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Contract for the Provision of Services

Testing Service Requirements- Spanning November 2015 to November 2016

20th October 2016

SECTION 1

FORM OF CONTRACT

PARTIES:

- (1) THE CARE QUALITY COMMISSION of 3rd Floor, 151 Buckingham Palace Road, London, SW1W 9SZ (the “**Authority**”);

AND

- (2) Sapient Limited, a company registered in England and Wales under company number 3144067 and whose registered office is at Pembroke Building Kensington Village, Avonmore Road, London, W14 8DG (the “**Supplier**”).

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

WHEREAS

the Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED as follows:

1. TERMS OF CONTRACT

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

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Pricing
Schedule 3:	Change Control
Schedule 4:	Contractor and Third Party Software
Schedule 5:	Security Requirements, Policy and Plan

- 1.2 The Contract is deemed to take effect from 08/11/2015 (the “**Commencement Date**”) and ends on 25/11/2016 (the “**End Date**”) the “**Initial Period**” unless it is terminated early or extended in accordance with the Contract.

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TERMS AND CONDITIONS

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

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

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

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

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

“**Authority Data**” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

“**Authority Premises**” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

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

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

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

“Breach of Security” means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms.

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

“Commencement Date” means the date set out in paragraph 1.2 of the Form of Contract.

“Commercially Sensitive Information” means the information listed:

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

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

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

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

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

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

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

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 4.

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

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

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

“Data Controller, Data Processor and Personal Data” shall have the same meaning as set out in the Data Protection Act 1998.

“Disaster” means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan.

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

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

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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

“Employment Liabilities” means any Loss including those incurred by or attributed to the Authority (which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the Authority to a Replacement Contractor or sub-contractor).

“End Date” means the date set out in paragraph 1.2 of the Form of Contract.

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

“Extension” has the meaning given in paragraph 1.3 of the Form of Contract.

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

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

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

“General Anti-Abuse Rule” means:

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

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

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

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Contractor System.

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

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

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

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

“Key Personnel” mean those persons named in the Specification as key personnel.

“Key Performance Indicators” means the key performance indicators which if applicable will be listed in Schedule 11 and a Key Performance Indicator (“KPI”) shall mean any one of them;

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

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

“**Loss**” means any losses, costs, charges, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions and the term “**Losses**” shall be construed accordingly.

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

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

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

“**Month**” means calendar month.

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

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

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

“**Pre-Existing Intellectual Property Rights**” shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority of the Contractor of their obligations under this Contract.

“**Premises**” means the location where the Services are to be supplied as set out in the Specification.

“**Price**” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Pricing Schedule” means Schedule 2 containing details of the Price.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

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

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

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

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

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

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

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

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

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

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

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

“Security Policy” means ISO/IEC 27001 Information Security Management.

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

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

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

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

“Staff Vetting Procedure” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority;

“Sub-Contractor” means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and **“Sub-Contract”** shall be construed accordingly.

“Tender” means the Authority’s invitation to supply to contractors consisting of the Specification and these clauses.

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

“Termination Notice” means a written notice delivered by the Authority to the Contractor indicating that it intends to terminate this Contract in accordance with its terms.

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

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 4.

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

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

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

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

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

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

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

In the Contract, unless the context implies otherwise:

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

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under the Contract:

(a) For the Authority:

Contact Name: [REDACTED]

Address: Care Quality Commission, Citygate, Gallowgate, Newcastle-Upon-Tyne, UK, NE1 4PA ; and

Email: [REDACTED]

(b) For the Contractor:

Contact Name: [REDACTED]

Address: Eden House, 8 Spital Square, London, UK; E1 6DU and

Email: [m](#)[REDACTED]

The registered address for Legal Notices is as follows:

(a) For the Authority:

Address: 3rd Floor, 151 Buckingham Palace Road, London, SW1W 9SZ; and

(b) For the Contractor:

