

DPS Schedule 6 (Letter of Appointment Template and Order Schedules)

Letter of Appointment

This Letter of Appointment is issued in accordance with the provisions of the DPS Contract ([Communications Marketplace RM6124](#)) between CCS and the Agency, dated 3 April 2024.

Capitalised terms and expressions used in this letter have the same meanings as in the Order Incorporated Terms unless the context otherwise requires.

ORDER:

| | |
|----------------------|--|
| Order Number: | C260476 |
| From: | Behavioural Programme Unit (BPU) in the Department of Health and Social Care (DHSC) 39 Victoria Street, London, SW1H 0EU |
| To: | Paragon Customer Communications (London) Limited Lower Ground Floor, Park House, 16/18 Finsbury Circus, London, EC2M 7EB |

| | |
|---|--------------|
| Order Start Date: | 4 April 2024 |
| Order Expiry Date: | 3 April 2027 |
| Order Initial Period: | 3 years |
| Order Optional Extension Period: | 2 x 1 year |

| | |
|------------------------------------|---|
| Goods or Services required: | Goods or Services required are set out in DPS Schedule 1 of the DPS Agreement and the relevant Brief and are to be delivered in line with the accepted Proposal as detailed at Annex A of this Letter. Subsequent calls for Goods or Services shall be priced and agreed using the Statement of Works form as per Annex B of this Letter of Appointment. |
|------------------------------------|---|

| | |
|--|--|
| Order Contract Charges (including any applicable discount(s), but excluding VAT): | In accordance with Order Schedule 5 (Pricing Details) Maximum Contract Value (incl Extension Options) = £8,250,000 |
| Liability | See Clause 11 of the Core Terms Estimated Year 1 Charges: |
| Additional Insurance Requirements | Not applicable |
| Client billing address for invoicing: | Accounts Payable 39 Victoria Street, London, SW10 0EU |
| Special Terms | Not used |

PROGRESS REPORT FREQUENCY

Progress reports to be distributed in accordance with the requirements of each campaign team as set out at project commencement.

PROGRESS MEETING FREQUENCY

Quarterly Business Reviews to be held with representatives from the Agency, OHID and DHSC Commercials in attendance.

Campaign specific progress meetings to be held in accordance with the requirements of each campaign team as set out at project commencement.

KEY SUBCONTRACTOR(S)

Not used

COMMERCIALLY SENSITIVE INFORMATION

Supplier's sensitive commercial pricing/fees information to include but not restricted to its Pricing Schedule, Staff Lists, Capacity detail, suppliers, case studies, security & BC information and associated policies, HR policies. This is featured across the commercial envelope and the technical envelope.

Critical and important (Indirect Suppliers) suppliers listed are for reference only. Their dependency is deemed commercially sensitive.

SOCIAL VALUE COMMITMENT

The Agency agrees, in providing the Goods or Services and performing its obligations under the Order Contract, that it will comply with the social value commitments in Order Schedule 4 (Order Proposal)

ORDER INCORPORATED TERMS

The following documents are incorporated into this Order Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Letter of Appointment including the Order Special Terms and Order Special Schedules.
2. *Joint Schedule 1 (Definitions and Interpretation) RM6124*
3. *The following Schedules in equal order of precedence:*
 - *Joint Schedules for RM6124*
 - *Joint Schedule 2 (Variation Form)*
 - *Joint Schedule 3 (Insurance Requirements)*
 - *Joint Schedule 4 (Commercially Sensitive Information)*
 - *Joint Schedule 11 (Processing Data)*
 - *Order Schedules for C260476*
 - *Order Schedule 2 (Staff Transfer)*
 - *Order Schedule 3 (Continuous Improvement)*
 - *Order Schedule 4 (Proposal)*
 - *Order Schedule 5 (Pricing Details)*
 - *Order Schedule 6 (ICT Services)*

DPS Schedule 6 (Letter of Appointment and Order Schedules)

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- *Order Schedule 7 (Key Supplier Staff)*
- *Order Schedule 8 (Business Continuity and Disaster Recovery)*
- *Order Schedule 9 (Security)*
- *Order Schedule 10 (Exit Management)*
- *Order Schedule 14 (Service Levels)*
- *Order Schedule 15 (Order Contract Management)*
- *Order Schedule 18 (Background Checks)*

4. CCS Core Terms
5. *Joint Schedule 5 (Corporate Social Responsibility) RM6124*
6. *Order Schedule 4 (Proposal)* as long as any parts of the Order Proposal that offer a better commercial position for the Client (as decided by the Client) take precedence over the documents above.

No other Agency terms are part of the Order Contract. That includes any terms written on the back of, or added to this Order Form, or presented at the time of delivery. For the avoidance of doubt, the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services and produce goods which are the same or similar to the Goods or Services.

FORMATION OF ORDER CONTRACT

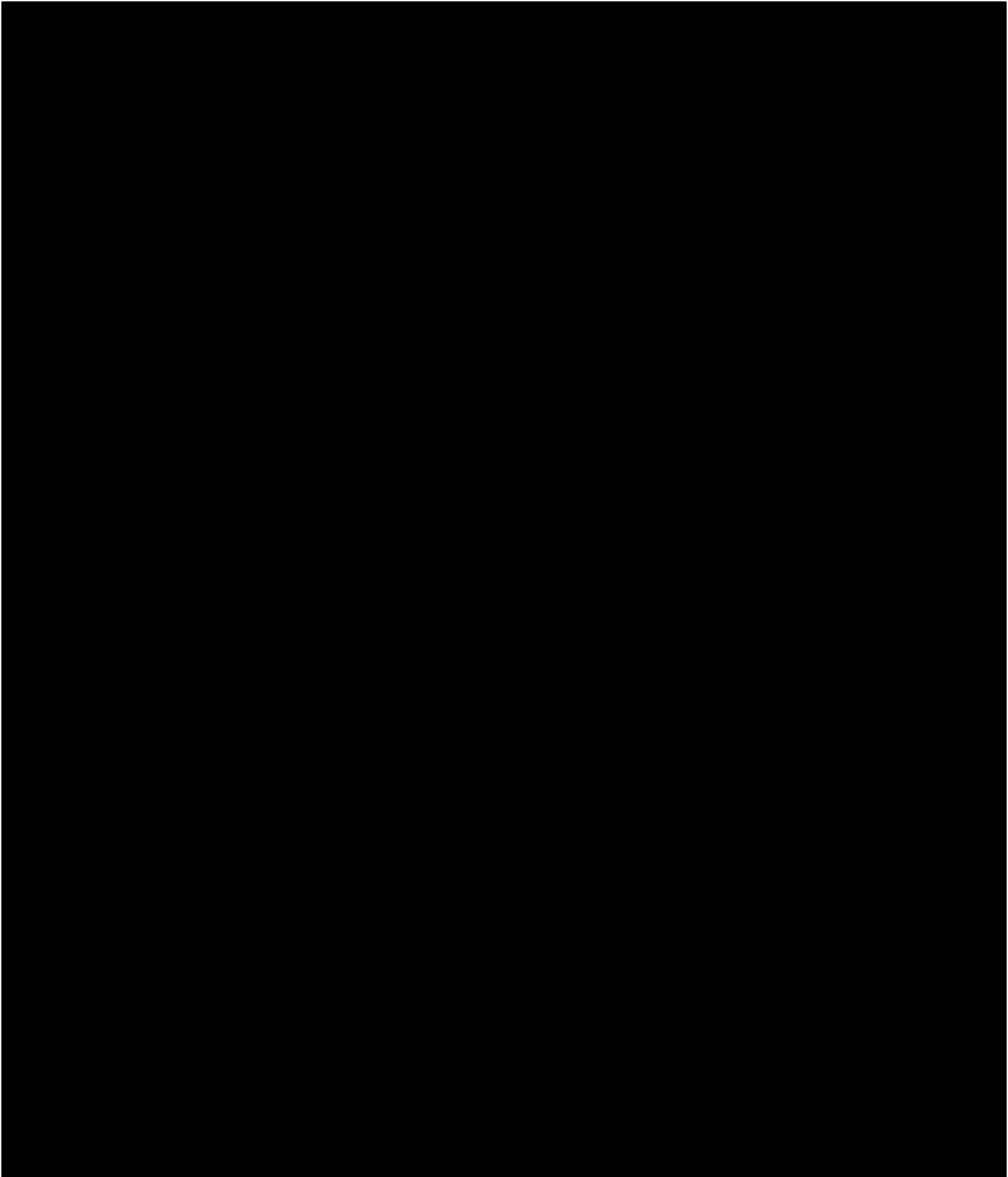
BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Agency agrees to enter into an Order Contract with the Client to provide the Goods or Services in accordance with the terms of this letter and the Order Incorporated Terms.

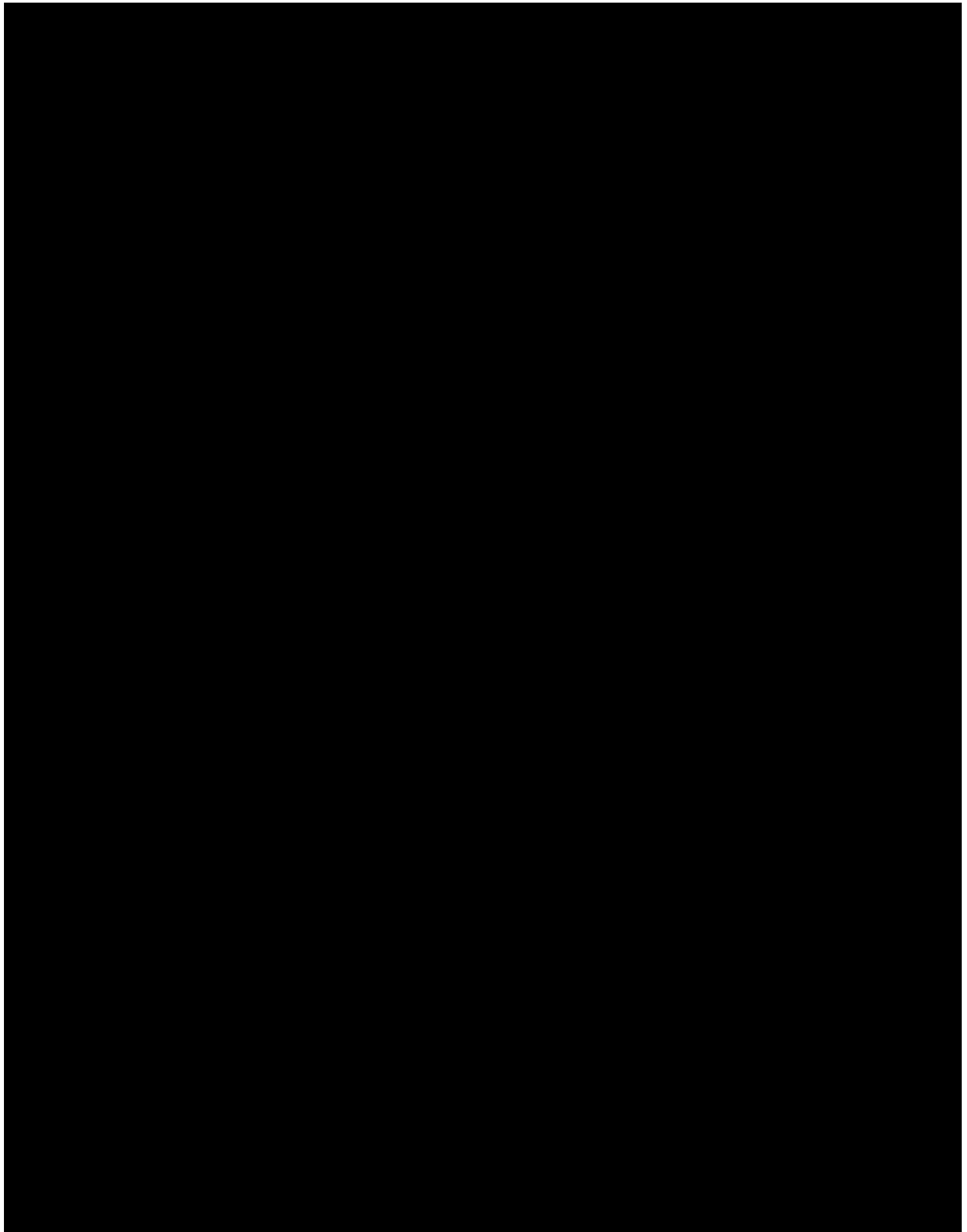
The Parties hereby acknowledge and agree that they have read this letter and the Order Incorporated Terms. The Parties hereby acknowledge and agree that this Order Contract shall be formed when the Client acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Agency within two (2) Working Days from such receipt.

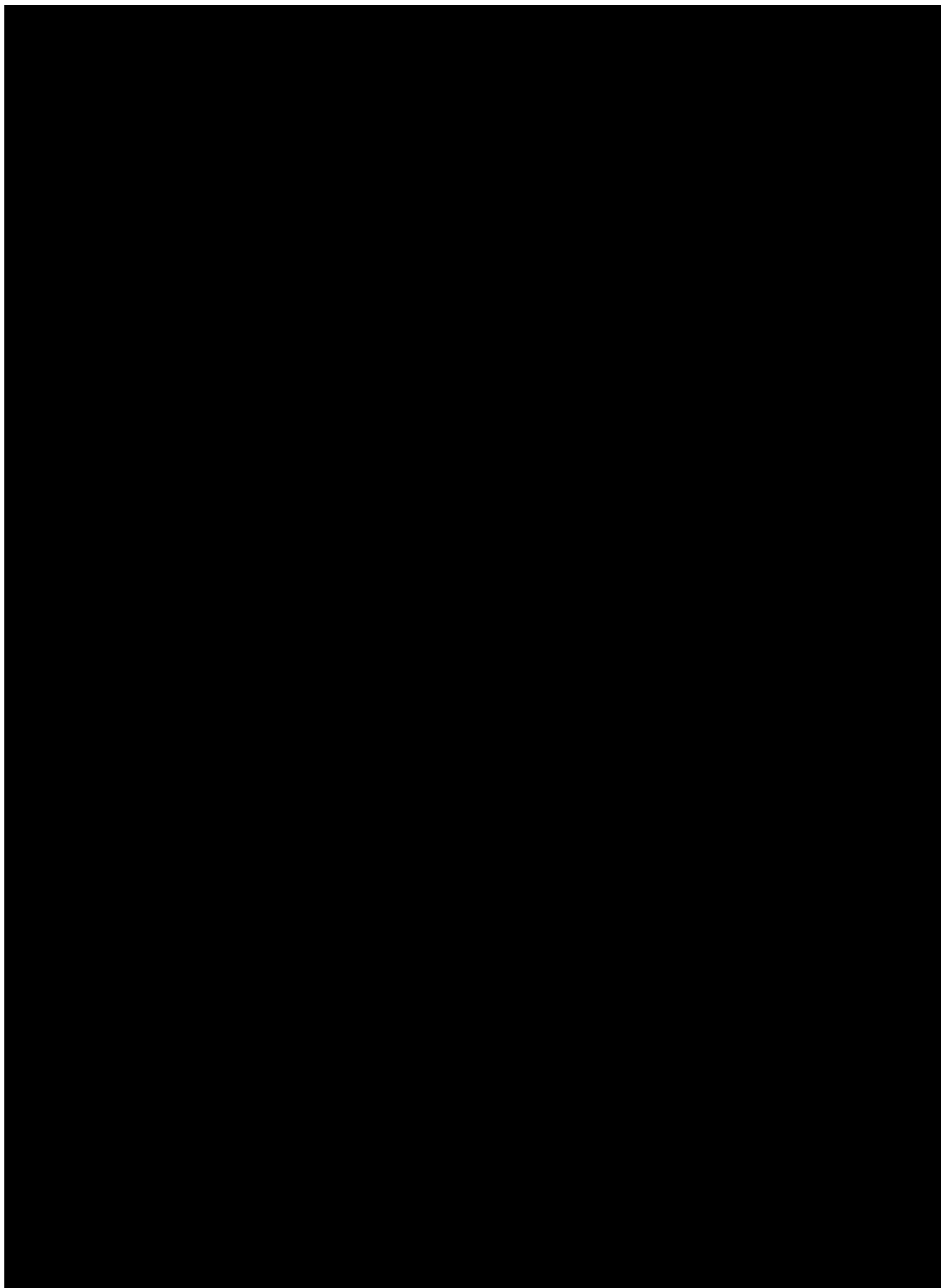
| | |
|---|---|
| For and on behalf of the Agency: | For and on behalf of the Client: |
|---|---|

