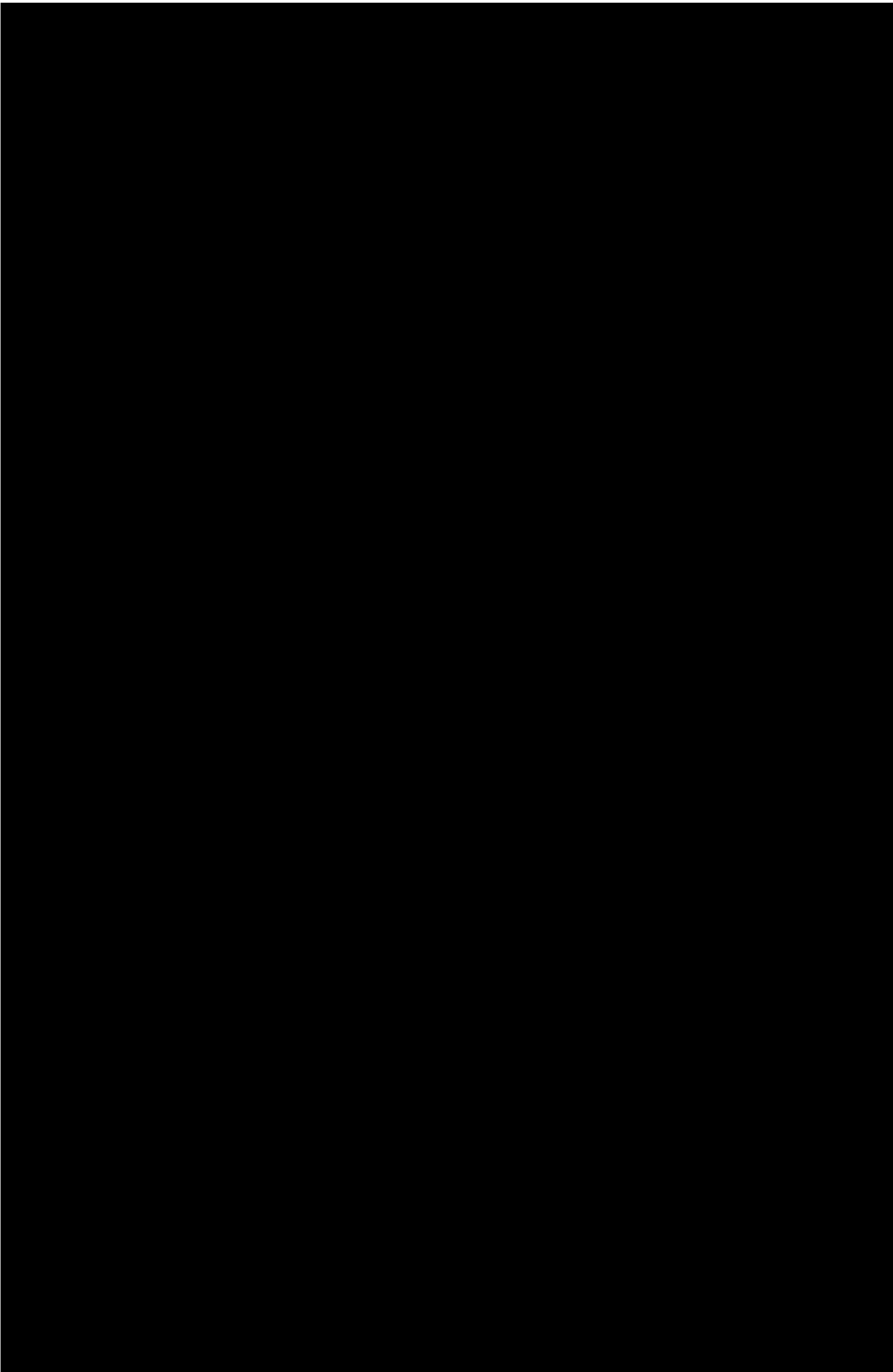
3. The contact details of the Contractor Data Protection Officer are:

