



Maritime &  
Coastguard  
Agency

**UK SEARCH & RESCUE 2ND GENERATION CONTRACT**

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**DATED**

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**MARITIME & COASTGUARD AGENCY (1)**  
**ACTING ON BEHALF OF THE**  
**SECRETARY OF STATE FOR**  
**TRANSPORT**

**AND**

**BRISTOW HELICOPTERS LIMITED (2)**

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**AGREEMENT**

relating to search and rescue, and aerial  
surveillance

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**MILLS & REEVE**

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**THIS AGREEMENT** is made on

**BETWEEN:**

- (1) **MARITIME & COASTGUARD AGENCY** of 105 Commercial Road, Southampton SO15 1EG acting on behalf of the Secretary of State for Transport (the “**Authority**”); and
- (2) **BRISTOW HELICOPTERS LIMITED** a company registered in England and Wales under company number **00551102** whose registered office is at Redhill Aerodrome, Kings Mill Lane, Redhill, Surrey, RH1 5JZ (the “**Supplier**”)

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

## **INTRODUCTION**

- (A) The Authority works to protect the safety of lives on the coast and at sea in the UK search and rescue region and requires an aviation search and rescue and an aerial surveillance capability (“**UKSAR2G**”).
- (B) On 8 March 2021 the Authority advertised in Find a Tender (Ref: 2021/S 000-004655) inviting prospective suppliers to submit proposals for the aviation search and rescue, and aerial surveillance capability. The procurement was divided into separate lots as specified in the notice.
- (C) The Supplier is a leading provider of non-scheduled passenger air transport and has experience in the Services being provided under each Lot.
- (D) On the basis of the Supplier’s response to the notice and a subsequent tender process, the Authority selected the Supplier as its preferred supplier to carry out the Services.
- (E) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

## **SECTION A - PRELIMINARIES**

### **1 Definitions and Interpretation**

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Clause or Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

- 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.5 the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.6 references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.8 unless otherwise provided and save for references in Annexes 1 and 2 to Schedule 11 (*IPR*), Schedule 26 (*Guarantee*) and Schedule 27 (*Direct Agreement*), references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
- 1.2.9 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.4.1 the Clauses and Schedule 1 (*Definitions*);
  - 1.4.2 Schedule 2 (*Services Description*) and Schedule 3 (*Key Performance Indicators*) and their Annexes;
  - 1.4.3 any other Schedules and their Annexes (other than Schedule 7 (*Supplier's Solution*) and its Annexes (if any)); and
  - 1.4.4 Schedule 7 (*Supplier's Solution*) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.
- 1.6 In entering into this Agreement the Authority is acting as part of the Crown.
- 2 Due Diligence**
- 2.1 The Supplier acknowledges that:



- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations pursuant to this Agreement;
- 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
  - (i) the Authority Requirements;
  - (ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
  - (iii) the operating processes and procedures and the working methods of the Authority;
  - (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
  - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier pursuant to this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and
- 2.1.4 it has advised the Authority in writing of:
  - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (ii) the actions needed to remedy each such unsuitable aspect; and
  - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including Schedule 2 (*Services Description*) and/or Authority Responsibilities as applicable.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations pursuant to this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
  - 2.2.1 any unsuitable aspects of the Operating Environment;
  - 2.2.2 any misinterpretation of the Authority Requirements; and/or
  - 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **3 Warranties**

#### 3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 3.1.2 this Agreement is executed by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations pursuant to this Agreement; and
- 3.1.4 its obligations pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

#### 3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
- 3.2.3 this Agreement is executed by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
- 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations pursuant to this Agreement;
- 3.2.6 its execution, delivery and performance of its obligations pursuant to this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default pursuant to any agreement by which it is bound;
- 3.2.7 its obligations pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including

without limitation its response to the selection questionnaire, the ITT and ITSFT, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

- 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
  - 3.2.10 it has all necessary rights in and to the Supplier Software and the Third Party IPR and any other materials and/or systems made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations pursuant to this Agreement and/or the receipt of the Services by the Authority;
  - 3.2.11 the Financial Model is a true and accurate reflection of the Charges forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
  - 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations pursuant to this Agreement;
  - 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
  - 3.2.14 within the previous twelve months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events pursuant to this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
  - 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
  - 3.5 If at any time a Party becomes aware that a representation or warranty given by it pursuant to Clauses 3.1 and/or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 3.6 The fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.

## SECTION B – THE SERVICES

### 4 Term

4.1 This Agreement shall:

4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 24 (*Confidentiality*), 25 (*Transparency and Freedom of Information*), 27 (*Publicity and Branding*), 29 (*Limitations on Liability*), 40 (*Waiver and Cumulative Remedies*), 41 (*Relationship of the Parties*), 43 (*Severance*), 45 (*Entire Agreement*), 46 (*Third Party Rights*), 47 (*Notices*), 48 (*Disputes*) and 49 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and

4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 36 (*Termination Rights*), terminate on the latest Base Expiry Date.

#### Extension

4.2 The Authority may from time to time and for any number of times extend the Base Expiry Date for any Base in relation to any Lot by giving the Supplier no less than 20 Working Days' written notice prior to the Base Expiry Date provided that any extended Base Expiry Date for any Base shall not be more than 24 months after the relevant Base Expiry Date (as at the Effective Date).

