

Title: The Employer Pays Principle Feasibility Study, within the Horticulture Value Chain

Project Number: C26488

Contract Number: C27058

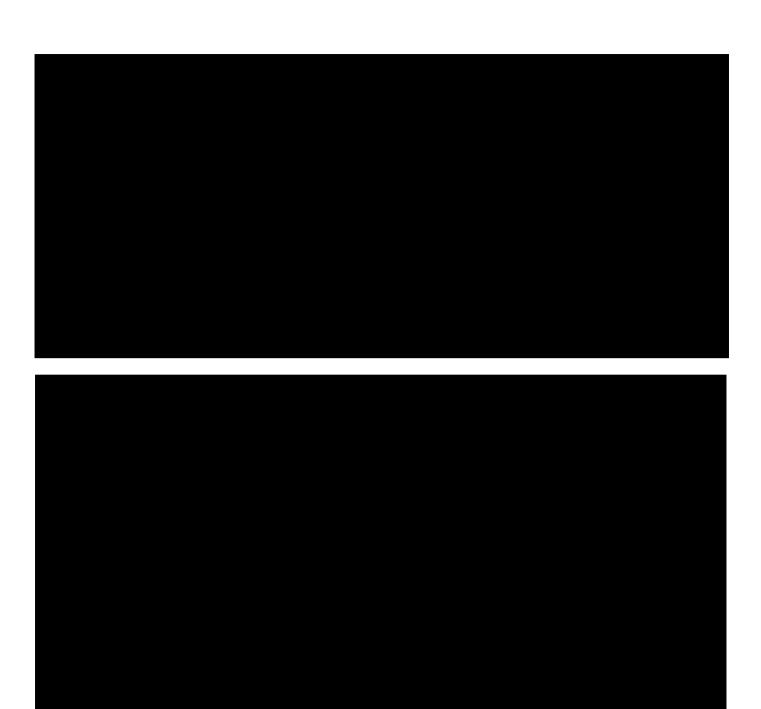
Order Form - Contract for Research and Development Goods and Services

1. Purchase Order Number	To be confirmed
2. Customer	DEFRA Seacole Building, 2 Marsham St, London SW1P 4DF
3. Contractor(s)	Alma Economics 43 Tanner Street, London, SE1 3PL United Kingdom
4. Co-Funder(s)	The Seasonal Worker Scheme Taskforce, represented by Stronger Together Camberley House 1 Portesbery Road Camberley Surrey GU15 3SZ
5. Defra Group Members	The following Defra Group members will receive the benefit of the Deliverables:
6. The Agreement	This Order is part of the Agreement and is subject to the terms and conditions appended at Appendix 1 and shall come into effect on the Start Date. Unless the context otherwise requires, capitalised expressions used in this Order have the same meanings as in the terms and conditions.

	The following documents are incorporated into the Agreement. If there is any conflict, the following order of precedence applies (in descending order):
	this Order;
	the terms and conditions at Appendix 1; and
	the remaining Appendices (if any) in equal order of precedence.
7. Deliverables	Goods: N/A
	Services:
	See Appendix 2 and 3 – Specification / Description / Costings
8. Milestone Delays	N/A
9. Start Date	21 November 2024
10. Expiry Date	30 April 2025
11. Extension Period (Clause 5.2)	Due to unknown situation and/or other factors beyond the control of both parties; an option for an extension may be executed if it is necessary. Any extension must be agreed with the Authority and will be processed via a Contract Change Note (CCN) issued by DGC.
12. Charges	The Charges for the Deliverables shall be as set out in Appendix 3 – Charges. Unless and to the extent otherwise expressly stated in Appendix 3, the Charges are fixed for the duration of the Agreement.
13. Payment including Payment by Co-funder(s)	
14. Customer's Authorised Representative(s)	For general liaison your contact will continue to be

15. Contractor's Authorised Representative	For general liaison your contact will be			
16. Co-funder's Authorised	+			
Representative				
17. Optional Intellectual Property Rights ("IPR") Clauses	The Customer has chosen Option E provisions for the Agreement as set	3 in respect of intellectual property rights tout in the terms and conditions.		
	Default Option B: Customer (Defra) including co-funder (Taskforce) ownership of all New IPR with limited Contractor rights to all New IPR in order to deliver the Agreement.			
	NB: Commercial Exploitation - Where there is likelihood that the contract may			
	involve commercial exploitation, a legal review will be required before proceeding.			
18. Contractor's general				
liability cap				
10 Progress Mostings and	Defendition of the Decimal Management of the Continuous Inc.			
19. Progress Meetings and Progress Reports	Defra will nominate a Project Manager who will be responsible for the day-to-day management of this contract and ensure it meets the project aim and objectives. The (Defra) Project Manager will monitor progress and provide advice, support, and guidance on project scope, methodology, policy focus, and project outputs. Meetings will be incorporated into the Programme of			
	Work to discuss progress and to ensure timely support as required. Similarly, the Contractor should identify individuals who will manage the progress of the research and nominate a representative for day-to-day contact with the Defra project officer.			
	Reporting will be scheduled at key gateway points, prior to scheduled payment windows to sign off deliverables per phase.			
20. Address for notices	Customer: DEFRA	Contractor: Alma Economics		
	Attention:	Attention:		
	DEFRA	Alma Economics 43 Tanner Street,		
	PLIIV	TO 1 AIIII O II GEL,		

2 Marsham St, CE1 3PL London SW1P 4DF Tel:	
On four days	
Co-funder(s):	
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21. Key Personnel of the Contractor	
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viewed on gov.uk at Research at Defra: open access policy for publication 23. Commercial Exploitation (Clause 11 (Commercial Exploitation) shall apply to this Agreement: Yes: □ No: ☑ N/A 25. Additional Insurance N/A	<u>ns</u> .



Appendix 1: R&D Terms and Conditions

The terms and conditions applicable to this requirement can be found on the website below;

Research and development terms and conditions - GOV.UK (www.gov.uk)

Appendix 2: Specification/Description

<u>Background to Defra's Seasonal Worker Team, Stronger Together, and the Seasonal</u> Worker Scheme Taskforce for which Stronger Together act as secretariat

Defra has a Seasonal Workers team within the Agri-Food Chain Directorate, which focuses on seasonal labour and the welfare of seasonal workers. The Seasonal Worker Scheme Taskforce (hereon, "the Taskforce") is a multi-stakeholder programme consisting of retailers, growers, suppliers, scheme operators, NGOs, and non-profits working collaboratively to develop and implement tangible actions to help safeguard and ensure access to workers' rights in the scheme. Stronger Together is an impact driven, not for profit organisation that provides businesses with practical training, resources, business services and collaborative programmes. Stronger Together is working towards a vision of a world where all workers are recruited responsibly and have fair work free from exploitation.

Background to the specific work area relevant to this purchase

Migrants using the Seasonal Worker visa route are at risk of exploitation as reported in the ICIBI report (e.g. para 3.45) and DLME's UK Labour Market Enforcement Strategy 2022-23 which notes agriculture is a 'high risk sector' for seasonal workers. These risks include debt bondage from costs incurred whilst travelling to and working in the UK and costs incurred in migrants' home countries.

Adoption of the Employer Pays Principle (EPP) has been cited by various organisations such as the Institute for Human Rights and Business (IHRB) and many retailers as potentially important to mitigating these risks. IHRB defines the EPP as "No worker should pay for a job – the costs of recruitment should be borne not by the worker but by the employer." The definition of recruitment fees and related costs in this project will match those of the International Labour Organization's (ILO) definition, i.e. "any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection". Further itemised definitions of recruitment fees and related costs are included in the ILO General principles and operational quidelines for fair recruitment and Definition of recruitment fees and related costs.

Requirement

The objective is to produce a cost analysis and potential models of implementing the EPP for horticulture seasonal workers and to identify the potential economic and welfare implications.

The project, as specified below, will be processed via an open competition and the intention is to commence in November 2024 for around six months.

The primary goal of this work is to reduce risk for workers whilst reasonably taking into account considerations such as food security, sustainability of the UK horticulture sector, consumers, etc.

Desired outputs include:

1. Stocktaking Report:

Essential

a) End-to-end illustration of how supply chains in the sub-sectors of the horticulture sector that use the most seasonal workers are structured.

Desirable

- b) High-level analysis of implementation of the EPP in different countries.
- c) Identification and mapping of workers' types of employment per crop.

2. Assessment of Costs Report:

Essential

a) End-to-end process map of where recruitment costs are incurred by migrant workers, how much and where costs would fall.

Desirable

- b) This should include an average cost for workers ideally per country with confidence limits, depending on data available.
- 3. Economic modelling of the implications of implementing costs associated with EPP based on:

Essential

- a) Range of implementation models where costs are shared differentially between different actors within the supply chain.
- b) Scenarios of partial versus full application of the EPP.

Desirable

c) Scenarios of a phased approach to implementation over a period of time.

Economic modelling should include the potential positive or negative implications on:

- i. The horticulture sector from applying the EPP, including the sustainability of the sector or the visa route.
- ii. Impacts on other actors within the supply chain, including the economic impact on competitiveness of the UK horticulture sector vs imports, and wholesalers i.e. hospitality and public procurement.
- iii. The workers' welfare, as a consequence of reducing financial risks faced.
- iv. Risks of illegal fee charging to workers.
 - 4. Assessment of potential operational models by which to implement the costs of EPP based on the options as outlined in part 3

To Note:

The successful bidder will be expected to outline a robust methodology to achieve this which may include conducting, among others:

- Early project scoping including desk-based review of existing data sources and research.
- Kick-off meeting for further input from Defra, the SWS Taskforce and a multistakeholder advisory group to refine project design.
- Confidential interviews with relevant supply chain actors to look at current commercial modelling for recruitment and labour costing at different tiers in the supply chain.
- Confidential interviews with operators of seasonal labour schemes in other countries that implement the EPP.
- Engagement and interviews with wider advisory stakeholders, including worker representative organisations.
- Worker-centred interviews with a broad range of migrant workers from different countries represented in the analysis.
- Regular engagement and reporting to the multi-stakeholder advisory group at key project milestones.
- Consultation with devolved governments to understand the implications for them of applying the EPP to the UK's horticulture sector.