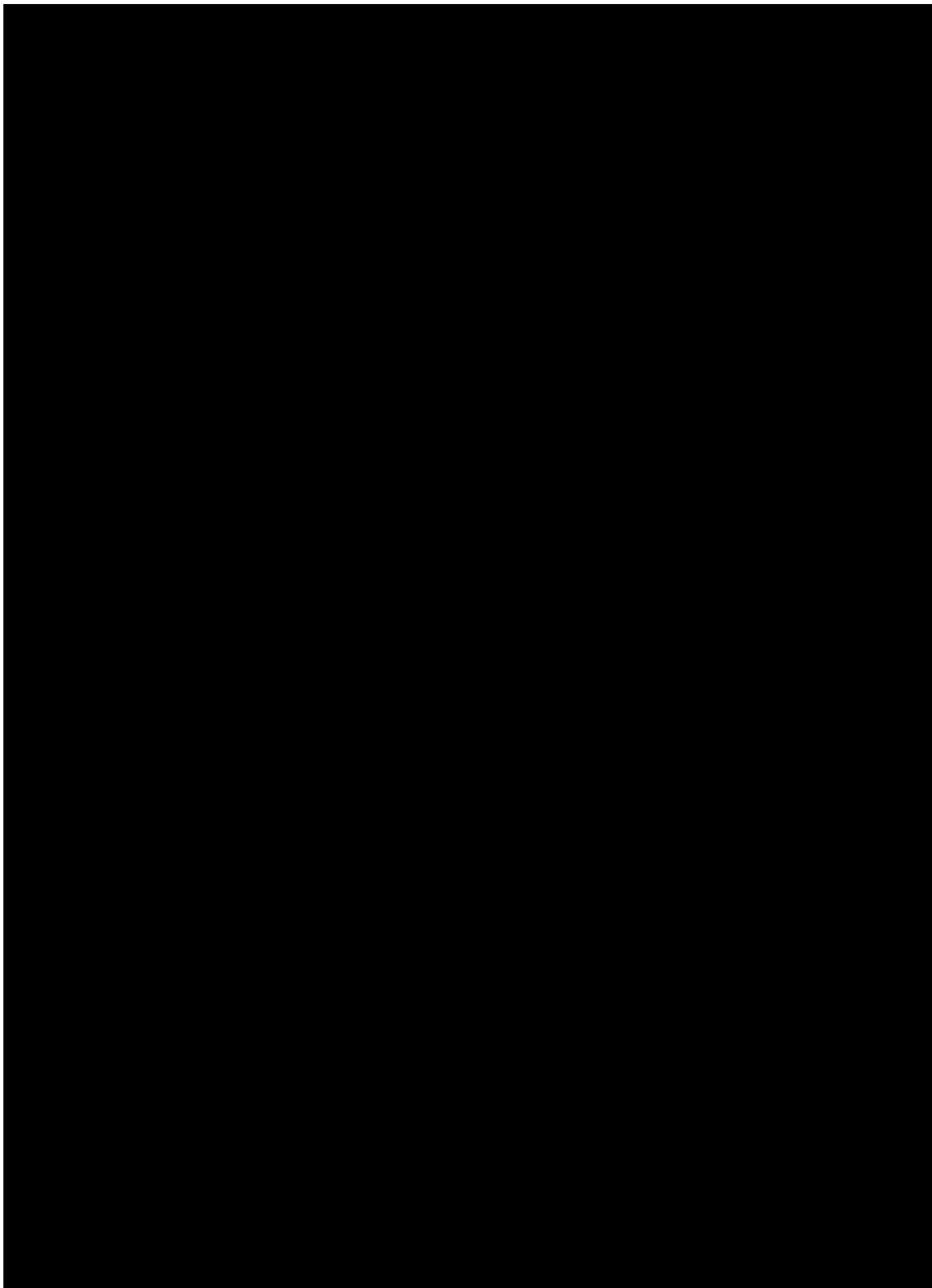
ANNEX A

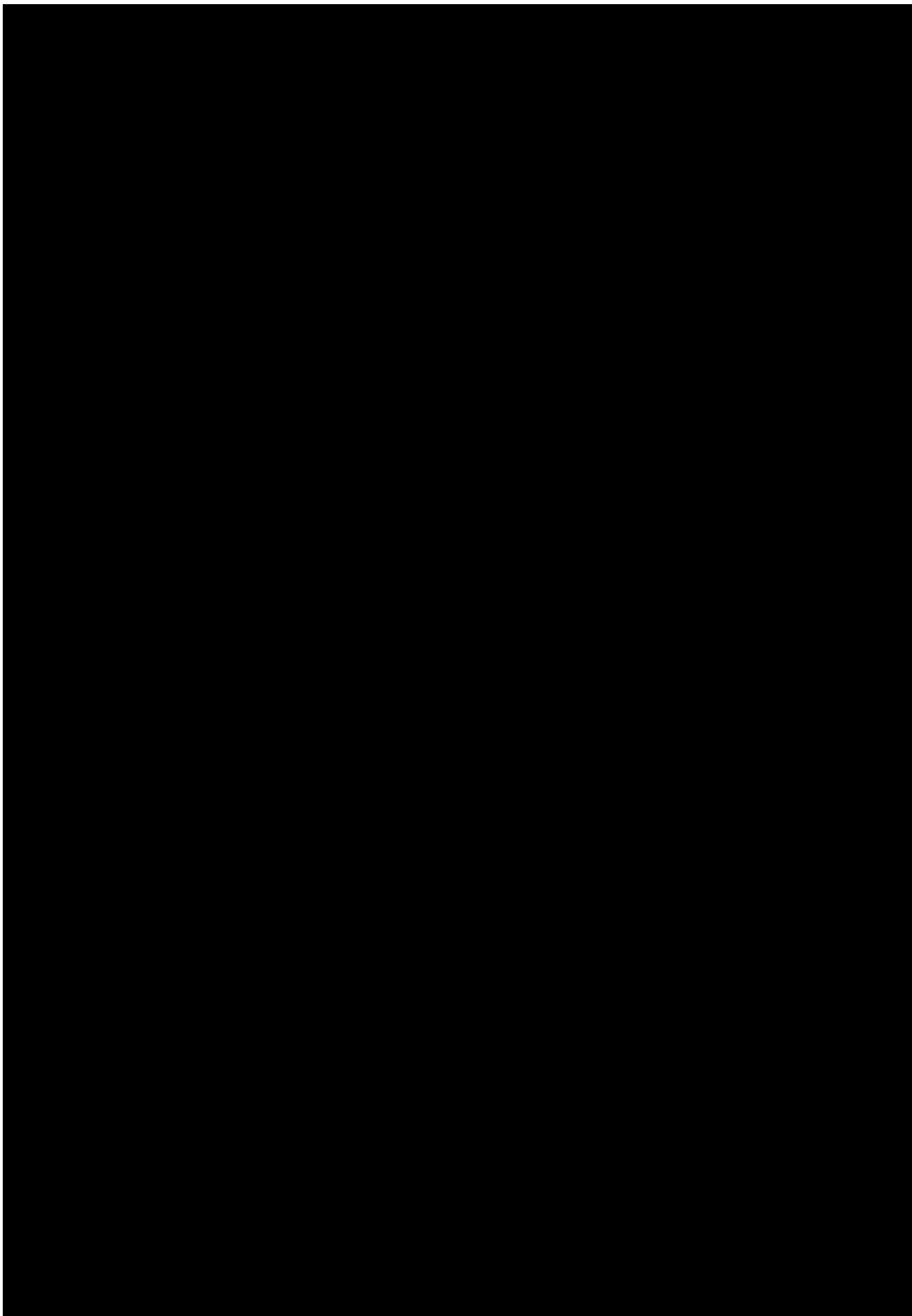
Agency Proposal

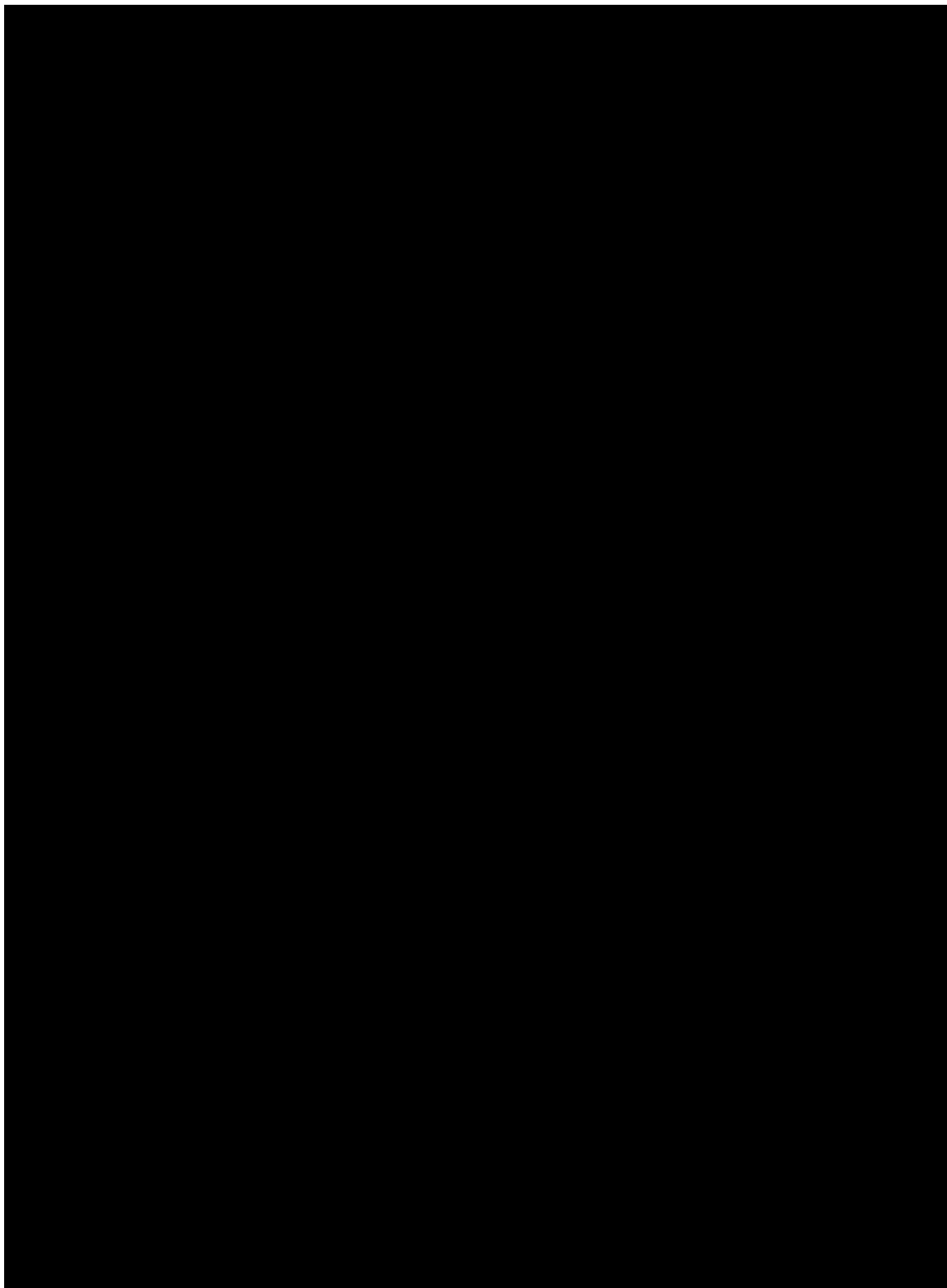


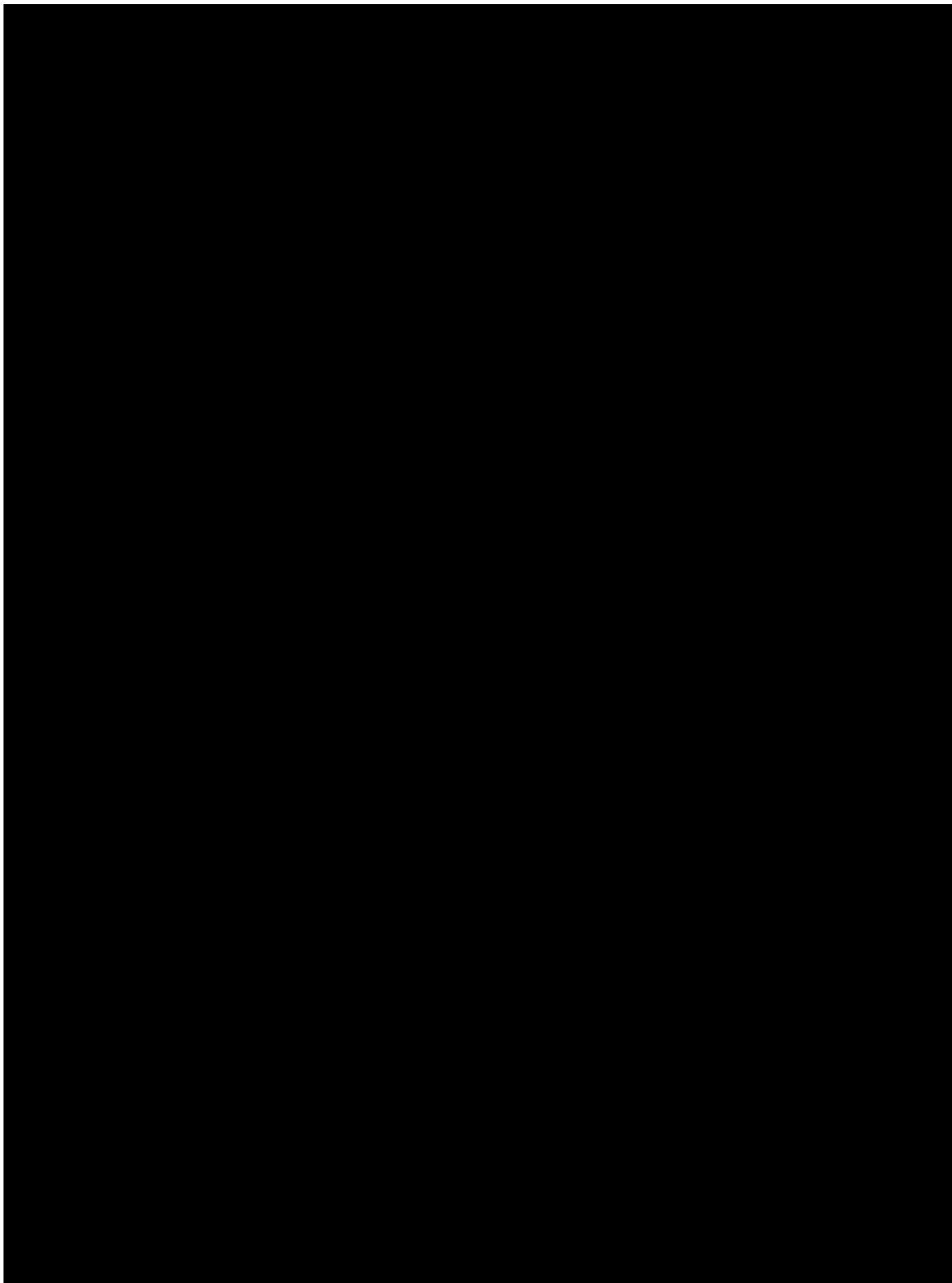


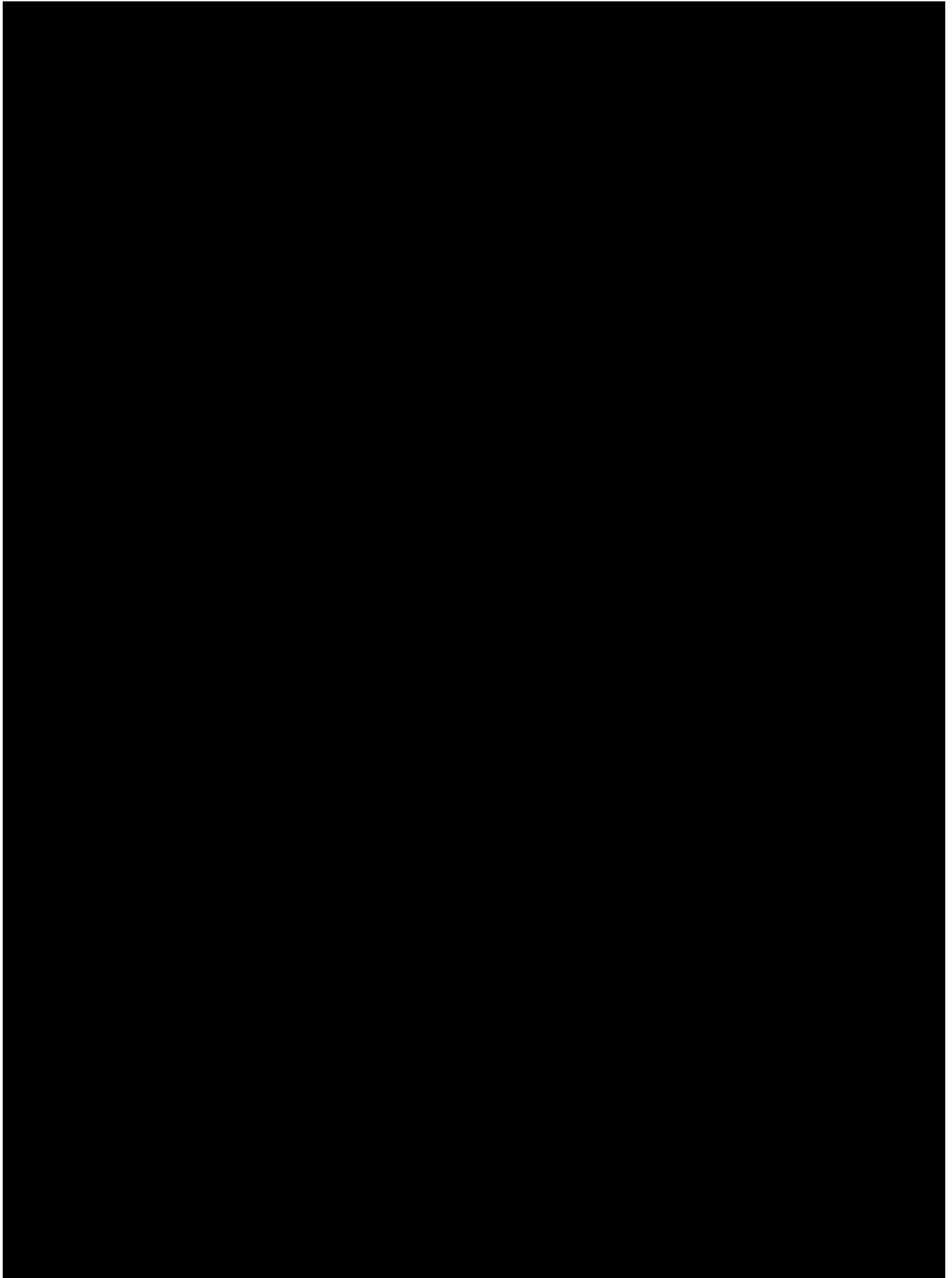


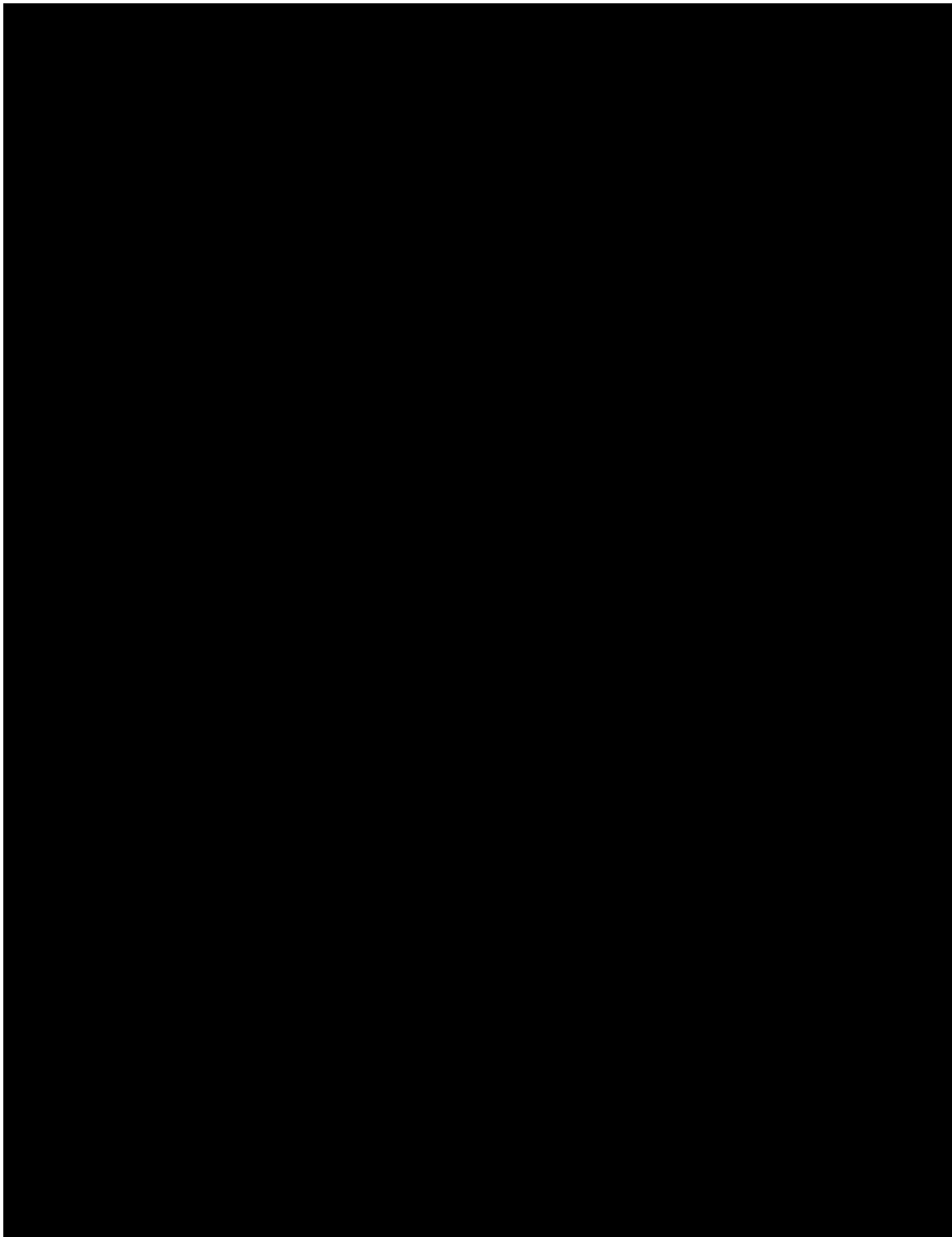


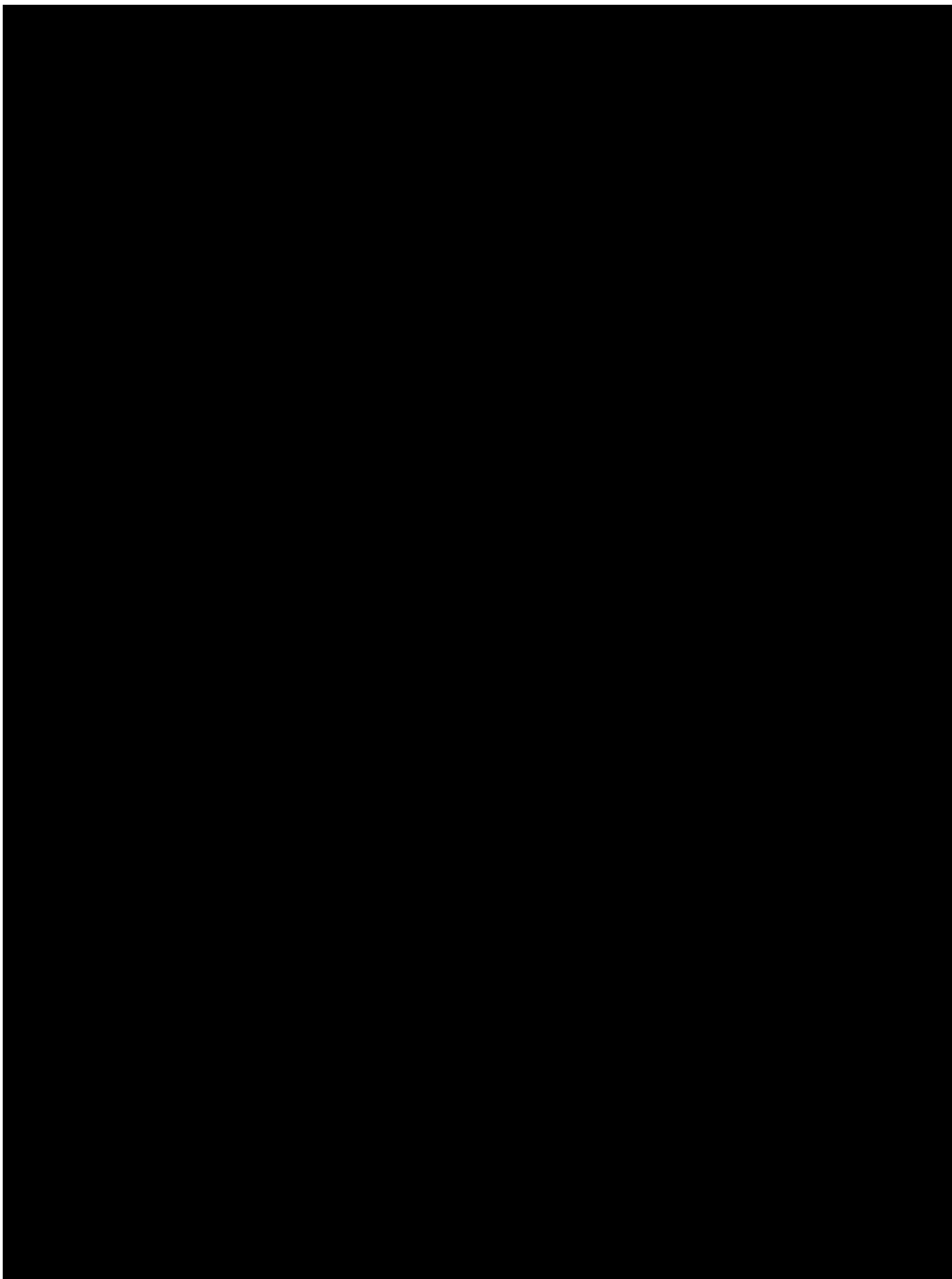


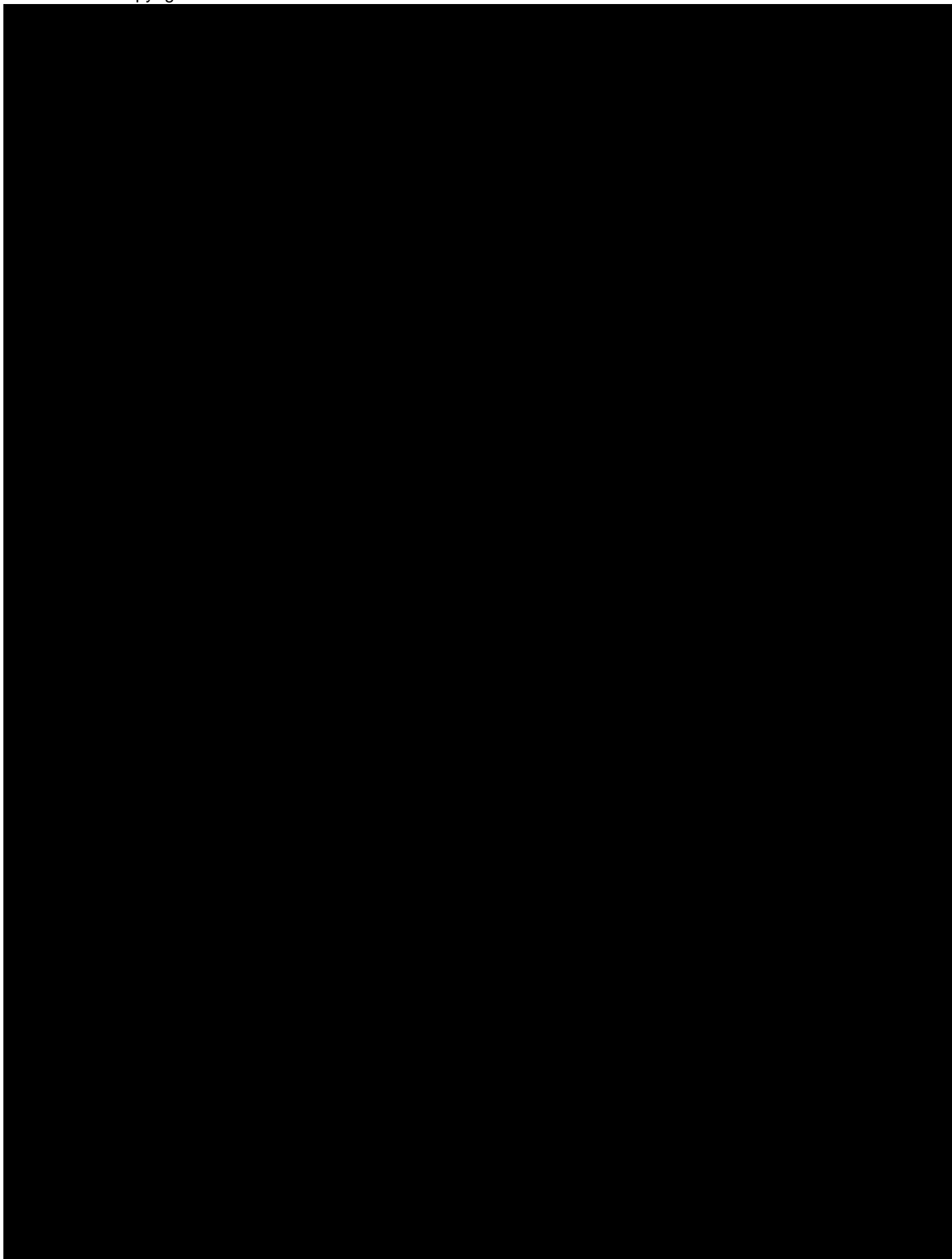


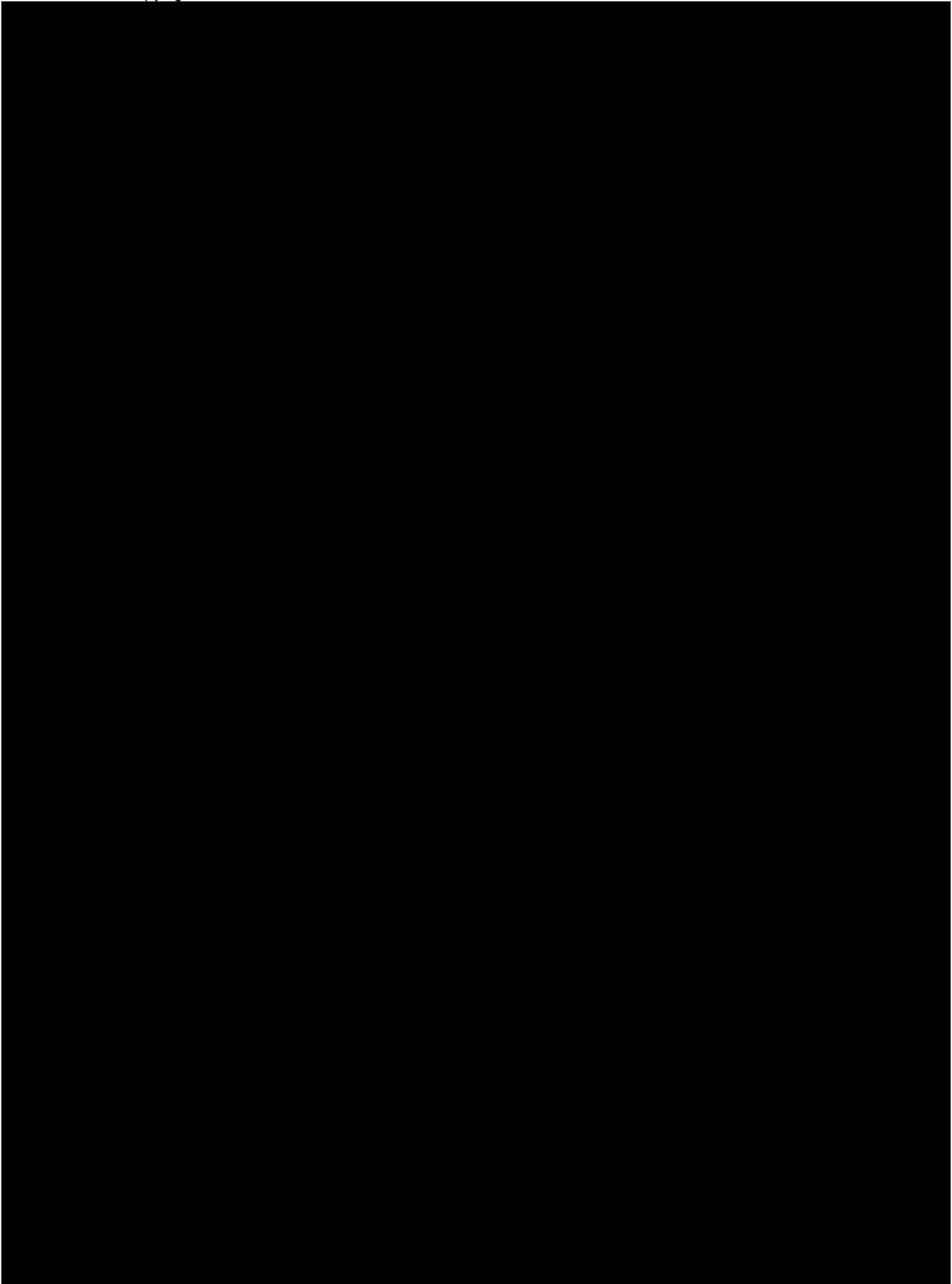


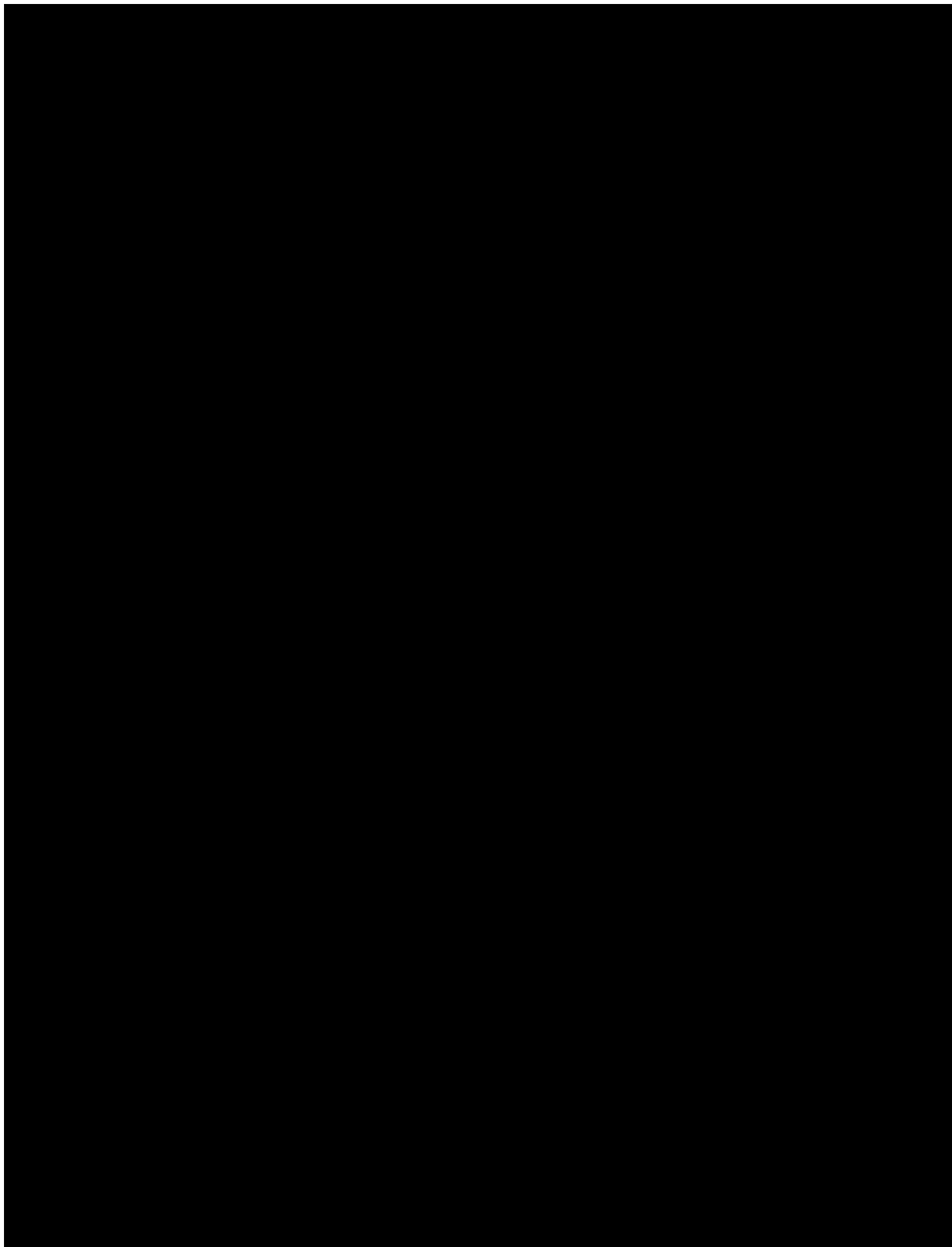


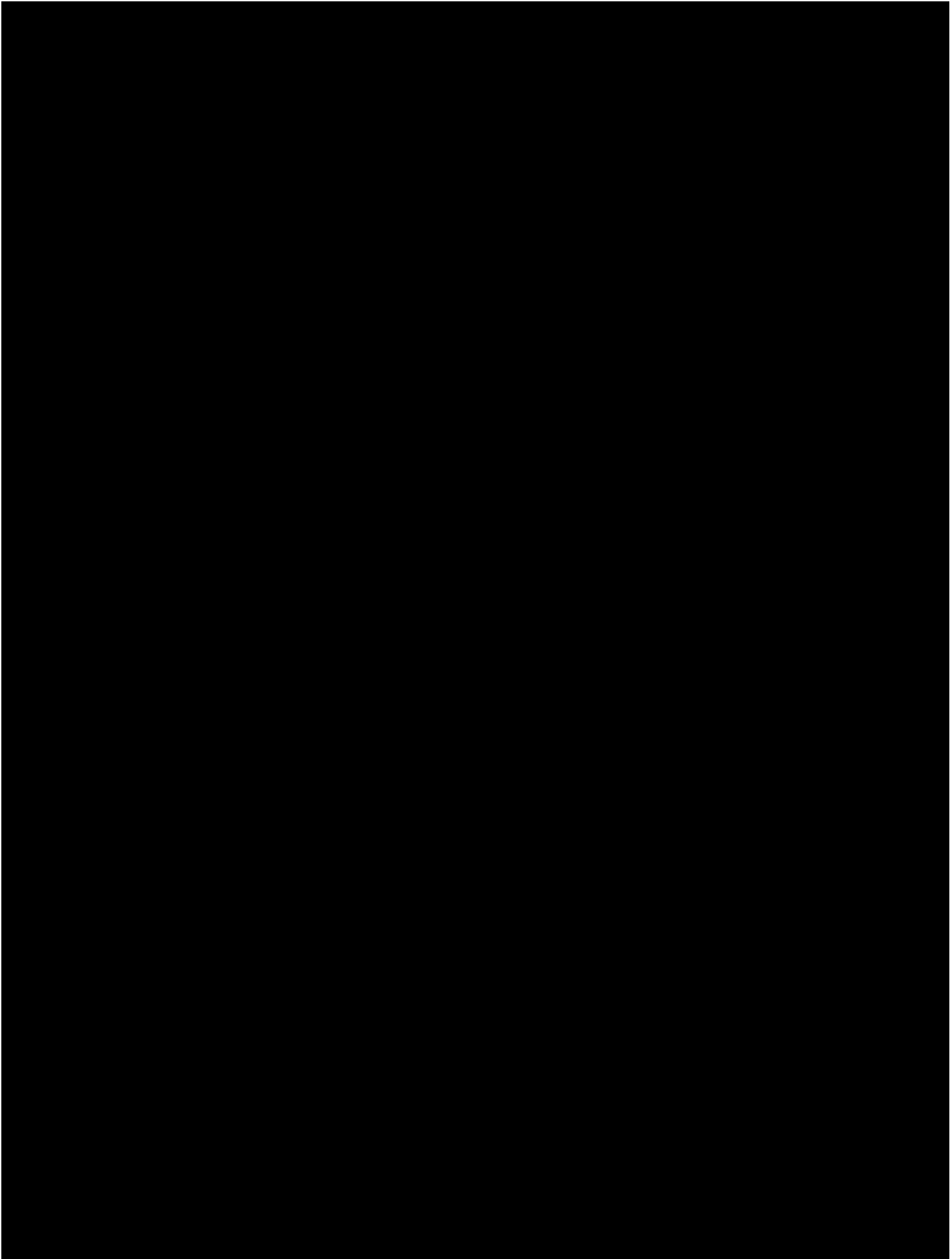


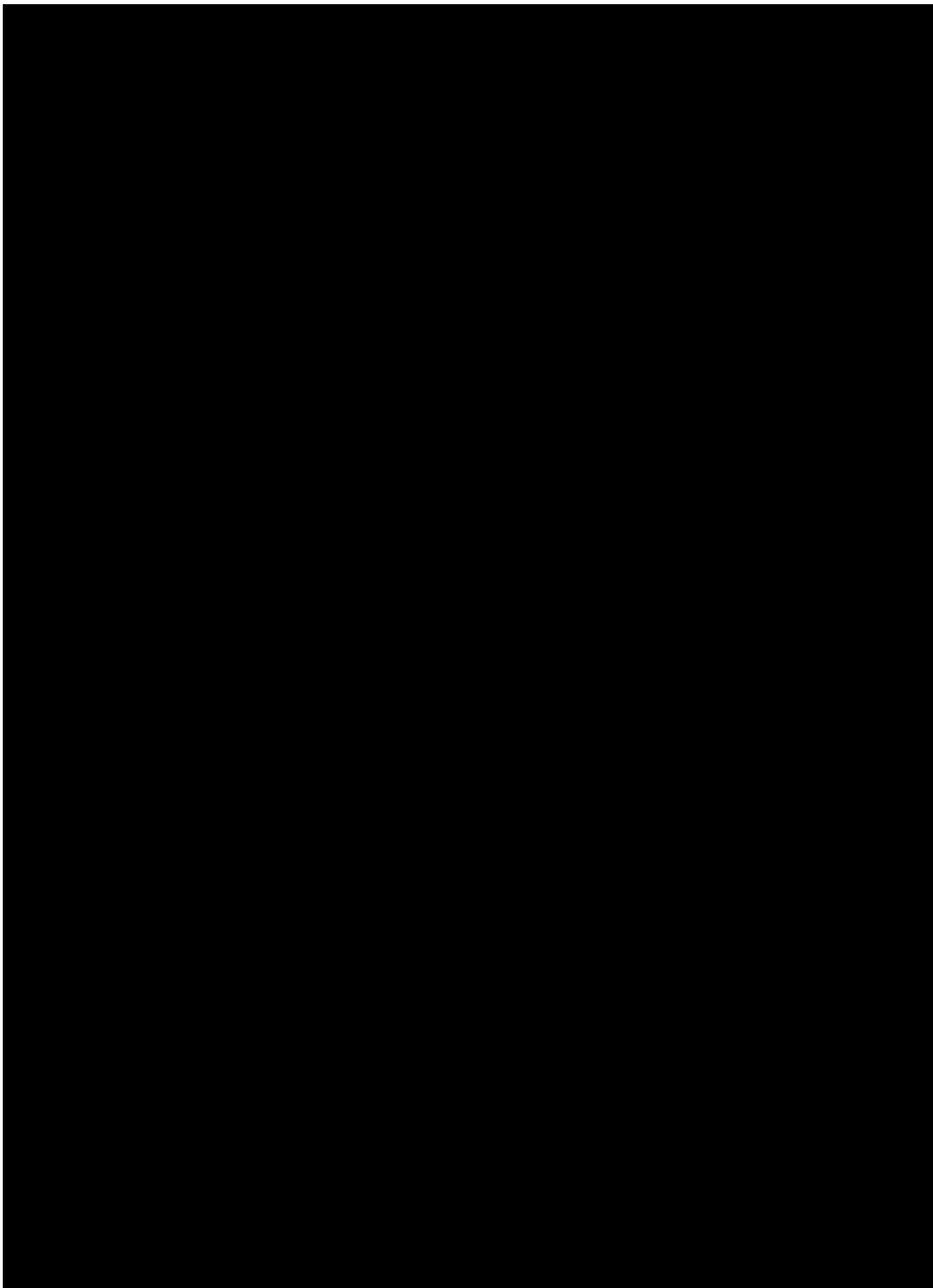


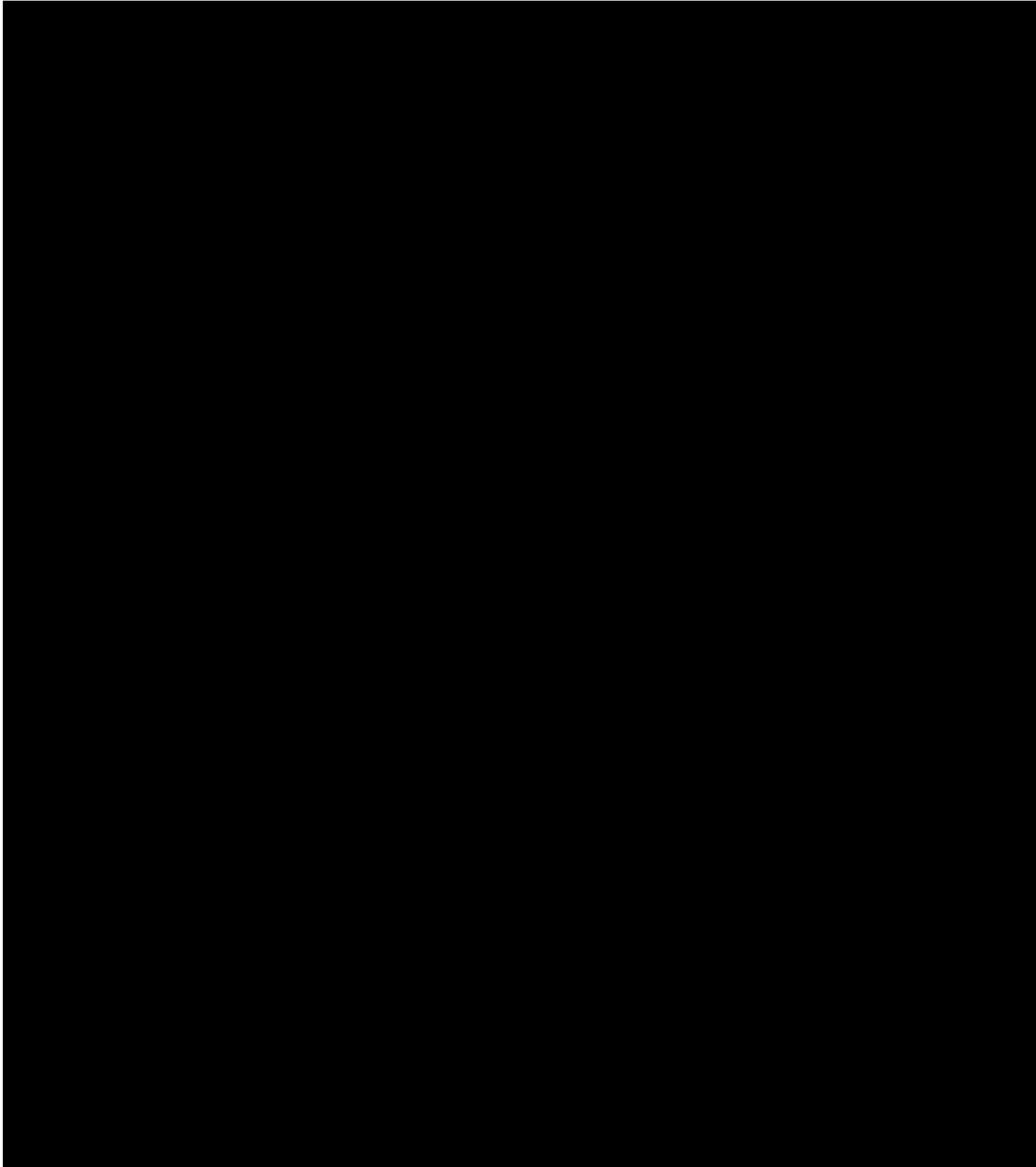


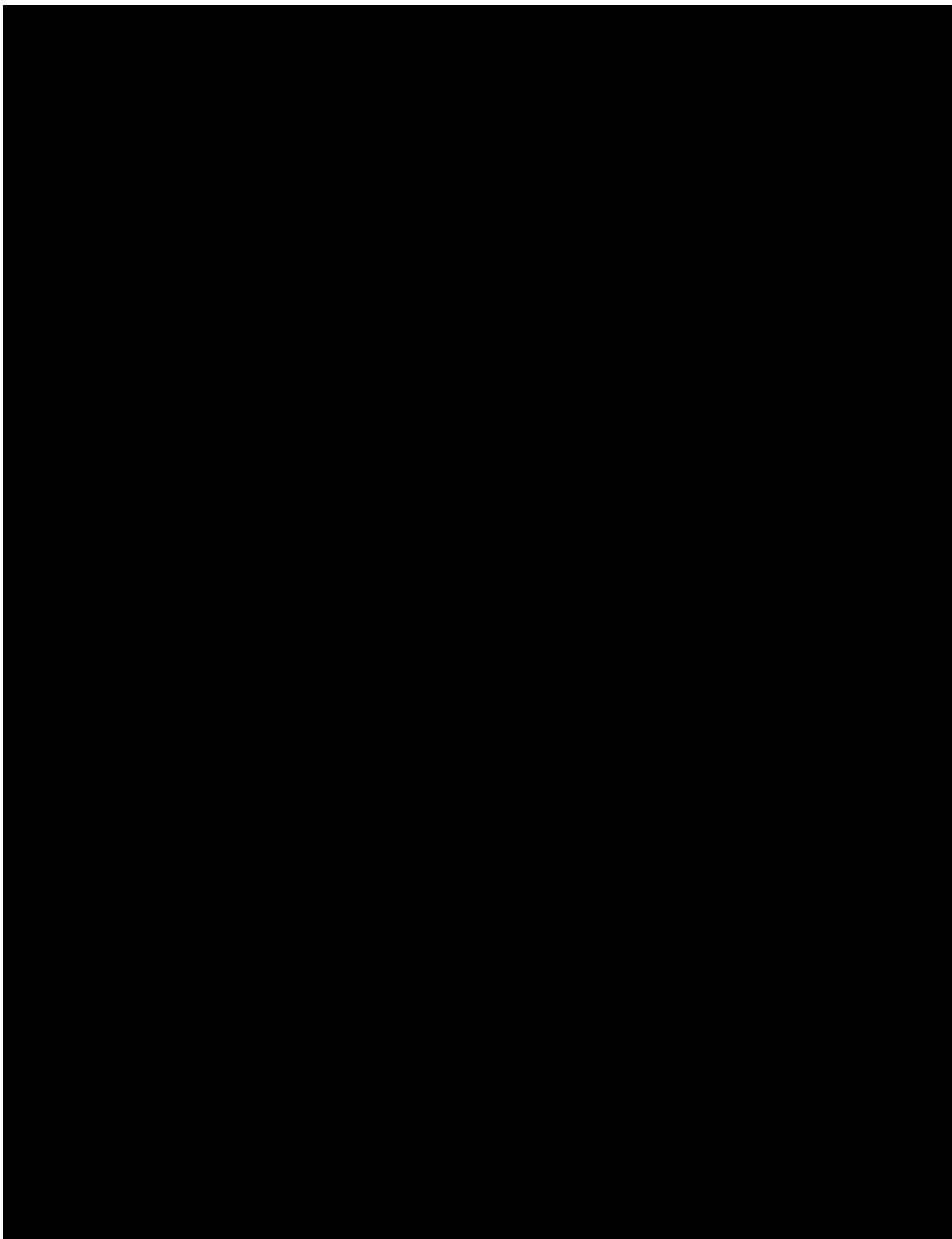


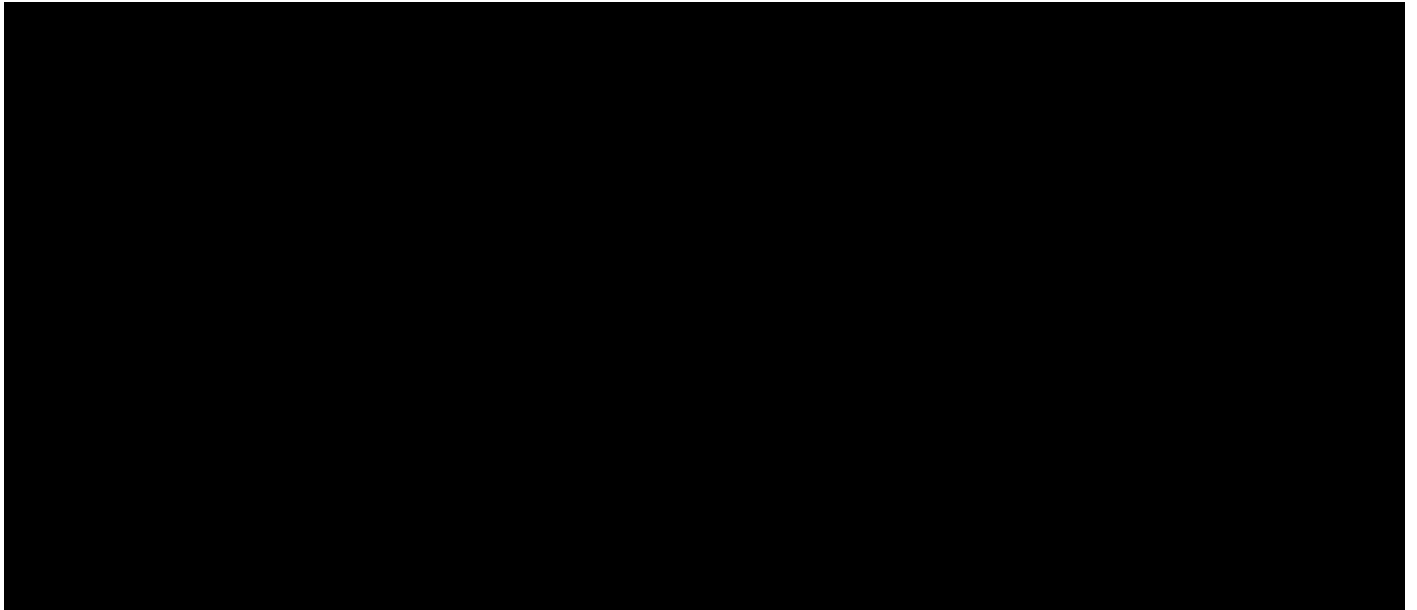












Annex B

Statement of Work-

This Statement of Work is issued under and in accordance with the Order Contract entered into between the parties dated *[insert date of signature of Order Contract.]*

Any schedule attached to this Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to this Statement of Work only applies to the relevant project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.