#### Condition Precedent

4.3 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 24 (*Confidentiality*), 25 (*Transparency and Freedom of Information*), 27 (*Publicity and Branding*), 29 (*Limitations on Liability*), 40 (*Waiver and Cumulative Remedies*), 41 (*Relationship of the Parties*), 43 (*Severance*), 45 (*Entire Agreement*), 46 (*Third Party Rights*), 47 (*Notices*), 48 (*Disputes*) and 49 (*Governing Law and Jurisdiction*), this Agreement is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.

4.4 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Agreement then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.3:

4.4.1 this Agreement shall automatically cease and shall not come into effect; and

4.4.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.

4.5 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.3 and shall keep the Authority fully informed of its

progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.4.

## **5 Services**

### Standard of Services

- 5.1 The Supplier shall provide the Services from each Base from (and including) the Services Commencement Date for that Base until the relevant Base Expiry Date unless the provision from such Base is terminated at an earlier date by operation of Law or in accordance with Clause 36 (*Termination Rights*) (in respect of each Base, the “**Base Services Period**”).
- 5.2 The Supplier shall ensure that the Services:
- 5.2.1 comply in all respects with the Services Description; and
  - 5.2.2 are supplied in accordance with the Supplier’s Solution and the provisions of this Agreement.
- 5.3 The Supplier shall:
- 5.3.1 perform its obligations pursuant to this Agreement, including in relation to the supply of the Services, in accordance with:
    - (i) all applicable Law and any additional requirements arising from international treaties and protocols to which the UK is a signatory;
    - (ii) Good Industry Practice;
    - (iii) the Quality Plans;
    - (iv) the Authority Information Security Policy; and
    - (v) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(i) to 5.3.1(iv); and
  - 5.3.2 deliver the Services using efficient business processes and ways of working having regard to the Authority’s obligation to ensure value for money;
  - 5.3.3 support and reflect at all times the public service ethos of the Authority;
  - 5.3.4 comply with Schedule 29 (*Environmental Requirements*);
  - 5.3.5 comply with Schedule 30 (*Social Value Plan*);
  - 5.3.6 share best practice with and support the Authority to enhance environmental performance; and
  - 5.3.7 implement an appropriate environmental management system for the Services in accordance with ISO14001 or equivalent.

- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1(i) to 5.3.1(iv), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirements the Supplier shall comply with.

Supplier covenants

- 5.5 The Supplier shall:
- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with this Agreement;
  - 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 14 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
  - 5.5.3 ensure that:
    - (i) it shall continue to have all necessary rights in and to the Supplier Software and any other materials and/or systems made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations pursuant to this Agreement and/or the receipt of the Services by the Authority;
    - (ii) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Services shall enable the Services to meet the Authority Requirements; and
    - (iii) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
  - 5.5.4 minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations pursuant to this Agreement;
  - 5.5.5 not use any Asset for any purpose other than the provision of the Services without the prior written consent of the Authority and if the Authority consents to such use the Parties shall comply with the Change Control Procedure;
  - 5.5.6 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - 5.5.7 throughout the Term attend, and provide suitable resources for, such events and conferences to engage with emergency services, stakeholders and industry as specified by the Authority from time to time by giving reasonable written notice to the Supplier;

- 5.5.8 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- 5.5.9 provide the Services so as to achieve the Objectives;
- 5.5.10 not used;
- 5.5.11 not used;
- 5.5.12 notify the Authority of any issues that may reasonably affect delivery of services that relate to UKSAR2G at the earliest practicable time;
- 5.5.13 not used;
- 5.5.14 not used;
- 5.5.15 not used;
- 5.5.16 act in a collaborative manner and in the spirit of mutual trust and respect;
- 5.5.17 not used;
- 5.5.18 not used;
- 5.5.19 rectify behaviours of the Supplier that do not comply with the Objectives;
- 5.5.20 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.21 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5.20;
- 5.5.22 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.23 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations pursuant to this Agreement;
- 5.5.24 notify the Authority in writing as soon as reasonably possible and in any event within one month of any change of Control taking place;



- 5.5.25 notify the Authority in writing within ten Working Days of the occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations pursuant to this Agreement; and
- 5.5.26 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in the Authority.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 22.2 and 22.3 (*IPR Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
  - 5.7.1 remedy any breach of its obligations in Clauses 5.5.2 to 5.5.4 within three Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
  - 5.7.2 remedy any breach of its obligations in Clause 5.5.1 and Clauses 5.5.5 to 5.5.26 within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
  - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations pursuant to Clause 5.7.1 or Clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Services

- 5.8 The Supplier shall continue to perform all of its obligations pursuant to this Agreement and shall not suspend the supply of the Services, notwithstanding:
  - 5.8.1 any Deductions being made;
  - 5.8.2 the existence of an unresolved Dispute; and/or
  - 5.8.3 any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement pursuant to Clause 36.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

Power of attorney

- 5.9 By way of security for the performance of its obligations pursuant to Clauses 5.5.20 and 5.5.21 the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf

to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.9 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