Address: Eden House, 8 Spital Square, London, UK; E1 6DU and

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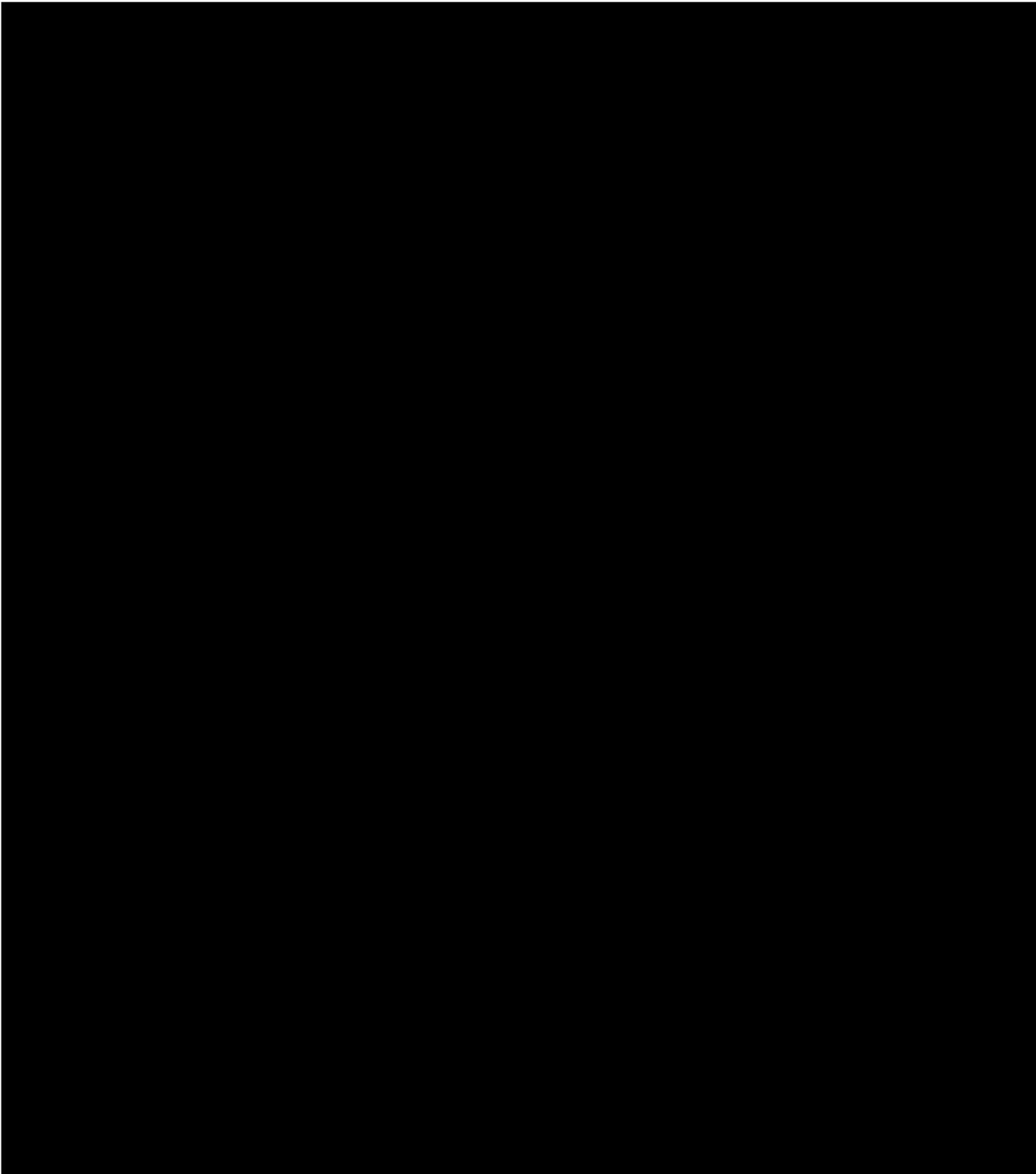