1.1 Where a Statement of Work would result in:

- a variation of the Services procured under this Order Contract;
- an increase in the Charges agreed under this Order Contract; or
- a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Order Contract, the relevant term(s) will be dealt with as a proposed Variation to this Order Contract in accordance with the Variation procedure set out in Clause 24.

| | |
|---------------------------------------|---|
| Project: | <i>Set out a short description of the Project.</i> |
| Project start Date | <i>Set out the start date for this Project and its duration and the likely end date if known– state whether for a fixed term or an initial term with extension periods</i> |
| Notice period for cancellation | <i>Where the parties are agreeing a Project Notice Period for cancellation of Project, specify the notice period</i> |
| [Project Notice Period]: | |
| Overarching Brand/Campaign | <i>If this campaign is part of a wider overarching campaign, or uses specific Government owned brands (such as the GREAT Britain brand for example) please state them and what the relationship of this campaign will be to them.</i> |
| Goods or Services | <i>Set out a description of the Goods or Services to be supplied by the Agency for this Project.</i> <i>State any specific activities agreed in the pitch that are to be delivered as part of this campaign.</i> <i>Ensure you capture any work across distinct specialisms or channels, for example if you were working on an integrated campaign you may write:</i> |

| | |
|--------------------------|--|
| | <ul style="list-style-type: none"> • Creative for campaigns (service) • Development and testing of creative propositions (deliverables) • Creative assets for use on social media • Delivery of creative assets for “Above the Line” media • Seamless working with the client’s media buyer to deliver assets in the correct format to required deadlines • PR • PR strategy that compliments the “Above the Line” approach • Development and delivery of PR hooks/stunts in agreement with the client • Development of three Op eds, case studies and three feature articles • Management of media at up to seven events, working with departmental press office • Evaluation in accordance with the OASIS framework <p>State if you require any specific requirements and ways of working such as third-party consents, licences, clearances that Agency needs to obtain and products or purchases.</p> <p>State that Client’s use of the Goods or Services will be “subject to any third-party usage rights which are notified to the Client in accordance with this Order Contract “.</p> |
| Project Plan: | <p><i>Set out the timing of each phase of the project, any key dates and/ or delivery of the Services and/or the Goods or Services (if known)</i></p> |
| Contract Charges: | <p><i>Set out the calculation of the Contract Charges [(including rules for the recovery of expenses where applicable)] payable to Agency for this Project e.g. details of any fixed price, time and materials in which case Agency’s Rate Card should be attached, together with invoice dates or milestones that trigger payment.</i></p> <p><i>Set out any payment terms specific to the Project.</i></p> <p>Examples of different wording for Contract Charges:</p> <p><i>The Client shall pay the Agency the sum of £[...] for delivery of these Services, payable in monthly</i></p> |

| | |
|------------------------------------|--|
| | <p><i>instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third-party costs</i></p> <p>OR</p> <p><i>The Contract Charges shall be calculated using the hourly charge out rates shown in[the Tender], [provided that the total Contract Charges shall not exceed £ [...].] For the avoidance of doubt, the Contract Charges shall be inclusive of all third-party costs.</i></p> |
| Client Assets: | <i>Set out details of the materials or information to be provided to the Agency.</i> |
| International locations: | <i>If Services are to be supplied outside the UK, specify additional territories here</i> |
| Client Affiliates: | <i>If relevant, set out any Client Affiliates which will be using Goods or Services</i> |
| Special Terms: | <i>Set out any special terms that are intended to take precedence over the Order Terms and/or the Schedules to the Order Terms such as, security requirements, warranties, specific insurance requirements, any specific data reporting requirements etc.</i> |
| Key Individuals: | <i>Set out details of the key personnel from the Agency for this Project if relevant.</i> |
| Authorised Agency Approver: | <i>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Agency for this project.</i> |
| Authorised Client Approver: | <i>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Client for this Project.</i> |

Signed by:.....

by (print name):.....

As Agency Authorised Approver for and on behalf of

[Agency]

Date.....

DPS Schedule 6 (Letter of Appointment and Order Schedules)
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Signed by:.....

by (print name):.....

As Client Authorised Approver for and on behalf of

[Client]

Date.....

Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

| Contract Details | | |
|--|--|---------------------------|
| This variation is between: | <p>The Secretary of State for Health and Social Care whose registered office is at Department of Health and Social Care with offices at 39 Victoria Street, London, SW10 0EU ("the Client")</p> <p>And</p> <p>Paragon Customer Communications (London) Ltd ("the Agency")</p> | |
| Contract name: | DHSC: OHID Database Management, ECRM and Associated Services ("the Contract") | |
| Contract reference number: | [insert] contract reference number] | |
| Details of Proposed Variation | | |
| Variation initiated by: | [delete] as applicable: CCS/Client/Agency] | |
| Variation number: | [insert] variation number] | |
| Date variation is raised: | [insert] date] | |
| Proposed variation | | |
| Reason for the variation: | [insert] reason] | |
| An Impact Assessment shall be provided within: | [insert] number] days | |
| Impact of Variation | | |
| Likely impact of the proposed variation: | [Agency to insert] assessment of impact] | |
| Outcome of Variation | | |
| Contract variation: | <p>This Contract detailed above is varied as follows:</p> <ul style="list-style-type: none"> Client to insert original Clauses or Paragraphs to be varied and the changed clause] | |
| Financial variation: | Original Contract Value: | £ [insert] amount] |
| | Additional cost due to variation: | £ [insert] amount] |
| | New Contract value: | £ [insert] amount] |

Joint Schedule 2 (Variation Form)

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1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Client]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in
Capitals)

Address

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

Signature

Date

Name (in
Capitals)

Address

Joint Schedule 3 (Insurance Requirements)

1. THE INSURANCE YOU NEED TO HAVE

1.1 The Agency shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Order Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Agency shall ensure that each of the Insurances is effective no later than:

- 1.1.1 the DPS Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.1.2 the Order Contract Effective Date in respect of the Additional Insurances.

1.2 The Insurances shall be:

- 1.2.1 maintained in accordance with Good Industry Practice;
- 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
- 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and

Joint Schedule 3 (Insurance Requirements)

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1.2.4 maintained for at least six (6) years after the End Date.

1.3 The Agency shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods or Services and for which the Agency is legally liable.

2. HOW TO MANAGE THE INSURANCE

2.1 Without limiting the other provisions of this Contract, the Agency shall:

2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Goods or Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Agency is or becomes aware; and

2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. WHAT HAPPENS IF YOU AREN'T INSURED

3.1 The Agency shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Agency has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Agency to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Agency.

4. EVIDENCE OF INSURANCE YOU MUST PROVIDE

- 4.1 The Agency shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5. MAKING SURE YOU ARE INSURED TO THE REQUIRED AMOUNT

- 5.1 The Agency shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Agency shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

6. CANCELLED INSURANCE

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

7. INSURANCE CLAIMS

- 7.1 The Agency shall promptly notify to insurers any matter arising from, or in relation to, the Goods or Services, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Goods or Services, the Agency shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Relevant Authority is the claimant party, the Agency shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Goods or Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Agency shall be liable for and shall promptly pay such premium.

Joint Schedule 3 (Insurance Requirements)

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- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Agency shall be liable for such excess or deductible. The Agency shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
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ANNEX: REQUIRED INSURANCES

The Agency shall hold the following standard insurance cover from the DPS Start Date in accordance with this Schedule:

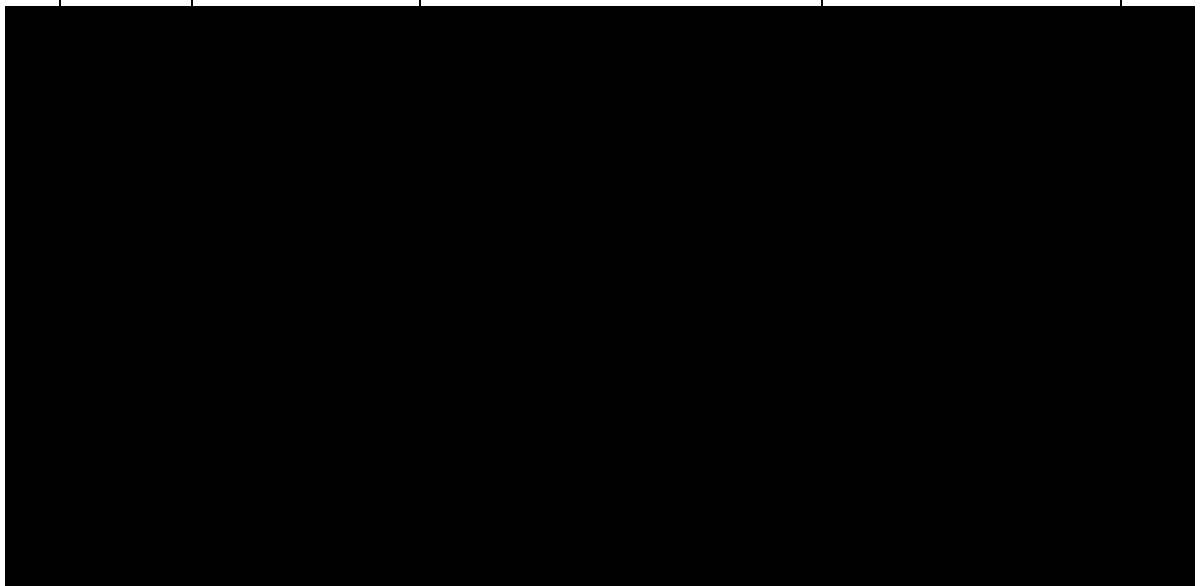
1. professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);
2. public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than two million pounds (£1,000,000); and
3. employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) with a minimum limit of indemnity as required by Law.

Joint Schedule 4 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Agency's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

| No. | Date | Item(s) | Duration of Confidentiality |
|-----|------|---------|-----------------------------|
|-----|------|---------|-----------------------------|



Joint Schedule 11 (Processing Data)

Definitions

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

| | |
|----------------------------------|---|
| “Processor Personnel” | all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract; |
|----------------------------------|---|

Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing in relation to the Goods or Services;

Joint Schedule 11 (Processing Data)

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- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, including in the case of the Agency the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with

Joint Schedule 11 (Processing Data)

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- UK GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 7 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Personal Data Breach.
8. The Processor's obligation to notify under paragraph 6 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.
9. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
- (a) the Controller with full details and copies of the complaint, communication or request;

Joint Schedule 11 (Processing Data)

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- (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor. Limited to one audit per calendar year. A minimum of 10 working days' notice is required.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
- (a) notify the Controller in writing of the intended Subprocessor and Processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
 - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
14. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an

applicable certification scheme (which shall apply when incorporated by attachment to the Contract).

16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Agency amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Independent Controllers of Personal Data

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller. This will apply where personal data is required for the management of the agreement and relates to business data.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 8 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
 - (a) to the extent necessary to perform their respective obligations under the Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
 - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with

the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
 - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
 - (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

Joint Schedule 11 (Processing Data)

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26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
28. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Agency is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 27 of this Joint Schedule 11.

Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

1.1 The contact details of the Relevant Authority's Data Protection Officer are:

[REDACTED]

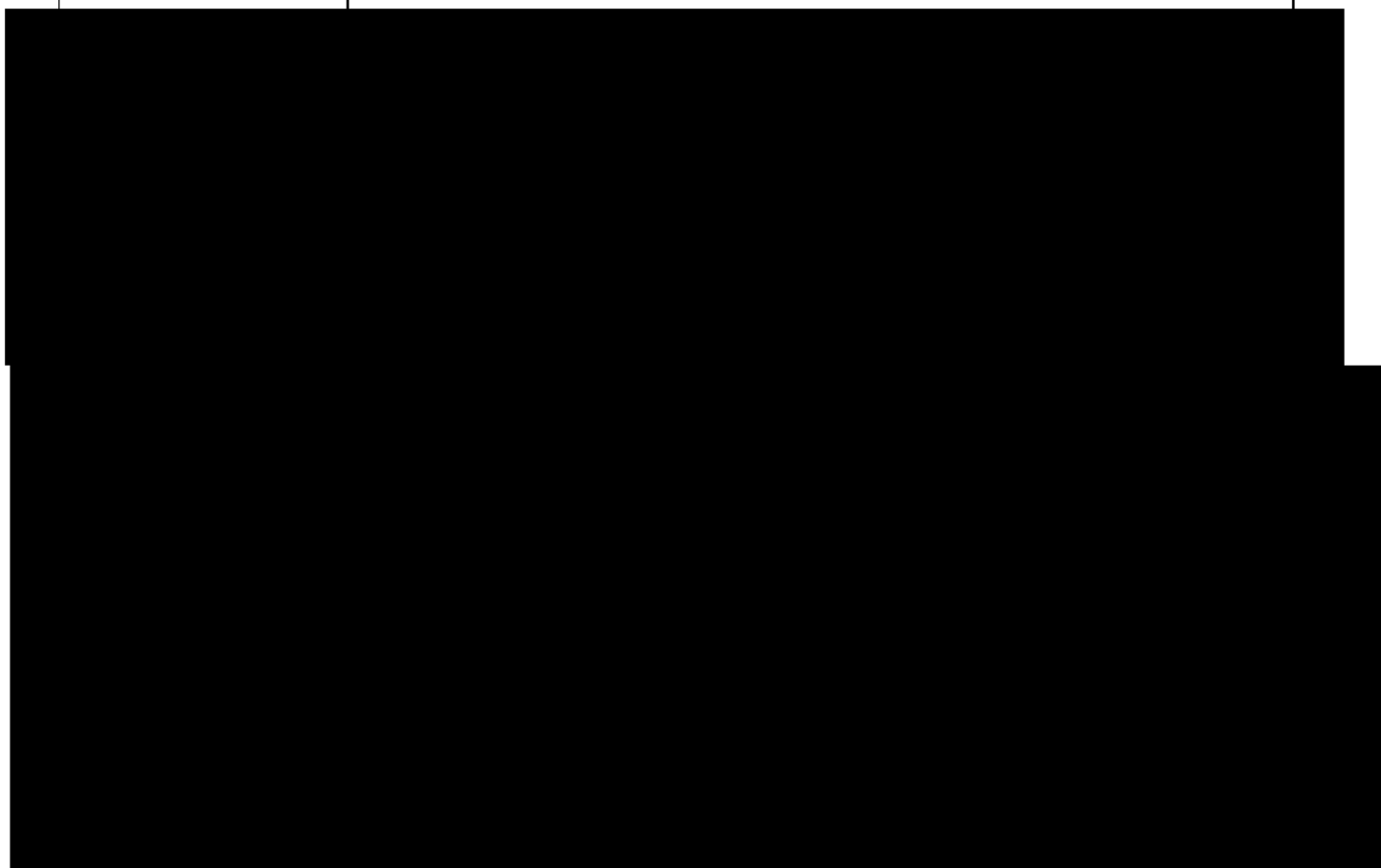
The contact details of the Agency's Data Protection Officer are: [REDACTED]

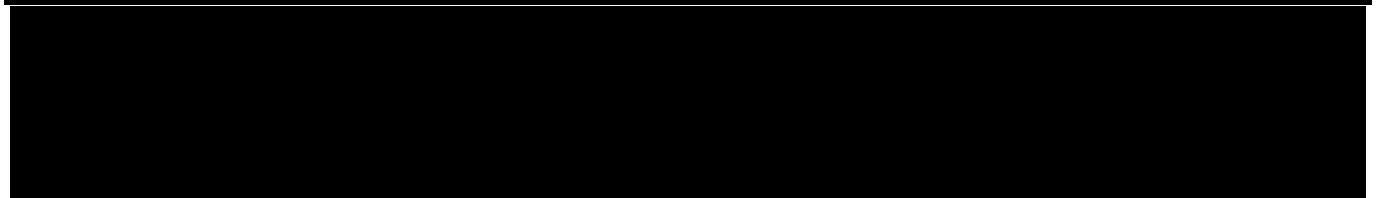
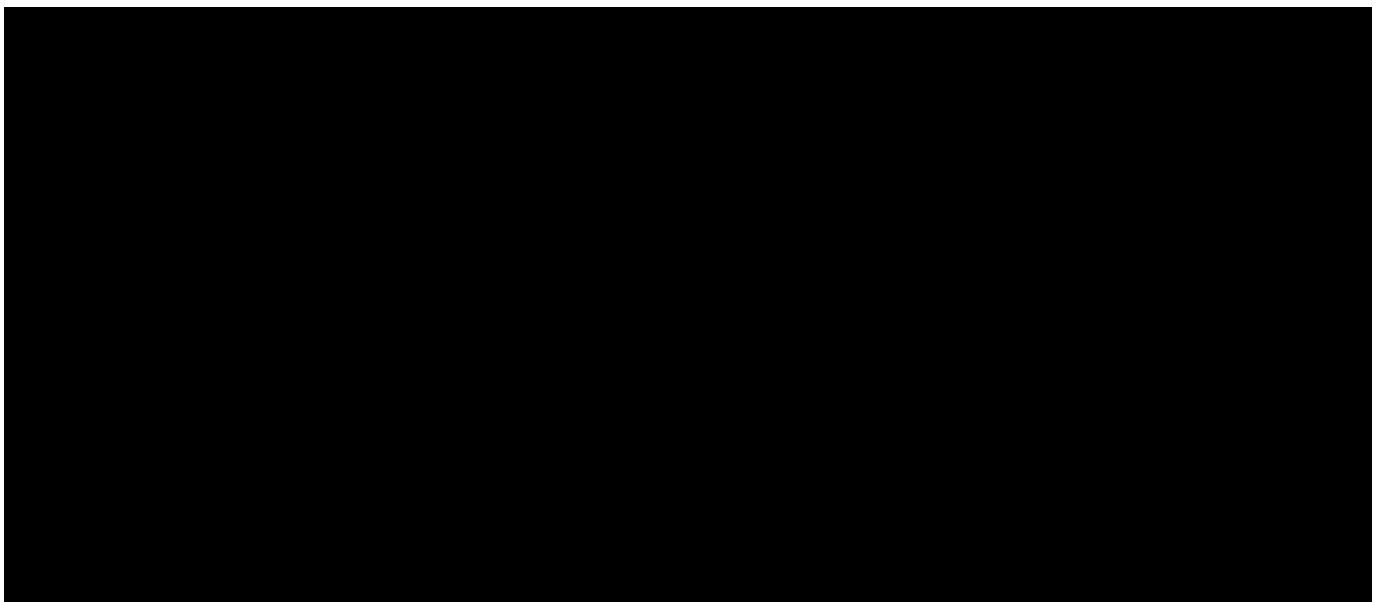
[REDACTED]

1.2 The Processor shall comply with any further written instructions with respect to Processing by the Controller.

1.3 Any such further instructions shall be incorporated into this Annex.

| Description | Details |
|---|---|
| Identity of Controller for each Category of Personal Data | The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Agency is the Processor of the following Personal Data: |





| | |
|--|--|
| <p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p> | <p>Programme of destruction in place, if message is issued by Paragon and no response received within agreed time limit the data record is destroyed also unsubscribe facility is available and actioned upon request.</p> |
|--|--|

Order Schedule 2 (Staff Transfer)

Clients will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Client on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Client shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Client Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department's Employment Law Group]

1. Definitions

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

“Acquired Rights Directive”

the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

"Employee Liability"

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;
- f) employment claims whether in tort, contract or statute or otherwise;
- g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Former Agency"

a supplier supplying services to the Client before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);

| | |
|---------------------------------|--|
| "New Fair Deal" | <p>the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i>" issued in October 2013 including:</p> <ul style="list-style-type: none">(i) any amendments to that document immediately prior to the Relevant Transfer Date; and(ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Agency by the Client; |
| "Old Fair Deal" | <p>HM Treasury Guidance "<i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i>" issued in June 1999 including the supplementary guidance "<i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i>" issued in June 2004;</p> |
| "Partial Termination" | <p>the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Client can end this contract) or 10.6 (When the Agency can end the contract);</p> |
| "Relevant Transfer" | <p>a transfer of employment to which the Employment Regulations applies;</p> |
| "Relevant Transfer Date" | <p>in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the Agency or a Subcontractor was the Former Agency and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Agency (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;</p> |

**"Staffing
Information"**

in relation to all persons identified on the Agency's Provisional Agency Personnel List or Agency's Final Agency Personnel List, as the case may be, such information as the Client may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

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- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Agency's Final Agency Personnel List" a list provided by the Agency of all Agency Staff whose will transfer under the Employment Regulations on the Service Transfer Date;

"Agency's Provisional Agency Personnel List" a list prepared and updated by the Agency of all Agency Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Agency;

"Term" the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

"Transferring Client Employees" those employees of the Client to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Agency Employees" in relation to a Former Agency, those employees of the Former Agency to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes any obligation on the Agency including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Agency shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Client, Former Agency, Replacement Agency or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Agency will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "Third Party Provisions") confer benefits on third parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this Order Contract has no right under the CRTPA to enforce any term of this Order Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

Order Schedule 2 (Staff Transfer)

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- 2.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Client, which may, if given, be given on and subject to such terms as the Client may determine.
- 2.5 Any amendments or modifications to this Order Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

3. Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Order Contract:

- Part C (No Staff Transfer on the Start Date)
- Part E (Staff Transfer on Exit)

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PART C: NO STAFF TRANSFER ON THE START DATE

1. What happens if there is a staff transfer

- 1.1 The Client and the Agency agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Client and/or any Former Agency.
- 1.2 If any employee of the Client and/or a Former Agency claims, or it is determined in relation to any employee of the Client and/or a Former Agency, that his/her contract of employment has been transferred from the Client and/or the Former Agency to the Agency and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Agency shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Client in writing and, where required by the Client, notify the Former Agency in writing; and
 - 1.2.2 the Client and/or the Former Agency may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the Agency or the Subcontractor (as appropriate) or take such other reasonable steps as the Client or Former Agency (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Client and/or the Former Agency),, the Agency shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period referred to in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved;the Agency may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the Agency and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Client shall:
 - 1.5.1 indemnify the Agency and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Client's employees referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the

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Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 1.5.2 procure that the Former Agency indemnifies the Agency and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Agency referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Client and/or the Former Agency as appropriate nor dismissed by the Agency and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Agency and/or the Subcontractor (as appropriate) and the Agency shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.
- 1.7 Where any person remains employed by the Agency and/or any Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the Agency and/or the Subcontractor and the Agency shall indemnify the Client and any Former Agency, and shall procure that the Subcontractor shall indemnify the Client and any Former Agency, against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Subcontractor.
- 1.8 The indemnities in Paragraph 1.5:
 - 1.8.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Agency and/or Subcontractor; or
 - (b) any claim that the termination of employment was unfair because the Agency and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Agency and/or any Subcontractor to the Client and, if applicable, Former Agency within 6 months of the Start Date.

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- 1.9 If the Agency and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Agency and/or the Subcontractor and the Agency shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Client and any Former Agency against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Subcontractor.

2. Limits on the Former Agency's obligations

Where in this Part C the Client accepts an obligation to procure that a Former Agency does or does not do something, such obligation shall be limited so that it extends only to the extent that the Client's contract with the Former Agency contains a contractual right in that regard which the Client may enforce, or otherwise so that it requires only that the Client must use reasonable endeavours to procure that the Former Agency does or does not act accordingly.

PART D: PENSIONS

1. Definitions

In this Part D and Part E, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes to this Part D:

| | | |
|---|--------------|--|
| "Actuary" | | a Fellow of the Institute and Faculty of Actuaries; |
| "Admission Agreement" | | either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires; |
| "Best Direction" | Value | the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate); |
| "Broadly Comparable" | | <p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p> |
| "CSPS" | | the schemes as defined in Annex D1 to this Part D; |
| "Direction Letter/Determination" | | has the meaning in Annex D2 to this Part D; |
| "Fair Deal Eligible Employees" | | each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or |

remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);

"Fair Employees"

Deal any of:

- (a) Transferring Client Employees;
- (b) Transferring Former Agency Employees;
- (c) employees who are not Transferring Client Employees or Transferring Former Agency Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Agency or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;
- (d) where the Agency or a Subcontractor was the Former Agency, the employees of the Agency (or Subcontractor);

who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Client;

"Fund Actuary"

a Fund Actuary as defined in Annex D3 to this Part D;

"LGPS"

the scheme as defined in Annex D3 to this Part D;

"NHSPS"

the schemes as defined in Annex D2 to this Part D;

(a)

(b)

"Statutory Schemes" means the CSPA, NHSPS or LGPS.

2. Agency obligations to participate in the pension schemes

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

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- 2.2 The Agency undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ Determination, if necessary) as may be required to enable the Agency to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Agency undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/ Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 2.3.2 subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Agency is the Former Agency (or a Subcontractor is a Subcontractor of the Former Agency) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Agency (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Agency (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Agency (or Sub- contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Client¹.

3. Agency obligation to provide information

- 3.1 The Agency undertakes to the Client:
- 3.1.1 to provide all information which the Client may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
 - 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Client (such consent not to be unreasonably withheld or delayed);
 - 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal

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Eligible Employees arising on expiry or termination of the relevant Contract.

4. Indemnities the Agency must give

4.1 The Agency shall indemnify and keep indemnified CCS, [NHS Pensions], the Client and/or any Replacement Agency and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Agency of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Agency or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Agency and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

Subcontractor:

- (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract; or
 - (b) arise out of the failure of the Agency and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of the relevant Contract; and/or
- 4.1.4 arise out of or in connection with the Agency (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- 4.2.1 shall survive termination of the relevant Contract; and
- 4.2.2 shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

5. What happens if there is a dispute

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the CCS and/or the Client and/or the Agency or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Client and/or the Agency be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
- 5.1.2 whose decision will be final and binding on the CCS and/or the Client and/or the Agency; and
- 5.1.3 whose expenses shall be borne equally by the CCS and/or the Client and/or the Agency unless the independent Actuary shall otherwise direct.

The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6. Other people's rights

6.1 The Parties agree Clause 19 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Agency under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Agency must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

7. What happens if there is a breach of this Part D

7.1 The Agency agrees to notify the Client should it breach any obligations it has under this Part D and agrees that the Client shall be entitled to terminate its Contract for material Default in the event that the Agency:

- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Client giving particulars of the breach and requiring the Agency to remedy it.

8. Transferring Fair Deal Employees

8.1 Save on expiry or termination of the relevant Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of

employment) the Agency shall or shall procure that any relevant Sub-contractor shall:

- 8.1.1 notify the Client as far as reasonably practicable in advance of the transfer to allow the Client to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Agency" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

9. What happens to pensions if this Contract ends

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant Contract.
- 9.2 The Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Agency and/or NHS Pension and/or CSPA and/or the relevant Administering Client and/or the Client may reasonably require, to enable the Replacement Agency to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10. Broadly Comparable Pension Schemes on the Relevant Transfer Date

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Agency must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Client.
- 10.2 Such Broadly Comparable pension scheme must be:
 - 10.2.1 established by the Relevant Transfer Date²;

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- 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Agency's Broadly Comparable pension scheme (unless otherwise instructed by the Client);
 - 10.2.4 capable of paying a bulk transfer payment to the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Client); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Client).
- 10.3 Where the Agency has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Agency shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Client details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Agency's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Client (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer³; and
 - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the

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Agency and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Agency and/or Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract:

10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Agency or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Agency's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the Agency shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Client shall otherwise direct. The Agency shall indemnify the Client or the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Client

directs) for any failure to pay the difference as required under this paragraph.

11. Broadly Comparable Pension Scheme in Other Circumstances

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Agency must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Client.
- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme⁴;
 - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Client);
 - 11.2.4 capable of paying a bulk transfer payment to the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Client); and
 - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Client).
- 11.3 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Agency shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Client details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of

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doubt any debts arising under section 75 or 75A of the Pensions Act 1995;

11.3.3 where required to do so by the Client, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Client (where applicable). The Agency must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Agency shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme⁵; and

11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Agency and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Agency and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits

(**“the Shortfall”**), the Agency or the Subcontractor (as agreed between them) must pay the Replacement Agency’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Agency and any Subcontractor, the Shortfall shall be paid by the Agency. The Agency shall indemnify the Client or the Replacement Agency’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Client directs) for any failure to pay the Shortfall under this paragraph.

12. Right of Set-off

12.1 The Client shall have a right to set off against any payments due to the Agency under the relevant Contract an amount equal to:

- 12.1.1 any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 12.1.2 any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 12.1.3 any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Client shall also have a right to set off against any payments due to the Agency under the relevant Contract all reasonable costs and expenses incurred by the Client as result of Paragraphs 12.1 above.

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Part E: Staff Transfer on Exit

1. Obligations before a Staff Transfer

1.1 The Agency agrees that within 20 Working Days of the earliest of:

- 1.1.1 receipt of a notification from the Client of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Client at any time (provided that the Client shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Agency's Provisional Agency Personnel List, together with the Staffing Information in relation to the Agency's Provisional Agency Personnel List and it shall provide an updated Agency's Provisional Agency Personnel List at such intervals as are reasonably requested by the Client.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Agency shall provide to the Client or at the direction of the Client to any Replacement Agency and/or any Replacement Subcontractor (i) the Agency's Final Agency Personnel List, which shall identify the basis upon which they are Transferring Agency Employees and (ii) the Staffing Information in relation to the Agency's Final Agency Personnel List (insofar as such information has not previously been provided).

1.3 The Client shall be permitted to use and disclose information provided by the Agency under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Agency and/or Replacement Subcontractor.

1.4 The Agency warrants, for the benefit of The Client, any Replacement Agency, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Agency agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Agency's Provisional Agency Personnel List and shall not without the approval of the Client (not to be unreasonably withheld or delayed):

:

- 1.5.1 replace or re-deploy any Agency Staff listed on the Agency Provisional Agency Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces

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- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Agency Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Agency Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Agency's Provisional Agency Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Agency's Provisional Agency Personnel List save by due disciplinary process;

and shall promptly notify, and procure that each Subcontractor shall promptly notify, the Client or, at the direction of the Client, any Replacement Agency and any Replacement Subcontractor of any notice to terminate employment given by the Agency or relevant Subcontractor or received from any persons listed on the Agency's Provisional Agency Personnel List regardless of when such notice takes effect.

1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Client may make written requests to the Agency for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Agency shall provide, and shall procure that each Subcontractor shall provide, to the Client such information as the Client may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and
- 1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Agency shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the Client, any Replacement Agency and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Agency Employees on the Service Transfer

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Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Agency Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Agency shall provide, and shall procure that each Subcontractor shall provide, to the Client or, at the direction of the Client, to any Replacement Agency and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Agency's Final Agency Personnel List who is a Transferring Agency Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. Staff Transfer when the contract ends

- 2.1 The Client and the Agency acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of the relevant Contract or otherwise) resulting in the Services being undertaken by a Replacement Agency and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Client and the Agency agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Agency and the Transferring Agency Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Agency and/or a Replacement Subcontractor (as the case may be) and each such Transferring Agency Employee.
- 2.2 The Agency shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Agency Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Agency Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any

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periodic payments shall be made between: (i) the Agency and/or the Subcontractor (as appropriate); and (ii) the Replacement Agency and/or Replacement Subcontractor.

2.3 Subject to Paragraph 2.4, the Agency shall indemnify the Client and/or the Replacement Agency and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:

2.3.1 any act or omission of the Agency or any Subcontractor in respect of any Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Agency or any Subcontractor occurring on or before the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Agency Employees; and/or

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Agency Employees which the Agency or any Subcontractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Agency or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(b) in relation to any employee who is not identified in the Agency's Final Agency Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency to the Client and/or Replacement Agency and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

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- 2.3.5 a failure of the Agency or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Agency or any Subcontractor other than a Transferring Agency Employee identified in the Agency's Final Agency Personnel List for whom it is alleged the Client and/or the Replacement Agency and/or any Replacement Subcontractor may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Agency or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Client and/or Replacement Agency to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Agency and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date including any Employee Liabilities:
 - 2.4.1 arising out of the resignation of any Transferring Agency Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Agency and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Agency's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Agency's Final Agency Employee List claims, or it is determined in relation to any employees of the Agency, that his/her contract of employment has been transferred from the Agency to the Replacement Agency and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - 2.5.1 the Client shall procure that the Replacement Agency and/or Replacement Subcontractor will, within 5 Working Days of

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- becoming aware of that fact, notify the Client and the Agency in writing; and
- 2.5.2 the Agency may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Agency and/or Replacement Subcontractor.
- 2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the Agency or a Subcontractor, Client shall procure that the Replacement Agency shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer has been made:
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved
- the Client shall advise the Replacement Agency and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;
- 2.8 Subject to the Replacement Agency's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the Agency will indemnify the Replacement Agency and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Agency's employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement Agency takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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In any case in relation to any alleged act or omission of the Replacement Agency and/or Replacement Subcontractor, or

- (b) any claim that the termination of employment was unfair because the Replacement Agency and/or Replacement Subcontractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Agency and/or Replacement Subcontractor to the Agency within 6 months of the Service Transfer Date..