## **6 Transition and Acceptance**

### The Quality Plans

- 6.1 The Supplier shall develop, within 60 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (“**Quality Plans**”).
- 6.2 The Supplier shall obtain the Authority Representative’s written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority’s approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 6.3 Following the approval by the Authority of the Quality Plans, any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

### Transition and Acceptance Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 12 (*Transition and Acceptance Plan*).
- 6.5 The Supplier shall:
  - 6.5.1 comply with the Transition and Acceptance Plan; and
  - 6.5.2 ensure that each Achievement Criterion is Achieved on or before its Planned Achievement Criterion Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
  - 6.6.1 implement such of the contingency arrangements set out in the Transition and Acceptance Plan as the Authority requires;
  - 6.6.2 notify the Authority in accordance with Clause 31.1 (*Rectification Plan Process*);
  - 6.6.3 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - 6.6.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
- 6.7 If:

- 6.7.1 the Supplier fails to implement the contingency arrangements set out in the Transition and Acceptance Plan as required by the Authority pursuant to Clause 6.6.1;
- 6.7.2 the Supplier fails to comply with the Rectification Plan Process;
- 6.7.3 the Authority reasonably considers that there is insufficient time for the Supplier to comply with the Rectification Plan Process; and/or
- 6.7.4 the Authority reasonably considers that there is insufficient time for the Supplier to implement the Rectification Plan successfully,

then:

- (i) the Authority may serve notice on the Supplier that it will be taking action pursuant to this Clause 6.7 and implement such arrangements as it reasonably considers necessary to mitigate the consequences of any Delay or anticipated Delay, which may include procuring a third party supplier to fulfil the Supplier's obligations pursuant to this Agreement; and
- (ii) the Supplier shall pay, or allow the Authority to deduct from any sums that would otherwise be due to the Supplier, all the costs incurred by the Authority in implementing such arrangements.

6.8 If all Achievement Criteria for a Base have not been Achieved by the Planned Services Commencement Date for that Base:

6.8.1 the Authority may procure performance of the relevant Services from the Services Commencement Date, which may include procuring performance of the relevant Services from a third party; and

6.8.2 the Supplier shall pay, or allow the Authority to deduct from any sums that would otherwise be due to the Supplier, all the additional costs incurred by the Authority in procuring performance of the relevant Services.

6.9 If the Supplier implements the contingency arrangements in accordance with the Authority's requirements pursuant to Clause 6.6.1 and the Authority requires the Supplier to commence the Services notwithstanding that one or more Achievement Criteria have not been Achieved:

6.9.1 the Authority may retain any Initial Payment in respect of the relevant Base until such Achievement Criteria have been Achieved; and

6.9.2 the Charges shall be reduced by the amount of any savings made by the Supplier as a result of providing the relevant contingency arrangements prior to Achieving the relevant Achievement Criteria.

#### Achievement of Achievement Criteria

6.10 The Parties shall comply with the provisions of Schedule 12 (*Transition and Acceptance Plan*) in relation to the procedures to determine whether an Achievement Criterion has been Achieved.

**7 Key Performance Indicators**

7.1 The Parties shall comply with the provisions of Schedule 3 (*Key Performance Indicators*).

**8 Services Improvement**

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify Innovation. As part of this obligation the Supplier shall identify and report to the Capability Integration and Development Working Group once every twelve months on Innovation.

8.2 The Supplier shall ensure that the information that it provides to the Authority in accordance with Clause 8.1 shall be sufficient for the Authority to decide whether any Innovation should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any Innovation identified by the Supplier in accordance with Clause 8.1 the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

8.4 The Supplier shall comply with the provisions of Schedule 13 (*Innovation Plan*).

**9 Assets**

9.1 The Supplier shall be solely responsible for the cost of carriage of Assets to the Sites, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Assets from the Sites, including the cost of packing, carriage and making good the Sites following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

9.2 All the Supplier's property, including Assets, shall remain at the sole risk and responsibility of the Supplier.

9.3 Subject to Clause 35 (*Force Majeure*), the loss or destruction for any reason of any Assets shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement.

## SECTION C – PAYMENT AND TAXATION PROVISIONS

### 10 Financial and Taxation Matters

#### Charges and invoicing

- 10.1 Without prejudice to any right of indemnity, counterclaim, set off, retention, withholding and/or deduction pursuant to this Agreement or otherwise, in consideration of the Supplier carrying out its obligations pursuant to this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 14 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations pursuant to this Agreement.
- 10.3 Without prejudice to any right of indemnity, counterclaim, set off, retention, withholding and/or deduction pursuant to this Agreement or otherwise that have the effect that the Charges have not fallen due, if the Authority fails to pay any undisputed Charges properly invoiced pursuant to this Agreement and falling due, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that are levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier pursuant to this Agreement. Any amounts due pursuant to this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

#### Set-off and withholding

- 10.6 Without prejudice to the right of set off set out in Clause 10.7 and without prejudice to any other rights to indemnity, counterclaim, set off, retention, withholding and/or deduction pursuant to this Agreement or otherwise, the Authority may set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present, future, contingent or executory, and whether either liability is liquidated or unliquidated, and whether either liability arises pursuant to this Agreement or otherwise.
- 10.7 Without prejudice to the right of set off set out in Clause 10.6 and without prejudice to any other rights to indemnity, counterclaim, set off, retention, withholding and/or deduction pursuant to this Agreement or otherwise, the Authority may set off any liability of the Supplier to the Crown (including the Authority) or any part of the Crown

against any liability of the Authority to the Supplier, whether either liability is present, future, contingent or executory, and whether either liability is liquidated or unliquidated, and whether either liability arises pursuant to this Agreement or otherwise.