Scope

- a) Only the horticulture sector.
- b) Only seasonal workers will be considered.
- c) UK-wide (given workers can transfer between farms in different regions of the UK).
- d) All recruitment fees and related costs as defined in the ILO Definition of Recruitment Fees and Related Costs, including those that are legal for workers to pay such as travel costs, should be considered within the economic modelling of the cost of EPP.
- e) Additional illegitimate, unreasonable and undisclosed costs, also defined in the ILO Definition of Recruitment Fees and Related Costs, should not be factored into the economic modelling except in assessments of potential positive or negative consequences. This is a limitation of the study that needs to be managed through effective due diligence in the implementation phase.

Variables

The bidder needs to demonstrate their methodology to ensure the economic modelling and operationalisation models include a representative sample of the following variables are considered and represented:

- a. A range of crops that reflect different season lengths.
- b. A sample of the different recruitment corridors from near, mid and far recruitment (e.g. but not necessarily Bulgaria, Kyrgyzstan, Indonesia).

- c. A sample of different Scheme Operator Recruitment and commercial models, with appropriate provisions in place to protect any information deemed commercially sensitive/confidential e.g. online, direct in-country office, direct UK teams, indirect via in-country agent.
- d. A range of scenarios of employment during the season including via transfers (e.g. one employer full 6 months; one employer shorter season; multiple employers (via transfers) full 6 months; multiple employers (via transfers) shorter season).
- e. A range of crops for which the direct labour cost is of varying proportion to the overall product cost. Direct labour cost should include the total cost of employment and recruitment, including the fee the Scheme Operator charges.
- f. A range of workforce make-up whereby seasonal worker visa (SWV) workers and other seasonal workers make up varying proportions of the overall workforce.
- g. The variability on the length of worker contract and any early termination, initiated by the employer or worker.

Key Assumptions

- a. The operation and scheme rules of the seasonal worker visa route remain unchanged.
- b. The application of the Employer Pays Principle in this context means that recruitment fees and related costs should not be borne by the worker (in line with the ILO Definition of Recruitment Fees and Related Costs) and should instead be reflected fairly in cost prices in the value chain.
- c. Financing models should be suggested to mitigate impacts on cash flow for those least able to afford, including consideration for worker cash flow and risk of going into debt for migration costs, and challenges at different levels in the value chain.
- d. The costs of all seasonal workers employed in the UK horticulture sectors (e.g. including those on Seasonal Worker Visas, EU Settled Status, those on Ukrainian visa schemes and UK residents) should be factored in for modelling the EPP with clearly defined representation in the analysis.
- e. Proposed operational models of the EPP should conform to the <u>UN Guiding Principles</u> on <u>Business and Human Rights</u>.
- f. The UK will continue to have a food security agenda and an interest in maintaining current levels of UK food production.
- g. The successful contractor will also be expected to apply their own assumptions, in agreement with Defra and the SWS Taskforce, to the modelling.

Definitions

- a. *Employer Pays Principle (EPP)*: No worker should pay for a job the costs of recruitment should be borne not by the worker but by the employer.
- b. *ILO definition of recruitment fees and related costs*: Any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. Full itemised definition here.
- c. Seasonal worker: A worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year (UN ICMW 1990). A seasonal worker may be a national of the State in which the seasonal work is performed or a migrant worker (see here).
- d. *Migrant worker:* A migrant worker is a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (UN ICMW 1990).
- e. Seasonal worker visa (SWV) worker: A migrant worker who holds a UK seasonal worker visa to work in UK horticulture or poultry (see here).
- f. Horticulture: The branch of agriculture that relates to the production, cultivation and management of edible fruits and vegetables, and ornamental plants (see here).
- g. Value chain: In this context refers to the processes and costs associated with recruiting workers from their place of residence through to the consumption of the products they cultivate and harvest in the UK.

End Products

- The successful contract must make all reasonable attempts to meet requirements for publication of accessible documents, following GOV.UK guidance on how to do so, as found here: <u>Publishing accessible documents - GOV.UK (www.gov.uk)</u>; <u>Document publishing standards | Defra Intranet</u>). They will agree with project officers where these cannot be met because they are a <u>disproportionate burden</u>.
- Products, including economic mapping and written conclusions, will be shared with all members of the Taskforce, and publicly. It will be made accessible via GOV.UK.

Deliverables and Payment Schedule Table

The following dates and deliverables are currently an estimation and will be reviewed by Defra, the Taskforce and the contractor together.

	Project Deliverables	Detail of Deliverables	Responsible Party	Payment Schedule, Date of completion, end (e.g. by week 2):
1	Kick off Meeting	defined in the bid/project specification) and gather stakeholder input.	Contractor, Defra Project Manager, SWS Taskforce and Project Advisory Group	Week 1 (week immediately after contract is awarded)
2	Refined Project Plan	A refined project plan sent to Defra, SWS Taskforce and Project Advisory Group. The project plan will provide an updated methodology and timetable (beyond the original proposal) following the kick-off meeting.	Contractor, Defra Project Manager, SWS Taskforce and Project Advisory Group.	End of week 3
3	Update Meeting, incl. submission and presentation on	Discussion of the project plan to agree its outlook, assessment of key findings via presentation and submission and reaching consensus on next steps	SVVS LASKIORCE	End of week 4 (20% of payment)

4	Management Meeting, incl. submission and		Project Manager	End of week 8 (20% of payment)
5	Progress Review Presentation (Data findings)	(suggested completion date	_	End of week 13 (20% payment)
6	Progress review Presentation (Economic modelling)	Contractor presents	1	End of week 18 (20% of payment)
7	Final Report Presentation	As an independent report authored by the Contractor, no influence on content at	review the report	End of week 23 (20% balance payment)

Payment Schedule

The successful Tenderer will be paid by invoice following satisfactory completion of the above Deliverables 3, 4, 5, 6, and 7.

Roles, Responsibilities, and Governance

Governance of the project will be managed by Defra in collaboration with the Taskforce, with Stronger Together acting as the secretariat for the latter. Defra and the Taskforce will work together to select the successful bidder and will work in partnership to provide oversight of the project. For this, the successful bidder will be expected to report on progress to both parties.

To deliver effective governance and oversight for the broader management of the project, Defra and the Taskforce will create a Project Advisory Group of stakeholders from within and outside Taskforce membership including NGOs, IGOs, industry, and government/public bodies.

The successful bidder will report to Defra and the Taskforce and will be guided by them. But, to ensure robust and realistic conclusions are developed, the successful bidder will be independent of both Defra and the Taskforce. Additionally, the Project Advisory Group will provide ongoing advice and support throughout the project.

The successful bidder will be expected to appoint a Project Manager who will act as the principal point of contact for Defra and who will be jointly responsible for the day-to-day management of the project. The successful Tenderer will be required to regularly update the nominated Defra Project Manager on project progress.

Quality Assurance

The evidence used in preparing the final report must be collected, processed and published with rigor, following appropriate quality assurance (QA) processes, which will be in place from the outset of the project and will be embedded within the contracting organisation. The Contractor will provide Defra with relevant assurances around QA procedures and/or certifications from recognised standards providers (e.g. ISO). Defra will review and assess quality assurance by internal and external peer review before final approval of outputs presented by the Contractor.

Appendix 3: Charges

- 2. The Authority shall pay all sums due to Alma Economics within 30 days of receipt of a valid invoice.
- 3. The invoice must include a valid purchase order number (PO Number) and the details (name and telephone number) of customer contact (i.e. Defra Contract Manager).
- 4. To avoid delay in payment it is important that the Contractor submit a compliant invoice. Any non-compliant invoices received will be returned to the Supplier, which may lead to a delay in payment.
- 5. The Authority is liable to the Contractor only for their respective payment in accordance with this schedule.
- 6. Any overpayment to the Contractor made by the Authority, whether of Project price or of VAT, shall be a sum of money recoverable by the Authority from the Contractor.



Table 2: Milestone and Payment Schedule

The following dates and deliverables are currently an estimation and will be reviewed by Defra, the Taskforce and the contractor together.