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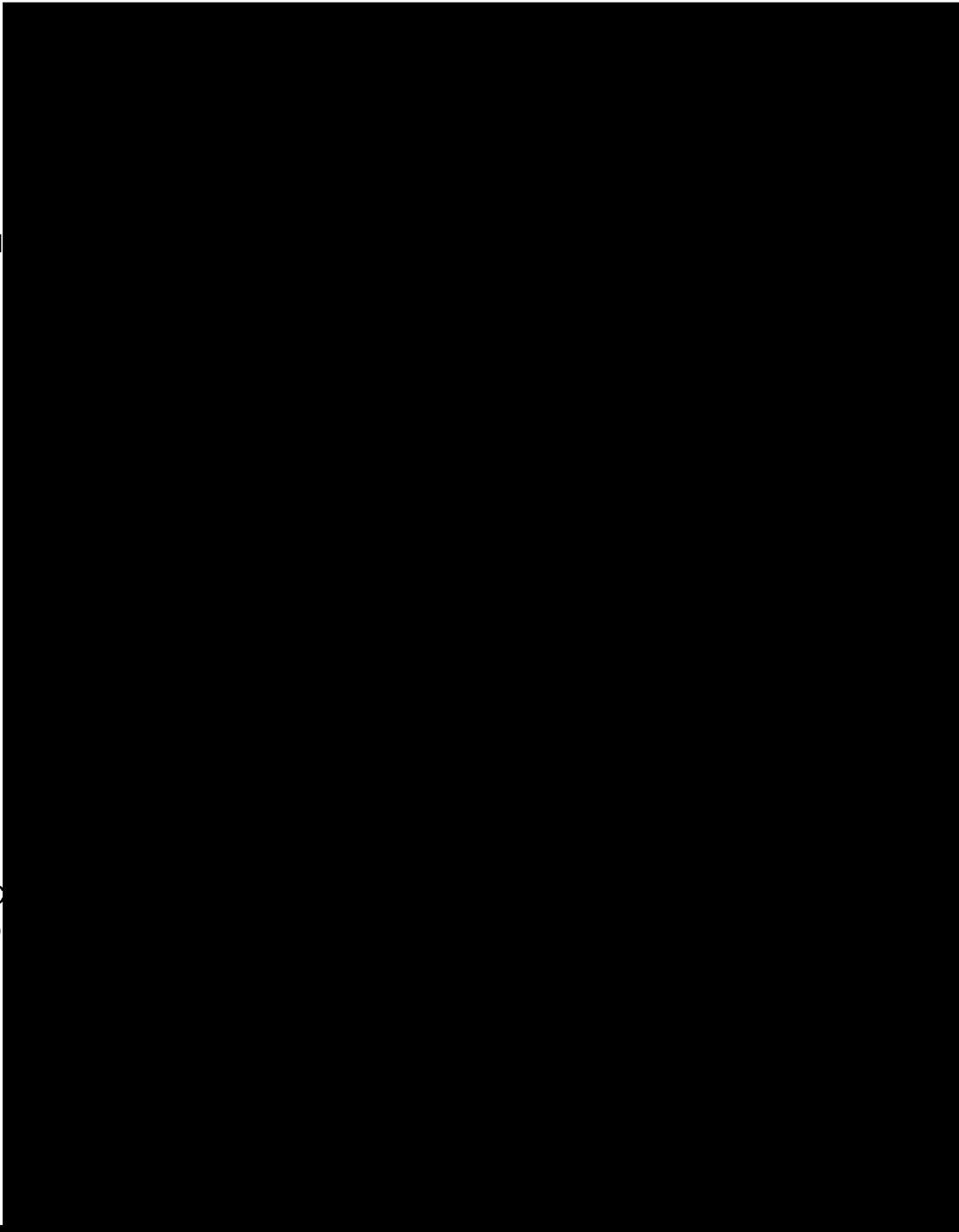
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