10.8 If the Authority wishes to:

10.8.1 set off pursuant to Clause 10.6 and/or Clause 10.7;

10.8.2 exercise its right to make Deductions in accordance with Schedule 3 (*Key Performance Indicators*); or

10.8.3 exercise its right pursuant to Clause 37.5 (*Consequences of Expiry or Termination*) to withhold payment of a proportion of the Charges,

it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for setting off, withholding, retaining and/or deducting against the relevant Charges.

#### Financial distress

10.9 The Parties shall comply with the provisions of Schedule 16 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

#### Promoting tax compliance

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

10.10.1 notify the Authority in writing of such fact within five Working Days of its occurrence; and

10.10.2 promptly provide to the Authority:

(i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

## **SECTION D - CONTRACT GOVERNANCE**

### **11 Governance**

11.1 The Parties shall comply with the provisions of Schedule 18 (*Governance*) in relation to the management and governance of this Agreement.

#### Representatives

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 25 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 15 (*Supplier Personnel*).

11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### **12 Records, Reports, Audits and Open Book Data**

12.1 The Supplier shall comply with the provisions of Schedule 21 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records.

12.2 The Parties shall comply with the provisions of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*).

### **13 Inspection**

13.1 Throughout the Term, the Authority, or an auditor acting on behalf of the Authority, shall have the power to inspect and examine any of the Services on the Authority Premises or on the Supplier's premises or on any third party premises at any reasonable time.

13.2 Where the Services are being performed on third party premises, the Supplier shall use its reasonable endeavours to secure access to the third party premises for the Authority, or an auditor acting on behalf of the Authority, to perform any inspection pursuant to Clause 13.1.

13.3 The Supplier shall provide all facilities and assistance required by the Authority, or an auditor acting on behalf of the Authority, for any inspection pursuant to this Clause 13 free of charge.

### **14 Change**

#### Change Control Procedure

14.1 Any requirement for a Change shall be subject to the Change Control Procedure.

### Change in Law

- 14.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:
- 14.2.1 a General Change in Law; or
  - 14.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 14.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 14.2.2), the Supplier shall:
- 14.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
    - (i) whether any Change is required to the Services, the Charges or this Agreement; and
    - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve an Achievement Criterion; and
  - 14.3.2 provide the Authority with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required pursuant to the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 14.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 14.2.2) shall be implemented in accordance with the Change Control Procedure.

### Post Contract Clarifications

- 14.5 The Parties acknowledge that in response to questions from the Authority during the procurement process, the Supplier amended aspects of the Supplier's Solution that was submitted as part of its final tender and incorporated into Schedule 7 (*Supplier's Solution*). The relevant questions and responses include those set out at Annex 1 of Schedule 7 (*Responses to AQs*).
- 14.6 The Supplier shall within 60 days of the date of this Agreement issue a Change Request to the Authority which shall include details of the amendments required to Schedule 7 (*Supplier's Solution*) to ensure that each question and response set out



in Annex 1 of Schedule 7 (*Responses to AQs*) is incorporated into the relevant part of Schedule 7 (*Supplier's Solution*).

- 14.7 The Parties agree that there shall be no increase to the Charges due to the Change contemplated by Clause 14.6 and that each Party shall pay its own costs in relation to the Change Request.
- 14.8 Until such time as the Change contemplated by this Clause 14.6 is effective, the Parties agree that Annex 1 of Schedule 7 (*Responses to AQs*) shall be incorporated into this Agreement and, where there is a conflict between the other parts of Schedule 7 (*Supplier's Solution*) and Annex 1 of Schedule 7 (*Responses to AQs*), Annex 1 of Schedule 7 (*Responses to AQs*) shall take precedence.
- 14.9 The Parties acknowledge that the Transition and Acceptance Plan, Innovation Plan, Ordinary Exit Plan, Emergency Exit Plan, Service Continuity Plan, Social Value Plan and tables detailing the Maximum Compensation Payments at Annex 1 (*Maximum Compensation Payment*) of Schedule 15 (*Payments on Termination*) included in this Agreement are the unamended responses that the Supplier submitted as part of its final tender in the procurement process. The Parties shall review such plans within 90 days of the date of this Agreement to discuss any amendments that are required. Following such review, the Supplier shall issue a Change Request to the Authority with details of any amendments required, including:
- 14.9.1 amendments to the Transition and Acceptance Plan to correct the end date for each Acceptance Procedure in the second column of the first four pages of the table to 9 – 13 February 2026, instead of 9 – 13 February 2024.
- 14.10 The Parties agree there shall be no change to the Charges due to the Change contemplated by Clause 14.9 and that each Party shall pay its own costs in relation to the Change Request.
- 14.11 The Parties acknowledge that the Supplier provided supporting documentations as part of the procurement process, including the documentation listed at Annex 2 to Schedule 7. The Parties agree that Annex 2 of Schedule 7 (*Supporting Documentation*) shall be incorporated into this agreement and, where there is a conflict between Annex 2 of Schedule 7 (*Supporting Documentation*) and any other part of this Agreement, the other part of this Agreement shall take precedence. The Parties shall review the list of documentation at Annex 2 of Schedule 7 (*Supporting Documentation*) within 90 days of the date of this Agreement to discuss any amendments that are required. Following such review, the Supplier shall issue a Change Request to the Authority with details of any amendments required.
- 14.12 The Parties agree there shall be no change to the Charges due to the Change contemplated by Clause 14.11 and that each Party shall pay its own costs in relation to the Change Request.