	Project Deliverables	Detail of Deliverables	Responsible Party	Payment Schedule, Date of completion, end (e.g. by week 2):
1	Kick off Meeting	defined in the bid/project specification) and gather stakeholder input.		Week 1 (week immediately after contract is awarded)
2	Refined Project Plan	A refined project plan sent to Defra, SWS Taskforce and Project Advisory Group. The project plan will provide an updated methodology and timetable (beyond the original proposal) following the kick-off meeting.	Contractor, Defra Project Manager, SWS Taskforce and Project Advisory Group.	End of week 3
3	Update Meeting, incl. submission and presentation on	Discussion of the project plan to agree its outlook, assessment of key findings via presentation and submission and reaching consensus on next steps	Contractor, Defra Project Manager, SWS Taskforce and Project Advisory Group	End of week 4 (

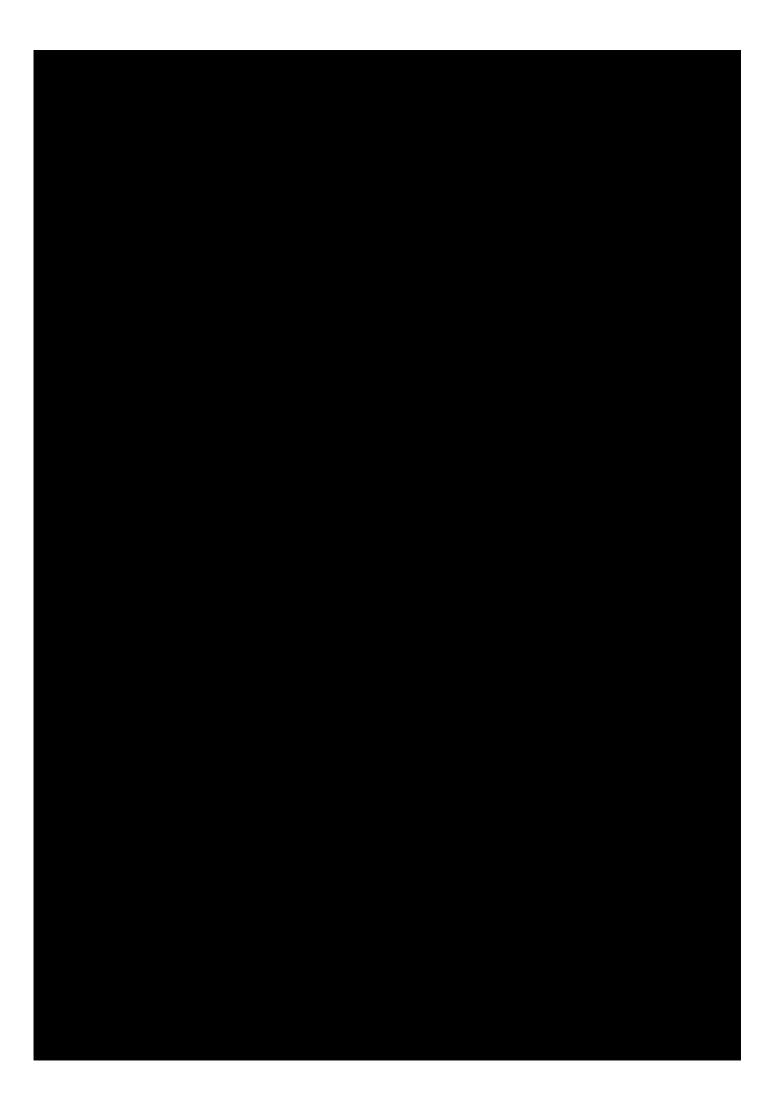
4	Management Meeting, incl. submission and	Project Management Review meeting between the Contractor presents and Defra and / SWS Taskforce on project progress.	Contractor Defra	End of week 8 (
5	Progress Review Presentation (Data findings)	Meeting between Defra, SWS Taskforce, Project Advisory Group and the Contractor to discuss progress and next steps (suggested completion date for data gathering).	Contractor, Defra, SWS Taskforce and Project Advisory Group to review and input	End of week 13
6	Progress review Presentation (Economic modelling)	for economic modelling).	Contractor, Defra, SWS Taskforce and Project Advisory Group to review and input	End of week 18
1/	Final Report Presentation	Final report to be submitted to Defra. As an independent report authored by the Contractor, no influence on content at this stage by Defra or SWS Taskforce.	Contractor, Defra and SWS Taskforce to review the report regarding service levels and quality.	End of week 23

Payment

Payment will be by invoice in five (5) stages as outlined in the above milestone table as well as on satisfactory completion of the above Deliverables 3 (20% of total cost), 4 (20% of total cost), 5 (20% of total cost), 6 (20% of total cost) and 7 (20% of total cost).