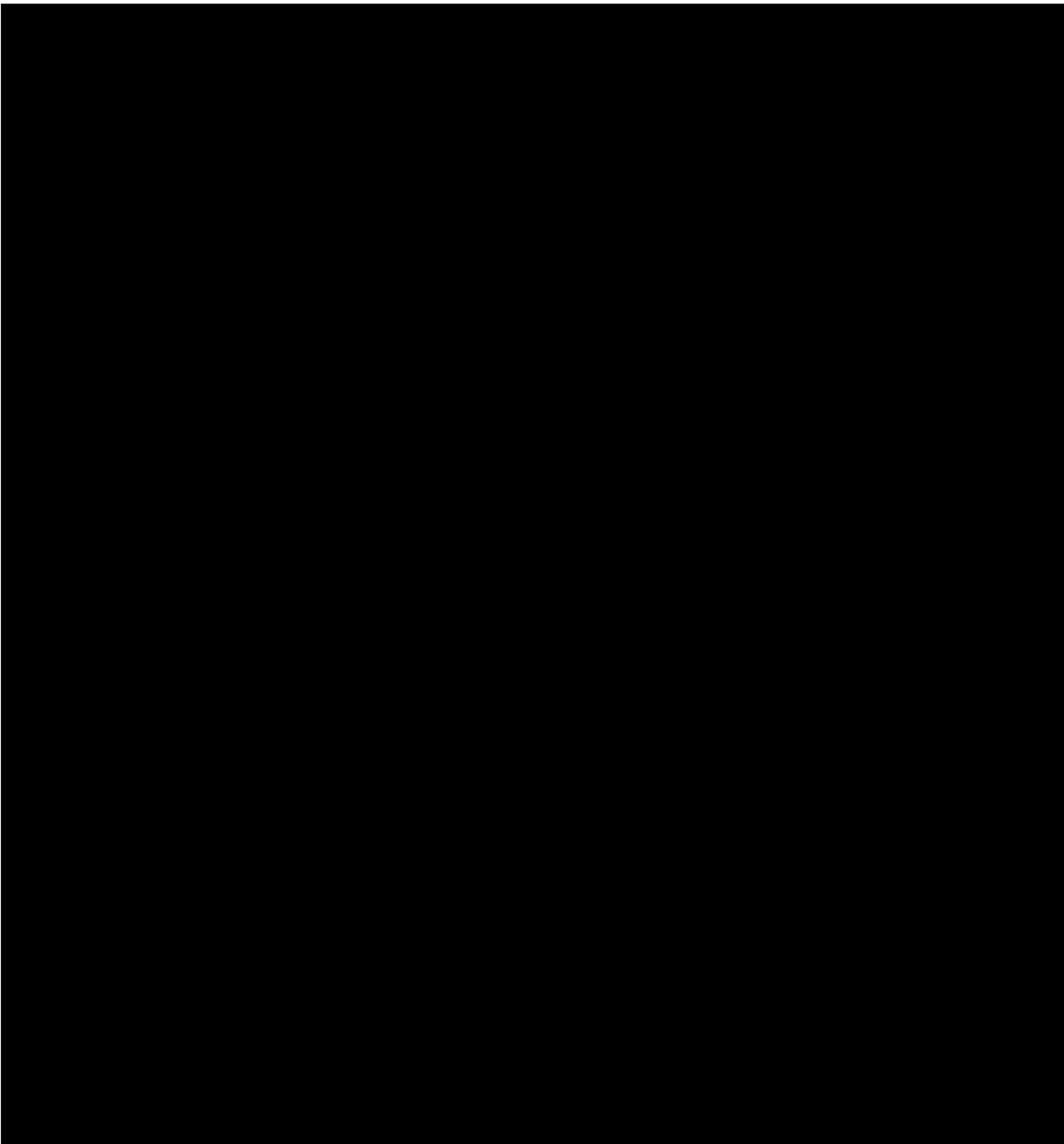
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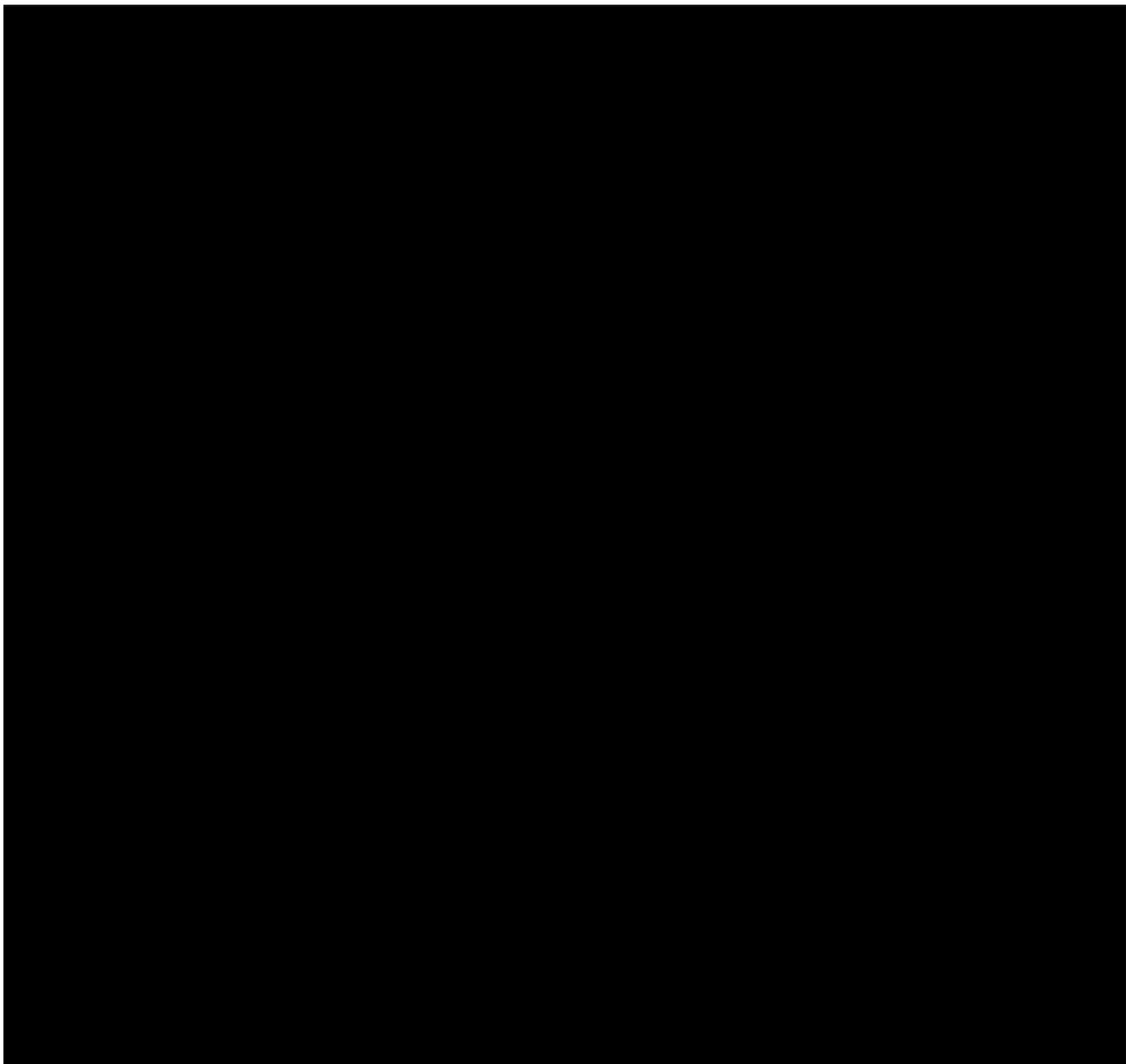