#### Post Contract UAS Changes

- 14.13 The Parties acknowledge and agree that at the date of this Agreement, Schedule 7 (*Supplier's Solution*) and the Financial Model do not accurately reflect the agreed UAS aspects of the Services and that a Change is required to amend the Agreement so that it accurately reflects the agreed UAS aspects of the Services.

- 14.14 The Supplier shall within 60 days of the date of this Agreement issue a Change Request to the Authority which shall include:
- 14.14.1 details of the amendments required to Schedule 7 (*Supplier's Solution*) to ensure that the Supplier's Solution accurately reflects the agreed UAS aspects of the Services; and
  - 14.14.2 an Updated Financial Model, showing that the UAS aspects of the Services shall be provided from 1 March 2025 until 28 February 2035 rather than from 1 October 2025 as currently shown in the Financial Model; and
  - 14.14.3 any consequential amendments that the Supplier considers are required to accurately reflect the agreed UAS aspects of the Services.
- 14.15 The Parties agree there shall be no increase to the Charges due to the Change contemplated by Clause 14.14 and that each Party shall pay its own costs in relation to the Change Request.

## **SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**

### **15 Supplier Personnel**

- 15.1 The Supplier shall:
- 15.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
  - 15.1.2 ensure that all Supplier Personnel:
    - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
    - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*); and
    - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises;
  - 15.1.3 subject to Schedule 24 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
  - 15.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default pursuant to this Agreement shall be a Default by the Supplier;
  - 15.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

- 15.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - 15.1.7 bear the programme familiarisation costs and other costs associated with any replacement of any Supplier Personnel; and
  - 15.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.
- 15.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- 15.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
  - 15.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

#### Key Personnel

- 15.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 25 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 15.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 15.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 15.5.1 requested to do so by the Authority;
  - 15.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
  - 15.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 15.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 15.6 The Supplier shall:
- 15.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 15.6.2 ensure that any Key Role is not vacant for any longer than ten Working Days;

- 15.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
- 15.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- 15.6.5 ensure that any replacement for a Key Role:
  - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
  - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

#### Income tax and national insurance contributions

- 15.7 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received pursuant to this Agreement, the Supplier shall:
  - 15.7.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - 15.7.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

#### Staff transfer

- 15.8 The Parties agree that where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 24 (*Staff Transfer*) shall apply.
- 15.9 Part 2 of Schedule 24 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

#### Employment covenant

- 15.10 Except in respect of any Relevant Transfer, the Supplier shall not, and the Supplier shall procure that any Sub-contractor shall not, during the Term and for a period of twelve months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Authority any person employed in the procurement and/or receipt and/or administration and/or contract management of the Services without the prior written consent of the Authority.

## **16 Supply Chain Rights and Protections**

### Advertising Sub-contract opportunities

- 16.1 The Supplier shall:
- 16.1.1 subject to Clause 16.3 and 16.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
  - 16.1.2 within 90 days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
  - 16.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder, advertised and awarded in its supply chain during the Term;
  - 16.1.4 provide reports on the information at Clause 16.1.2 to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 16.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 16.2 Each advert referred to in Clause 16.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 16.3 The obligation at Clause 16.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 16.4 Notwithstanding Clause 16.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

### Appointment of Sub-contractors

- 16.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 16.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
  - 16.5.2 comply with its obligations pursuant to this Agreement in the delivery of the Services; and
  - 16.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations pursuant to each Sub-contract that relates exclusively to this Agreement.
- 16.6 Prior to sub-contracting any of its obligations pursuant to this Agreement, the Supplier shall notify the Authority in writing of:
- 16.6.1 the proposed Sub-contractor's name, registered office and company registration number;

- 16.6.2 the scope of any Services to be provided by the proposed Sub-contractor;  
and
  - 16.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on “arm’s-length” terms.
- 16.7 If requested by the Authority within ten Working Days of receipt of the Supplier’s notice issued pursuant to Clause 16.6, the Supplier shall also provide:
- 16.7.1 a copy of the proposed Sub-contract; and
  - 16.7.2 any further information reasonably requested by the Authority.
- 16.8 The Authority may, within ten Working Days of receipt of the Supplier’s notice issued pursuant to Clause 16.6 (or, if later, receipt of any further information requested pursuant to Clause 16.7), object to the appointment of the relevant Sub-contractor if it considers that:
- 16.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
  - 16.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
  - 16.8.3 the proposed Sub-contractor employs unfit persons;
  - 16.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 16.28 (*Exclusion of Sub-contractors*); and/or
  - 16.8.5 the proposed Sub-contractor is:
    - (i) an entity constituted or organised under the law of Russia or Belarus; or
    - (ii) an entity registered in the UK or with substantive business operations in the UK, or another country but controlled by an entity based in Russia or Belarus,

in which case, the Supplier shall not proceed with the proposed appointment.