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Agency or any Subcontractor nor dismissed by the Replacement Agency and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Agency Employee. .

2.11 The Agency shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Agency's Final Agency Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(b) the Agency and/or any Subcontractor; and

(c) the Replacement Agency and/or the Replacement Subcontractor.

2.12 The Agency shall, and shall procure that each Subcontractor shall, promptly provide the Client and any Replacement Agency and/or Replacement Subcontractor, in writing such information as is necessary to enable the Client, the Replacement Agency and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Client shall procure that the Replacement Agency and/or Replacement Subcontractor, shall promptly provide to the Agency and each Subcontractor in writing such information as is necessary to enable the Agency and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Client shall procure that the Replacement Agency indemnifies the Agency on its own behalf and on behalf of any

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Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:

- 2.13.1 any act or omission of the Replacement Agency and/or Replacement Subcontractor in respect of any Transferring Agency Employee in the Agency's Final Agency Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Agency Employee;
- 2.13.2 the breach or non-observance by the Replacement Agency and/or Replacement Subcontractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Agency Employees identified in the Agency's Final Agency Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Agency Employees identified in the Agency's Final Agency Personnel List which the Replacement Agency and/or Replacement Subcontractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Agency Employees identified in the Agency's Final Agency Personnel List arising from or connected with any failure by the Replacement Agency and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Agency and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Agency Employees identified in the Agency's Final Agency Personnel List on or after their transfer to the Replacement Agency or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Agency's Final Agency Personnel List who would have been a Transferring Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Agency or Replacement Subcontractor to, or in respect of, any Transferring Agency Employee identified in the Agency's Final Agency Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Agency in writing;

Order Schedule 2 (Staff Transfer)

Order Ref:

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- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Agency Employee identified in the Agency's Final Agency Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Agency Employee identified in the Agency's Final Agency Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency or Subcontractor, to the Replacement Agency or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Agency or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees identified in the Agency's Final Agency Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Agency Employee identified in the Agency's Final Agency Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Agency Employee relating to any act or omission of the Replacement Agency or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Agency and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

Order Schedule 3 (Continuous Improvement)

1. Client's Rights

- 1.1 The Client and the Agency recognise that, where specified in DPS Schedule 4 (DPS Management), the Client may give CCS the right to enforce the Client's rights under this Schedule.

2. Agency's Obligations

- 2.1 The Agency must, throughout the Contract Period, identify new or potential improvements to the provision of the Goods or Services with a view to reducing the Client's costs (including the Charges) and/or improving the quality and efficiency of the Goods or Services and their supply to the Client.
- 2.2 The Agency must adopt a policy of continuous improvement in relation to the Goods or Services, which must include regular reviews with the Client of the Goods or Services and the way it provides them, with a view to reducing the Client's costs (including the Charges) and/or improving the quality and efficiency of the Goods or Services. The Agency and the Client must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Agency shall produce at the start of each Contract Year a plan for improving the provision of Goods or Services and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Client's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 2.3.1 identifying the emergence of relevant new and evolving technologies;
 - 2.3.2 changes in business processes of the Agency or the Client and ways of working that would provide cost savings and/or enhanced benefits to the Client (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 2.3.3 new or potential improvements to the provision of the Goods or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Goods or Services; and
 - 2.3.4 measuring and reducing the sustainability impacts of the Agency's operations and supply-chains relating to the Goods or Services, and identifying opportunities to assist the Client in meeting their sustainability objectives.
- 2.4 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Agency to the Client for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.

Order Schedule 3 (Continuous Improvement)

Order Ref:

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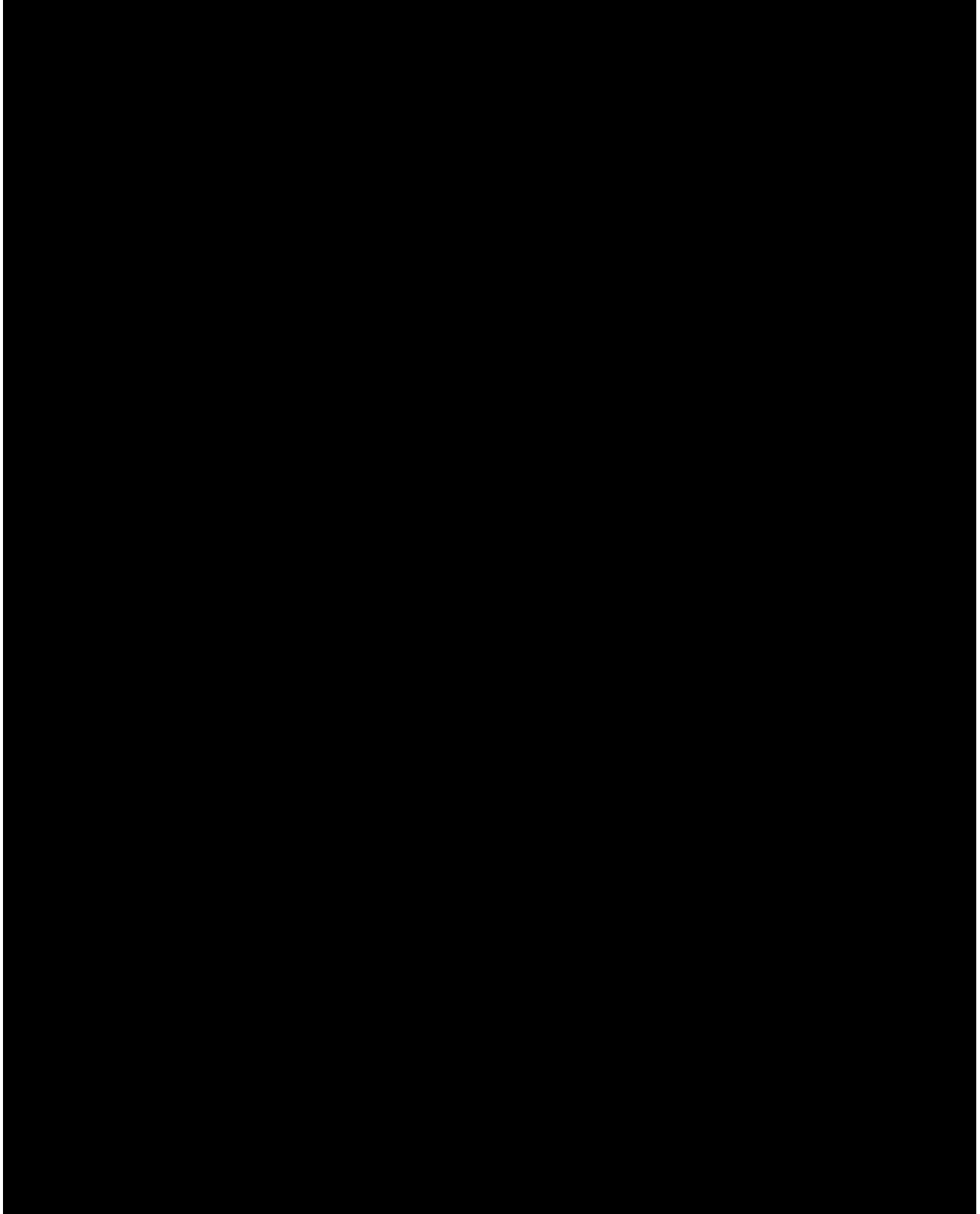
- 2.5 The Client shall notify the Agency of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Agency shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Agency must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Agency shall provide any further information as requested.
- 2.7 If the Client wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Agency must implement such Variation at no additional cost to the Client or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
 - 2.8.1 the Agency shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Agency's progress against the Continuous Improvement Plan.
- 2.9 The Agency shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Agency's costs in providing the Goods or Services to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Client by way of a consequential and immediate reduction in the Charges for the Goods or Services.
- 2.12 If at any time during the Term the Agency reduces its DPS Prices for Goods or Services provided in accordance with the terms of the DPS Contract, the Agency shall immediately reduce the Charges for the Goods or Services under the Order Contract by the same amount. This obligation applies whether or not the Goods or Services are offered in a catalogue provided under the DPS Contract.

Order Schedule 4 (Proposal)

Order Ref:

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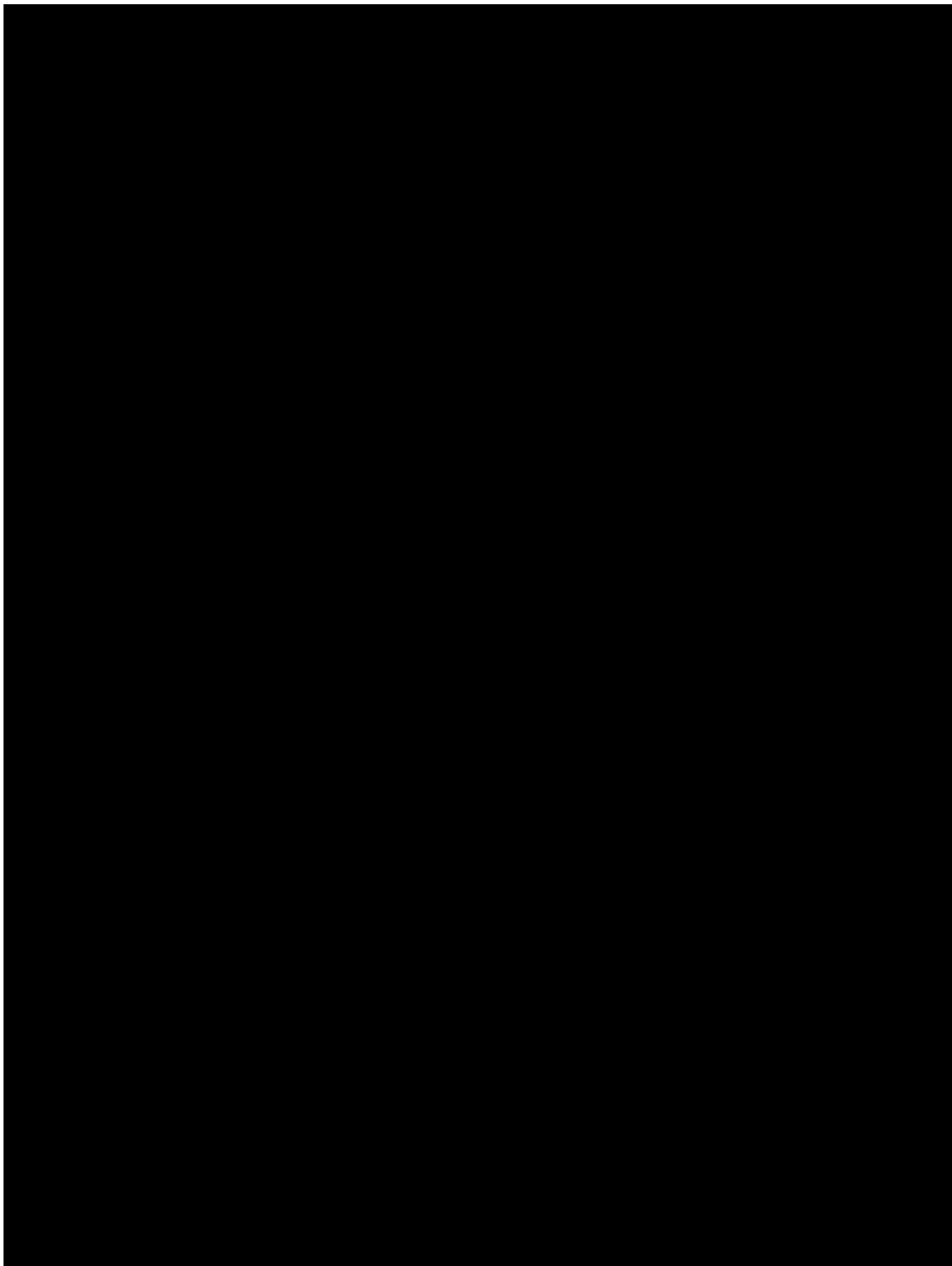
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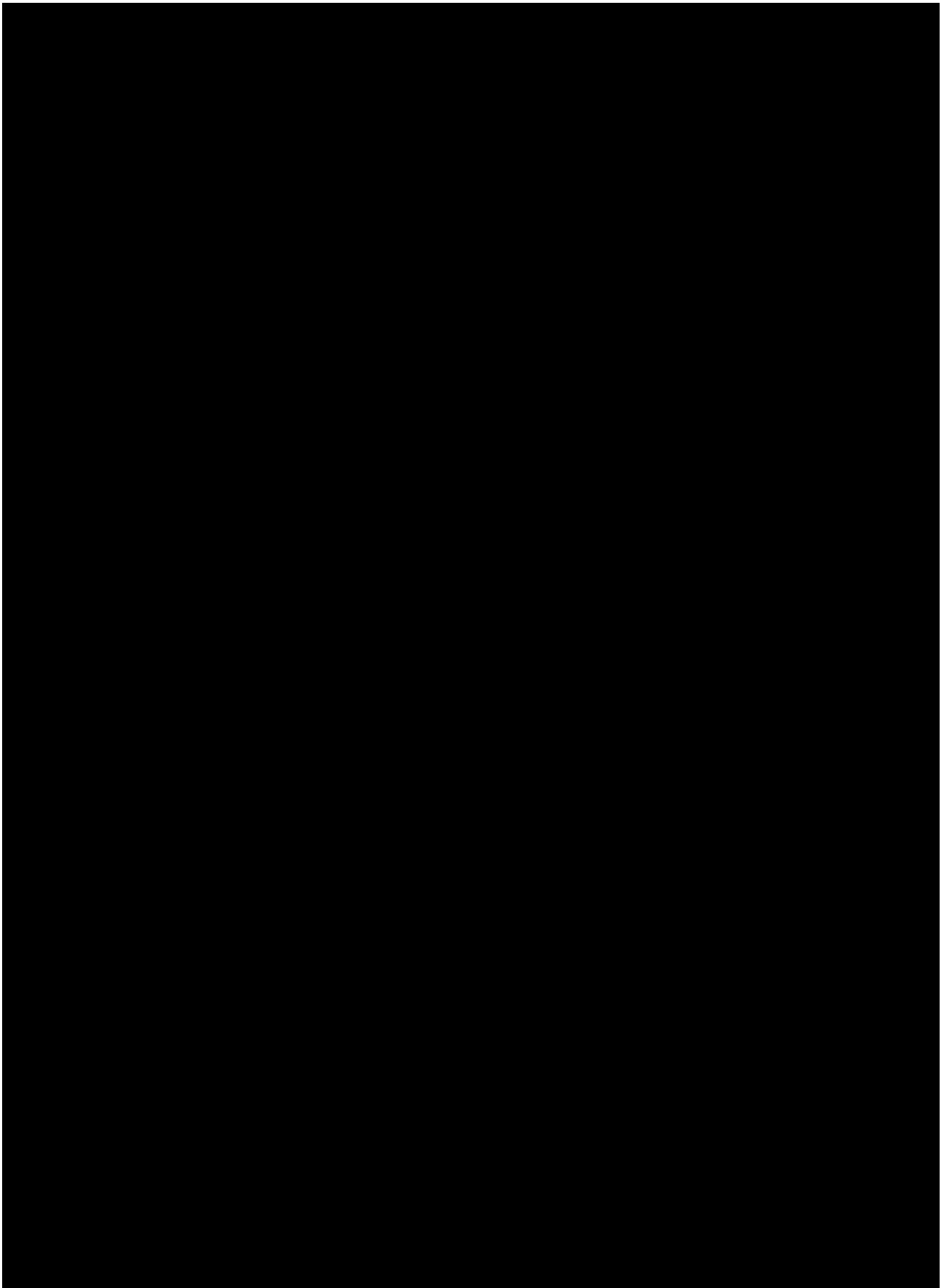
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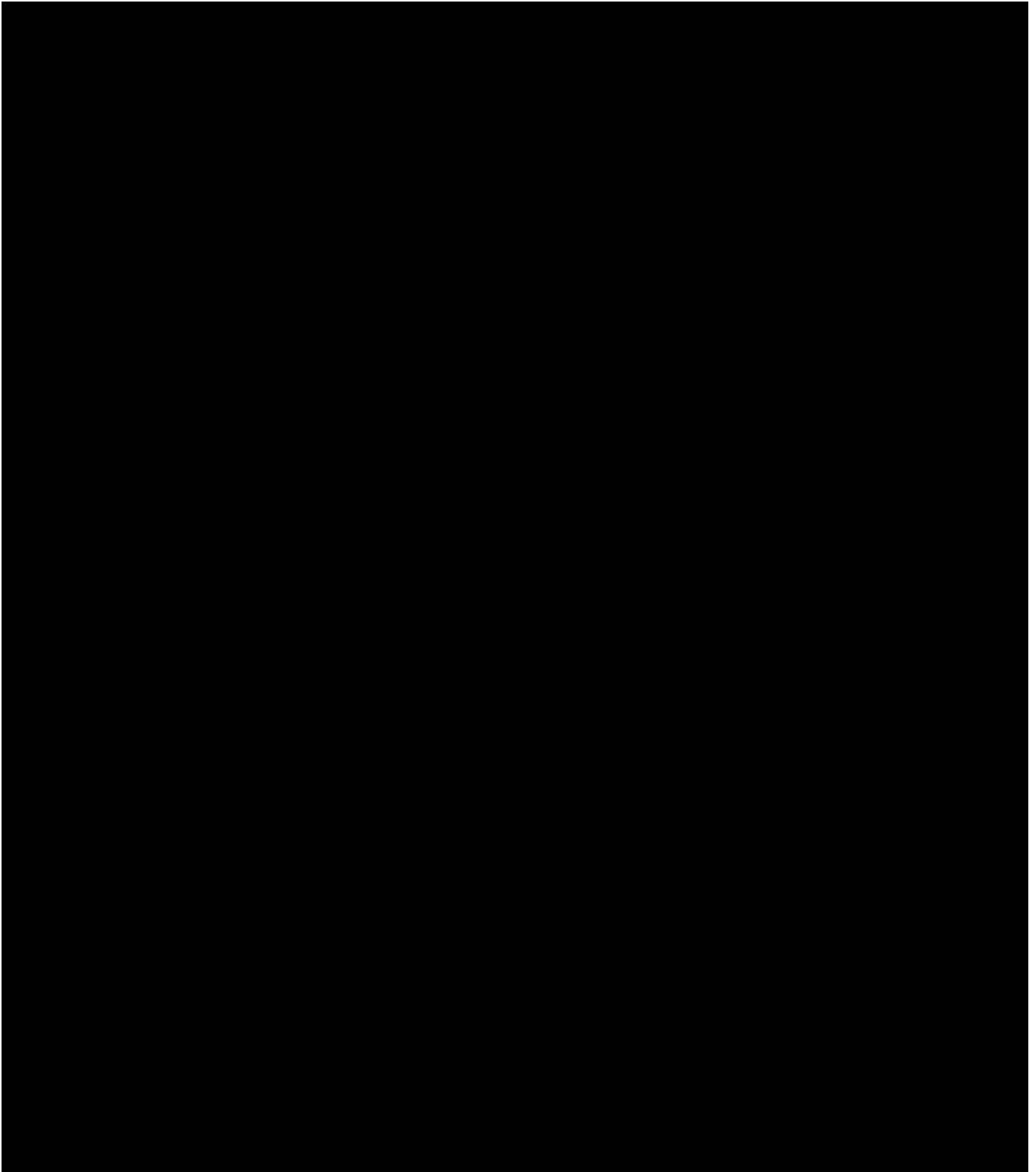
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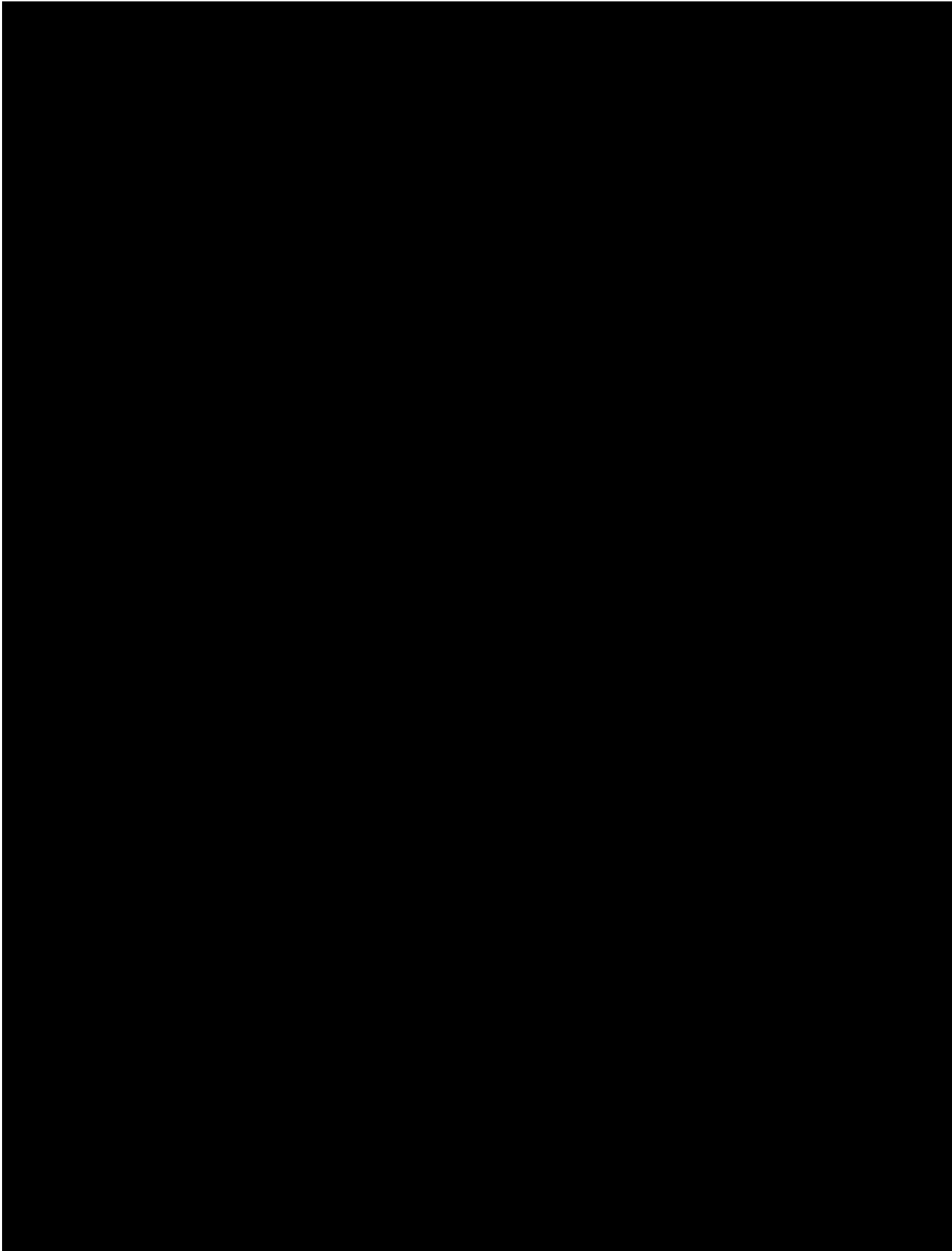
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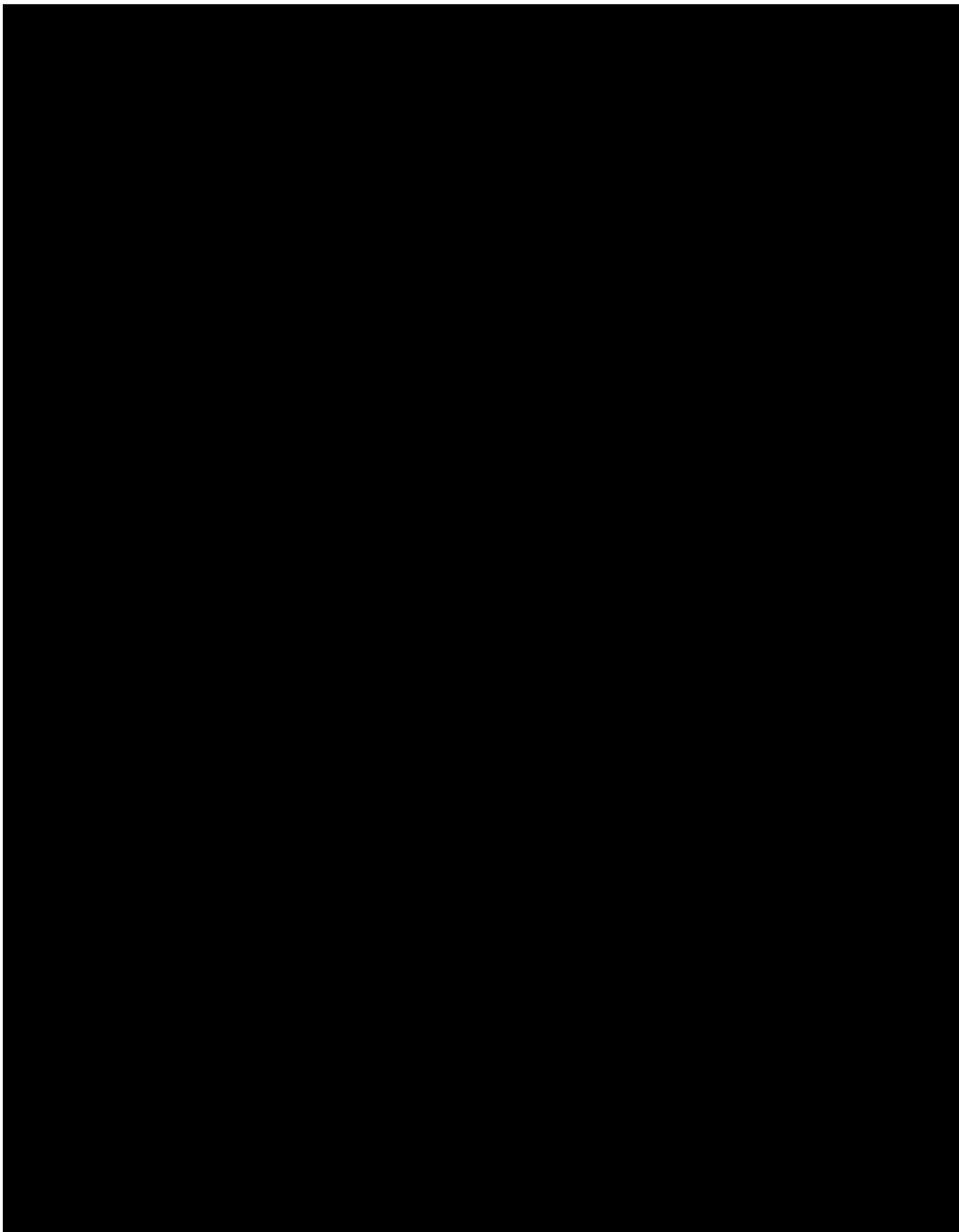
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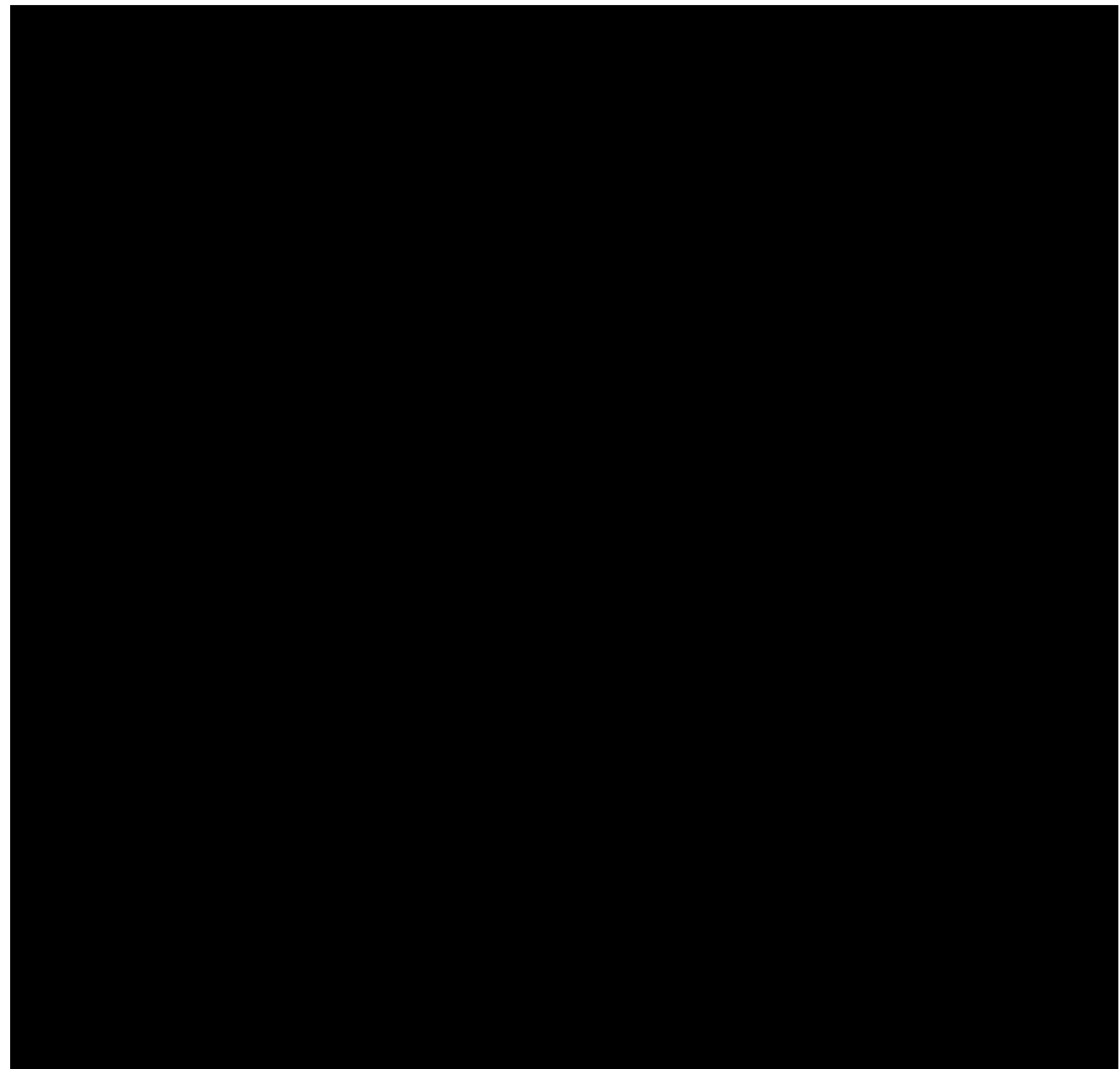
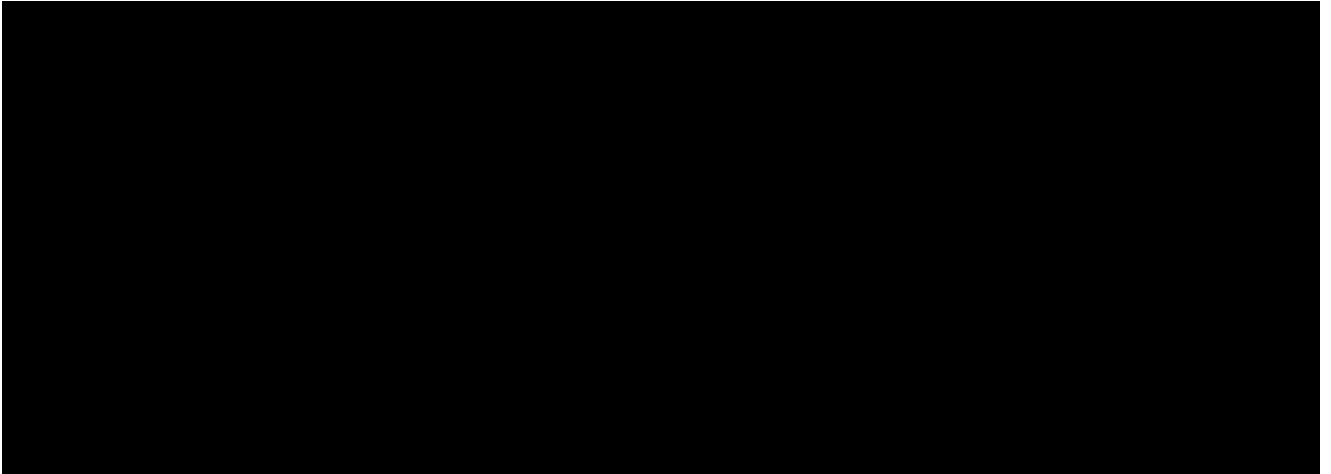
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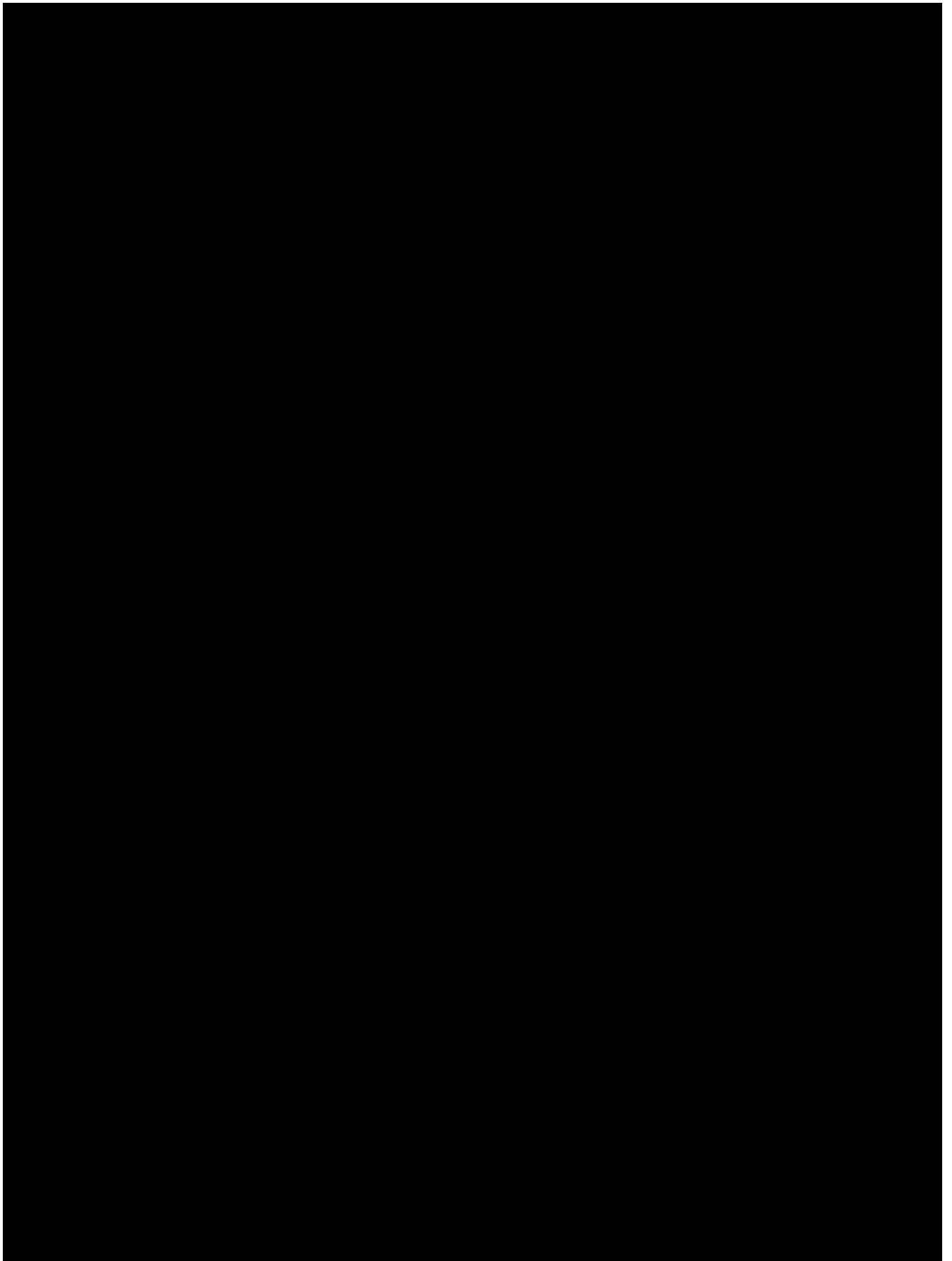
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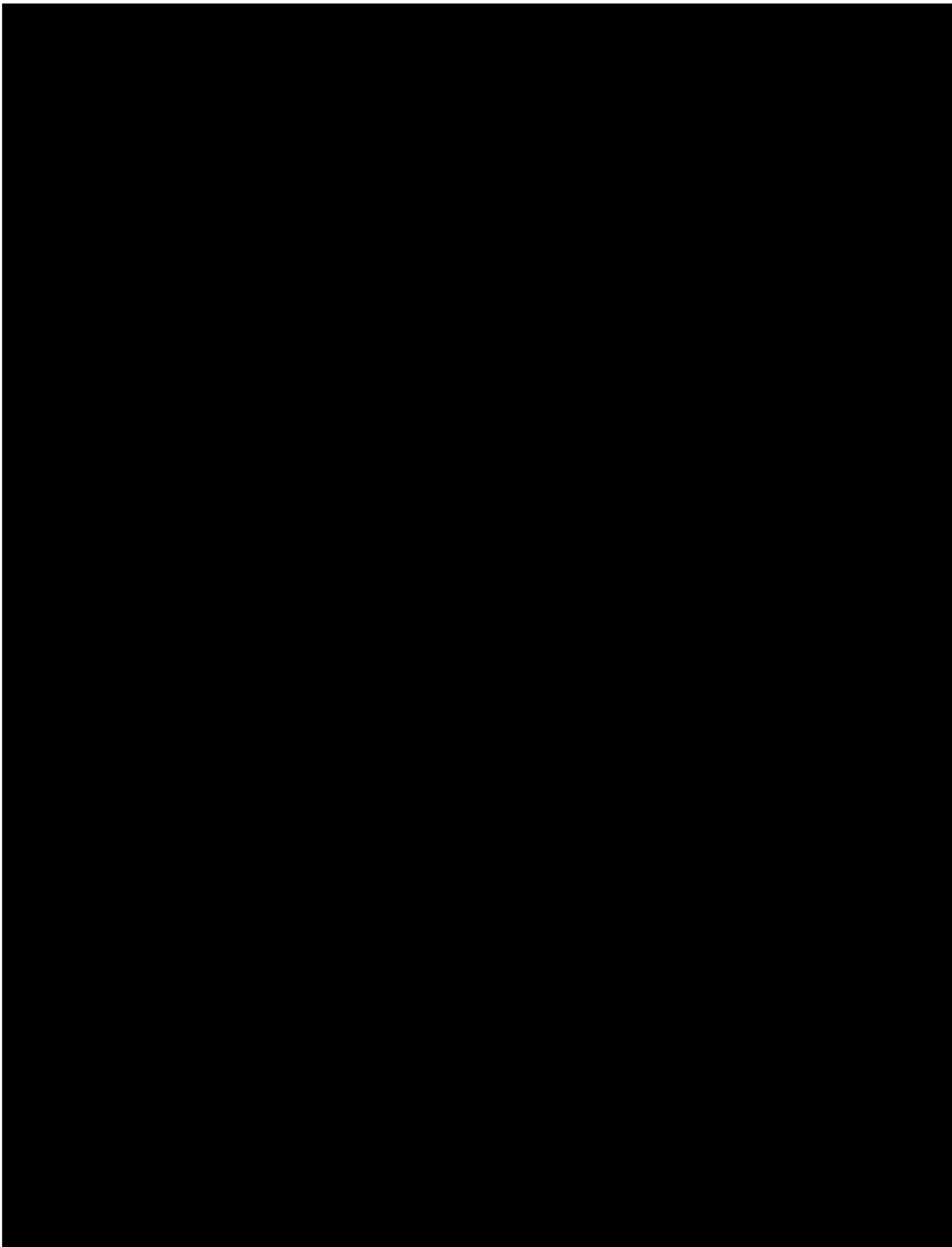
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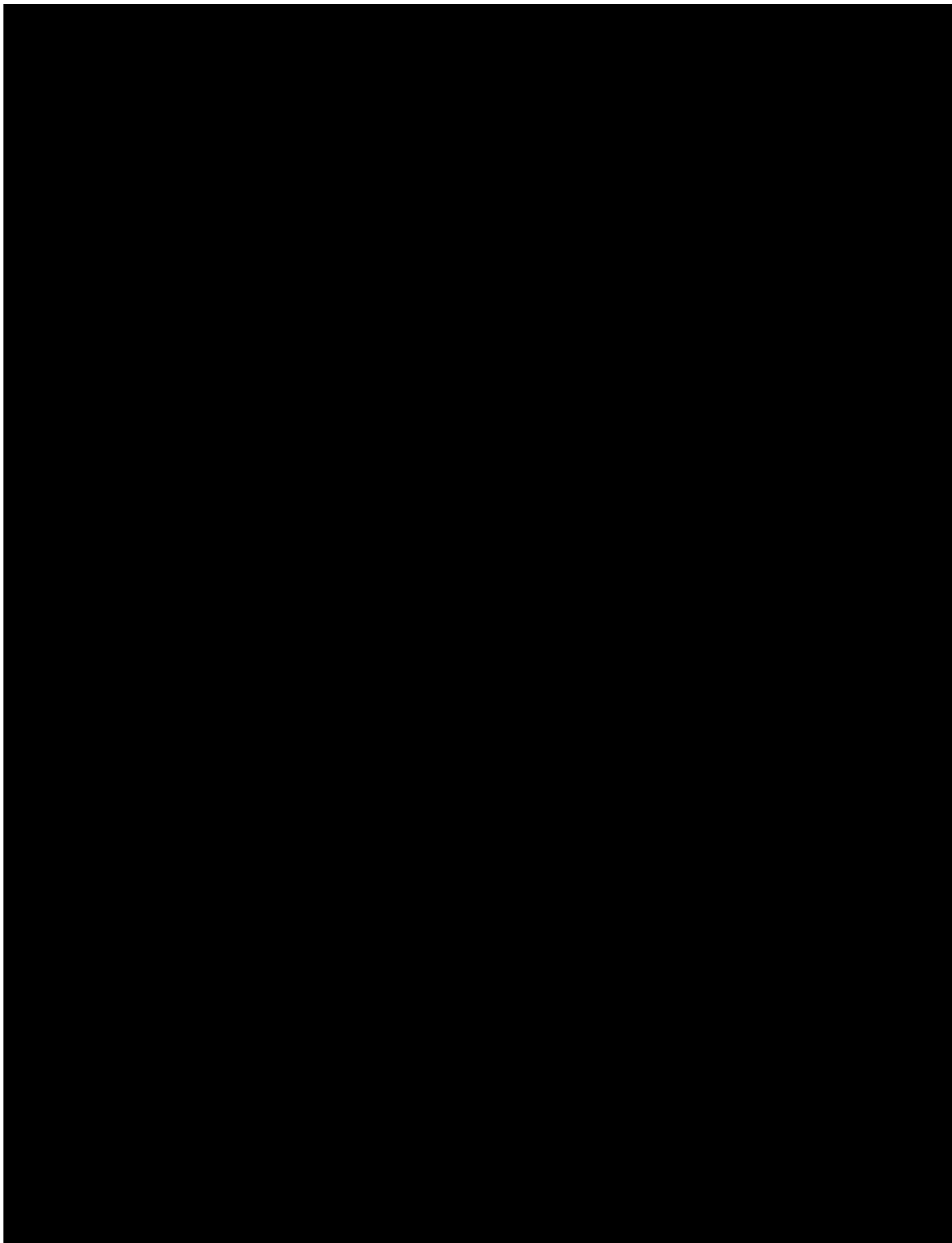
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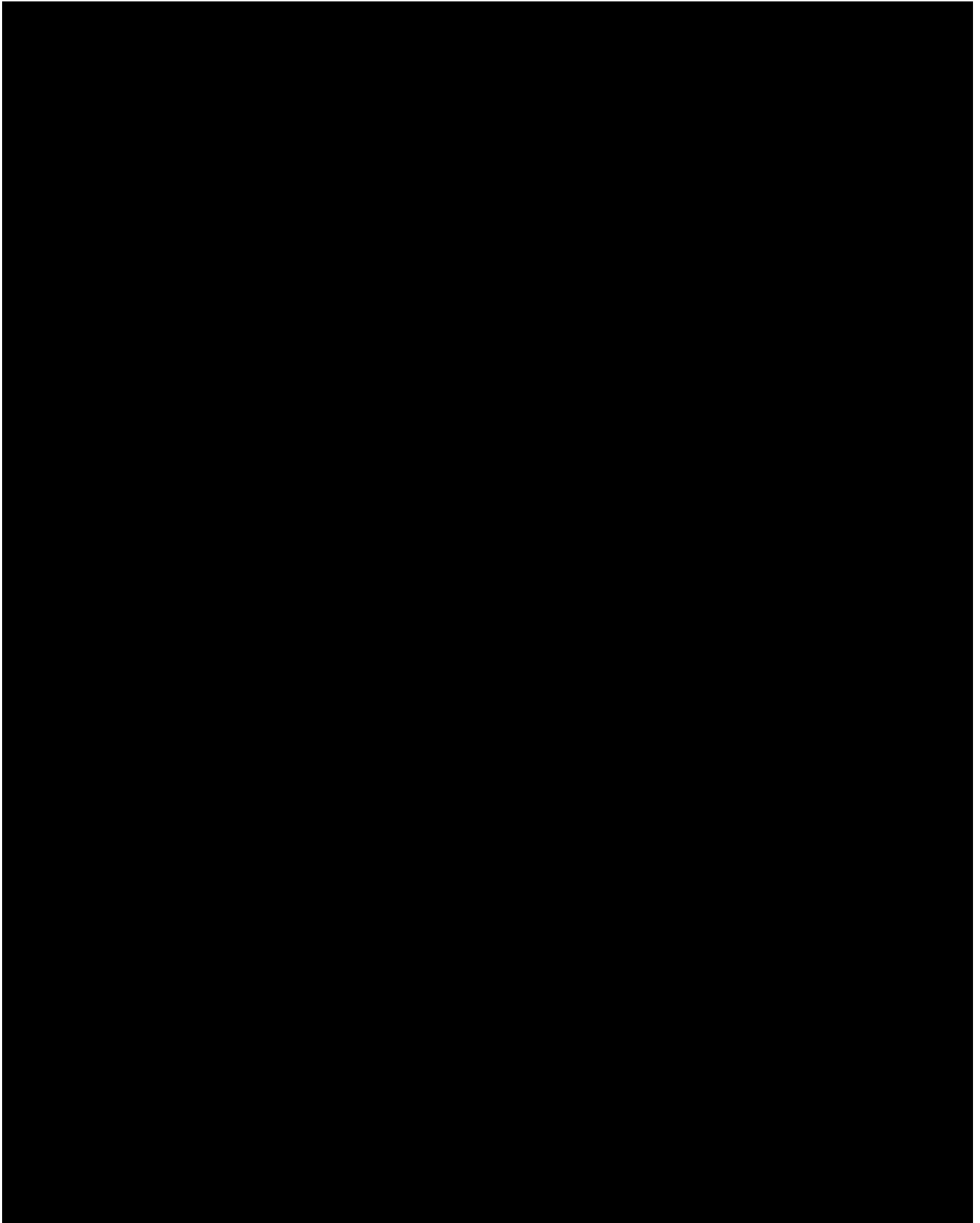
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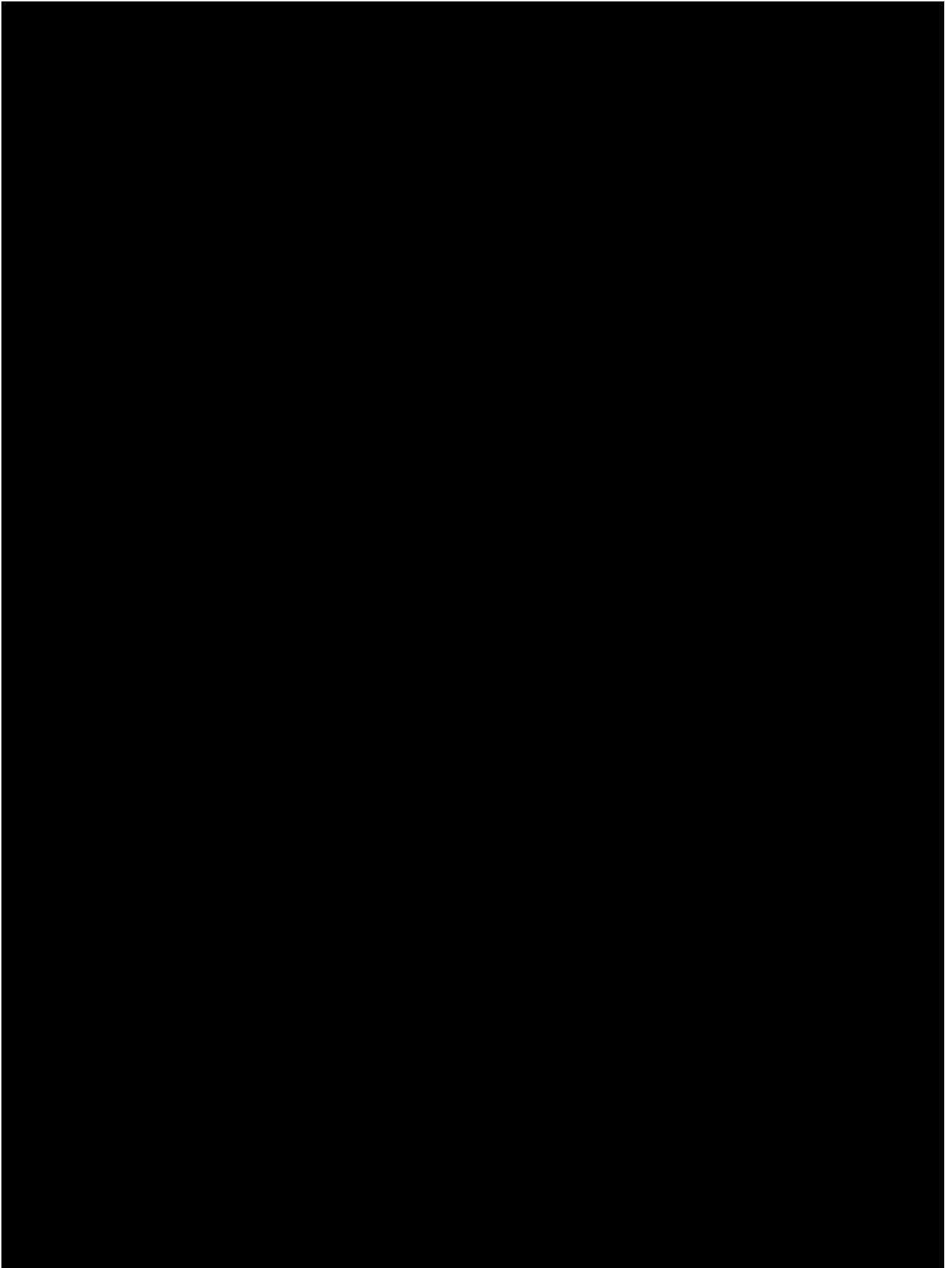
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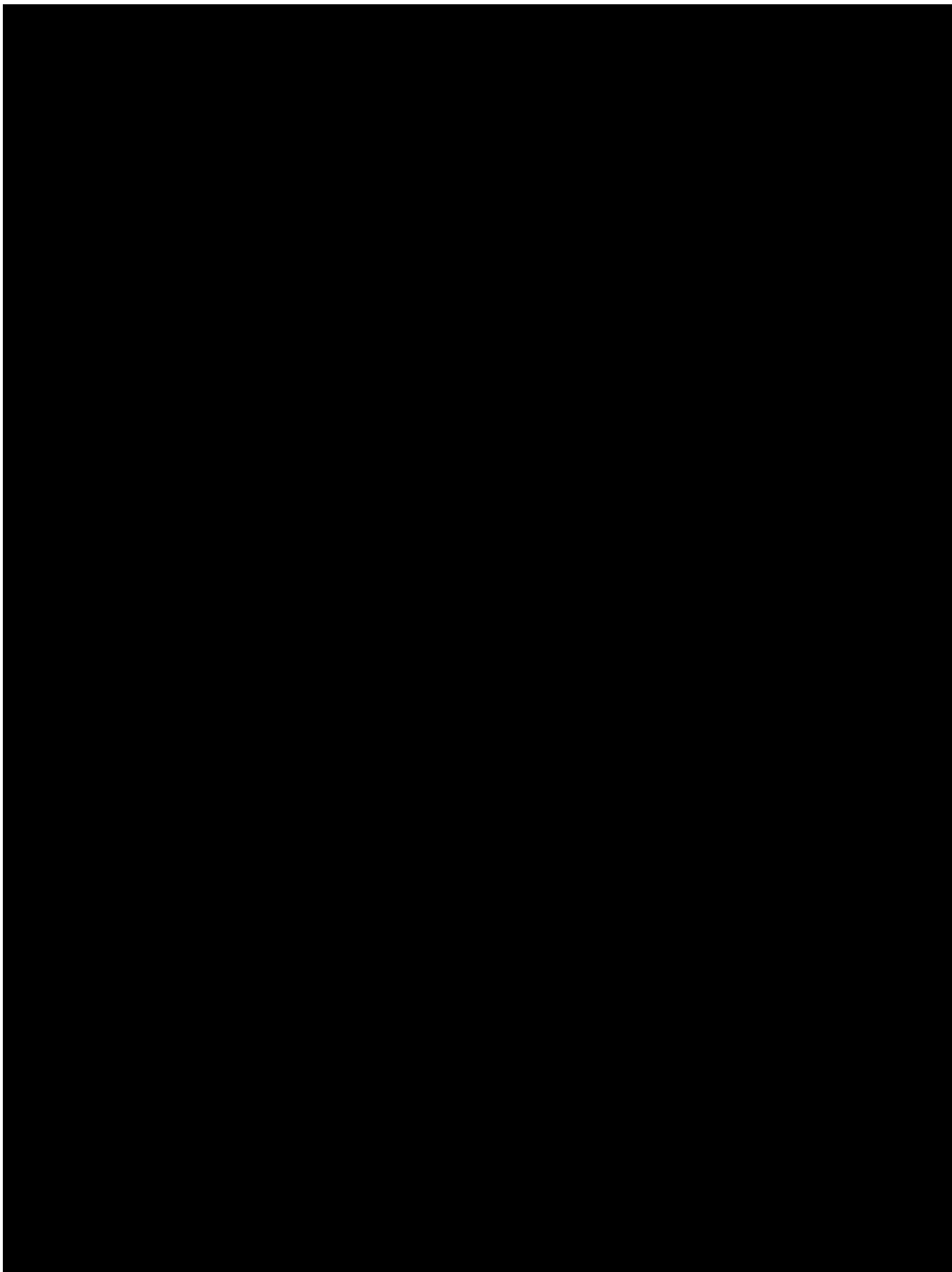
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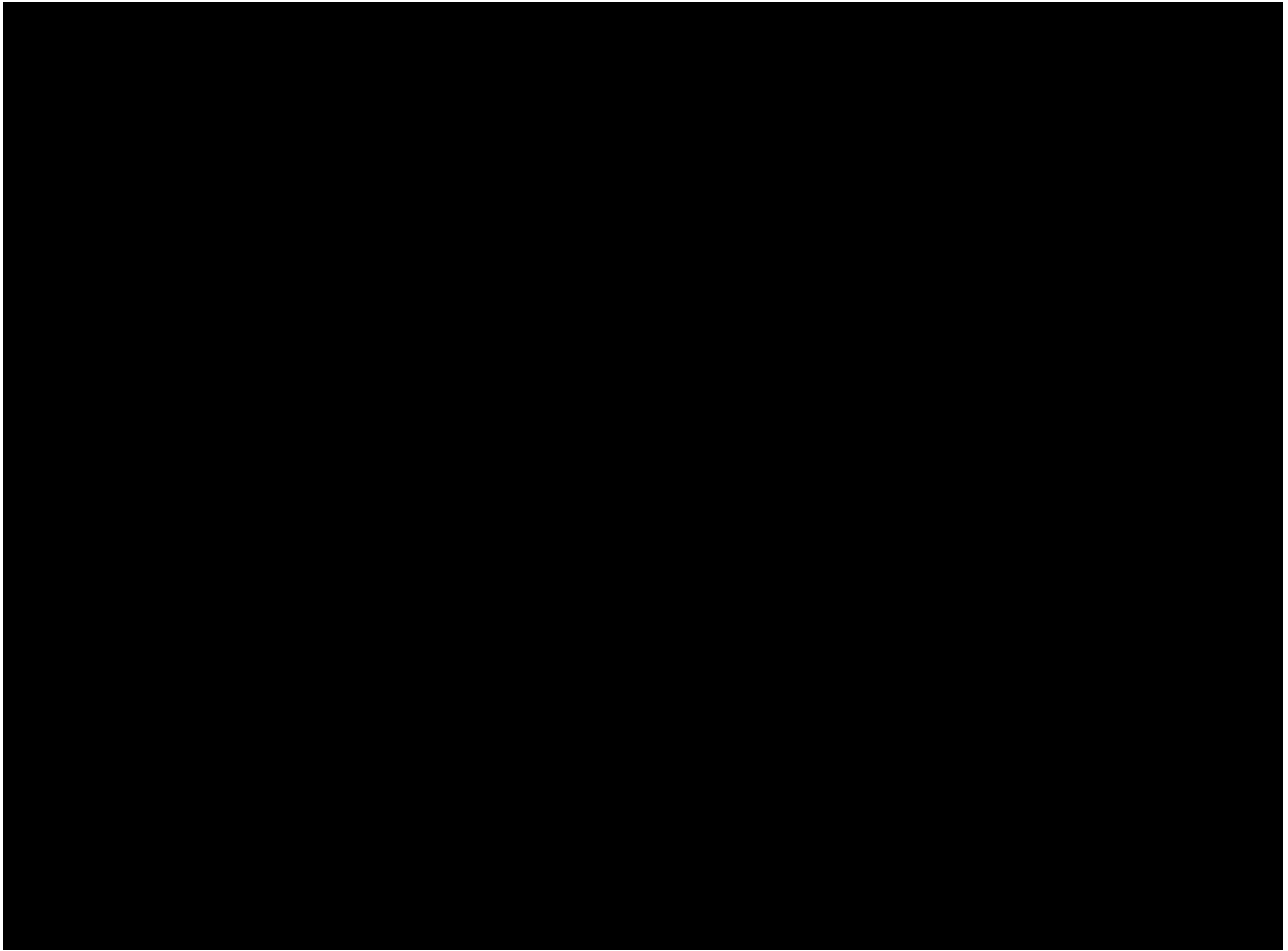
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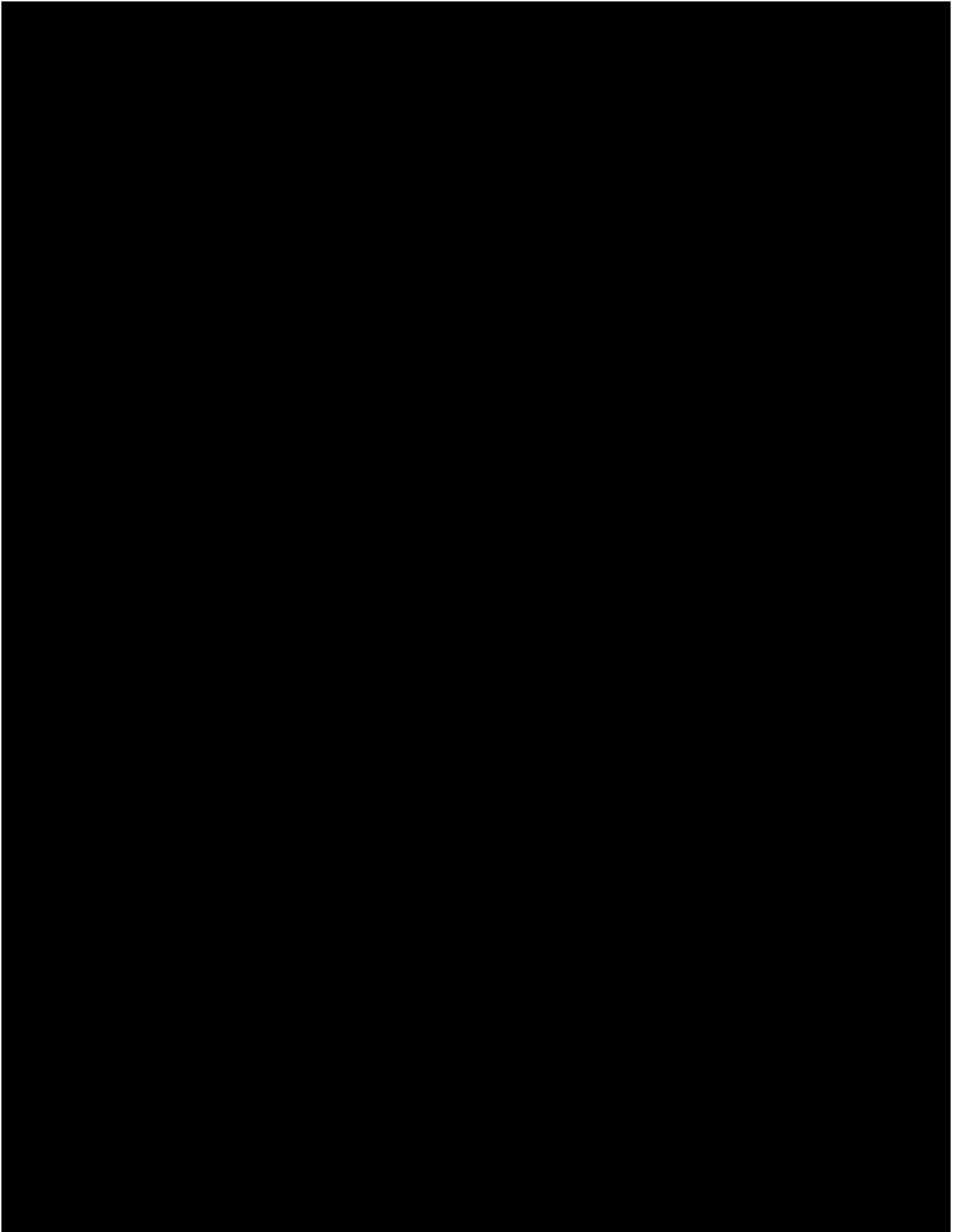