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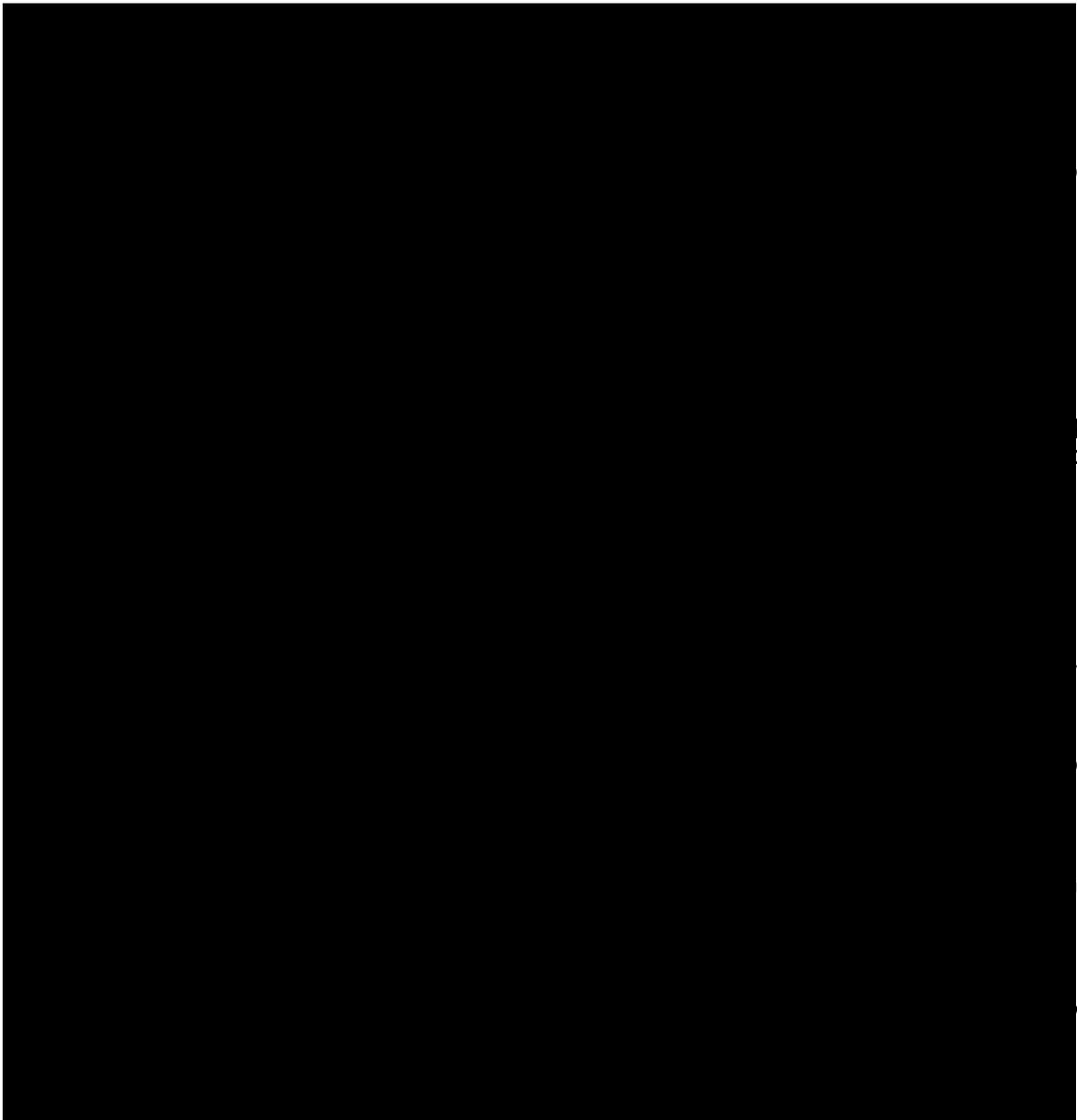
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