- 16.9 If:
- 16.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor’s appointment by the later of ten Working Days of receipt of:
    - (i) the Supplier’s notice issued pursuant to Clause 16.6; and
    - (ii) any further information requested by the Authority pursuant to Clause 16.7; and

16.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 16.10 (*Appointment of Key Sub-contractors*)),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is a Third Party Contract, shall notify the Authority and update Schedule 10 (*Third Party Contracts*), in accordance with Paragraph 2 of Schedule 10 (*Third Party Contracts*).

#### Appointment of Key Sub-contractors

16.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

16.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

16.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;

16.10.3 the proposed Key Sub-contractor employs unfit persons;

16.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 16.28 (*Exclusion of Sub-contractors*); and/or

16.10.5 the proposed Sub-contractor is:

(i) an entity constituted or organised under the law of Russia or Belarus; or

(ii) an entity registered in the UK or with substantive business operations in the UK, or another country but controlled by an entity based in Russia or Belarus,

and/or if a Key Sub-contractor refuses to enter into a direct agreement in accordance with Clause 16.14 (*Appointment of Key Sub-contractors*).

16.11 Subject to Clauses 16.12 to 16.14, the Authority consents to the appointment of the Key Sub-contractors listed in Schedule 9 (*Notified Key Sub-contractors*).

16.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

16.12.1 provisions which will enable the Supplier to discharge its relevant obligations pursuant to this Agreement;

16.12.2 a right pursuant to CRTPA for the Authority to enforce any provisions pursuant to the Key Sub-contract which are capable of conferring a benefit upon the Authority;

- 16.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier (including (where the Key Sub-contract provides any right in connection with a Base and/or Aircraft) a provision enabling the Authority to take control of and/or use any Bases and/or Assets as if it were the Supplier);
- 16.12.4 a provision requiring the Key Sub-contractor to give notice to the Authority prior to exercising or seeking to exercise any rights it may have to:
- (i) terminate the Key Sub-contract;
  - (ii) treat the Key Sub-contract as having been terminated by the Supplier;
  - (iii) take possession of any Assets;
  - (iv) prevent the Supplier and/or the Authority from using any Assets in connection with the delivery of UKSAR2G;
  - (v) discontinue performance of any service provided pursuant to the Key Sub-contract; and/or
  - (vi) discontinue performance of any other obligations pursuant to the Sub-contract;
- 16.12.5 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations pursuant to the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 16.12.6 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier pursuant to this Agreement in respect of:
- (i) data protection requirements set out in Clauses 23 (*Authority Data, Coordinating Authority Data and Security Requirements*) and 26 (*Protection of Personal Data*);
  - (ii) FOIA requirements set out in Clause 25 (*Transparency and Freedom of Information*);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.26 (*Services*);
  - (iv) the keeping of records in respect of the services being provided pursuant to the Key Sub-contract, including the maintenance of Open Book Data; and
  - (v) the conduct of Audits set out in Part 5 of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);
- 16.12.7 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority pursuant to Clauses 36.1.1 (*Termination by the Authority*)



and 37.5 (*Payments by the Authority*) and Schedule 15 (*Payments on Termination*) of this Agreement;

- 16.12.8 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier pursuant to the Key Sub-contract without first seeking the written consent of the Authority;
  - 16.12.9 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 32 (*Remedial Adviser*);
  - 16.12.10 where the Key Sub-contractor provides rights in connection to a Base and/or Aircraft, a provision enabling the Authority to take control of and/or use any Bases and/or Assets as if it were the Supplier in the event of a step-in by the Authority pursuant to Clause 33 (*Step-in Rights*);
  - 16.12.11 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 33 (*Step-in Rights*);
  - 16.12.12 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
  - 16.12.13 a provision requiring the Key Sub-contractor to:
    - (i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
      - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; and/or
      - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within ten Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
    - (ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 16 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 2.3.2(ii) of Schedule 16 (*Financial Distress*).
- 16.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

- 16.14 As a condition of its consent pursuant to Clause 16.10, the Authority may require that the relevant Key Sub-contractor enters into a direct agreement with the Authority in which case the Supplier shall procure that such Key Sub-contractor enters into a direct agreement with the Authority as soon as reasonably practicable and in the form appended in Schedule 27 (*Direct Agreement*).

Supply chain protection

- 16.15 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

- 16.15.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- 16.15.2 requiring the Supplier or other party receiving goods or services pursuant to the contract to consider and verify invoices pursuant to that contract in a timely fashion;
- 16.15.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 16.15.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 16.15.4 after a reasonable time has passed;
- 16.15.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days after verifying that the invoice is valid and undisputed;
- 16.15.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 16.15.6 requiring the Sub-contractor to include a clause to the same effect as this Clause 16.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

- 16.16 The Supplier shall:

- 16.16.1 pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed;
- 16.16.2 notify the Authority of any failure to comply with Clause 16.16.1;
- 16.16.3 keep records of its compliance with Clause 16.16.1, such records to be certified each Quarter by a director of the Supplier as being accurate and not misleading; and
- 16.16.4 upon request, provide the Authority with copies of such certified records.