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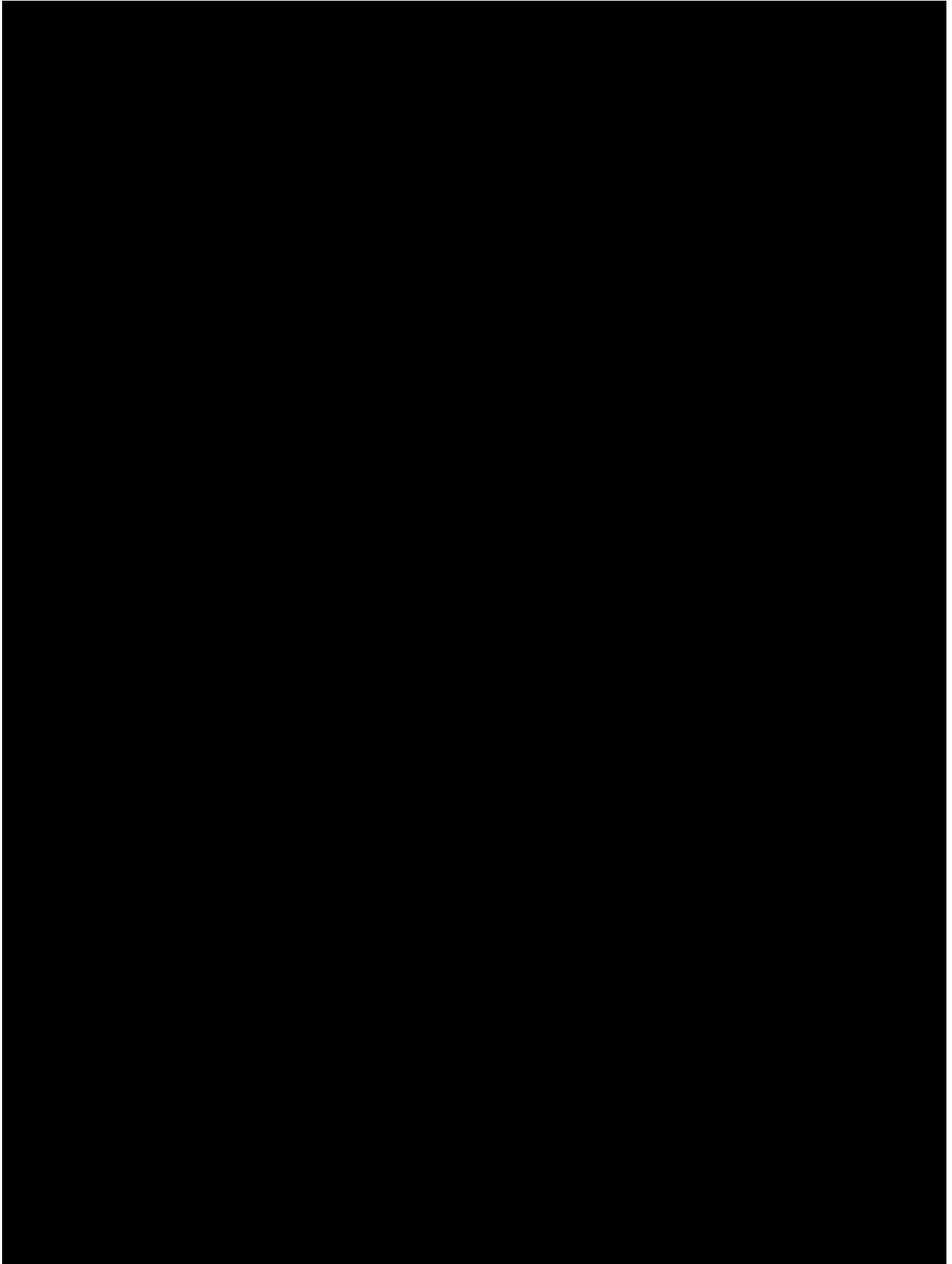
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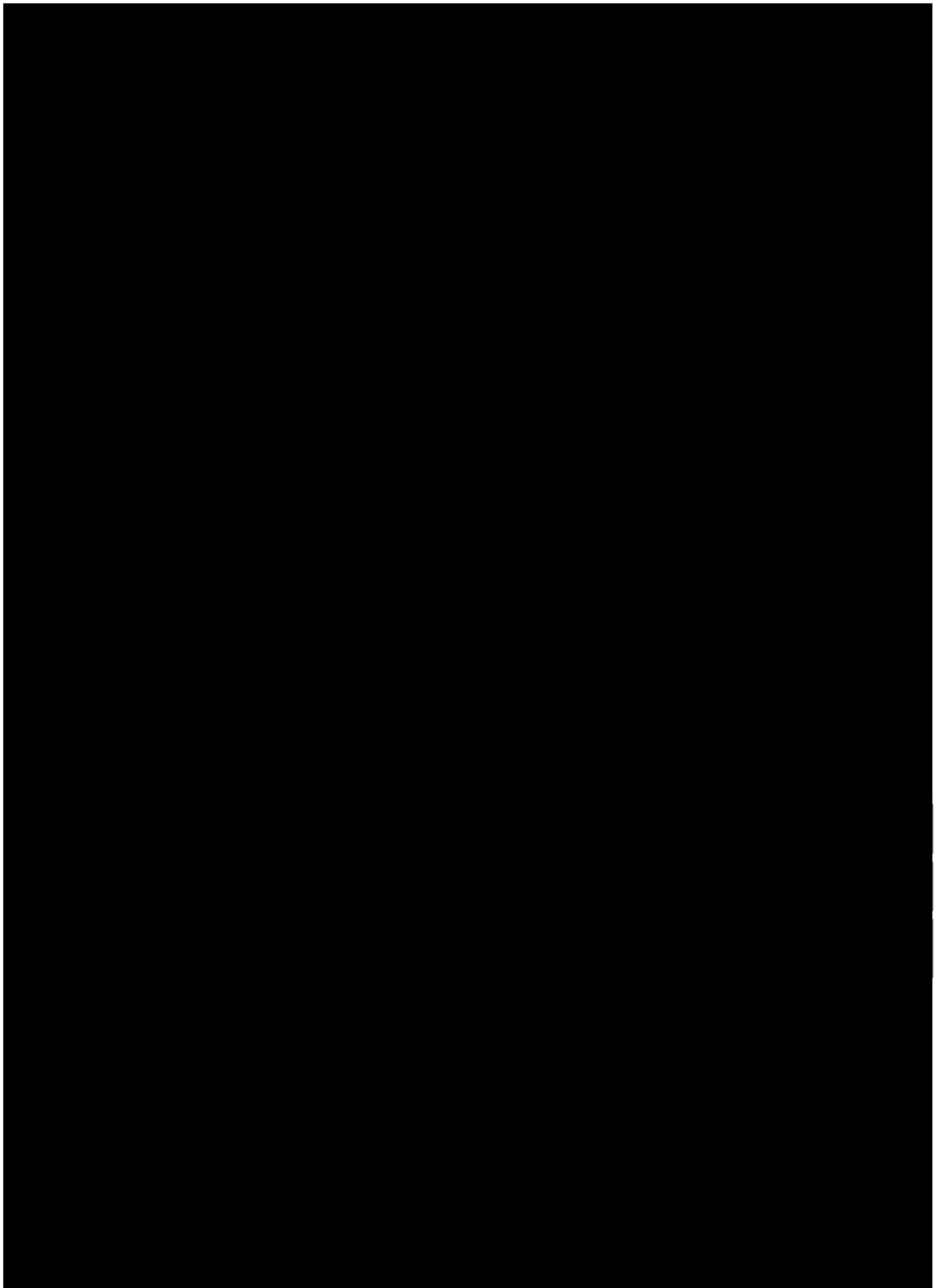
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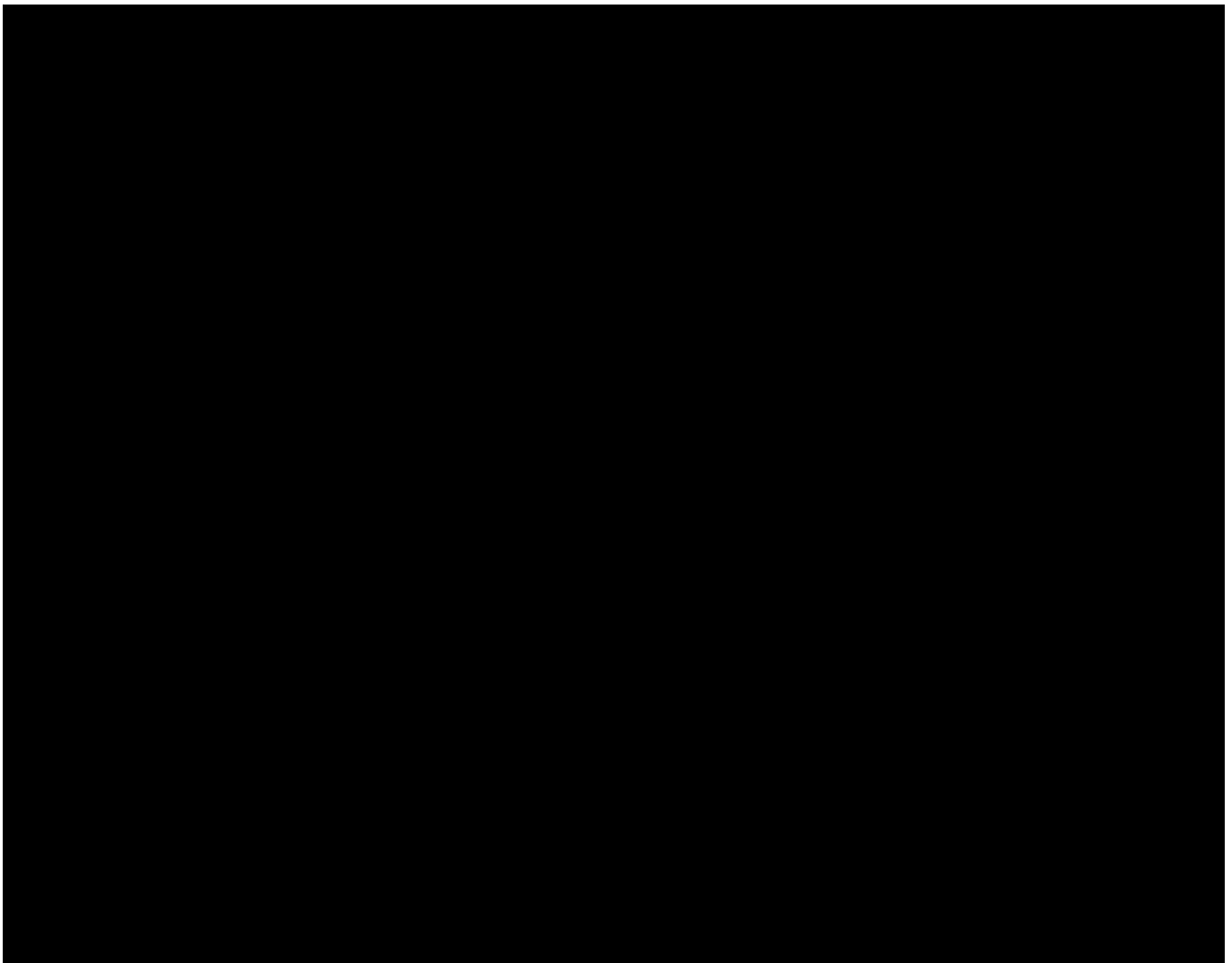
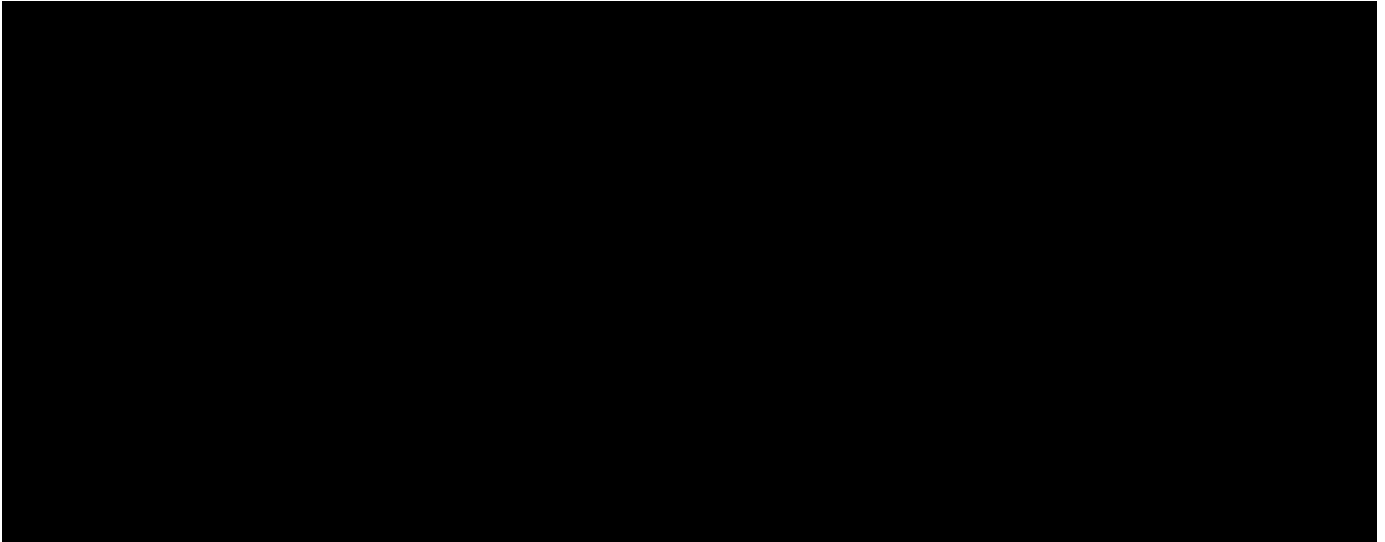
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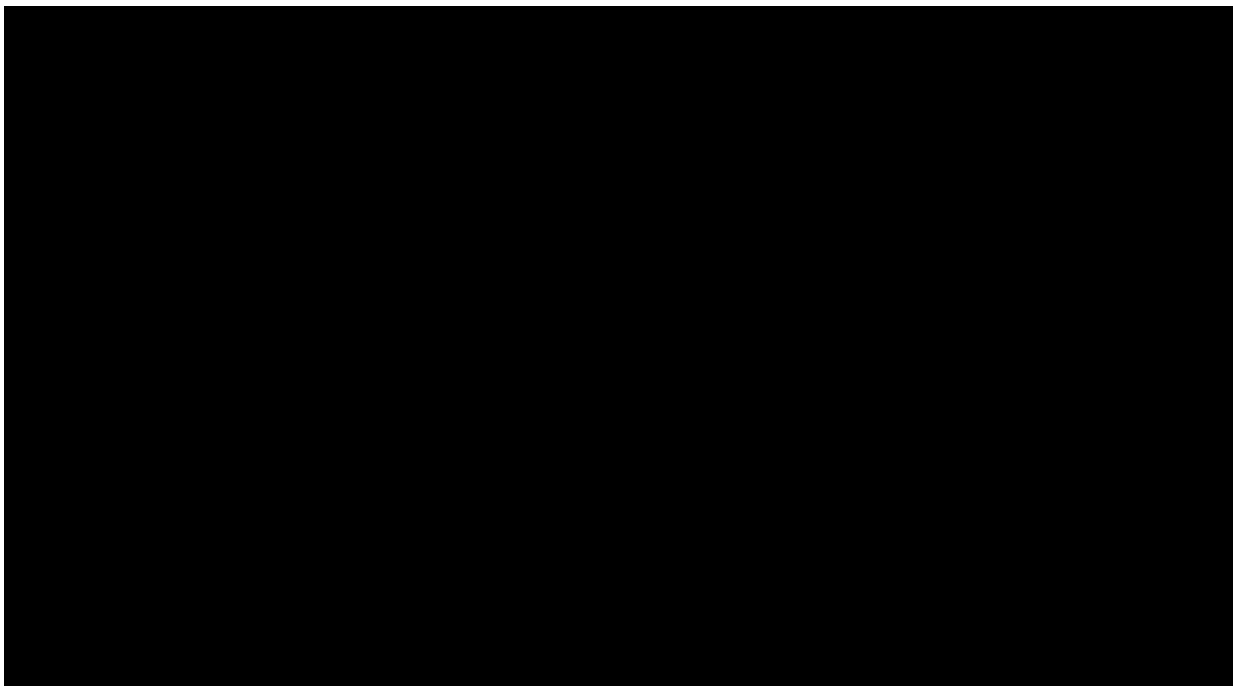
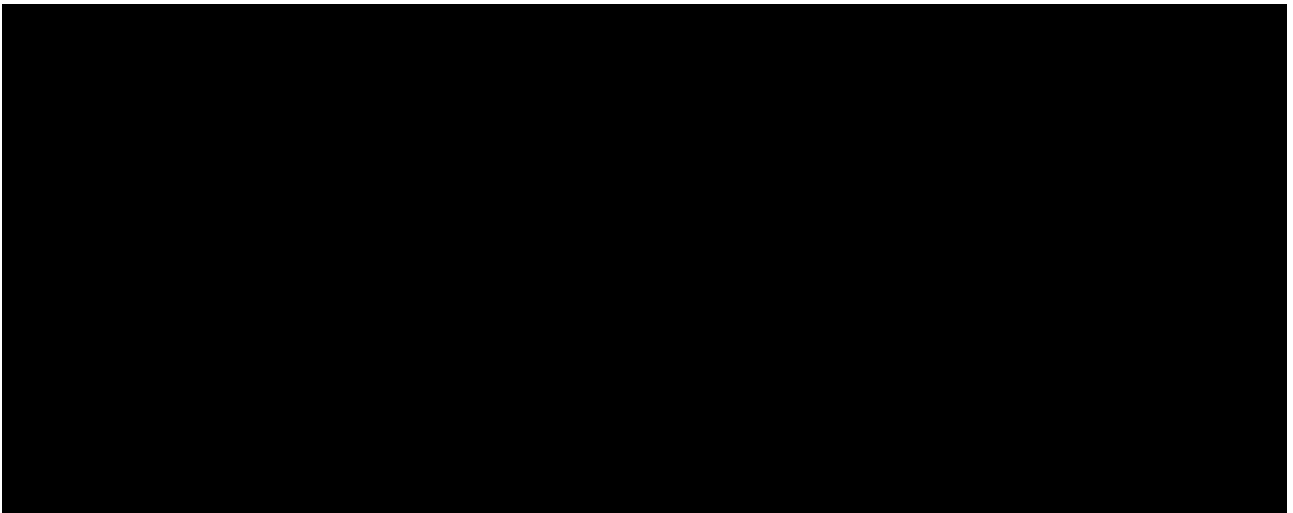
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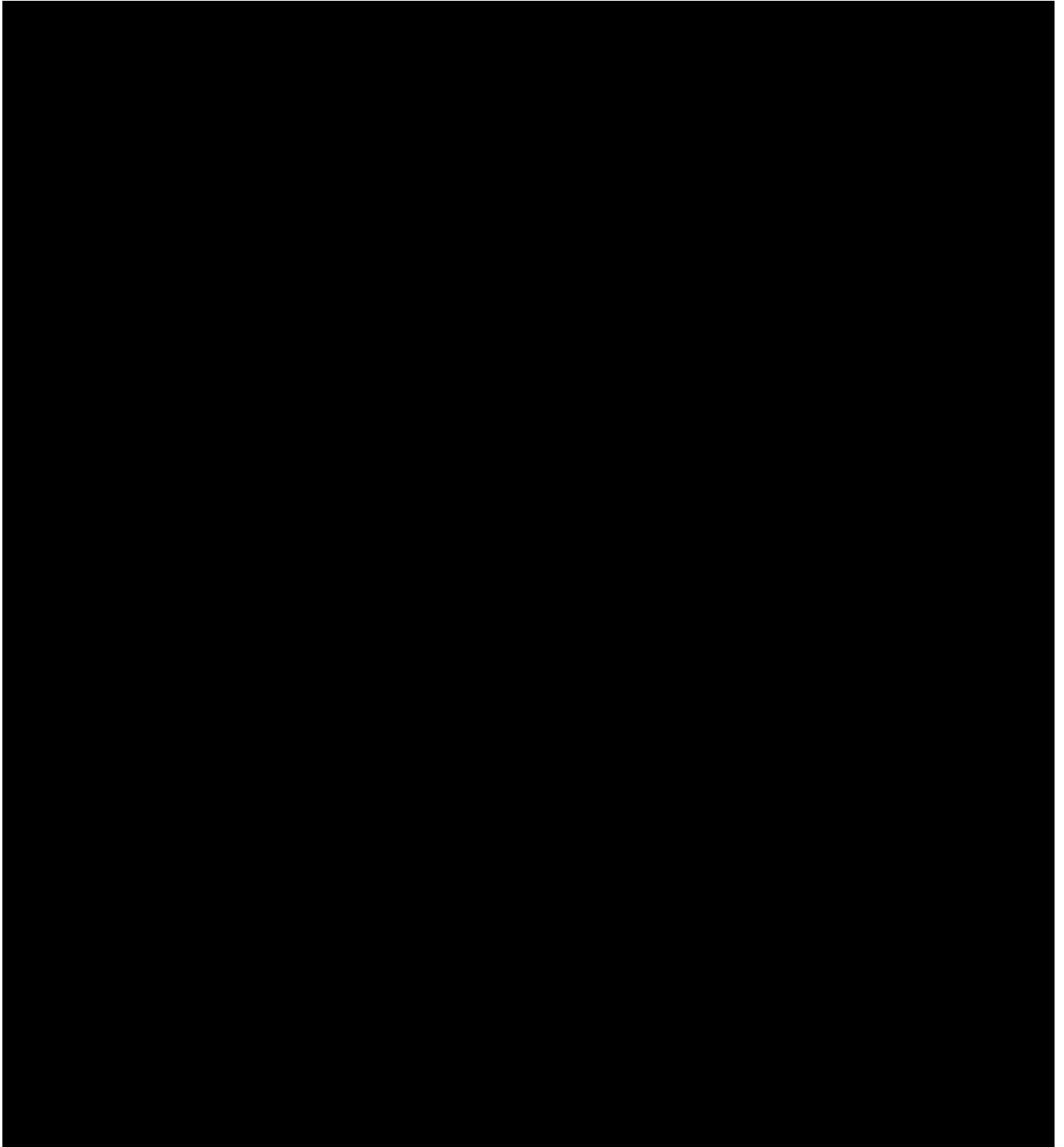
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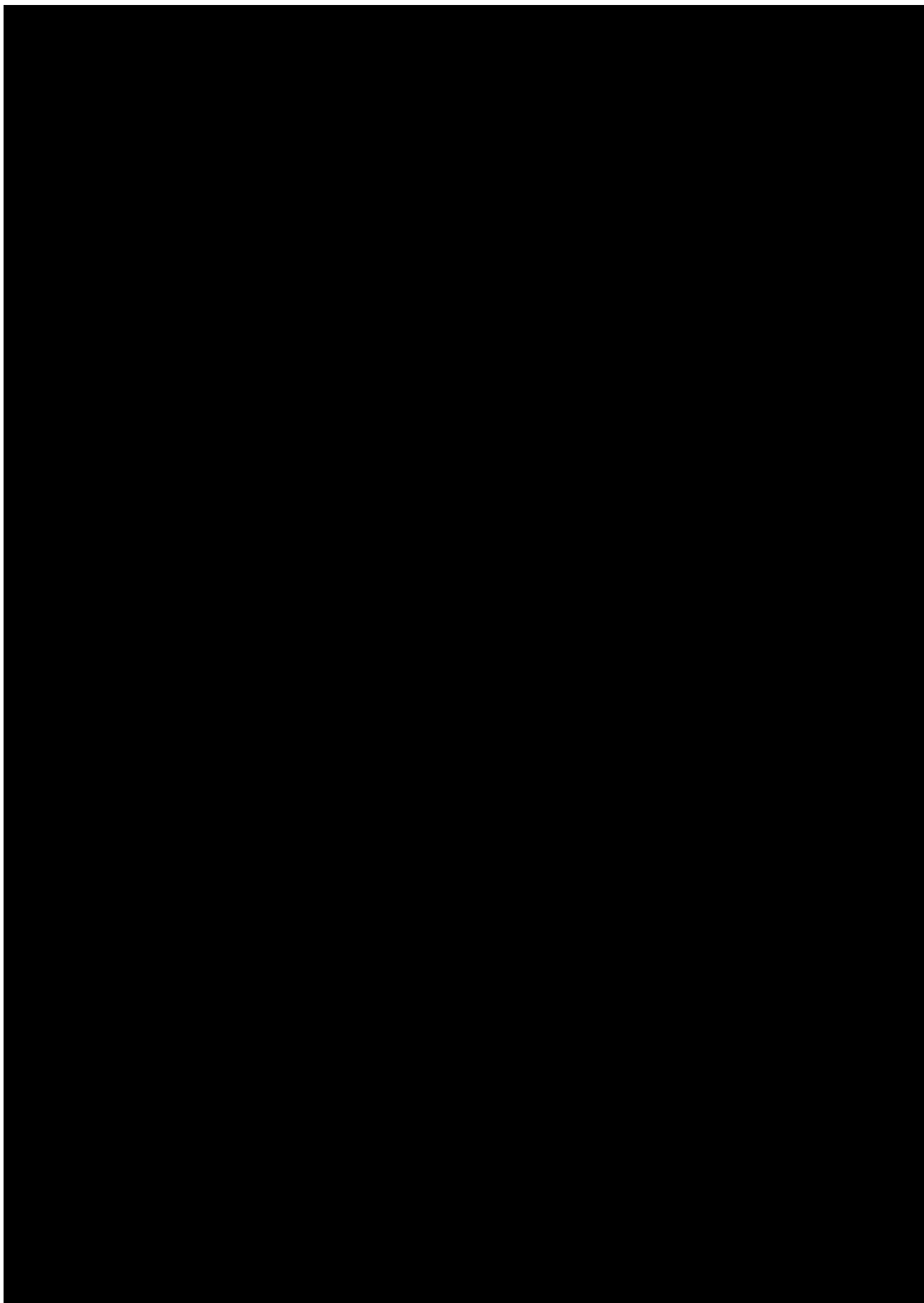
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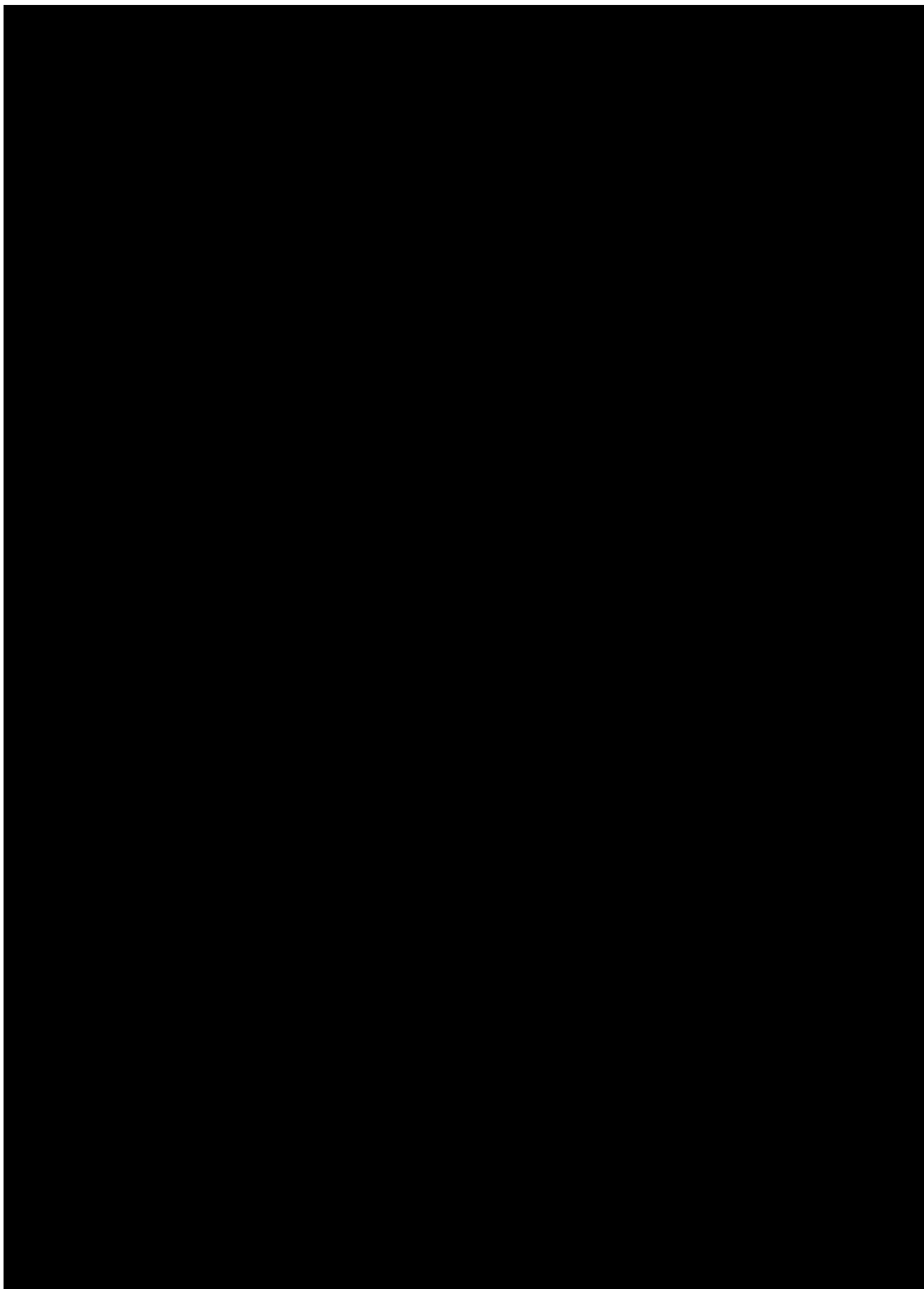
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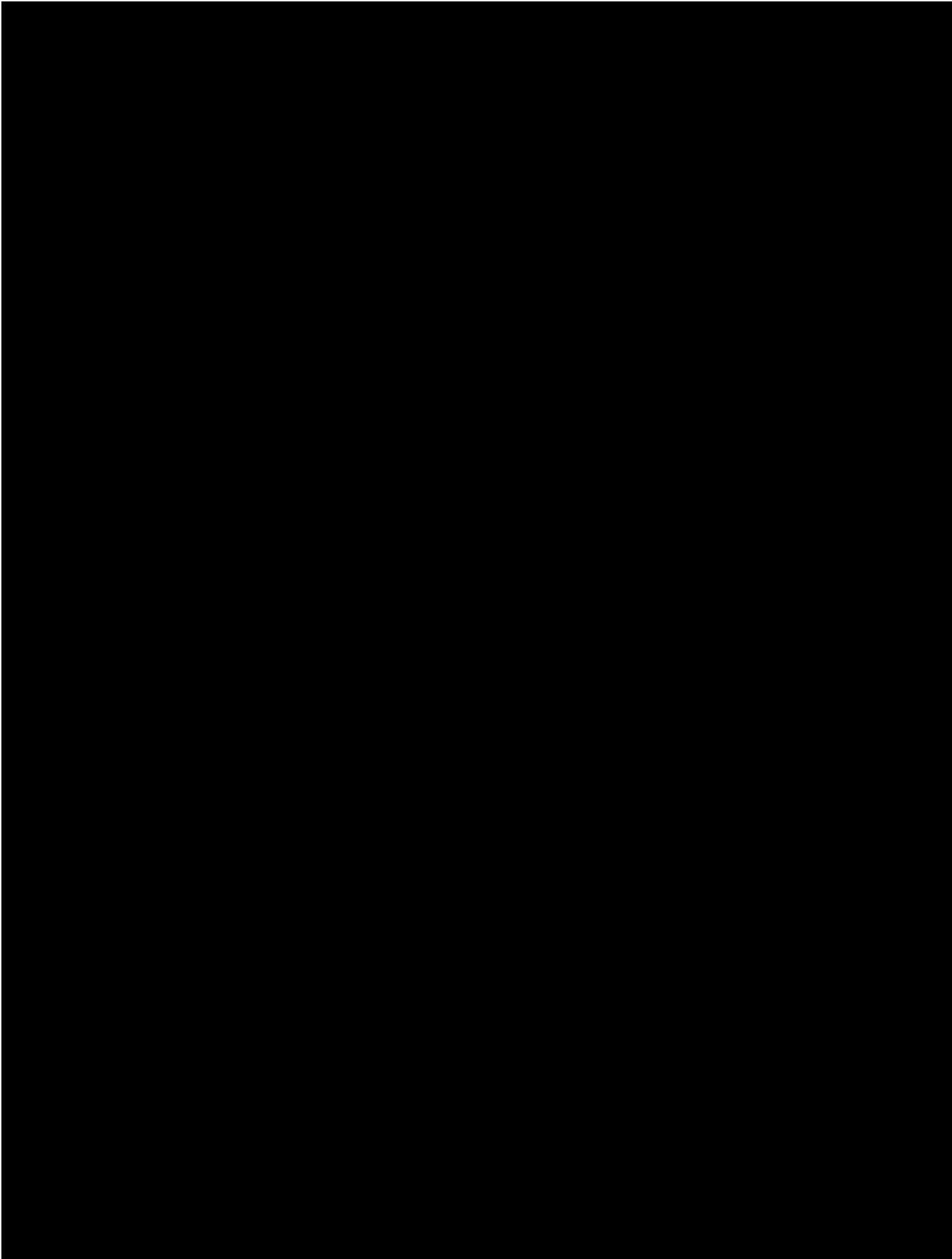
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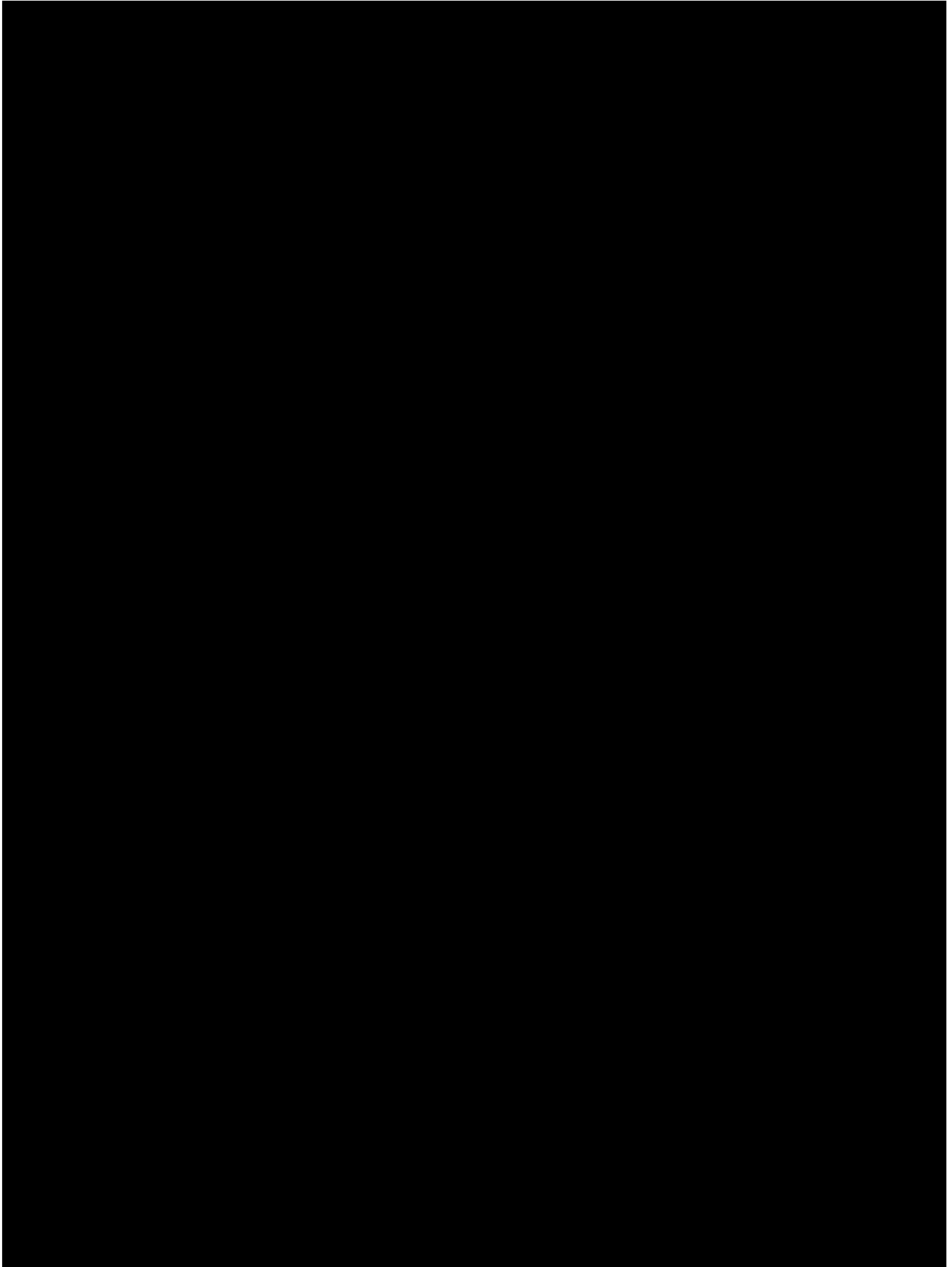
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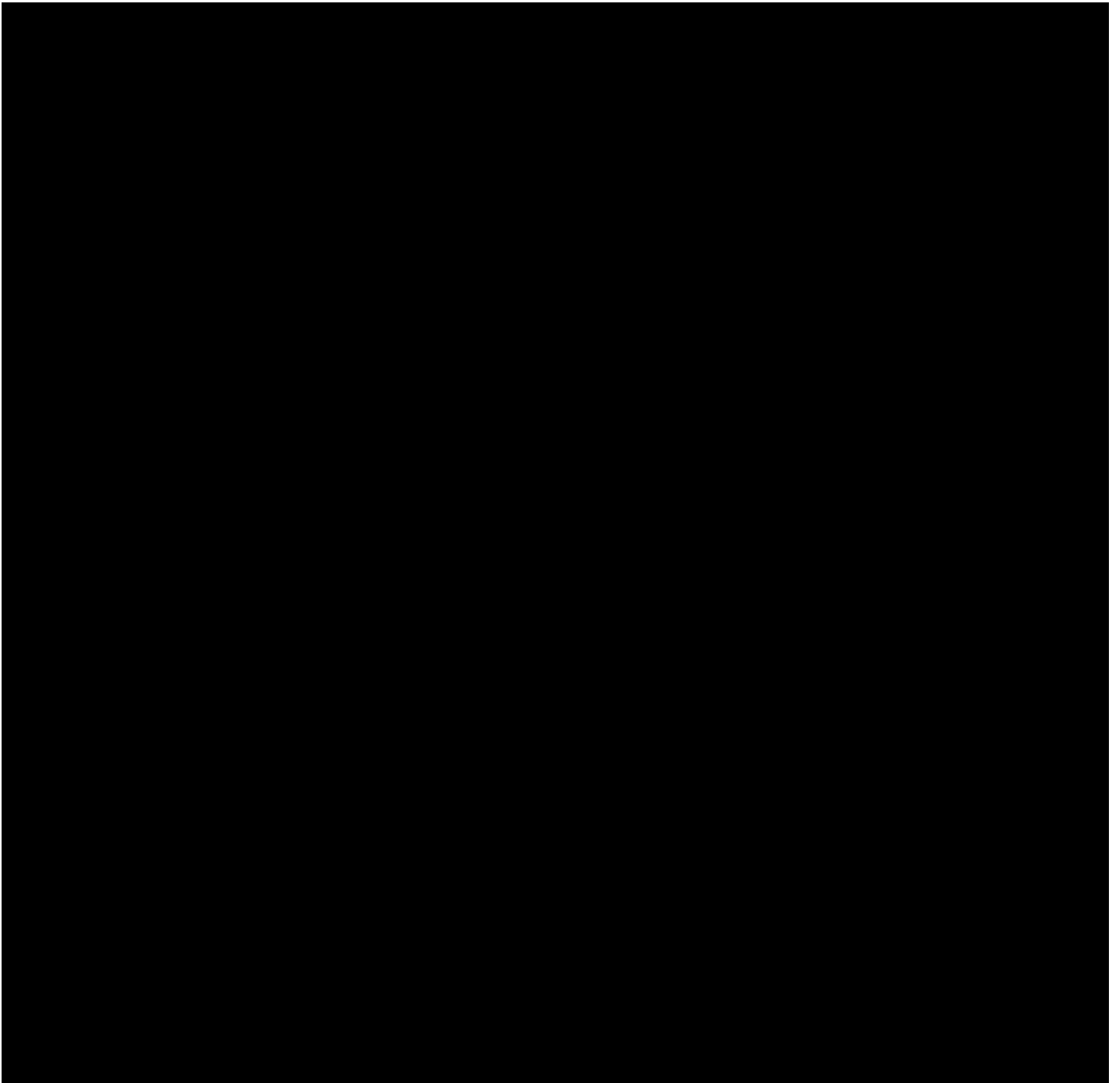
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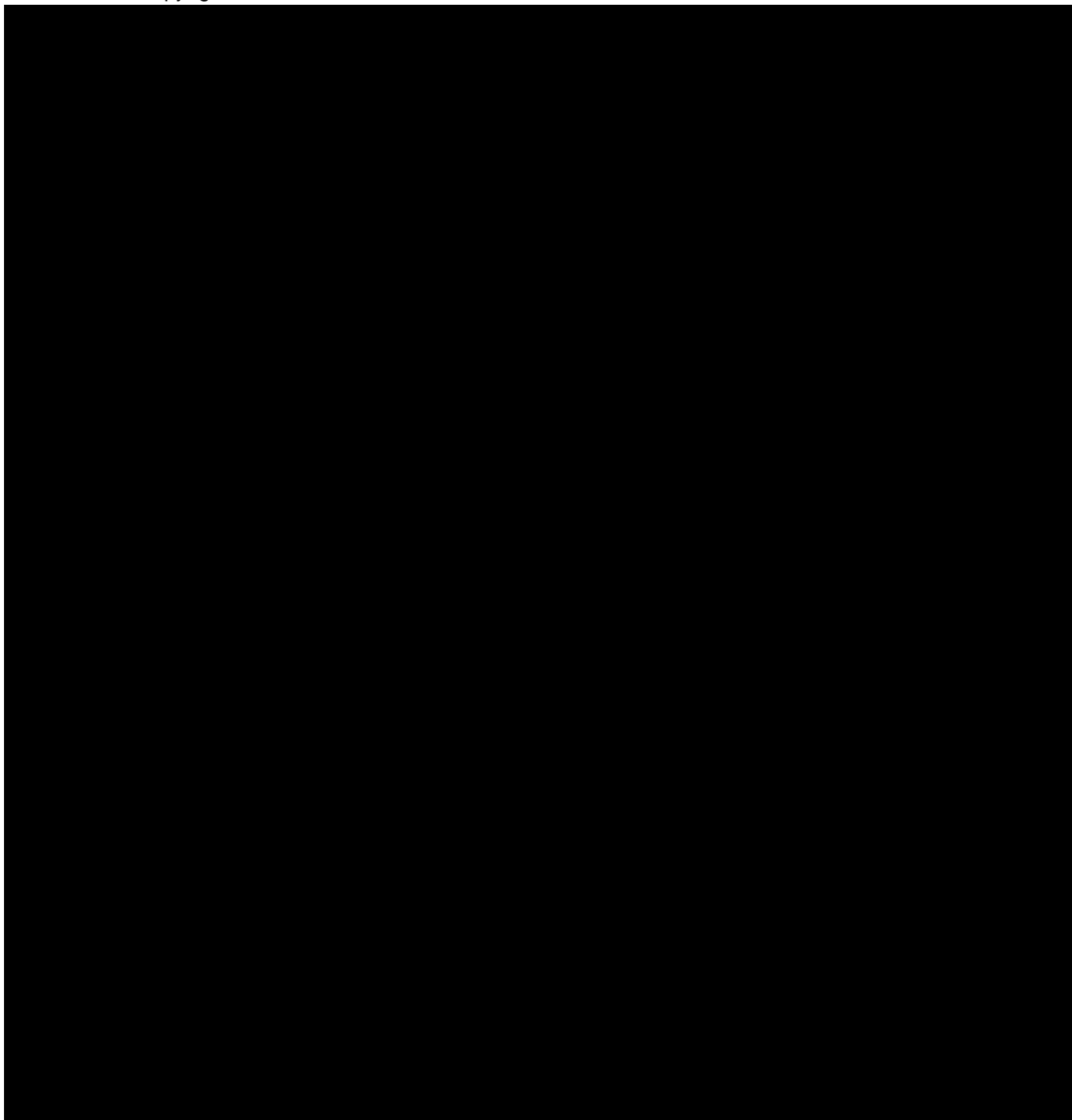
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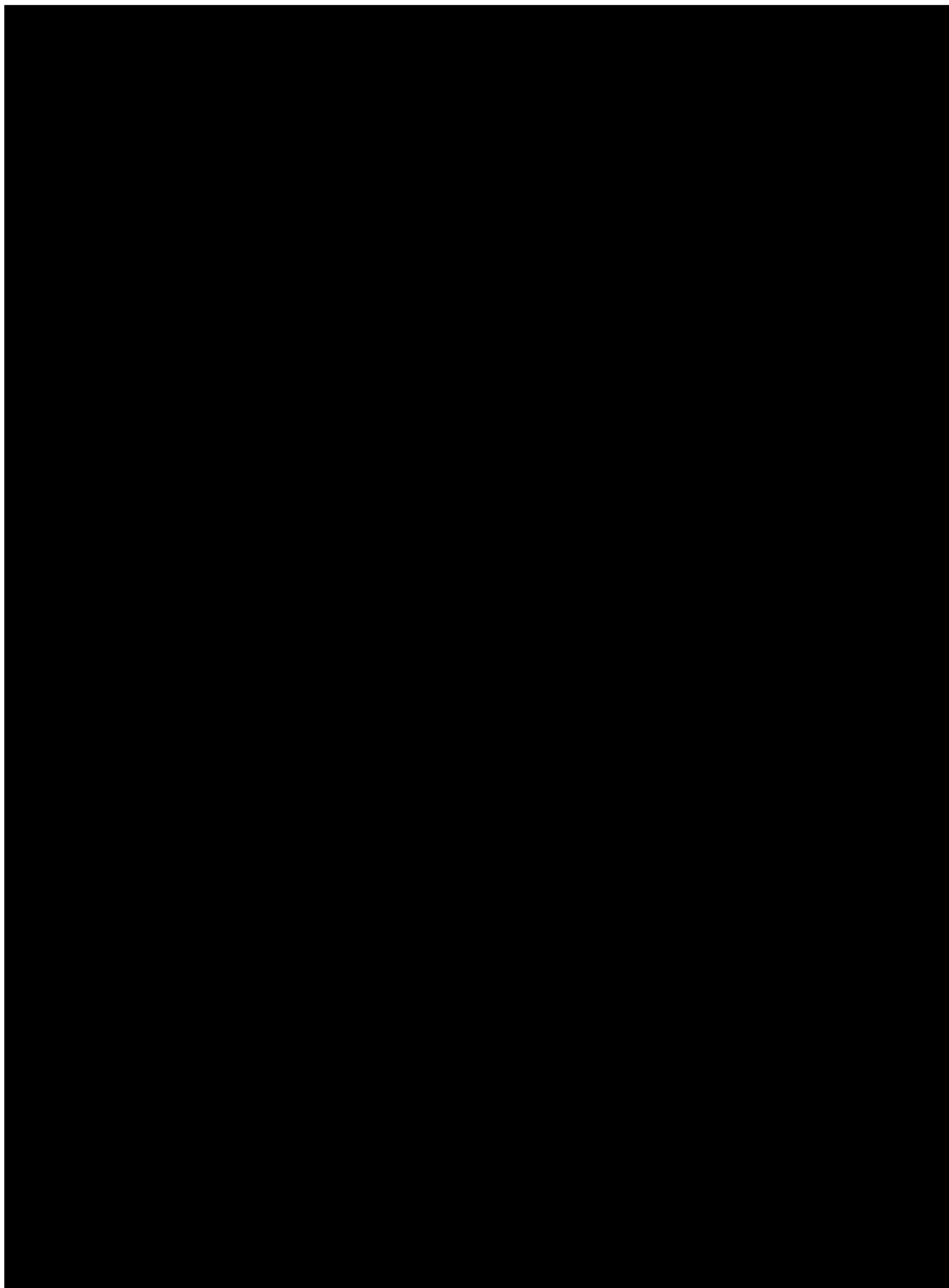
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Order Schedule 5 (Pricing Details)