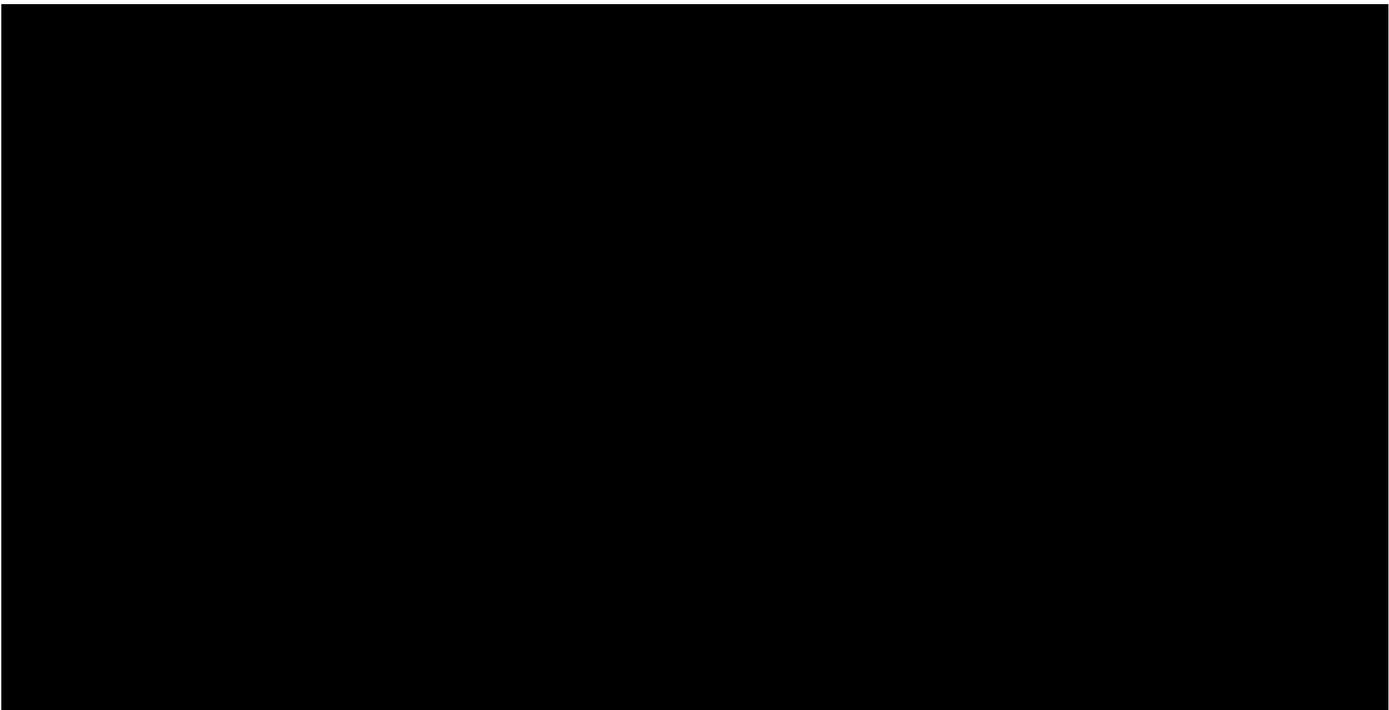
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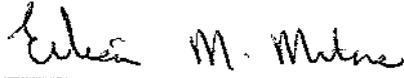