- 16.17 Without prejudice to Clause 16.16.1, the Supplier shall:

- 16.17.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
  - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
  - (ii) the date that falls 60 days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment);
- 16.17.2 keep records of its compliance with Clause 16.17.1, such records to be certified each Quarter by a director of the Supplier as being accurate and not misleading; and
- 16.17.3 upon request, provide the Authority with copies of such certified records.
- 16.18 If the Supplier fails to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within 60 days of receipt in any Quarter, the Supplier shall notify the Authority and upload to the Virtual Library within 15 Working Days the required certified records in accordance with Clause 16.17.2 and an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include the following:
  - 16.18.1 identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within 60 days of receipt;
  - 16.18.2 actions to address each of the causes set out in Clause 16.18.1; and
  - 16.18.3 a mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 16.19 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within ten Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 16.20 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier shall take to address this.
- 16.21 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included).
- 16.22 Notwithstanding any provision of Clauses 24 (*Confidentiality*) and 27 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in accordance with Clause 16.16.2, Clause 16.18 or otherwise) that the Supplier has failed to pay a Sub-contractor’s undisputed invoice within 30 days of verification or that it has failed to pay 95% or above of its Sub-contractors or Unconnected Sub-contractors within 60 days after the day on which the Supplier receives an invoice or otherwise has notice

of an amount for payment, or the Authority otherwise discovers the same, the Authority may publish the details of the late or non-payment (including on government websites and in the press).

#### Termination of Sub-contracts

16.23 The Authority may require the Supplier to terminate:

16.23.1 a Sub-contract where:

- (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 36.1.2 (*Termination by the Authority*);
- (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 16.28 (*Exclusion of Sub-contractors*); and/or
- (v) the Sub-contractor is found to be or in the course of the Sub-Contract becomes:
  - (A) an entity constituted or organised under the law of Russia or Belarus; or
  - (B) an entity registered in the UK or with substantive business operations in the UK, or another country but controlled by an entity based in Russia or Belarus; and

16.23.2 a Key Sub-contract where:

- (i) there is a change of Control of the relevant Key Sub-contractor, unless:
  - (A) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (B) the Authority has not served its notice of objection within six months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control; or

- (ii) the Key Sub-contractor is found to be or in the course of the Sub-contract becomes:
  - (A) an entity constituted or organised under the law of Russia or Belarus; or
  - (B) an entity registered in the UK or with substantive business operations in the UK, or another country but controlled by an entity based in Russia or Belarus.

#### Competitive terms

- 16.24 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services provided by such Sub-contractor or third party and used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- 16.24.1 require the Supplier to replace its existing commercial terms with such Sub-contractor or third party with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
  - 16.24.2 subject to Clause 16.26, enter into a contract with that Sub-contractor or third party in respect of the relevant item.
- 16.25 If the Authority exercises either of its options pursuant to Clause 16.24, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 16.26 The Authority's right to enter into a contract for the supply of the relevant items is subject to:
- 16.26.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
  - 16.26.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### Retention of legal obligations

- 16.27 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 16, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing pursuant to this Agreement, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

#### Exclusion of Sub-contractors

- 16.28 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor pursuant to Regulation 57 of the Public Contracts Regulations 2015, then:
- 16.28.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
  - 16.28.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

## **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **17 Intellectual Property Rights**

17.1 Except as expressly set out in this Agreement:

17.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (i) the Supplier Software;
- (ii) the Operational Data;
- (iii) the Supplier Trade Marks; and
- (iv) the Innovation IPR; and

17.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

- (i) the Authority Software;
- (ii) the Captured Data;
- (iii) the Authority Data;
- (iv) the Coordinating Authority Data; and
- (v) the Authority Trade Marks.

17.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 17.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

### **18 Supplier Trade Marks and Authority Trade Marks**

18.1 Neither Party shall have any right to use any of the other Party's names, logos or trade marks without the other Party's prior written consent.

18.2 The Authority grants the Supplier a worldwide, royalty-free, non-exclusive licence for the Term to use the Authority Trade Marks as necessary for the performance of the Services.

18.3 The Supplier shall not:

18.3.1 apply for, or obtain, registration of any Authority Trade Mark or of any trade mark that is similar to any Authority Trade Mark for any goods or services anywhere in the world; and

18.3.2 do, or omit to do, anything to diminish the rights of the Authority in any Authority Trade Mark.

- 18.4 The Supplier grants the Authority a perpetual, worldwide, royalty-free, non-exclusive licence to use the Supplier Trade Marks contained in the Captured Data.
- 18.5 The Authority shall not:
- 18.5.1 apply for, or obtain, registration of any Supplier Trade Mark or of any trade mark that is similar to any Supplier Trade Mark for any goods or services anywhere in the world; and
  - 18.5.2 do, or omit to do, anything to diminish the rights of the Supplier in any Supplier Trade Mark.
- 18.6 Each Party shall comply with the reasonable directions notified by it to the other Party from time to time in relation to the application and form of the other Party's names, logos or trade marks licensed pursuant to this Agreement, including branding guidelines.
- 18.7 Any goodwill derived from the use by a Party of the other Party's names, logos or trade marks shall accrue to the owner of the names, logo or trade mark.