Order Ref:

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Order Schedule 5 (Pricing Details)



Order Schedule 7 (Key Agency Staff)

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

Order Schedule 9 (Security)

Part A: Short Form Security Requirements

1. Definitions

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

"Breach of Security"

the occurrence of:

- a) any unauthorised access to or use of the Goods or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Client and/or the Agency in connection with this Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Client and/or the Agency in connection with this Contract,

in either case as more particularly set out in the Security Policy where the Client has required compliance therewith in accordance with paragraph 2.2;

"Security Management Plan"

the Agency's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Agency to the Client and as updated from time to time.

2. Complying with security requirements and updates to them

- 2.1 The Client and the Agency recognise that, where specified in DPS Schedule 4 (DPS Management), CCS shall have the right to enforce the Client's rights under this Schedule.
- 2.2 The Agency shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Client that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Agency fully complies with the Security Policy.
- 2.3 Where the Security Policy applies the Client shall notify the Agency of any changes or proposed changes to the Security Policy.

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- 2.4 If the Agency believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods or Services it may propose a Variation to the Client. In doing so, the Agency must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.5 Until and/or unless a change to the Charges is agreed by the Client pursuant to the Variation Procedure the Agency shall continue to provide the Goods or Services in accordance with its existing obligations.

3. Security Standards

- 3.1 The Agency acknowledges that the Client places great emphasis on the reliability of the performance of the Goods or Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Agency shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
 - 3.2.1 is in accordance with the Law and this Contract;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 meets any specific security threats of immediate relevance to the Goods or Services and/or the Government Data; and
 - 3.2.4 where specified by the Client in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Agency from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Agency should notify the Client's Representative of such inconsistency immediately upon becoming aware of the same, and the Client's Representative shall, as soon as practicable, advise the Agency which provision the Agency shall be required to comply with.

4. Security Management Plan

4.1 Introduction

- 4.1.1 The Agency shall develop and maintain a Security Management Plan in accordance with this Schedule. The Agency shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

- 4.2.1 The Security Management Plan shall:
 - a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
 - b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Agency;

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- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Client with access to the Goods or Services, processes associated with the provision of the Goods or Services, the Client Premises, the Sites and any ICT, Information and data (including the Client's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Goods or Services;
- d) be developed to protect all aspects of the Goods or Services and all processes associated with the provision of the Goods or Services, including the Client Premises, the Sites, and any ICT, Information and data (including the Client's Confidential Information and the Government Data) to the extent used by the Client or the Agency in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Goods or Services;
- e) set out the security measures to be implemented and maintained by the Agency in relation to all aspects of the Goods or Services and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods or Services comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Agency to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Agency and the Client engaged in the provision of the Goods or Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Agency shall prepare and deliver to the Client for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Client in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Agency shall amend it within ten (10) Working

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Days of a notice of non-approval from the Client and re-submit to the Client 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 fifteen (15) Working Days from the date of its first submission to the Client. If the Client does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Client shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Client to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Client of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Agency of its obligations under this Schedule.

4.4 Amendment of the Security Management Plan

4.4.1 The Security Management Plan shall be fully reviewed and updated by the Agency at least annually to reflect:

- a) emerging changes in Good Industry Practice;
- b) any change or proposed change to the Goods or Services and/or associated processes;
- c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
- d) any new perceived or changed security threats; and
- e) any reasonable change in requirements requested by the Client.

4.4.2 The Agency shall provide the Client with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Client. The results of the review shall include, without limitation:

- a) suggested improvements to the effectiveness of the Security Management Plan;
- b) updates to the risk assessments; and
- c) suggested improvements in measuring the effectiveness of controls.

4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Agency proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Client or otherwise) shall be subject to the Variation Procedure.

4.4.4 The Client may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on

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timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

5. Security breach

5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Agency shall:

5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Client) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security to the extent possible and protect the integrity of the Client and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Client, where the Client so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Client.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Client.

Order Schedule 9 (Security)

Order Ref

Crown Copyright 2021

Order Schedule 6 (ICT Services)

1. Definitions

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

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| "Agency System" | the information and communications technology system used by the Agency in supplying the Goods or Services, including the COTS Software, the Agency Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Client System); |
| "Client Property" | the property, other than real property and IPR, including the Client System, any equipment issued or made available to the Agency by the Client in connection with this Contract; |
| "Client Software" | any software which is owned by or licensed to the Client and which is or will be used by the Agency for the purposes of providing the Goods or Services; |
| "Client System" | the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Agency in connection with this Contract which is owned by or licensed to the Client by a third party and which interfaces with the Agency System or which is necessary for the Client to receive the Goods or Services; |
| "Commercial off the shelf Software" or "COTS Software" | non-customised software where the IPR may be owned and licensed either by the Agency or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms |
| "Defect" | any of the following: any error, damage or defect in the manufacturing of Goods or Services; or |

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| | <p>error or failure of code within the Software which causes Goods or Services to malfunction or to produce unintelligible or incorrect results; or</p> <p>any failure of any Goods or Services to provide the performance, features and functionality specified in the requirements of the Client or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Goods or Services from passing any Test required under this Order Contract; or</p> <p>failure of any Goods or Services to operate in conjunction with or interface with any other Goods or Services in order to provide the performance, features and functionality specified in the requirements of the Client or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Goods or Services from passing any Test required under this Contract;</p> |
| "Emergency Maintenance" | ad hoc and unplanned maintenance provided by the Agency where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault; |
| "ICT Environment" | the Client System and the Agency System; |
| "Licensed Software" | all and any Software licensed by or through the Agency, its Sub-Contractors or any third party to the Client for the purposes of or pursuant to this Order Contract, including any COTS Software; |
| "Maintenance Schedule" | has the meaning given to it in paragraph 8 of this Schedule; |
| "Malicious Software" | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |

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| "New Release" | an item produced primarily to extend, alter or improve the Software and/or any Goods or Services by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Goods or Services are also corrected) while still retaining the original designated purpose of that item; |
| "Open Source Software" | computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge; |
| "Operating Environment" | <p>means the Client System and any premises (including the Client Premises, the Agency's premises or third party premises) from, to or at which:</p> <p>Goods or Services are (or are to be) provided; or</p> <p>Agency manages, organises or otherwise directs the provision or the use of the Goods or Services; or</p> <p>Any part of the Agency System is situated;</p> |
| "Permitted Maintenance" | has the meaning given to it in paragraph 8.2 of this Schedule; |
| "Quality Plans" | has the meaning given to it in paragraph 6.1 of this Schedule; |
| "Sites" | has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Order Schedule shall also include any premises from, to or at which physical interface with the Client System takes place; |
| "Software" | Specially Written Software COTS Software and non-COTS Supplier and third party Software; |
| "Software Supporting Materials" | has the meaning given to it in paragraph 9.1 of this Schedule; |

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| "Source Code" | computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| "Specially Written Software" | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Agency (or by a Sub-Contractor or other third party on behalf of the Agency) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR; |

2. When this Schedule should be used

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Goods or Services.

3. Client due diligence requirements

- 3.1. The Agency shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
 - 3.1.2. operating processes and procedures and the working methods of the Buyer;
 - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Goods or Services of the Clients Assets; and
 - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Agency under this Contract and/or which the Agency will require the benefit of for the provision of the Goods or Services.
- 3.2. The Agency confirms that it has advised the Client in writing of:
- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
 - 3.2.2. the actions needed to remedy each such unsuitable aspect; and

3.2.3. a timetable for and the costs of those actions.

4. Licensed software warranty

4.1. The Agency represents and warrants that:

4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Agency (and/or any Sub-Contractor) to the Client which are necessary for the performance of the Agency's obligations under this Contract including the receipt of the Goods or Services by the Client;

4.1.2. all components of the Specially Written Software shall:

4.1.2.1. be free from material design and programming errors;

4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Order Schedule 14 (Service Levels) and Documentation; and

4.1.2.3. not infringe any IPR.

5. Provision of ICT Services

5.1. The Agency shall:

5.1.1. ensure that the release of any new COTS Software in which the Agency owns the IPR, or upgrade to any Software in which the Agency owns the IPR complies with the interface requirements of the Client and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Client three (3) Months before the release of any new COTS Software or Upgrade;

5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Agency are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

5.1.3. ensure that the Agency System will be free of all encumbrances;

5.1.4. ensure that the Goods or Services are fully compatible with any Client Software, Client System, or otherwise used by the Agency in connection with this Contract;

5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Goods or Services;

6. ICT Audit

6.1. The Agency shall allow any auditor access to the Agency premises to:

6.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);

6.1.2. review any records created during the design and development of the Agency System and pre-operational environment such as information relating to Testing;

- 6.1.3. review the Agency 's quality management systems including all relevant Quality Plans.

7. Maintenance of the ICT Environment

- 7.1. If specified by the Client in the Order Form, the Agency shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Client for Approval in accordance with the timetable and instructions specified by the Client.
- 7.2. Once the Maintenance Schedule has been Approved, the Agency shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 7.3. The Agency shall give as much notice as is reasonably practicable to the Client prior to carrying out any Emergency Maintenance.
- 7.4. The Agency shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Goods or Services.

8. Intellectual Property Rights in ICT

8.1. Assignments granted by the Agency: Specially Written Software

- 8.1.1. The Agency assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Client with full guarantee (or shall procure assignment to the Client), title to and all rights and interest in the Specially Written Software together with and including:

- 8.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and

- 8.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").

8.1.2. The Agency shall:

- 8.1.2.1. inform the Client of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;

- 8.1.2.2. deliver to the Client the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of

them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Client and the Client shall become the owner of such media upon receipt; and

8.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Client of any of the Agency's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Agency hereby grants to the Client and shall procure that any relevant third party licensor shall grant to the Client a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Agency's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Client to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

8.1.3. The Agency shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Client.

8.2. Licences for non-COTS IPR from the Agency and third parties to the Buyer

8.2.1. Unless the Client gives its Approval the Agency must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

8.2.2. Where the Client Approves the use of the Agency's Existing IPR that is not COTS Software the Agency shall grants to the Client a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Goods or Services (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Client is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Order Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Agency.

8.2.3. Where the Client Approves the use of third party Software that is not COTS Software the Agency shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Client on terms at least equivalent to those set out in Paragraph 9.2.2. If the Agency cannot obtain such a licence for the Client it shall:

8.2.3.1. notify the Client in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Agency could seek to use; and

8.2.3.2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Client Approves the terms of the licence from the relevant third party.

8.2.4. Where the Agency is unable to provide a license to the Agency's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

8.2.5. The Agency may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Agency gives the Client written notice specifying the breach and requiring its remedy.

8.3. Licenses for COTS Software by the Agency and third parties to the Buyer

8.3.1. The Agency shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Client on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

8.3.2. Where the Agency owns the COTS Software it shall make available the COTS software to a Replacement Agency at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

8.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Agency shall support the Replacement Agency to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

8.3.4. The Agency shall notify the Client within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

8.3.4.1. will no longer be maintained or supported by the developer;
or

8.3.4.2. will no longer be made commercially available

8.4. Client's right to assign/novate licences

8.4.1. The Client may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:

8.4.1.1. a Central Government Body; or

8.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

8.4.2. If the Client ceases to be a Central Government Body, the successor body to the Client shall still be entitled to the benefit of the licences granted in paragraph 9.2.

8.5. Licence granted by the Buyer

- 8.5.1. The Client grants to the Agency a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Client Software and the Specially Written Software solely to the extent necessary for providing the Goods or Services in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Agency on the same terms as set out in Clause 15 (Confidentiality).

8.6. Open Source Publication

- 8.6.1. Unless the Client otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Agency shall also provide the converted format to the Buyer) into a format, which is:

8.6.1.1. suitable for publication by the Client as Open Source; and

8.6.1.2. based on Open Standards (where applicable),

and the Client may, at its sole discretion, publish the same as Open Source.

- 8.6.2. The Agency hereby warrants that the Specially Written Software and the New IPR:

8.6.2.1. are suitable for release as Open Source and that the Agency has used reasonable endeavours when developing the same to ensure that publication by the Client will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Client System;

8.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Client shall not cause any harm or damage to any party using them;

8.6.2.3. do not contain any material which would bring the Client into disrepute;

8.6.2.4. can be published as Open Source without breaching the rights of any third party;

8.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Client to the Agency; and

8.6.2.6. do not contain any Malicious Software.

- 8.6.3. Where the Client has Approved a request by the Agency for any part of the Specially Written Software or New IPRs to be excluded from

the requirement to be in an Open Source format due to the intention to embed or integrate Agency Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Agency shall:

- 8.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Goods or Services based on IPRs which are to be excluded from Open Source publication; and
- 8.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Goods or Services based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Goods or Services as Open Source.

8.7. Malicious Software

- 8.7.1. The Agency shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 8.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Goods or Services to its desired operating efficiency.
- 8.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
 - 8.7.3.1. by the Agency, where the Malicious Software originates from the Agency Software, the third party Software supplied by the Agency or the Government Data (whilst the Government Data was under the control of the Agency) unless the Agency can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Client when provided to the Agency; and
 - 8.7.3.2. by the Client, if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Buyer).

Order Schedule 10 (Exit Management)

1. Definitions

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

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| "Exclusive Assets" | Agency Assets used exclusively by the Agency or a Key Subcontractor in the provision of the Goods or Services; |
| "Exit Information" | has the meaning given to it in Paragraph 3.1 of this Schedule; |
| "Exit Manager" | the person appointed by each Party to manage their respective obligations under this Schedule; |
| "Exit Plan" | the plan produced and updated by the Agency during the Initial Period in accordance with Paragraph 4 of this Schedule; |
| "Net Book Value" | the current net book value of the relevant Agency Asset(s) calculated in accordance with the DPS Tender or Order Tender (if stated) or (if not stated) the depreciation policy of the Agency (which the Agency shall ensure is in accordance with Good Industry Practice); |
| "Non-Exclusive Assets" | those Agency Assets used by the Agency or a Key Subcontractor in connection with the Goods or Services but which are also used by the Agency or Key Subcontractor for other purposes; |
| "Registers" | the register and configuration database referred to in Paragraph 2.2 of this Schedule; |
| "Replacement Goods" | any goods which are substantially similar to any of the Goods and which the Client receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Client internally and/or by any third party; |

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| "Replacement Services" | any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the End Date, whether those goods are provided by the Client internally and/or by any third party; |
| "Termination Assistance" | the activities to be performed by the Agency pursuant to the Exit Plan, and other assistance required by the Client pursuant to the Termination Assistance Notice; |
| "Termination Assistance Notice" | has the meaning given to it in Paragraph 5.1 of this Schedule; |
| "Termination Assistance Period" | the period specified in a Termination Assistance Notice for which the Agency is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule; |
| "Transferable Assets" | Exclusive Assets which are capable of legal transfer to the Client ; |
| "Transferable Contracts" | Sub-Contracts, licences for the Agency's software, licences for third party software or other agreements which are necessary to enable the Client or any Replacement agency to provide the Goods or Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation; |
| "Transferring Assets" | has the meaning given to it in Paragraph 8.2.1 of this Schedule; |
| "Transferring Contracts" | has the meaning given to it in Paragraph 8.2.3 of this Schedule. |

2. **Agency must always be prepared for contract exit**

2.1 The Agency shall within 30 days from the Start Date provide to the Client a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Agency shall promptly:

- 2.2.1 create and maintain a detailed register of all Agency Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Goods or Services; and
- 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Agency provides the Goods or Services ("**Registers**").

2.3 The Agency shall:

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
- 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Client) at the request of the Client to the Client (and/or its nominee) and/or any Replacement Agency upon the Agency ceasing to provide the Goods or Services (or part of them) and if the Agency is unable to do so then the Agency shall promptly notify the Client and the Client may require the Agency to procure an alternative Subcontractor or provider of Goods or Services.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

2.5 The Agency shall ensure at no cost to the Client that all digital data that is the Existing IPR of the Client or New IPR to be assigned to the Client can be identified and returned to the Client in an open format on demand and advise the Client of any Transferable Contracts and technical information that would assist in the continued use of such data.

3. Assisting re-competition for Goods or Services

- 3.1 The Agency shall, on reasonable notice, provide to the Client and/or its potential Replacement Agencies (subject to the potential Replacement Agencies entering into reasonable written confidentiality undertakings), such information (including any access) as the Client shall reasonably require in order to facilitate the preparation by the Client of any invitation to tender and/or to facilitate any potential Replacement Agencies undertaking due diligence (the "**Exit Information**").
- 3.2 The Agency acknowledges that the Client may disclose the Agency's Confidential Information (excluding the Agency's or its Subcontractors' prices or costs) to an actual or prospective Replacement Agency to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Agency shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Client within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Goods or Services (and shall consult the Client in relation to any such changes).

- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Goods or Services; and not be disadvantaged in any procurement process compared to the Agency.

4. Exit Plan

- 4.1 The Agency shall, within three (3) Months after the Start Date, deliver to the Client an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Client.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.2 how the Goods or Services will transfer to the Replacement Agency and/or the Client;
 - 4.3.3 details of any contracts which will be available for transfer to the Client and/or the Replacement Agency upon the Expiry Date together with any reasonable costs required to effect such transfer;
 - 4.3.4 proposals for the training of key members of the Replacement Agency's staff in connection with the continuation of the provision of the Goods or Services following the Expiry Date;
 - 4.3.5 proposals for providing the Client or a Replacement Agency copies of all documentation (including without limitation database schema and any other digital resources) relating to the use and operation of the Goods or Services and required for their continued use;
 - 4.3.6 proposals for the assignment or novation of all services utilised by the Agency in connection with the supply of the Goods or Services;
 - 4.3.7 proposals for the identification and return, or transfer to the Replacement Agency, of all Client Assets in the possession of and/or control of the Agency or any third party;
 - 4.3.8 proposals for the disposal of any redundant Goods or Services and materials;
 - 4.3.9 how the Agency will ensure that there is no disruption to or degradation of the Goods or Services during the Termination Assistance Period; and
 - 4.3.10 any other information or assistance reasonably required by the Client or a Replacement Agency.

- 4.4 The Agency shall:

- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
- (a) every six (6) months throughout the Contract Period; and
 - (b) no later than twenty (20) Working Days after a request from the Client for an up-to-date copy of the Exit Plan;
 - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Goods or Services (including all changes under the Variation Procedure); and

4.4.2 jointly review and verify the Exit Plan if required by the Client and promptly correct any identified failures.

4.5 Only if (by notification to the Agency in writing) the Client agrees with a draft Exit Plan provided by the Agency under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Agency.

5. Termination Assistance

5.1 The Client shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Agency (a **"Termination Assistance Notice"**) at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Client shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and

5.2.2 the Client shall notify the Agency of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.

5.3 The Client shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Agency.

- 5.4 In the event that Termination Assistance is required by the Client but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Agency will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Client approved version of the Exit Plan (insofar as it still applies).

6. Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Agency shall:

- 6.1.1 continue to provide the Goods or Services (as applicable) and otherwise perform its obligations under this Contract and, if required by the Client, provide the Termination Assistance;
- 6.1.2 provide to the Client and/or its Replacement Agency any reasonable assistance and/or access requested by the Client and/or its Replacement Agency including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Goods or Services to the Client and/or its Replacement Agency;
- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Client;
- 6.1.4 subject to Paragraph 6.3, provide the Goods or Services and the Termination Assistance at no detriment to the Key Performance Indicators (KPI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Agency's obligations under this Contract;
- 6.1.5 at the Client's request and on reasonable notice, deliver up-to-date Registers to the Client;
- 6.1.6 seek the Client's prior written consent to access any Client Premises from which the de-installation or removal of Agency Assets is required.

- 6.2 If it is not possible for the Agency to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Client, any additional costs incurred by the Agency in providing such reasonable assistance shall be subject to the Variation Procedure.

- 6.3 If the Agency demonstrates to the Client's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Agency's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels accordingly.

7. Obligations when the contract is terminated

- 7.1 The Agency shall comply with all of its obligations contained in the Exit Plan.

- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Agency's performance of the Goods or Services and the Termination Assistance), the Agency shall:

- 7.2.1 vacate any Client Premises;

- 7.2.2 remove the Agency Equipment together with any other materials used by the Agency to supply the Goods or Services and shall leave the Sites in a clean, safe and tidy condition. The Agency is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Agency;
- 7.2.3 provide access during normal working hours to the Client and/or the Replacement Agency for up to twelve (12) Months after expiry or termination to:
 - (a) such information relating to the Goods or Services as remains in the possession or control of the Agency; and
 - (b) such members of the Agency Staff as have been involved in the design, development and provision of the Goods or Services and who are still employed by the Agency, provided that the Client and/or the Replacement Agency shall pay the reasonable costs of the Agency actually incurred in responding to such requests for access.
- 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Client to the Agency in relation to the Goods or Services shall be terminated with effect from the end of the Termination Assistance Period.

8. Assets, Sub-contracts and Software

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Agency shall not, without the Client's prior written consent:
 - 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Goods or Services; or
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Agency Assets or acquire any new Agency Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Agency, the Client shall notify the Agency setting out:
 - 8.2.1 which, if any, of the Transferable Assets the Client requires to be transferred to the Client and/or the Replacement Agency ("**Transferring Assets**");
 - 8.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Client and/or the Replacement Agency requires the continued use of; and
 - 8.2.3 which, if any, of Transferable Contracts the Client requires to be assigned or novated to the Client and/or the Replacement Agency (the "**Transferring Contracts**"),

in order for the Client and/or its Replacement Agency to provide the Goods or Services from the expiry of the Termination Assistance Period. The Agency shall provide all reasonable assistance required by the Client and/or its Replacement Agency to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Goods or Services or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Agency shall sell the Transferring Assets to the Client and/or the Replacement Agency for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Client or the Replacement Agency (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Client and/or the Replacement Agency requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Agency shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Client and/or the Replacement Agency to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Client or the Replacement Agency to bear the reasonable proven costs of procuring the same.

8.6 The Agency shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Client and/or the Replacement Agency. The Agency shall execute such documents and provide such other assistance as the Client reasonably requires to effect this novation or assignment.

8.7 The Client shall:

8.7.1 accept assignments from the Agency or join with the Agency in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Client and/or the Replacement Agency, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Agency does the same.

8.8 The Agency shall hold any Transferring Contracts on trust for the Client until the transfer of the relevant Transferring Contract to the Client and/or the Replacement Agency has taken place.

8.9 The Agency shall indemnify the Client (and/or the Replacement Agency, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Client (and/or Replacement Agency) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall

not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

9. No charges

9.1 Unless otherwise stated, the Client shall not be obliged to pay for costs incurred by the Agency in relation to its compliance with this Schedule.

10. Dividing the bills

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Client and/or the Replacement and the Agency as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Client or Replacement Agency (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Agency shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Order Schedule 14 (Service Levels)

1. Definitions

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

| | |
|--|--|
| “Critical Service Level Failure” | means if the Authority has been able to claim Service Credits in 3 Service Periods over the life of the Contract; |
| "Service Credits" | any service credits specified in the Annex to Part A of this Schedule being payable by the Agency to the Client in respect of any failure by the Agency to meet one or more Service Levels; |
| "Service Credit Cap" | this will be the value of 2 times 5% of the Total Monthly Fee payable in a 12 month period |
| "Service Level Failure" | means a failure to meet the Service Level Performance Measure in respect of a Service Level; |
| "Service Level Performance Measure" | shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and |
| "Service Level Threshold" | shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule. |
| “Total Monthly Cost” | shall be as the Supplier proposed in the commercial envelope in its tender and included in Order Schedule 5 Pricing Details, or as otherwise varied by agreement between DHSC and the Supplier |

2. What happens if you don't meet the Service Levels

- 2.1 The Agency shall at all times provide the Goods or Services to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Agency acknowledges that any Service Level Failure shall entitle the Client to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Client as a result of the Agency's failure to meet any Service Level Performance Measure.
- 2.3 The Agency shall send Performance Monitoring Reports to the Client detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

Order Schedule 14 (Service Levels)

Order Ref:

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2.4 A Service Credit shall be the Client's exclusive financial remedy for a Service Level Failure except where:

2.4.1 the Agency has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or

2.4.2 the Service Level Failure:

- (a) exceeds the relevant Service Level Threshold;
- (b) has arisen due to a Prohibited Act or wilful Default by the Agency;
- (c) results in the corruption or loss of any Government Data; and/or
- (d) results in the Client being required to make a compensation payment to one or more third parties; and/or

2.4.3 the Client is otherwise entitled to or does terminate this Contract pursuant to Clause 10.4 (CCS and Client Termination Rights).

2.5 Not more than once in each Contract Year, the Client may, on giving the Agency at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Agency shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

2.5.2 the principal purpose of the change is to reflect changes in the Client's business requirements and/or priorities or to reflect changing industry standards; and

3. Critical Service Level Failure

3.1 On the occurrence of a Critical Service Level Failure

3.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.1.2 the Client shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Agency in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Client to terminate this Contract and/or to claim damages from the Agency for material Default.

Order Schedule 14 (Service Levels)

Order Ref:

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Part A: Service Levels and Service Credits

1. Service Levels

If the level of performance of the Agency:

1.1 is likely to or fails to meet any Service Level Performance Measure; or

1.2 is likely to cause or causes a Critical Service Failure to occur,

the Agency shall immediately notify the Client in writing and the Client, in its absolute discretion and without limiting any other of its rights, may:

1.2.1 require the Agency to immediately take all remedial action that is reasonable to mitigate the impact on the Client and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

1.2.2 instruct the Agency to comply with the Rectification Plan Process;

1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Agency to the Client; and/or

1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

2. Service Credits

2.1 The Client shall use the Performance Monitoring Reports supplied by the Agency to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2 Service Credits are a reduction of the amounts payable in respect of the Goods or Services and do not include VAT. The Agency shall set-off the value of any Service Credits against the appropriate invoice in accordance with the calculation formula in the Annex to Part A of this Schedule.

Order Schedule 14 (Service Levels)

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Annex A to Part A: Services Levels and Service Credits Table

| Service Level Performance Measure | Description | Good | Approaching target | Requires Improvement | Inadequate |
|--------------------------------------|--|---|--------------------|----------------------|------------|
| Accuracy of data capture/fulfilment* | 98% of respondents will receive correct material as measured by the Supplier. | 98%< | 90%-97.9% | 85%-89.9% | <85% |
| Report Timeliness* | Reports will be provided to an agreed schedule and be 100% accurate. | 100% | 95%-99.9% | 90%-94.9% | <90% |
| Ad-hoc requests/reports* | The response to requests for ad-hoc reports must be processed within a reasonable specified time to be agreed by DHSC and the supplier to the time of request – this may vary from a few hours to a few days. | 100% | 95%-99.9% | 90%-94.9% | <90% |
| System Changes and Implementation* | The response to requests for system changes, and their subsequent implementation. These will be a reasonable specified time to be agreed by DHSC and the supplier to the time of request – this may vary from a few hours to a few days. | 100% | 95%-99.9% | 90%-94.9% | <90% |
| Complaints | Complaints or problems should be investigated promptly. Any complaints regarding the system or services must be responded to within 24 hours of the notification and formally within one week. | Acknowledge - within 24 hours Formal response – within 5 working days. | | | |

The Service Credits shall be calculated on the basis of the following formula:

- The Service Credits shall apply when the supplier's performance only meets the 'requires improvement' target in any of the SLA's marked with *.
- Service credits will be calculated by applying a 5% discount to the Total Monthly Cost payable by the Authority for the three month period where the SLA's hit 'requires improvement' and it will be deducted from the next Invoice payable by the Authority (calculated on a pro-rata basis to determine the 3 month Total Monthly Cost the 5% is applied to)

Part B: Performance Monitoring

3. Performance Monitoring and Performance Review

3.1 Within twenty (20) Working Days of the Start Date the Agency shall provide the Client with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

3.2 The Agency shall provide the Client with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 3.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- 3.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 3.2.3 details of any Critical Service Level Failures;
- 3.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
- 3.2.6 such other details as the Client may reasonably require from time to time.

3.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Agency and the Client of the Performance Monitoring Reports. The Performance Review Meetings shall:

- 3.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Agency at such location and time (within normal business hours) as the Client shall reasonably require;
- 3.3.2 be attended by the Agency's Representative and the Client's Representative; and
- 3.3.3 be fully minuted by the Agency and the minutes will be circulated by the Agency to all attendees at the relevant meeting and also to the Client's Representative and any other recipients agreed at the relevant meeting.