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IN WITNESS of which this Contract has been duly executed by the parties.

SIGNED for and on behalf of **CARE QUALITY COMMISSION**



Signature

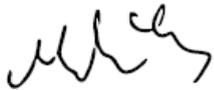
Name 

Position 

Services

Date24 October 2016.....

SIGNED for and on behalf of **SAPIENT LTD**



Signature

Name.....

Position DIRECTOR

Date 20/10/2016

SCHEDULE 1 - SPECIFICATION

Overview:

This agreement covers the provision of testing services for the following Customer systems spanning November 2015 to November 2016:

- OBIEE
- OLS
- CRM

The following key services are required and are cross-functional across the aforementioned systems:

- Understanding of the changes and creation of Test data and Test scenarios.
- Functional Testing on the Inspection Defect Fixes
- Regression Testing due to defect fixes
- Report Format changes testing.
- Providing UAT Support
- Testing on the Training Environment
- Production Preparation, Production day support and post Production support.

Each piece of Testing required will be called-off based on set day-rates specified in Schedule 2 of this Contractual Agreement 'Pricing' and will fall under a specific Testing Release Project.

Deliverables

The following Testing Release Projects detailed within Table 1 form contract deliverables are to be carried out as part of this agreement:

Table 1: Contract Deliverables

Deliverable	Estimated Completion Date
1. Testing related to one OBIEE project completed in 2015/2016 -OBIEE Release 29.2 (28 Days)	17 th April 2016
2. Testing related to one OBIEE project completed in 2015/2016 -OBIEE Release 32 (30 Days)	17 th April 2016
3. Testing relating to one project completed in 2015/2016 -CRM Open UI upgrade (10 Days)	17 th April 2016
4. Testing relating to one project completed in 2015/2016 -CRM Essential Changes Release 31 (33 Days)	17 th April 2016
5. Testing for OBIEE Release 33	29 th July 2016
6. Testing for CRM - Maintenance & Improvements Release 32.1 and Release 33	29 th July 2016
7. Testing for OLS Migration - Phase 2	29 th July 2016
8. Testing for OBIEE Release 33.1 and 34	25 th November 2016
9. Testing for CRM - Maintenance & Improvements Release 33.2 and	25 th November 2016

R34	
10. Testing for Inspections - PMS & Hospitals	25 th November 2016

Authority Responsibilities

The Authority will be responsible for:

- Overseeing each individual testing project
- Specifying to the Contractor the testing required under each project on a call-off basis
- Making the necessary arrangements to ensure the Contractor can work within the Customer's premises including the provision of the necessary equipment including any laptops and servers required to conduct the services outlined within this Schedule 1.