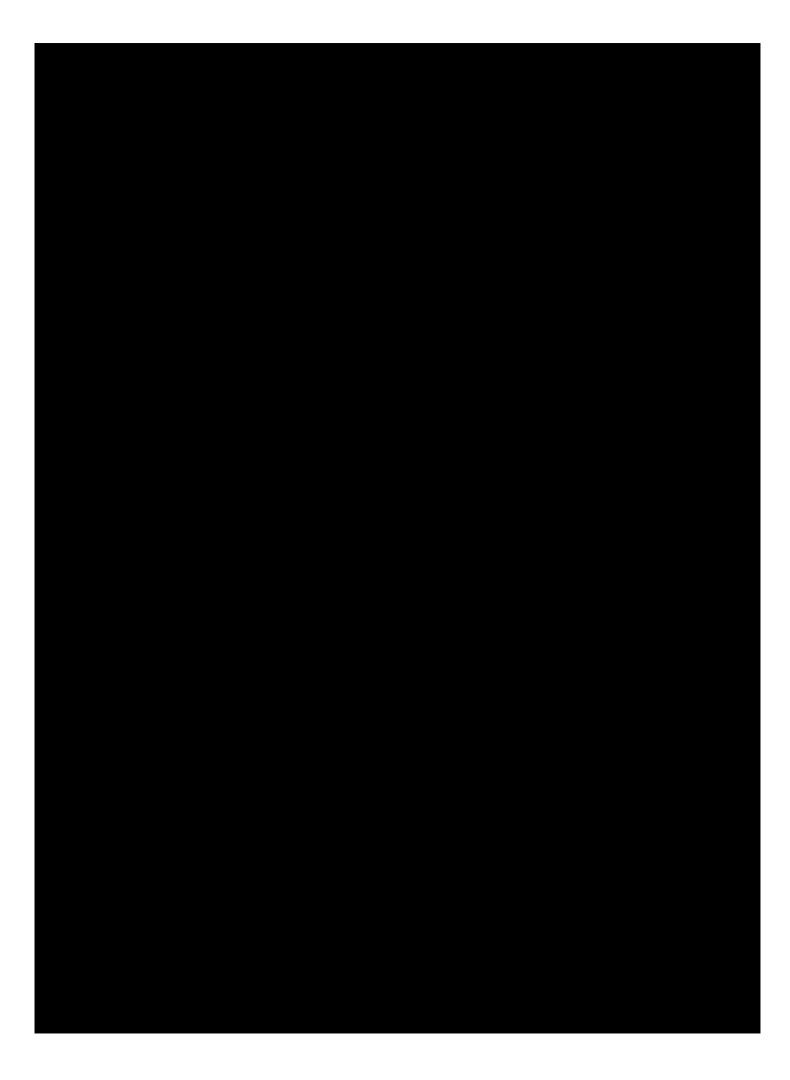
Appendix 4: Supplier Proposal

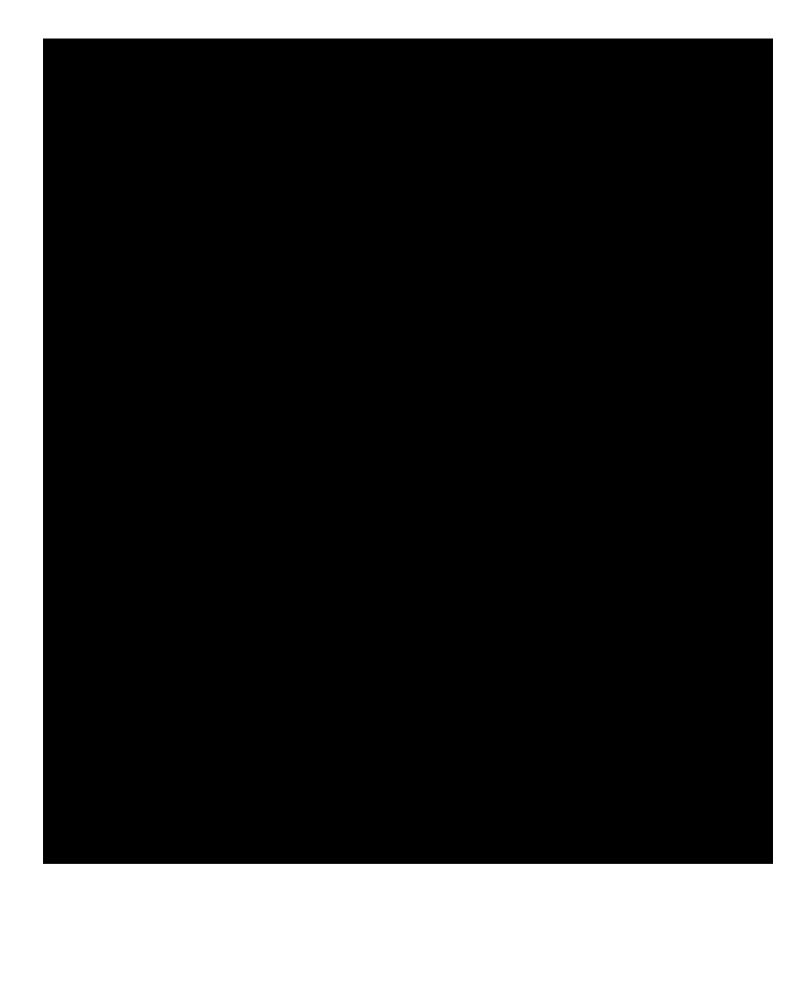


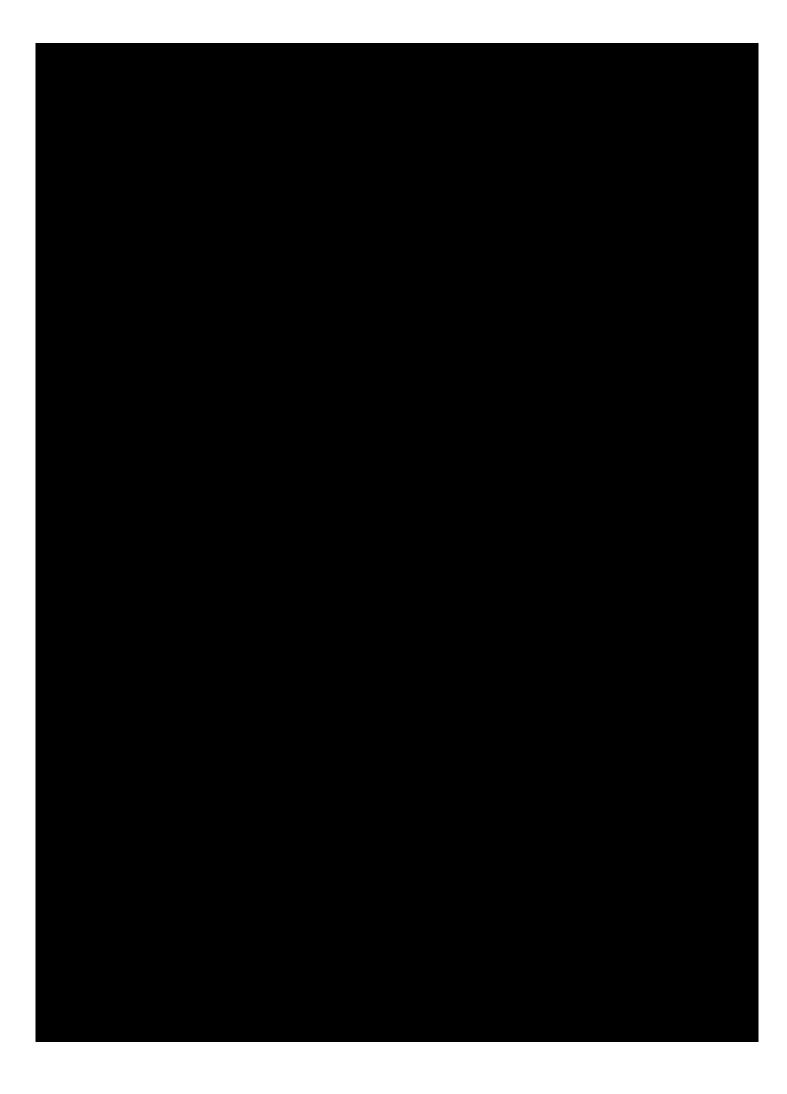




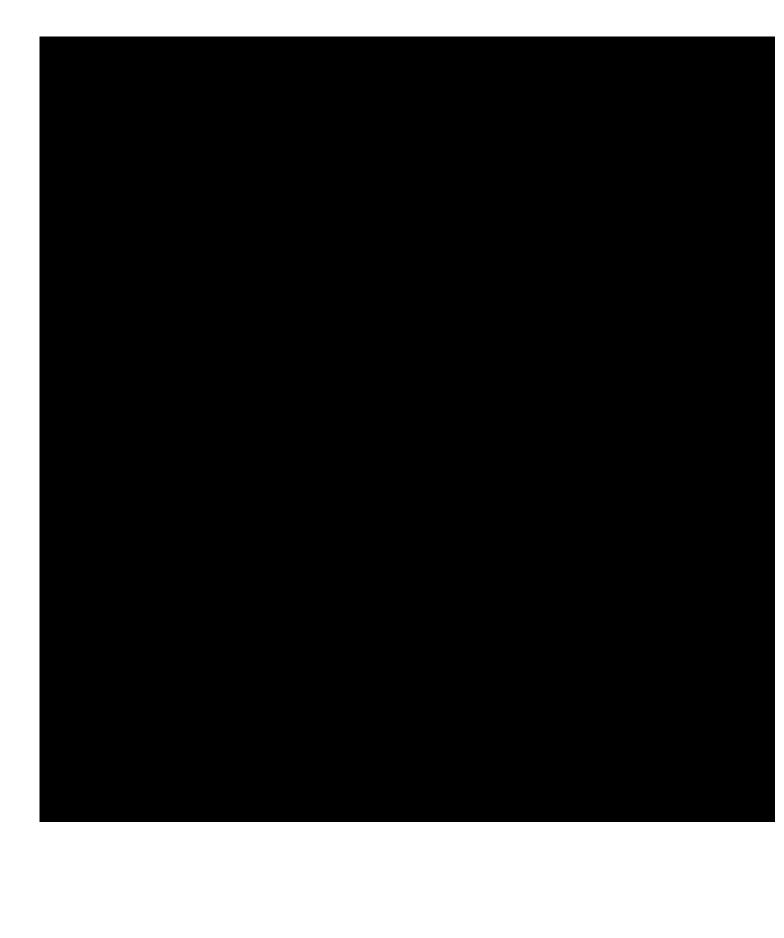


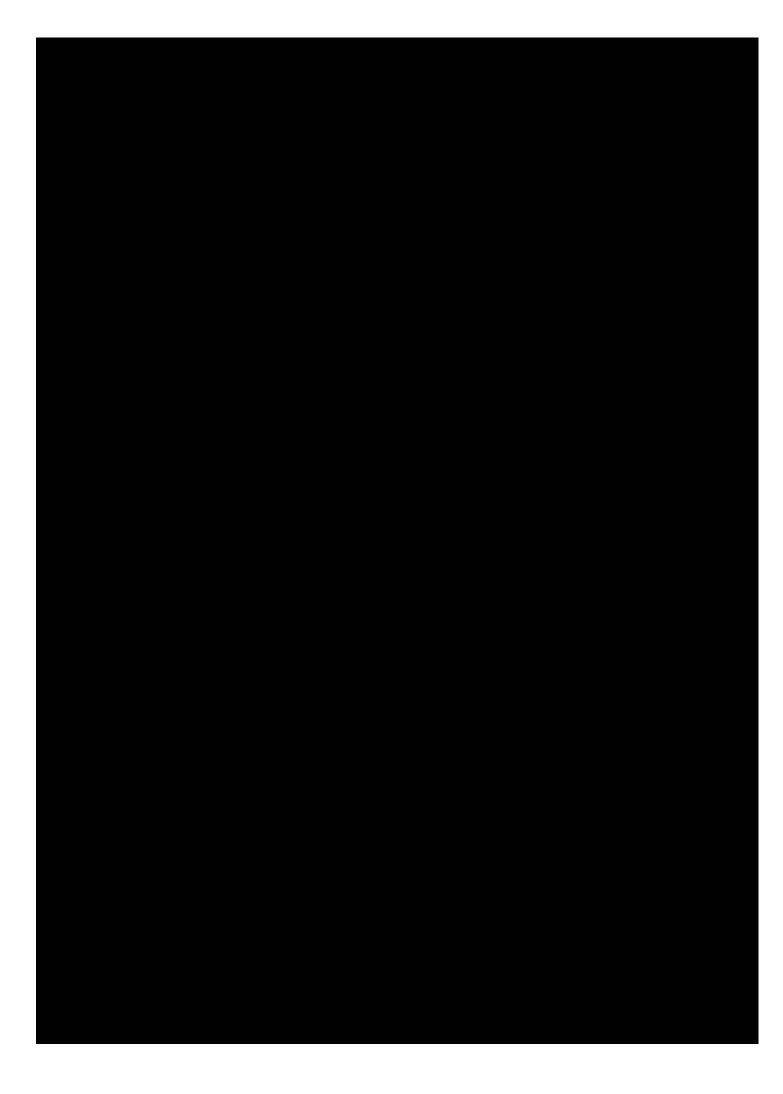




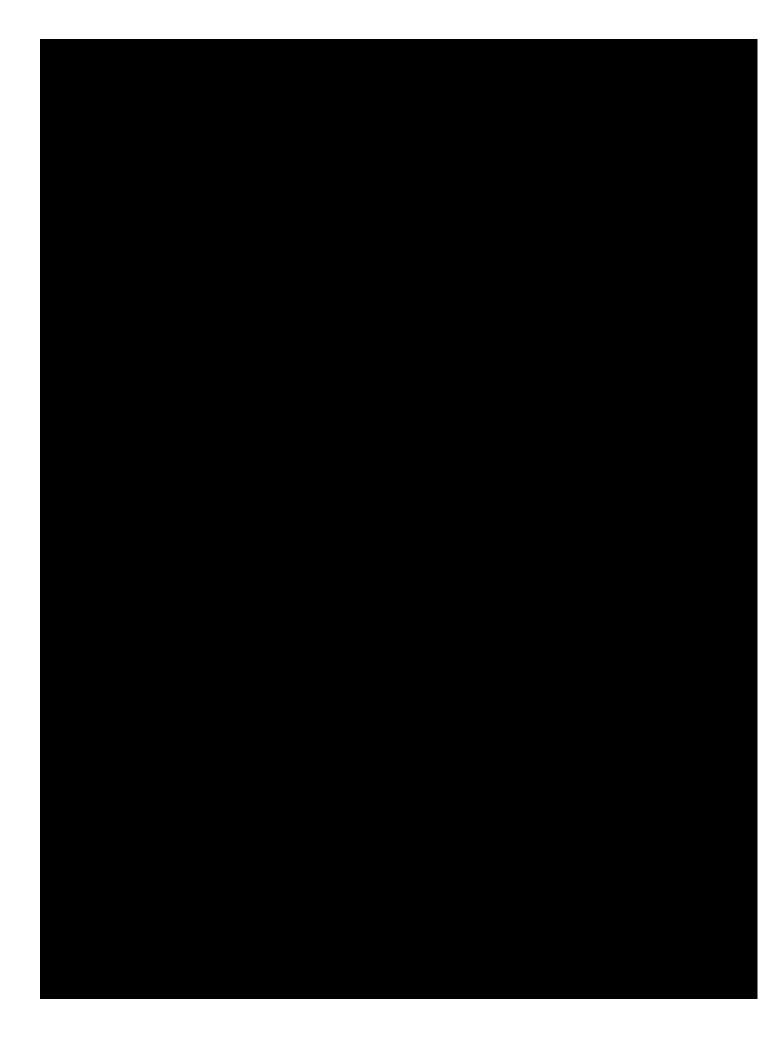


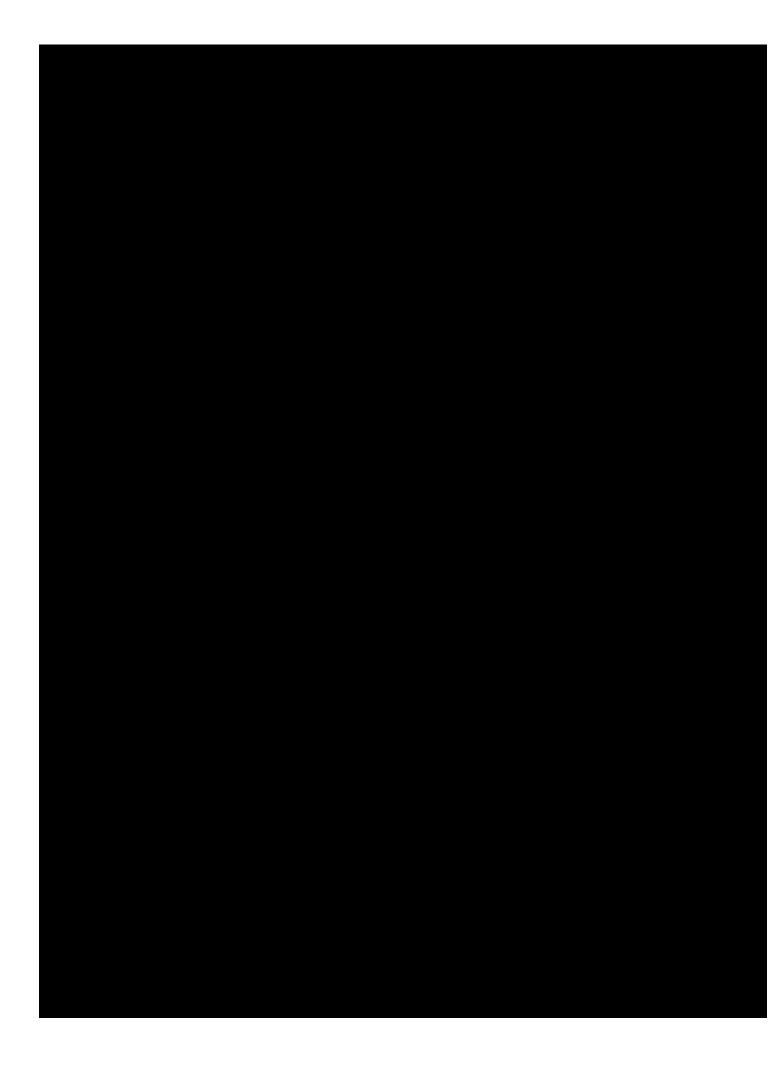


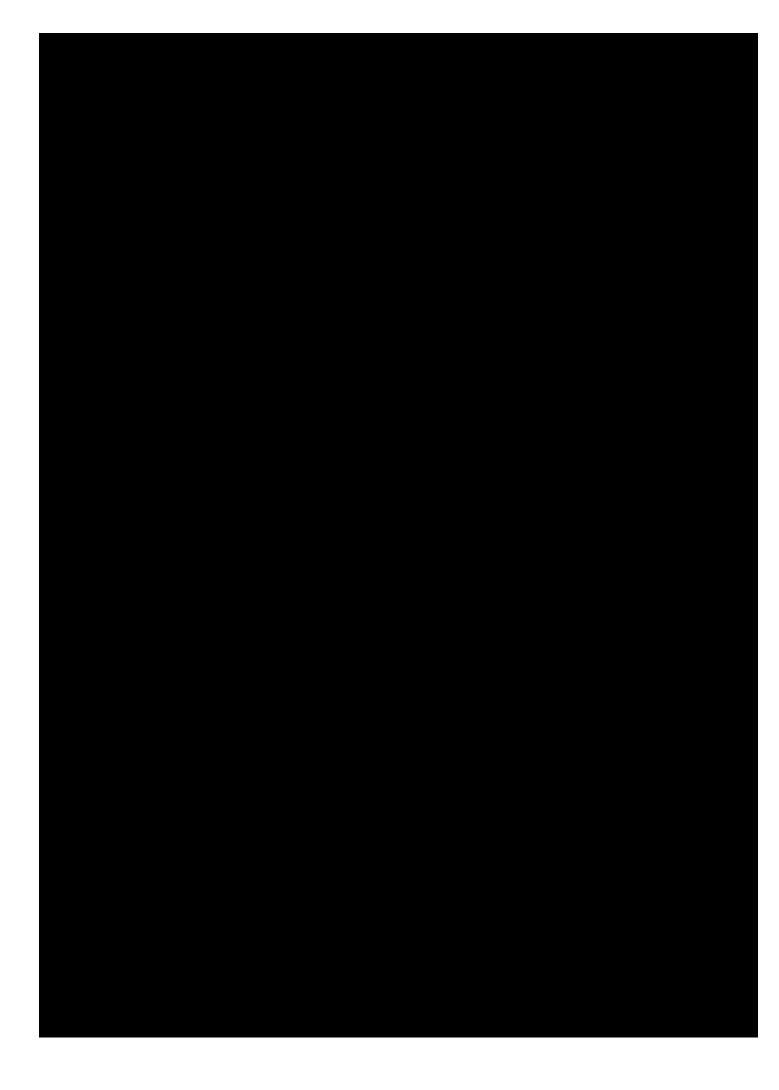


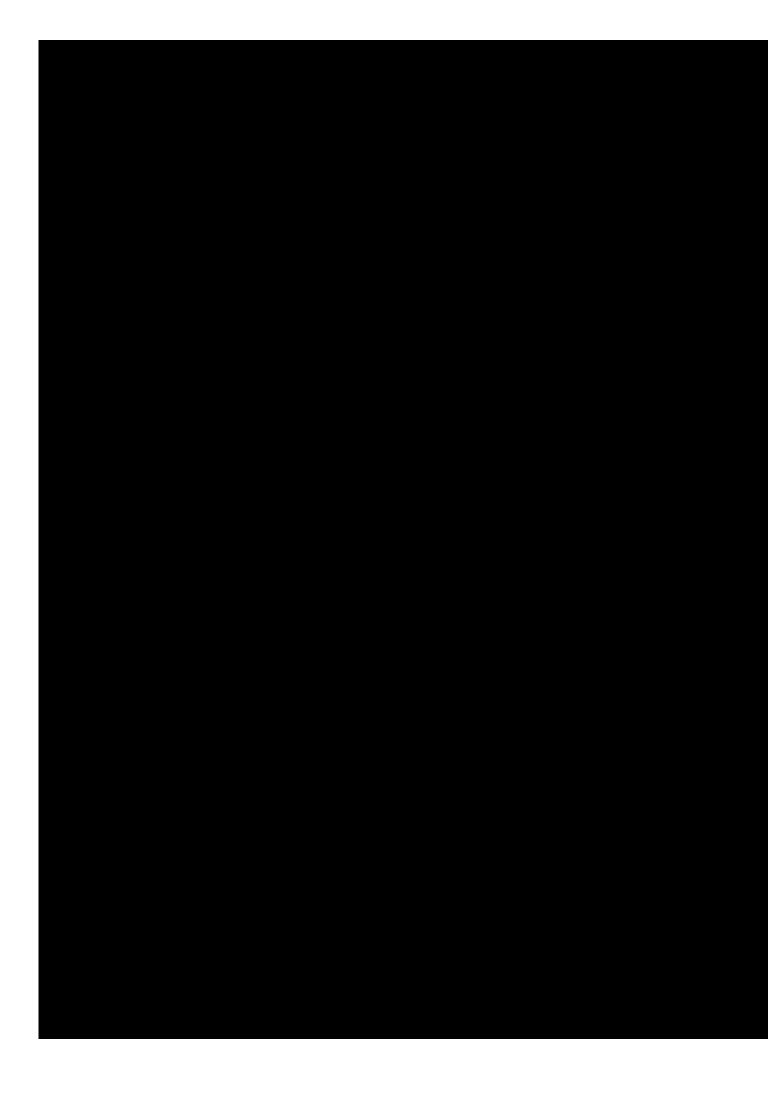






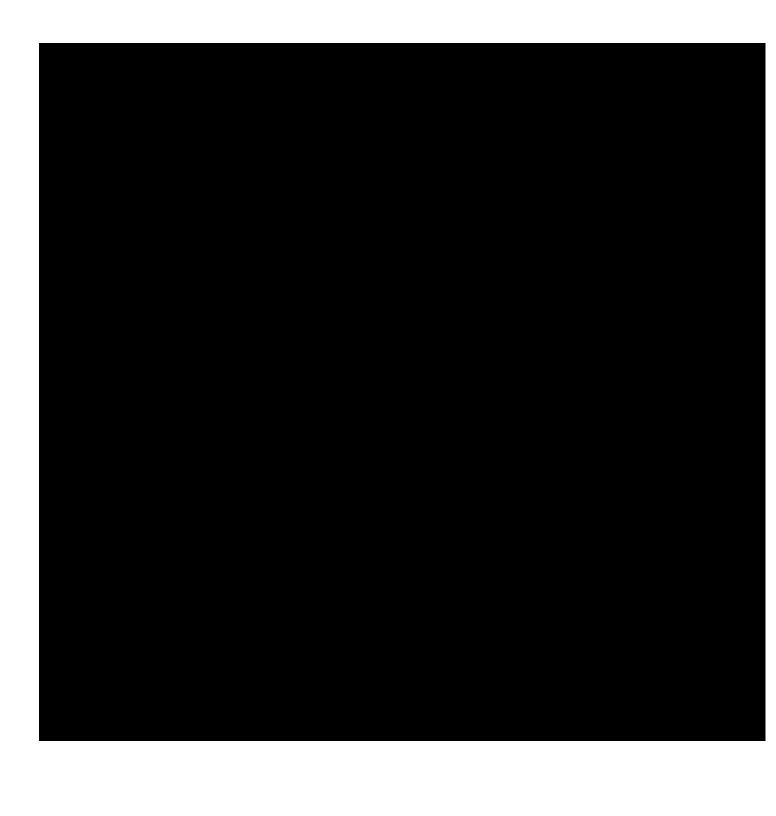








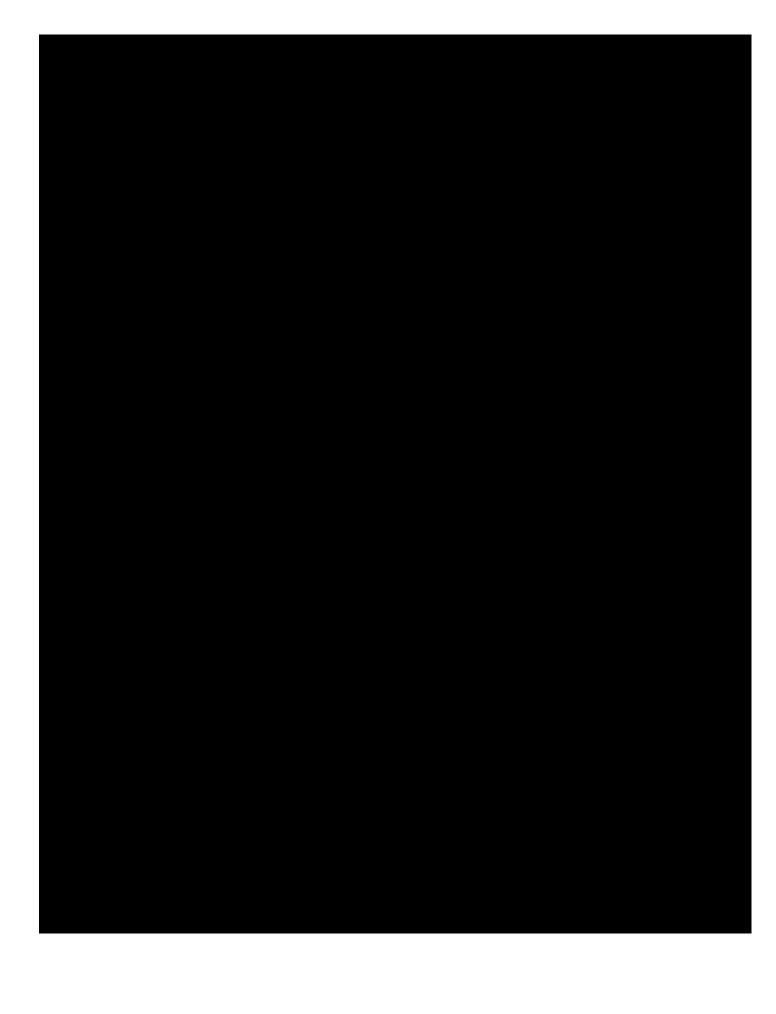


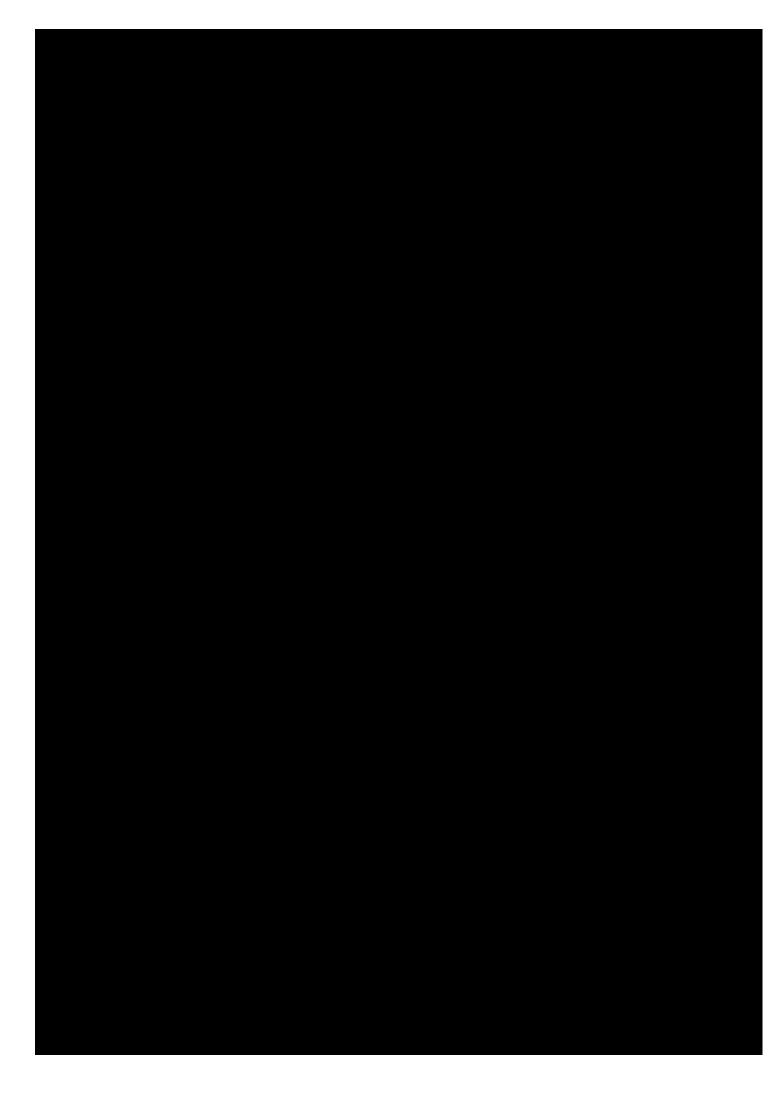




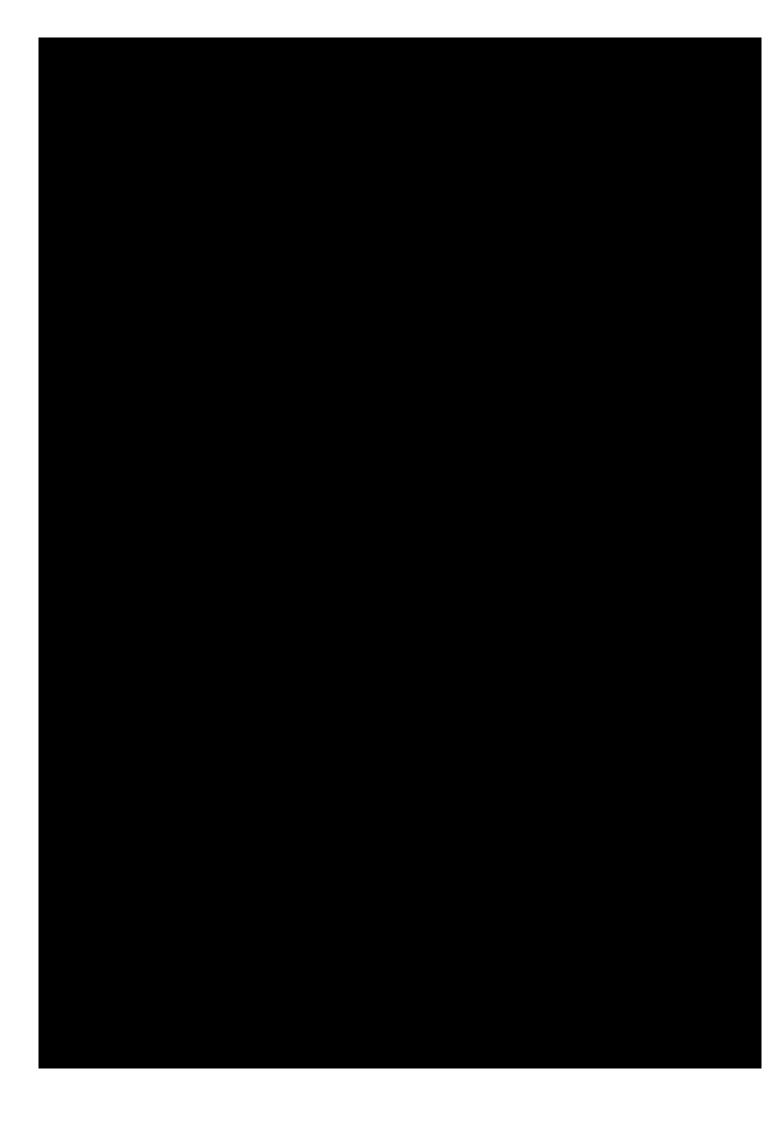


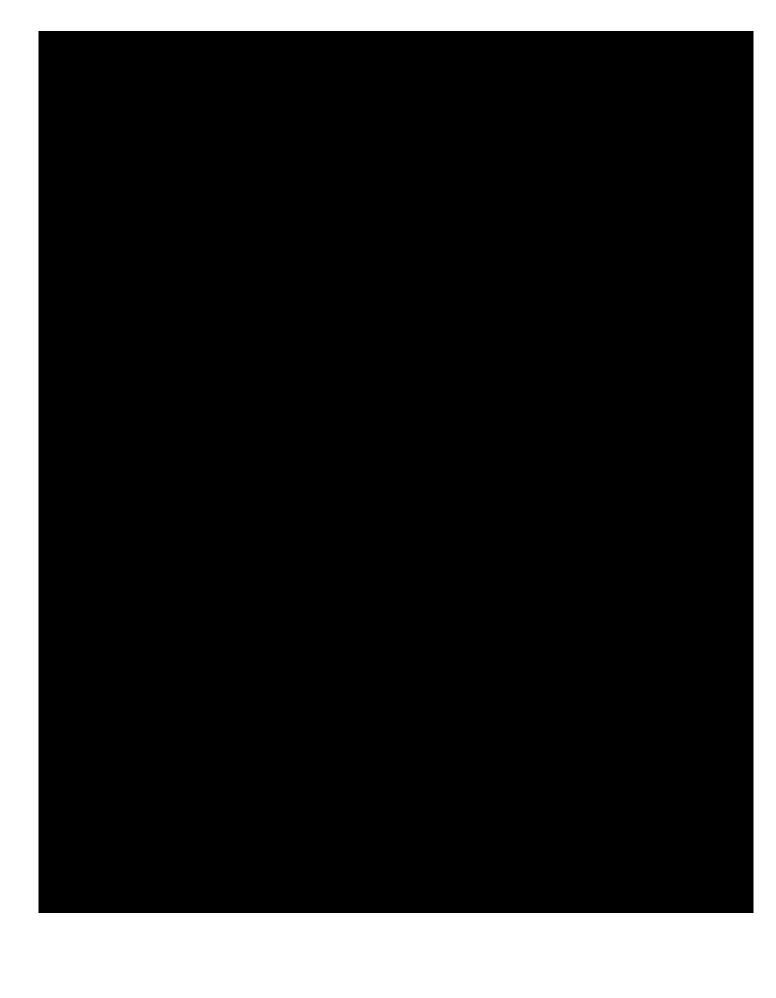




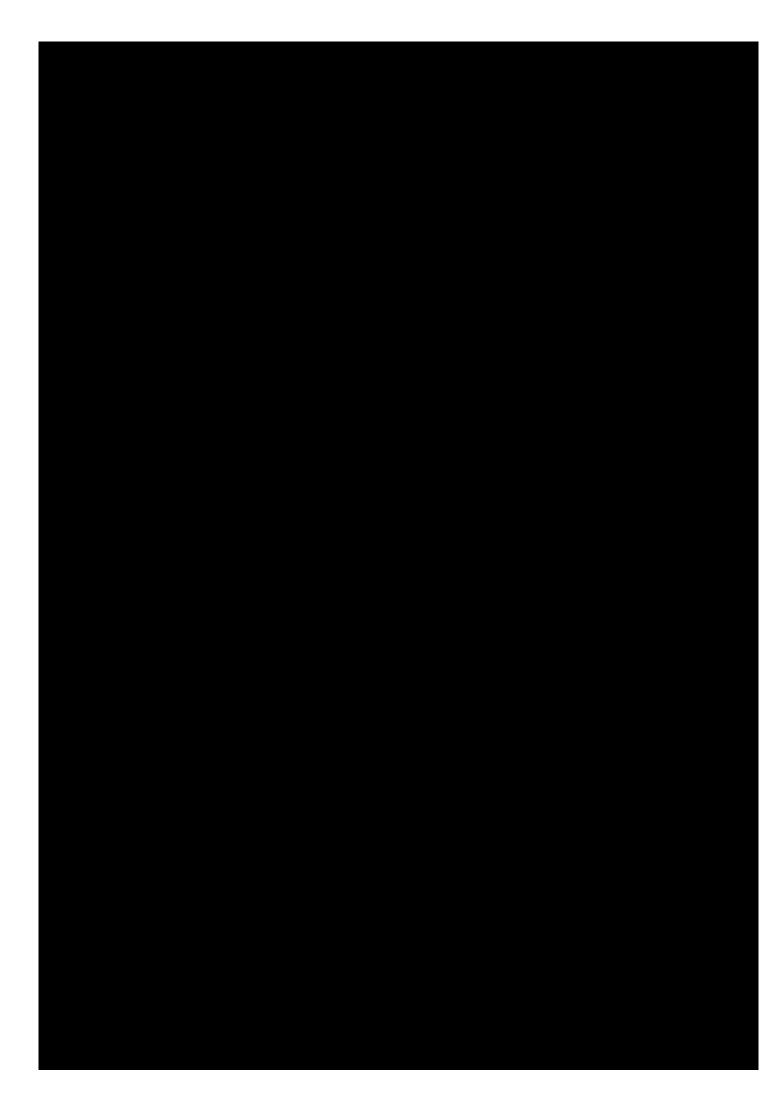


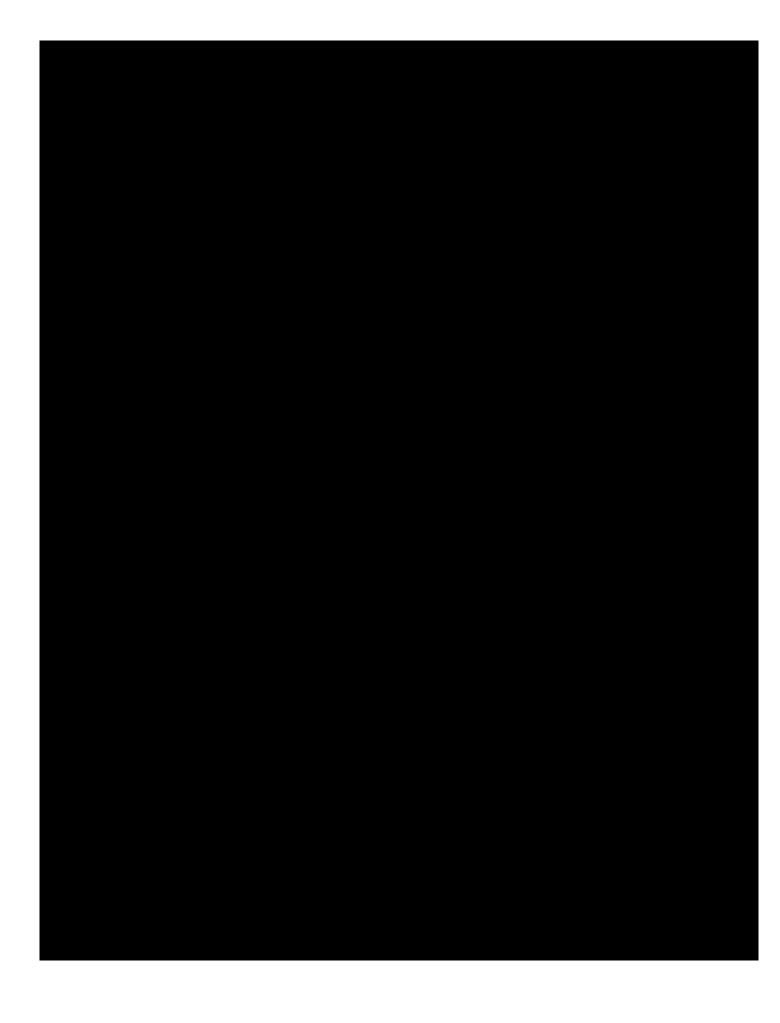




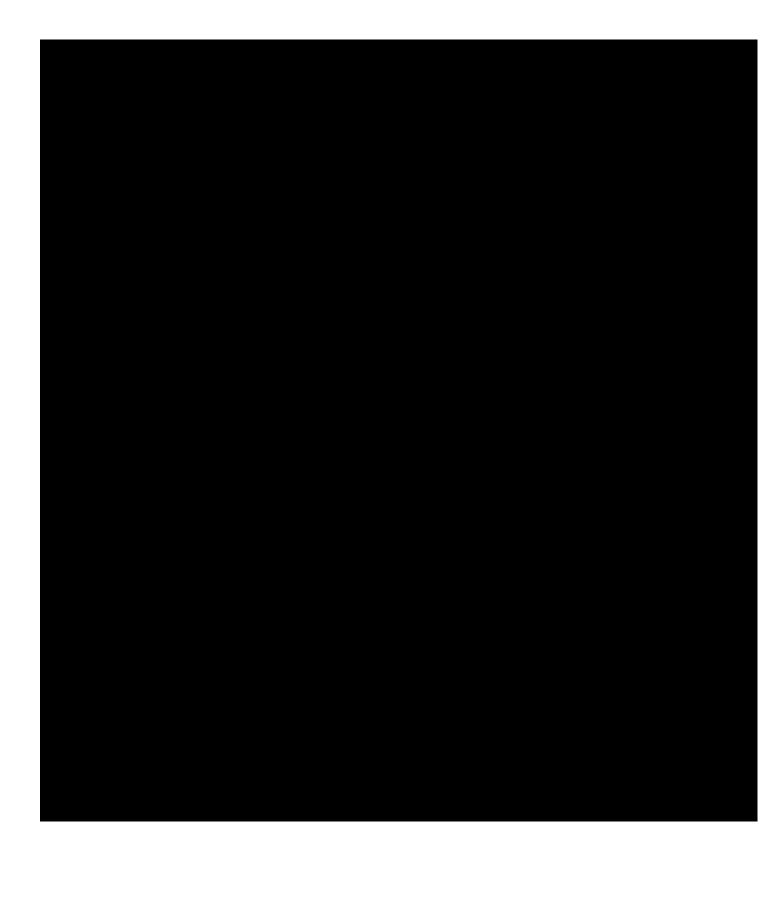


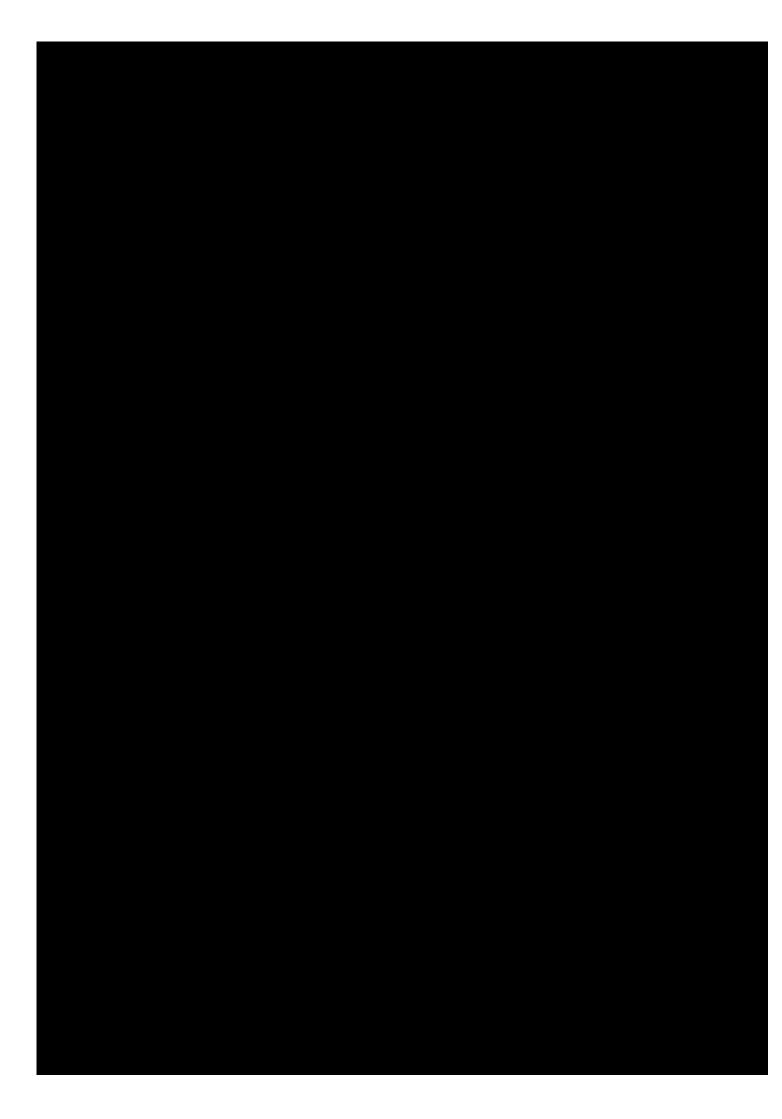




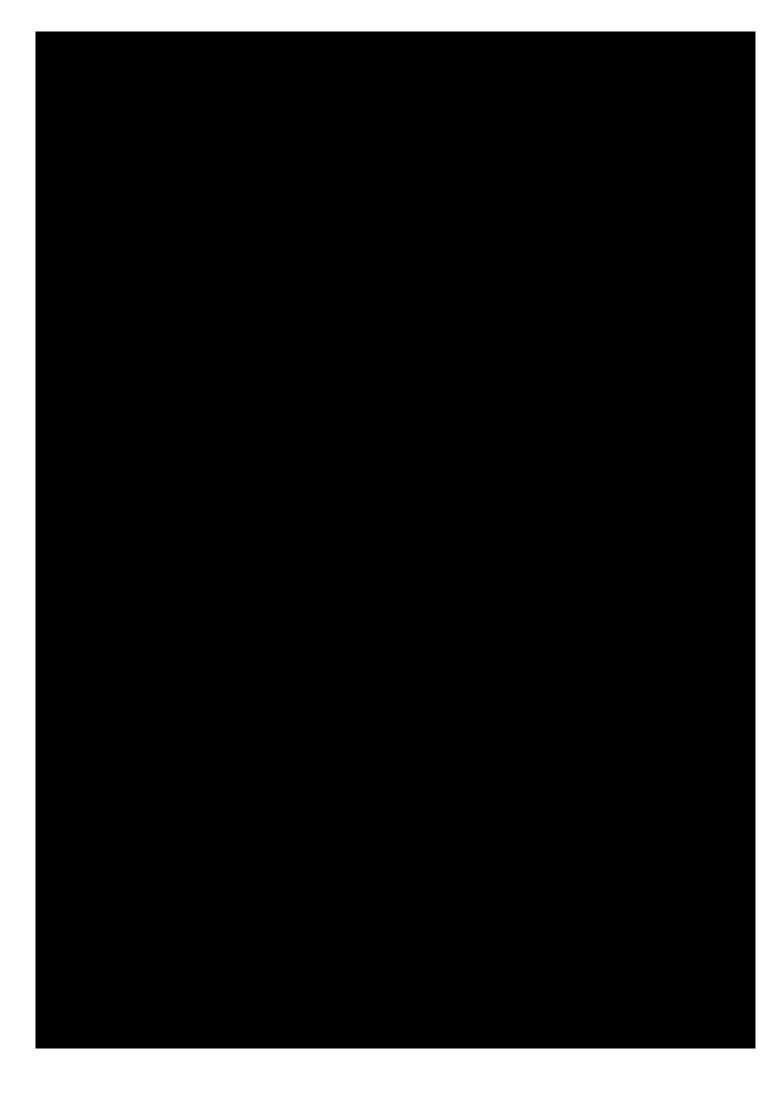














Appendix 5: Processing Personal Data

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.



- 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.

Data Processing descriptor	Narrative