Order Schedule 14 (Service Levels)

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3.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Agency's Representative and the Client's Representative at each meeting.

3.5 The Agency shall provide to the Client such documentation as the Client may reasonably require in order to verify the level of the performance by the Agency for any specified Service Period.

4. Satisfaction Surveys

4.1 The Client may undertake satisfaction surveys in respect of the Agency's provision of the Goods or Services. The Client shall be entitled to notify the Agency of any aspects of their performance of the provision of the Goods or Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

Order Schedule 15 (Order Contract Management)

1. Definitions

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

"Contract Manager"

the manager appointed in accordance with paragraph 2.1 of this Schedule;

2. Managing the contract

- 2.1. The Agency and the Client shall each appoint a Contract Manager for the purposes of this Contract through whom the provision of the Goods or Services shall be managed day-to-day.
- 2.2. The Parties shall ensure that appropriate resource and expertise is made available to deliver the aims, objectives and specific provisions of the Contract. The Client will give the Agency instructions as to its requirements for the Goods or Services. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Goods or Services.
- 2.3. During the Contract Period, the Agency will:
- 2.3.1. keep the Client fully informed as to the progress and status of all Goods or Services, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties; and
 - 2.3.2. promptly inform the Client of any actual or anticipated problems relating to provision of the Goods or Services. Receipt of communication from the Agency by the Client does not absolve the Agency from its responsibilities, obligations or liabilities under the Contract.
- 2.4. During the Contract Period, the Parties' respective Contract Managers will arrange and attend meetings to review the status and progress of the Goods or Services and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the Parties.
- 2.5. Unless otherwise agreed in the Statement of Work, the Agency will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Client does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

Order Schedule 15 (Order Contract Management)

Order Ref:

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3. Approvals and Authority

- 3.1. For the purposes of this Order Schedule 15, any reference to Client Approval means written approval in one of the following ways:
 - 3.1.1. the Client issuing a purchase order bearing the signature of an Authorised Client Approver;
 - 3.1.2. email from the individual business email address of an Authorised Client Approver; or
 - 3.1.3. the signature of an Authorised Client Approver on the Agency's documentation.
- 3.2. The Agency will seek the Client's prior Approval of:
 - 3.2.1. any estimates or quotations for any costs to be paid by the Client that are not agreed in a Statement of Work; and
 - 3.2.2. any creative treatments, including but not limited to scripts, messaging, storyboards, copy, layouts, design, artwork, or proposed marketing activity.
- 3.3. The Agency will seek the Client's prior Approval of any draft Goods or Services. The Client's Approval will be the Agency's authority to proceed with the use of the relevant Goods or Services.
- 3.4. If the Client does not approve of any matter requiring Approval, it must notify the Agency of its reasons for disapproval within 14 days of the Agency's request.
- 3.5. If the Client delays approving or notifying the Agency as to its disapproval, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Statement of Work.

4. Monitoring Campaign Performance

- 4.1. The Agency agrees to provide access to data and support for Audits undertaken by the Client and its Auditors under the CRTPA relating to campaign performance under the Contract during and after campaigns.
- 4.2. The Agency will fully comply with all remote access requests.
- 4.3. The Auditor may share data with relevant key stakeholders as necessary to complete the work. Where the Client carries out an Audit it will own the resulting report and may share non-sensitive outcomes as appropriate.
- 4.4. The Agency and the Client will agree a plan to address Audit findings to optimise campaign performance.

Order Schedule 15 (Order Contract Management)

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5. Contract Risk Management

- 5.1. Both Parties will proactively manage risks attributed to them under the terms of this Contract.
- 5.2. The Agency will develop, operate, maintain and amend, as agreed with the Client, processes for:
 - 5.2.1. the identification and management of risks;
 - 5.2.2. the identification and management of issues; and
 - 5.2.3. monitoring and controlling project plans.

Order Schedule 18 (Background Checks)

1. When you should use this Schedule

This Schedule should be used where Agency Staff must be vetted before working on the Contract.

2. Definitions

“Relevant Conviction” means any conviction listed in Annex 1 to this Schedule.

3. Relevant Convictions

3.1 The Agency must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Goods or Services without Approval.

3.2 Notwithstanding Paragraph 3.1 for each member of Agency Staff who, in providing the Goods or Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Client owes a special duty of care, the Agency must (and shall procure that the relevant Sub-Contractor must):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Agency shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Goods or Services any person who has a Relevant Conviction or an inappropriate record.

Order Schedule 18 (Background Checks)

Order Ref:

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Annex 1 – Relevant Convictions

- Any unspent criminal conviction
- Any offences that will never be filtered from a DBS certificate:
<https://www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check>



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Core Terms - DPS

RM6124 Communications Marketplace DPS

1. Definitions used in the contract

Interpret this Contract using Joint Schedule 1 (Definitions).

2. How the contract works

- 2.1 The Agency is eligible for the award of Order Contracts during the DPS Contract Period.
- 2.2 CCS does not guarantee the Agency any exclusivity, quantity or value of work under the DPS Contract.
- 2.3 CCS has paid one penny to the Agency legally to form the DPS Contract. The Agency acknowledges this payment.
- 2.4 If the Client decides to buy Services under the DPS Contract it must use DPS Schedule 7 (Order Procedure) and must state its requirements using DPS Schedule 6 (Letter of Appointment Template and Order Schedules). If allowed by the Regulations, the Client can:

- (a) make changes to DPS Schedule 6 (Letter of Appointment Template and Order Schedules);
- (b) create new Order Schedules;
- (c) exclude optional template Order Schedules; and/or
- (d) use Special Terms in the Letter of Appointment to add or change terms.

2.5 Each Order Contract:

-
- (a) is a separate Contract from the DPS Contract;
 - (b) is between an Agency and a Client;
 - (c) includes Core Terms, Schedules and any other changes or items in the completed Letter of Appointment; and
 - (d) survives the termination of the DPS Contract until its own End Date.

- 2.6 Where the Agency is approached by any Other Contracting Authority requesting Goods or Services or substantially similar goods or services, the Agency must tell them about this DPS Contract before accepting their order so that they are aware that they could place an order under this DPS Contract.

- 2.7 The Agency acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Agency.
- 2.8 The Agency will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
- (a) verify the accuracy of the Due Diligence Information; or
 - (b) properly perform its own adequate checks.
- 2.9 CCS and the Client will not be liable for errors, omissions or misrepresentation of any information.
-

- 2.10 The Agency warrants and represents that all statements made and documents submitted as part of the procurement of Goods or Services are and remain true and accurate.
-

- 2.11 An Order Contract can only be created using the electronic procedures described in the FTS Notice as required by the Regulations.
-

- 2.12 An Agency can only receive Orders under the DPS Contract while it meets the basic access requirements for the DPS stated in the FTS Notice. CCS can audit whether an Agency meets the basic access requirements at any point during the DPS Contract Period.
-

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Agency must provide Goods or Services:

- (a) that comply with the Specification, the DPS Tender Response and, in relation to an Order Contract, the Order Proposal (if there is one);
- (b) to a professional standard;
- (c) using reasonable skill and care;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
- (f) on the dates agreed; and
- (g) that comply with Law.

3.1.2 The Agency must provide any Goods which form part of the Order Contract with a warranty of at least 90 days from Delivery against all obvious defects.

3.2 Services clauses

- 3.2.1 The Agency must co-operate with the Client and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
 - 3.2.2 The Agency must at its own risk and expense provide all Agency Equipment required to Deliver the Services.
 - 3.2.3 The Agency must allocate sufficient resources and appropriate expertise to each Contract.
 - 3.2.4 The Agency must take all reasonable care to ensure performance does not disrupt the Client's operations, employees or other contractors.
 - 3.2.5 The Agency must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
 - 3.2.6 The Client is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.
-

3.2.7 Late Delivery of the Services will be a Default of an Order Contract.

3.3 Goods clauses

- 3.3.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.3.2 All manufacturer warranties covering the Goods must be assignable to the Client on request and for free.
- 3.3.3 The Agency transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

- 3.3.4 Risk in the Goods transfers to the Client on Delivery of the Goods, but remains with the Agency if the Client notices damage following Delivery and lets the Agency know within 3 Working Days of Delivery.
- 3.3.5 The Agency warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.3.6 The Agency must deliver the Goods on the date and to the specified location during the Client's working hours.
- 3.3.7 The Agency must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.3.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.3.9 The Agency must provide all tools, information and instructions the Client needs to make use of the Goods.
- 3.3.10 The Agency must indemnify the Client against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.3.11 The Client can cancel any order or part order of Goods which has not been Delivered. If the Client gives less than 14 days' notice then it will pay the Agency's reasonable and proven costs already incurred on the cancelled order as long as the Agency takes all reasonable steps to minimise these costs.
- 3.3.12 The Agency must at its own cost repair, replace, refund or substitute (at the Client's option and request) any Goods that the Client rejects because they do not conform with Clause 3. If the Agency does not do this it will pay the Client's costs including repair or re-supply by a third party.

4. Pricing and payments

- 4.1 In exchange for the Goods or Services, the Agency must invoice the Client for

the Charges in the Letter of Appointment or applicable Statement of Work.

- 4.2 CCS must invoice the Agency for the Management Charge and the Agency must pay it using the process in DPS Schedule 5 (Management Charges and Information).
- 4.3 The Agency must invoice the Client for the GCS Management Charge and pass it to CCS when the Agency pays the Management Charge.
- 4.4 All Charges and the Management Charge:

-
- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
 - (b) include all costs connected with the Supply of Goods or Services.

- 4.5 The Client must pay the Agency the Charges within 30 days of receipt by the Client of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Letter of Appointment.
- 4.6 An Agency invoice is only valid if it:

-
- (a) includes all appropriate references including the Contract reference number and other details reasonably requested by the Client;
 - (b) includes a detailed breakdown of Delivered Goods or Services and Milestone(s) (if any); and
 - (c) does not include the Management Charge (the Agency must not charge the Client in any way for the Management Charge) but, for the avoidance of doubt, may include the GCS Management Charge where applicable..

- 4.7 The Client must accept and process for payment an undisputed Electronic Invoice received from the Agency.

- 4.8 The Client may retain or set-off payment of any amount owed to it by the Agency if notice and reasons are provided.
 - 4.9 The Agency must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, CCS or the Client can publish the details of the late payment or non-payment.
 - 4.10 If CCS or the Client can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Agency to provide the Goods or Services, then CCS or the Client may require the Agency to use their supplier.
 - 4.11 If CCS or the Client uses Clause 4.10 then the DPS Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.
 - 4.12 The Agency has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.
-

5. The client's obligations to the agency

- 5.1 If Agency Non-Performance arises from an Authority Cause:
 - (a) neither CCS or the Client can terminate a Contract under Clause 10.4.1;
 - (b) the Agency is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under this Contract;
 - (c) the Agency is entitled to additional time needed to make the Delivery; and
 - (d) the Agency cannot suspend the ongoing supply of Goods or Services.
- 5.2 Clause 5.1 only applies if the Agency:
 - (a) gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware;
 - (b) demonstrates that the Agency Non-Performance would not have occurred but for the Authority Cause; and
 - (c) mitigated the impact of the Authority Cause.

6. Record keeping and reporting

- 6.1 The Agency must attend Progress Meetings with the Client and provide Progress Reports when specified in the Letter of Appointment.
- 6.2 The Agency must keep and maintain full and accurate records and accounts on everything to do with the Contract:
- (a) during the Contract Period;
 - (b) for 7 years after the End Date; and
 - (c) in accordance with UK GDPR, including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1.
- 6.3 The Relevant Authority or an Auditor under the CRTPA can Audit the Agency.
- 6.4 During an Audit, the Agency must:
-
- (a) allow the Relevant Authority or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and
 - (b) provide information to the Relevant Authority or to the Auditor and reasonable co-operation at their request.
- 6.5 Where the Audit of the Agency is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Relevant Authority.
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- 6.6 If the Agency is not providing any of the Goods or Services, or is unable to provide them, it must immediately:
-

- (a) tell the Relevant Authority and give reasons;
- (b) propose corrective action; and
- (c) provide a deadline for completing the corrective action.

6.7 The Agency must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:

-
- (a) the methodology of the review;
 - (b) the sampling techniques applied;
 - (c) details of any issues; and
 - (d) any remedial action taken.

6.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Agency's management team that is qualified in either a relevant audit or financial discipline.

6.9 If an Audit reveals that the Agency has underpaid an amount equal to or greater than 1% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this DPS Contract and any Order Contracts, the Agency shall reimburse CCS its reasonable costs incurred in relation to the Audit.

6.10 If an Audit reveals:

-
- (a) that the Agency has underpaid an amount equal to or greater than 5% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this DPS Contract and any Order Contracts, or
 - (b) a material Default

6.11 CCS may terminate this DPS Contract. The Agency shall also reimburse CCS its reasonable costs incurred in relation to the Audit.

6.12 The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, save as specified in Clause 6.10.

6.13 CCS may from time to time undertake (or procure the undertaking of) a "Client

Satisfaction Survey”, to assess the level of satisfaction among some or all Clients with the Goods or Services. This may include:

-
- (a) the way in which the Goods or Services are provided, performed and delivered;
 - (b) the quality, efficiency and effectiveness of the supply of the Goods or Services;
 - (c) Agency compliance with this DPS Contract and any Order Contracts; and
 - (d) any other assessment CCS deems appropriate for monitoring Client satisfaction.

6.14 CCS and the Clients may use the results of any Client Satisfaction Survey to make decisions in relation to this DPS Contract and any Order Contracts.

6.15 When the Agency enters into or extends an Order Contract with a Client, a signed copy of the Order Contract must be provided to CCS within 14 days.

7. Supplier staff

7.1 The Supplier Staff involved in the performance of each Contract must:

- (a) be appropriately trained and qualified;
- (b) be vetted using Good Industry Practice and the Security Policy; and
- (c) comply with all conduct requirements when on the Client's Premises.

7.2 Where a Client decides one of the Supplier's Staff is not suitable to work on a Contract, the Agency must replace them with a suitably qualified alternative.

7.3 If requested, the Agency must replace any person whose acts or omissions have caused the Agency to breach Clause 27.

7.4 The Agency must provide a list of Supplier Staff needing to access the Client's Premises and say why access is required.

7.5 The Agency indemnifies CCS and the Client against all claims brought by any person employed by the Agency caused by an act or omission of the Agency or any Supplier Staff.

8. Rights and protection

8.1 The Agency warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform each Contract;
- (b) each Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
- (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
- (g) it is not impacted by an Insolvency Event;
- (h) it will comply with each Order Contract; and
- (i) as at the date they are delivered, the Goods or Services of an Order Contract may be used for the purposes set out in the Order Contract and comply with all Advertising Regulations.

8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Agency provides Goods or Services under the Contract.

8.3 The Agency indemnifies both CCS and every Client against each of the following:

- (a) wilful misconduct of the Agency, Subcontractor and Supplier Staff that impacts the Contract; and
- (b) non-payment by the Agency of any Tax or National Insurance.

8.4 All claims indemnified under this Contract must use Clause 26.

- 8.5 The description of any provision of this Contract as a warranty does not prevent CCS or a Client from exercising any termination right that it may have for breach of that clause by the Agency.
- 8.6 If the Agency becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Client.
- 8.7 All third party warranties and indemnities covering the Goods or Services must be assigned for the Client's benefit by the Agency.

9. Intellectual Property Rights (IPRs)

- 9.1 Each Party keeps ownership of its own Existing IPRs. The Agency gives the Client a non-exclusive, royalty-free, irrevocable, transferable licence to use, change and sub-license the Agency's Existing IPR as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work to enable it to both:

- (a) receive and use the Deliverables; and
- (b) make use of the deliverables provided by a Replacement Agency.

-
- 9.2 Subject to the provisions of clause 9.8, any New IPR created under a Contract is owned by the Client. The Client gives the Agency a non-exclusive licence to use any Client Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
 - 9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
 - 9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.
 - 9.5 If there is an IPR Claim, the Agency indemnifies CCS and each Client against

all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Agency must at its own expense and the Client's sole option, either:

- (a) obtain for CCS and the Client the rights in Clause 9.1 and 9.2 without infringing any Third Party IPR; or
- (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Goods or Services.

9.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Client and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Agency acknowledges that any authorisation by the Client under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

9.8 The Agency warrants that it owns, or has obtained, valid licences for all IPR that are necessary to perform its obligations under this Framework Agreement and the Call-Off Contract, other than any IPR provided to it by CCS or the Client. The Agency shall maintain these licences in full during the Contract Period of this Framework Contract and the Call-Off Contract, save for any Third Party IPR in respect of which the Agency will maintain licences so the Client can use these Third Party IPR for the purposes set out in the Statement of Work. The Agency will notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party IPR.

9.9 Unless expressly prohibited in an Order Contract, the Agency will be able during and after the Contract Period to use any Goods or Services which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel. Any other use by the Agency shall be subject to the Client's prior Approval.

9.10 During the Contract Period, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this Clause 9, the Agency will retain ownership of all IPR in any materials forming part of the pitch process. If the Agency is successful in such pitch and the Parties agree that such materials will be used in an Order Contract the Agency will assign all such IPR to the Client.

9.11 The Agency is not liable in connection with a Call-Off Contract for:

9.11.1 any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf after the Agency has handed them over;

9.11.2 any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables which arises due to the acts or omissions of the Client;

9.11.3 the Deliverables infringing a third party's IPR where the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party IPR and the Agency had obtained the prior approval of the Authorised Client Approver to use such Deliverables notwithstanding such notified risk; and/or

9.11.4 the incorporation of Client Existing IPR into the Deliverables provided that the Agency has incorporated and used such Client Existing IPR in accordance with any instructions given by the Client from time to time.

9.12 Any marketing materials produced by the Agency in relation to this DPS Contract must comply in all respects with the Branding Guidance.

9.13 To the extent permitted by Law, the Agency shall ensure that all Moral Rights relating to Agency IPR are waived. Where it is not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the relevant materials.

- 9.14 The Agency will use its reasonable endeavours to ensure that all Moral Rights relating to Third Party IPR are waived. Where it is not lawfully possible to waive Moral Rights, the Agency will work with the owner or creator of the Third Party IPR to procure that Moral Rights are not asserted in respect of the relevant materials). If the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any such materials, the Agency will notify the Client and will obtain the Client's Approval prior to incorporating such materials into the Goods or Services.

10. Ending the contract or any subcontract

10.1 Contract Period

- 10.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.
- 10.1.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Agency no less than 3 Months' written notice before the Contract expires.

10.2 Ending the contract without a reason

- 10.2.1 CCS has the right to terminate the DPS Contract at any time without reason by giving the Agency at least 30 days' notice.
- 10.2.2 Each Client has the right to terminate their Order Contract at any time without reason by giving the Agency not less than 90 days' written notice.

10.3 Rectification plan process

10.3.1 If there is a Default, the Relevant Authority may, without limiting its other rights, request that the Agency provide a Rectification Plan.

10.3.2 When the Relevant Authority receives a requested Rectification Plan it can either:

- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
- (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Agency must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

10.3.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- (a) must give reasonable grounds for its decision; and
- (b) may request that the Agency provides a revised Rectification Plan within 5 Working Days.

10.3.4 If the Relevant Authority rejects any Rectification Plan, including any revised Rectification Plan, the Relevant Authority does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 10.4.3(a).

10.4 When CCS or the client can end a contract

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Agency:

- (a) there is an Agency Insolvency Event;
- (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Agency does not provide a Rectification Plan within 10 days of the request;
- (d) there is any material Default of the Contract;
- (e) there is any material Default of any Joint Controller Agreement relating to any Contract;
- (f) there is a Default of Clauses 2.10, 9, 14, 15, 27, 32 or DPS Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract;
- (g) there is a consistent repeated failure to meet the Key Performance Indicators in DPS Schedule 4 (DPS Management);
- (h) there is a Change of Control of the Agency which is not pre-approved by the Relevant Authority in writing;
- (i) if the Relevant Authority discovers that the Agency was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded; or
- (j) the Agency or its Affiliates embarrass or bring CCS or the Client into disrepute or diminish the public trust in them.

10.4.2 CCS may terminate the DPS Contract if a Client terminates a Order Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If any of the following non-fault based events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Agency:

- (a) the Relevant Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 24 (Changing the

- contract) or resolved using Clause 34 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any Variation; or
- (d) the events in 73 (1) (a) of the Regulations happen.

10.5 When the agency can end the contract

The Agency can issue a Reminder Notice if the Client does not pay an undisputed invoice on time. The Agency can terminate a Order Contract if the Client fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

10.6 What happens if the contract ends

10.6.1 Where a Party terminates a Contract under any of Clauses 10.2.1, 10.2.2, 10.4.1, 10.4.2, 10.4.3, 10.5 or 20.2 or a Contract expires all of the following apply:

- (a) The Client's payment obligations under the terminated Contract stop immediately.
- (b) Accumulated rights of the Parties are not affected.
- (c) The Agency must promptly repay to the Client any and all Charges the Client has paid in advance in respect of Goods or Services not provided by the Agency as at the End Date.
- (d) The Agency must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Agency must promptly return any of CCS or the Client's property provided under the terminated Contract.
- (f) The Agency must, at no cost to CCS or the Client, co-operate fully in the handover and re-procurement (including to a Replacement Agency).

10.6.2 In addition to the consequences of termination listed in Clause 10.6.1, where the Relevant Authority terminates a Contract under Clause 10.4.1 the Agency is also responsible for the Relevant Authority's reasonable costs of procuring

Replacement Goods or Services for the rest of the Contract Period.

10.6.3 In addition to the consequences of termination listed in Clause 10.6.1, if either the Relevant Authority terminates a Contract under Clause 10.2.1 or 10.2.2 or an Agency terminates an Order Contract under Clause 10.5:

- (a) the Client must promptly pay all outstanding Charges incurred to the Agency; and
- (b) the Client must pay the Agency reasonable committed and unavoidable Losses as long as the Agency provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Agency if the Contract had not been terminated.

10.6.4 In addition to the consequences of termination listed in Clause 10.6.1, where a Party terminates under Clause 20.2 each Party must cover its own Losses.

10.6.5 The following Clauses survive the termination or expiry of each Contract: 3.2.10, 4.2, 6, 7.5, 9, 11, 12.2, 14, 15, 16, 17, 18, 31.3, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

10.7 Partially ending and suspending the contract

10.7.1 Where CCS has the right to terminate the DPS Contract it can suspend the

Agency's ability to accept Orders (for any period) and the Agency cannot enter into any new Order Contracts during this period. If this happens, the Agency must still meet its obligations under any existing Order Contracts that have already been signed.

10.7.2 Where CCS has the right to terminate a DPS Contract it is entitled to terminate all or part of it.

10.7.3 Where the Client has the right to terminate an Order Contract it can terminate or suspend (for any period), all or part of it (including without limitation individual Statements of Work). If the Client suspends a Contract it can provide the Goods or Services itself or buy them from a third party.

10.7.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.7.5 The Parties must agree any necessary Variation required by Clause 10.7 using the Variation Procedure, but the Agency may not either:

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 10.2.

10.7.6 The Client can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.7.

10.8 When subcontracts can be ended

At the Client's request, the Agency must terminate any Subcontracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which is not pre-approved by the Relevant Authority in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4; or
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or

diminishes the public trust in the Relevant Authority.

11. How much you can be held responsible for

11.1 Each Party's total aggregate liability in each Contract Year under this DPS Contract (whether in tort, contract or otherwise) is no more than £100,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Order Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Order Letter of Appointment.

11.3 No Party is liable to the other for:

- (a) any indirect Losses; or
- (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

-
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by Law;
 - (d) its obligation to pay the required Management Charge, GCS Management Charge or Default Management Charge.

11.5 In spite of Clauses 11.1 and 11.2, the Agency does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3(b), 9.5, 31.3 or Order Schedule 2 (Staff Transfer) of a Contract.

11.6 In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Agency's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed the Data Protection Liability Cap.

11.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.8 When calculating the Agency's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- (a) Deductions; and
- (b) any items specified in Clauses 11.5 or 11.6.

11.9 If more than one Agency is party to a Contract, each Agency Party is jointly and severally liable for their obligations under that Contract.

12. Obeying the law

12.1 The Agency must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 To the extent that it arises as a result of a Default by the Agency, the Agency indemnifies the Relevant Authority against any fine or penalty incurred by the Relevant Authority pursuant to Law and any costs incurred by the Relevant Authority in defending any proceedings which result in such fine or penalty.

12.3 The Agency must appoint a Compliance Officer who must be responsible for ensuring that the Agency complies with Law, Clause 12.1 and Clauses 27 to 32.

12.4 The Parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations and will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulations.

12.5 Where the Agency or its Subcontractors perform the Contract outside the United Kingdom they shall do so in accordance with the Law and the local laws

applicable to their activity in the relevant country, including without limitation the Modern Slavery Act 2015.

13. Insurance

The Agency must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Letter of Appointment.

14. Data protection

- 14.1 The Agency must process Personal Data and ensure that Agency Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).
- 14.2 The Agency must not remove any ownership or security notices in or relating to the Government Data.
- 14.3 The Agency must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Client copies every 6 Months.
- 14.4 The Agency must ensure that any Agency system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 14.5 If at any time the Agency suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Agency must notify the Relevant Authority and immediately suggest remedial action.
- 14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

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- (a) tell the Agency to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Agency finds out about the issue, whichever is earlier; and/or
 - (b) restore the Government Data itself or using a third party.

- 14.7 The Agency must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Client is at fault.

- 14.8 The Agency:

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- (a) must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
 - (b) must have documented processes to guarantee prompt availability of Government Data if the Agency stops trading;
 - (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - (d) securely erase all Government Data and any copies it holds when asked to do so by CCS or the Client unless required by Law to retain it; and
 - (e) indemnifies CCS and each Client against any and all Losses incurred if the Agency breaches Clause 14 and any Data Protection Legislation.

15. What you must keep confidential

15.1 Each Party must:

- (a) keep all Confidential Information it receives confidential and secure;
- (b) except as expressly set out in the Contract at Clauses 15.2 to 15.4 or elsewhere in the Contract, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
- (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
- (b) if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
- (c) if the information was given to it by a third party without obligation of confidentiality;
- (d) if the information was in the public domain at the time of the disclosure;
- (e) if the information was independently developed without access to the Disclosing Party's Confidential Information;

- (f) on a confidential basis, to its auditors;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (h) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 In spite of Clause 15.1, the Agency may disclose Confidential Information on a confidential basis to Agency Staff on a need-to-know basis to allow the Agency to meet its obligations under the Contract. The Agency Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 In spite of Clause 15.1, CCS or the Client may disclose Confidential Information in any of the following cases:

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- (a) on a confidential basis to the employees, agents, consultants and contractors of CCS or the Client;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Client transfers or proposes to transfer all or any part of its business to;
 - (c) if CCS or the Client (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by Parliament; or
 - (e) under Clauses 4.7 and 16.

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Agency must not share any information with the media, make any media announcement or publicise the Contracts or any part of them including a Brief or any other pre-Contract material or discussions in any way including industry award competitions, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

15.8 Nothing in this Clause shall prevent a Recipient Party from using any techniques, ideas or Know-How which the Recipient Party has gained during the performance of this DPS Contract in the course of its normal business, as

long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of IPR.

16. When you can share information

- 16.1 The Agency must tell the Relevant Authority within 48 hours if it receives a Request For Information.
- 16.2 Within five (5) Working Days of the Client's request the Agency must give CCS and each Client full co-operation and information needed so the Client can:

-
- (a) publish the Transparency Information;
 - (b) comply with any Freedom of Information Act (FOIA) request; and/or
 - (c) comply with any Environmental Information Regulations (EIR) request.

- 16.3 The Relevant Authority may talk to the Agency to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision in its absolute discretion.
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17. Invalid parts of the contract

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it is valid or enforceable.

18. No other terms apply

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

19. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist

independently from CRTPA.

20. Circumstances beyond your control

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

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- (a) provides a Force Majeure Notice to the other Party; and
 - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

20.2 Either Party can partially or fully terminate the affected Contract if the provision of the Goods or Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

21. Relationships created by the contract

No Contract creates a partnership, joint venture or employment relationship. The Agency must represent themselves accordingly and ensure others do so.

22. Giving up contract rights

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

23. Transferring responsibilities

23.1 The Agency cannot assign, novate or transfer a Contract or any part of a Contract without the Relevant Authority's written consent.

23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Central Government Body, public or private sector body which performs the functions of the Relevant Authority.

23.3 When CCS or the Client uses its rights under Clause 23.2 the Agency must enter into a novation agreement in the form that CCS or the Client specifies.

23.4 The Agency can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Agency remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If CCS or the Client asks the Agency for details about Subcontractors, the Agency must provide details of Subcontractors at all levels of the supply chain including:

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- (a) their name;
 - (b) the scope of their appointment; and
 - (c) the duration of their appointment.

24. Changing the contract

24.1 Either Party can request a Variation which is only effective if agreed in writing and signed by both Parties.

24.2 The Agency must provide an Impact Assessment either:

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- (a) with the Variation Form, where the Agency requests the Variation; or
 - (b) within the time limits included in a Variation Form requested by CCS or the Client.

24.3 If the Variation cannot be agreed or resolved by the Parties, CCS or the Client can either:

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- (a) agree that the Contract continues without the Variation; or
 - (b) terminate the affected Contract, unless in the case of an Order Contract, the Agency has already provided part or all of the provision of the Goods or Services, or where the Agency can show evidence of substantial work being carried out to provide them; or
 - (c) refer the Dispute to be resolved using Clause 34 (Resolving Disputes).

- 24.4 CCS and the Client are not required to accept a Variation request made by the Agency.
- 24.5 If there is a General Change in Law, the Agency must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Agency must give CCS and the Client notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Goods or Services, DPS Prices or a Contract and provide evidence:
- (a) that the Agency has kept costs as low as possible, including in Subcontractor costs; and
 - (b) of how it has affected the Agency's costs.
- 24.7 Any change in the DPS Prices or relief from the Agency's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.
- 24.8 The Agency will disclose to the Client any commission, discount or rebate earned by the Agency arising in respect of third party costs directly related to Order Contracts. The Client will receive the full benefit of such commission, discount or rebate and the Charges shall be varied accordingly.
- 24.9 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

25. How to communicate about the contract

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address indicated on the Platform.

- 25.3 Notices to the Client must be sent to the Client Authorised Representative's address or email address in the Letter of Appointment.
- 25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- (b) give the Indemnifier reasonable assistance with the claim if requested.

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

- (b) the amount the Indemnifier paid the Beneficiary for the Claim.

27. Preventing fraud, bribery and corruption

27.1 The Agency must not during any Contract Period:

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- (a) commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
 - (b) do or allow anything which would cause CCS or the Client, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Agency must during the Contract Period:

- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
- (b) keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Client on request; and
- (c) if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

27.3 The Agency must immediately notify CCS and the Client if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

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- (a) been investigated or prosecuted for an alleged Prohibited Act;
 - (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or

- (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.

27.4 If the Agency notifies CCS or the Client as required by Clause 27.3, the Agency must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Agency gives under Clause 27.3 it must specify the:

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- (a) Prohibited Act;
 - (b) identity of the Party who it thinks has committed the Prohibited Act; and
 - (c) action it has decided to take.

28. Equality, diversity and human rights

28.1 The Agency must follow all applicable equality Law when they perform their obligations under the Contract, including:

- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- (b) any other requirements and instructions which CCS or the Client reasonably imposes related to equality Law.

28.2 The Agency must take all necessary steps, and inform CCS or the Client of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

29. Health and safety

29.1 The Agency must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety; and
- (b) the Client's current health and safety policy while at the Client's Premises, as provided to the Agency.

29.2 The Agency and the Client must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Client Premises that relate to the performance of a Contract.

30. Environment

30.1 When working on Site the Agency must perform its obligations under the Client's current Environmental Policy, which the Client must provide.

30.2 The Agency must ensure that Supplier Staff are aware of the Client's Environmental Policy.

31. Tax

31.1 The Agency must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Client cannot terminate a Contract where the Agency has not paid a minor Tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Client are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Agency must notify CCS and the Client of it within 5 Working Days including:

- (a) the steps that the Agency is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
- (b) other information relating to the Occasion of Tax Non-Compliance that CCS and the Client may reasonably need.

31.3 Where the Agency or any Agency Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under an Order Contract, the Agency must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
- (b) indemnify the Client against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Goods or Services by the Agency or any of the Agency Staff.

31.4 If any of the Agency Staff are Workers who receive payment relating to the Goods or Services, then the Agency must ensure that its contract with the Worker contains the following requirements:

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- (a) the Client may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Client can specify the information the Worker must provide and the deadline for responding;
 - (b) the Worker's contract may be terminated at the Client's request if the Worker fails to provide the information requested by the Client within the time specified by the Client;
 - (c) the Worker's contract may be terminated at the Client's request if the Worker provides information which the Client considers is not good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements; and
 - (d) the Client may supply any information they receive from the Worker to HMRC for revenue collection and management.

32. Conflict of interest

- 32.1 The Agency must take action to ensure that neither the Agency nor the Agency Staff are placed in the position of an actual or potential Conflict of Interest.
- 32.2 The Agency must promptly notify and provide details to CCS and each Client if a Conflict of Interest happens or is expected to happen.
- 32.3 CCS and each Client can terminate its Contract immediately by giving notice in writing to the Agency or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

33. Reporting a breach of the contract

- 33.1 As soon as it is aware of it the Agency and Agency Staff must report to CCS or the Client any actual or suspected breach of:
 - (a) Law;
 - (b) Clause 12.1; or
 - (c) Clauses 27 to 32.
- 33.2 The Agency must not retaliate against any of the Agency Staff who in good faith reports a breach listed in Clause 33.1 to the Client or a Prescribed Person.

34. Resolving disputes

- 34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not

resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the Dispute;
- (b) grant interim remedies; and/or
- (c) grant any other provisional or protective relief.

34.4 The Agency agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Agency has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Agency cannot suspend the performance of a Contract during any Dispute.

35. Which law applies

This Contract and any Disputes arising out of, or connected to it, are governed by English law.

36. Agency doing work for others

36.1 Adverse public perception could have a detrimental impact on the Client's desired outcomes for an Order Contract. To minimise this risk, the Agency must not, without the Client's written consent, provide services to a third party during the Contract Period of any Order Contract where the provision of such services

(in the reasonable opinion of the Client):

- (a) has the potential to adversely affect the Client's desired outcome of the Order Contract or diminish the trust that the public places in the Client; or
- (b) is likely to cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client.

- 36.2 The only exception to this is if the Agency provides services to an existing client, which the Client had been informed about before entering into the relevant Order Contract.
- 36.3 If the Agency becomes aware of a breach, or potential breach, of its obligations under Clause 36.1, the Agency must notify the Client immediately, providing full details of the nature of the breach and the likely impact on the Order Contract.
- 36.4 If the Agency breaches Clause 36.1, the Client may terminate the relevant Order Contract or any Statement of Work under it with immediate effect in accordance with Clause 10.4.1.