Principal Location

The services are to be performed at the Customer Head Office located at the following address:

Care Quality Commission,
151 Buckingham Palace Road,
3rd Floor,
London,
SW1W 9SW

Standards

Quality Standards

The Service Provider must adhere to the Quality Standards to be agreed throughout completion of each individual Testing project.

Technical Standards

The Service Provider must adhere to the Technical standards to be agreed throughout completion of each individual Testing project. The Service Provider will be required to work with the Buyer's existing systems and interfaces.

SCHEDULE 2 - PRICING

The following day-rates detailed within Table 2 shall apply to resource deployed by the Contractor on a call-off basis in order to conduct the Services detailed within Schedule 1. The specific resource required will be specified at the point of call-off however it is anticipated that SFIA Level 3 resource at [REDACTED] will form the majority of the resource required:

Table 2: Supplier Day-Rates

SFIA level	Strategy & architecture	Business change	Solution development & implementation	Service management	Procurement & management support	Client interface	Application developers	Quality assurance	Project & programme management	Design	Creative direction	Marketing strategy & analysis	Content strategy
Follow													
Assist													
Apply													
Enable													
Ensure/Advise													
Initiate/Influence													
Set Strategy/Inspire													

Payment will be made monthly in arrears. The Contractor shall submit invoices to the following address at the end of each month:

CARE QUALITY COMMISSION

T70 PAYABLES F175

PHOENIX HOUSE, TOPCLIFFE LANE

WAKEFIELD, WEST YORKSHIRE

WF3 1WE

payables@sbs.nhs.uk

All invoices must include a valid Purchase order number.

SCHEDULE 3 - CHANGE CONTROL (To be used if required)

Contract Change Note

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

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

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect from the date on which both the Authority and the Contractor have communicated acceptance of its terms.

SCHEDULE 4 - CONTRACTOR AND THIRD PARTY SOFTWARE

CONTRACTOR SOFTWARE

For the purposes of this Schedule 4, “**Contractor Software**” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

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

THIRD PARTY SOFTWARE

For the purposes of this Schedule 4, “**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 4. The Third Party Software shall consist of the following items:

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

SCHEDULE 5 - SECURITY REQUIREMENTS, POLICY AND PLAN

INTERPRETATION AND DEFINITION

For the purposes of this Schedule 5, unless the context otherwise requires the following provisions shall have the meanings given to them below:

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

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

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 4.

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

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

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 5.

“Software” means Specially Written Software, Contractor Software and Third Party Software.

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

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 4.

1. INTRODUCTION

This Schedule 5 covers:

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

2. PRINCIPLES OF SECURITY

- 2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice and Law;
 - 2.2.2 complies with Security Policy Framework; and
 - 2.2.3 meets any specific security threats to the Contractor System.
- 2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
 - 2.3.1 loss of integrity of Authority Data;
 - 2.3.2 loss of confidentiality of Authority Data;
 - 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
 - 2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
 - 2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
 - 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

3. SECURITY PLAN

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 5.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on

the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- 3.5.1 the provisions of this Schedule 5;
 - 3.5.2 the provisions of Schedule 1 relating to security;
 - 3.5.3 the Information Assurance Standards;
 - 3.5.4 the data protection compliance guidance produced by the Authority;
 - 3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
 - 3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
 - 3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.
- 3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 5.

4. AMENDMENT AND REVISION

- 4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 4.1.1 emerging changes in Good Industry Practice;
 - 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
 - 4.1.3 any new perceived or changed threats to the Contractor System;

- 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
- 4.1.5 a reasonable request by the Authority.

- 4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

5. AUDIT AND TESTING

- 5.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 5.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.
- 5.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.
- 5.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

6. BREACH OF SECURITY

- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
 - 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and

6.2.2 prevent an equivalent breach in the future.

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

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

APPENDIX 1- OUTLINE SECURITY PLAN- Not required

SCHEDULE 6 - EXIT PLAN

As per Clause H9.1 the Authority may reasonably request the provision of an Exit Plan to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10 of the Terms and Conditions.

Upon such request by the Authority, the Exit Plan is to be inserted within this Schedule 6.