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause 15.
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a series of key stakeholder workshops and one-to-one interviews
Duration of the processing	Processing will take place for the duration of the contract: 21/11/2024 to 30/04/2025. Data will be retained for the statutory minimum required by the contract, i.e., six years. Scientific research data will be retained indefinitely in order to be available to the research community.
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)
Type of Personal Data	May include: name, address, telephone number, images
Categories of Data Subject	Volunteer stakeholders, staff, consultants

Plan for return and destruction of the data once the processing is complete

UNLESS requirement under union or member state law to preserve that type of data

Collected data will be retained for the statutory minimum of 6 years, unless the data are needed for scientific research purposes, in which case those will be held indefinitely. Where appropriate the latter will be anonymised. All data to be destroyed will be deleted from the Contractor's computer system i.e., emails, servers and back-ups.

Appendix 6: Performance Management Framework

1. Overview of the PMF

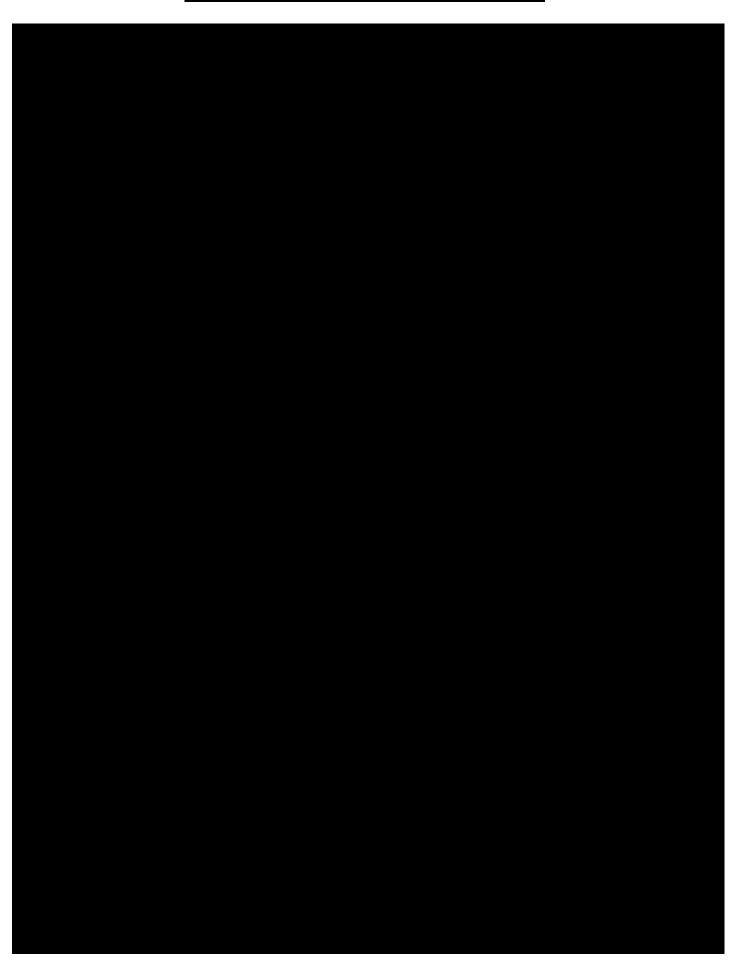
- 1.1. As part of the Authority's continuous drive to improve the performance of all Contractors, this PMF will be used to monitor, measure, and control all aspects of the Supplier's performance of contract responsibilities should they be awarded following mini competitions.
- 1.2. The PMF purpose is to set out the obligations on the successful Contractor, to outline how the successful Contractor's performance will be monitored, evaluated, and rectified for performance.
- 1.3. The Authority may define any reasonable performance management indicators for the Contractor under the following categories:
 - Updates to Authority
 - Data Handling
 - Participatory Outputs
 - Reports
 - Presentations