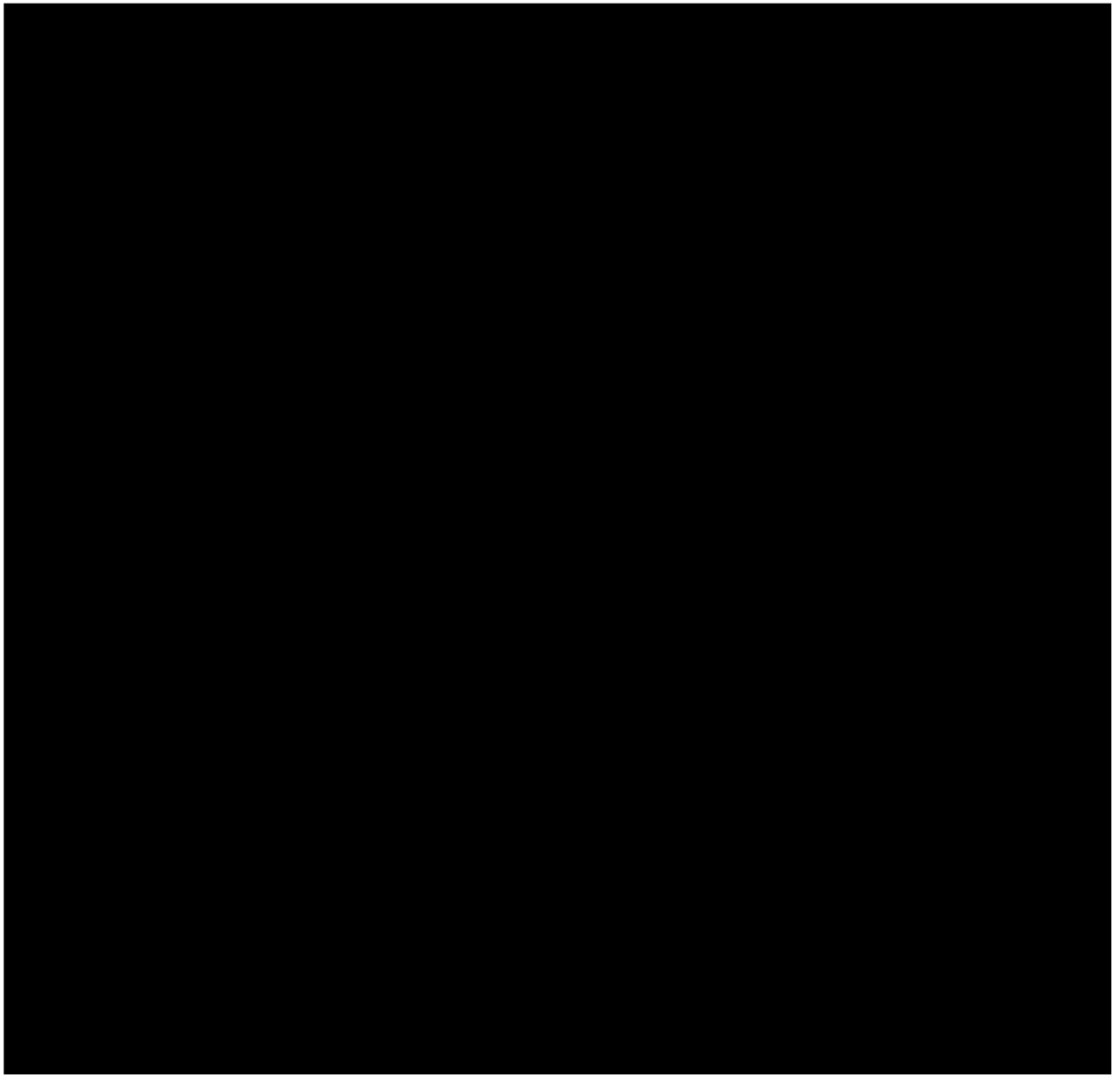
[REDACTED]

4. The Contractor shall comply with any further written instructions with respect to processing by the Authority.

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

[REDACTED]





## Annex 8

# NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made the 04th day of January (the "Commencement Date")

BETWEEN:

Anthesis (UK) Limited registered in England and Wales under number 3409491 whose registered office is situated at Unit J, Taper Studios, 175 Long Lane, London, SE1 4GT, England (the "Contractor");

and

[REDACTED]

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

WHEREAS:

- (a) The Contractor has contracted with the Secretary of State for Environment, Food and Rural Affairs (the "Authority") to provide goods and/or services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an employee of the Contractor engaged in the provision of certain goods and/or services to the Authority in support of or in connection with the goods and/or services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will

at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

#### Definition and Interpretation

1. In this Agreement:
  - a) “Confidential Information” means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679); whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;
  - b) “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case

may be) by particular examples intended to fall within the meaning of the general words.

3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

#### CONFIDENTIALITY

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the goods and/or services under the Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings,

and the Contractor shall institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.

11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
  - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
  - 14.3 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
  - 14.4 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

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

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.



22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

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

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