- 1.4. The above categories are consistent with all Contract awards allowing the Authority to monitor Contractor' performance at both individual level and at the enterprise level with the individual Contractor.

2. Management of the PMF

- 2.1. Key Performance Indicators (KPI's) shall be monitored on a regular basis and shall form part of the contract performance review. Performance of KPI's will be reported by the Contractor to the Authority on monthly basis. The Contractor shall detail performance against KPI's in Monthly Reports and at quarterly Contract Meetings with the Authority, who will review this and make comments if any.
- 2.2. The Contractor shall maintain their own management reports, including a Risk and Issues Log and present these as requested by the Authority at any meeting requested by the Authority.
- 2.3. Any performance issues highlighted in these reports will be addressed by the Contractor, who shall be required to provide an improvement plan ("Remediation Plan") to address all issues highlighted within a week of the Authority request.
- 2.4. Key Performance Indicators (KPIs) are essential to align Contractor's performance with the requirements of the Authority and to do so in a fair and practical way. KPIs must be realistic and achievable; they also must be met otherwise indicating that the service is failing to deliver. The successful Contractor will ensure that failure and non-performance is quickly rectified.

2.5.	The Authority reserves the right to amend the existing KPI's detailed in appendix 7 below or add any new KPI's. Any changes to the KPI's shall be confirmed by way of a Contract Change Note.

Appendix 7: Key Performance Indicators





Appendix 8 - NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made the 19th day of November 2024 (the "Commencement Date"

BETWEEN:

Alma Economics, 43 Tanner Street, SE1 3PL, London, UK and

(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 a consultant 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;
- 14.5 Disclosure of Confidential Information by the Disclosee where it has been independently developed without access to 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.