## **19 Operational Data and Captured Data**

- 19.1 Operational Data shall be the property of the Supplier.
- 19.2 The Supplier shall not publish, or authorise or allow anyone else to publish, the Operational Data without the prior written permission of the Authority, except as required for legal or regulatory purposes. If the Authority gives the Supplier permission to publish the Operational Data, the Supplier shall comply with any terms of publication specified by the Authority.
- 19.3 Where the Operational Data comprises reports prepared for publication by the Supplier pursuant to this Agreement, the Supplier shall ensure that such reports carry the following disclaimer:
- 'This report has been produced by Bristow Helicopters Limited pursuant to a contract with the Maritime and Coastguard Agency. Any views expressed in this report are not necessarily those of the Maritime and Coastguard Agency.'*
- 19.4 The Supplier hereby assigns to the Authority, with full title guarantee, all rights, title and interest to or in any Captured Data with effect from creation.
- 19.5 The Supplier waives and shall procure that all Supplier Personnel and Sub-contractors waive unconditionally and irrevocably in favour of the Authority all moral rights granted pursuant to the Copyright Designs and Patents Act 1988 or equivalent or analogous rights pursuant to the laws of other jurisdictions which exist or may arise in relation to or form part of any of the Captured Data.

## **20 Licences Granted by the Supplier**

- 20.1 The Supplier hereby grants to the Authority a royalty-free, non-exclusive:
- 20.1.1 licence for the Term to use the Supplier Software on the terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 11



- (*IPR*) and signed by or on behalf of the Parties on or before the Effective Date for any purpose relating to the Services;
- 20.1.2 perpetual licence to use, reproduce, publish, modify, adapt, enhance and otherwise deal with the Operational Data, including the right to undertake further work in connection with the Operational Data or any part of the Operational Data, for any purpose relating to the Authority's business or function; and
  - 20.1.3 perpetual licence to use, copy, modify, adapt and enhance the Innovation IPR for any purpose relating to the Authority's business or function.
- 20.2 The Supplier shall not use in the provision of the Services any Third Party IPR unless detailed in Schedule 11 (*IPR*) or approval is granted by the Authority and in each case such Third Party IPR have been licensed to the Authority on a royalty-free basis under terms no less favourable to the Authority than those set out in Clauses 20.1, 20.3 and 20.4.
- 20.3 The Authority may sub-licence the rights granted pursuant to Clause 20.1 to a third party provided that:
- 20.3.1 the sub-licence is on terms no broader than those granted to the Authority; and
  - 20.3.2 the sub-licence authorises the third party to use the rights licensed in Clause 20.1 only for purposes relating to the Services or for any purpose relating to the exercise of the Authority's business or function, provided that any recipient of such rights enters into a confidentiality agreement in the form set out in Annex 2 of Schedule 11 (*IPR*).
- 20.4 The Authority may assign, novate or otherwise transfer its rights and obligations pursuant to the licences granted pursuant to Clause 20.1 to:
- 20.4.1 a Central Government Body; and/or
  - 20.4.2 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 Authority.
- 20.5 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 20.1. If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 20.1.
- 20.6 If a licence granted in Clause 20.1 is novated pursuant to Clause 20.4 or there is a change of the Authority's status pursuant to Clause 20.5, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

## **21 Licences Granted by the Authority**

21.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence:

21.1.1 to use the Captured Data for the purposes of education and training;

21.1.2 for the Term to use the Authority Software and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including the right to grant sub-licences to Sub-contractors provided that:

(i) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 24 (*Confidentiality*); and

(ii) the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

21.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 21.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

21.2.1 immediately cease all use of the Captured Data, Authority Software and the Authority Data (as the case may be);

21.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Captured Data, Authority Software and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Captured Data, Authority Software and the Authority Data (as the case may be); and

21.2.3 ensure, so far as reasonably practicable, that any Captured Data, Authority Software and Authority Data that are held in electronic, digital or other machine-readable form cease to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Captured Data, Authority Software and/or Authority Data.

## **22 IPR Indemnity**

22.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPR Claim.

22.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- 22.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPR Claim; or
- 22.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
  - (iii) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 22.3 If the Supplier elects to procure a licence in accordance with Clause 22.2.1 or to modify or replace an item pursuant to Clause 22.2.2, but this has not avoided or resolved the IPR Claim, then:
  - 22.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and
  - 22.3.2 without prejudice to the indemnity set out in Clause 22.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

**23 Authority Data, Coordinating Authority Data and Security Requirements**

- 23.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data and/or Coordinating Authority Data.
- 23.2 The Supplier shall not store, copy, disclose, or use:
  - 23.2.1 the Authority Data, except as necessary for the performance by the Supplier of its obligations pursuant to this Agreement or as otherwise expressly authorised in writing by the Authority; and/or
  - 23.2.2 the Coordinating Authority Data, except as necessary for the performance by the Supplier of its obligations pursuant to this Agreement or as otherwise expressly authorised in writing by the relevant Coordinating Authority.
- 23.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 23.4 To the extent that Coordinating Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Coordinating Authority Data to the relevant Coordinating Authority as requested by the relevant Coordinating Authority in the format specified in Schedule 2 (*Services Description*).

- 23.5 The Supplier shall preserve the integrity of Authority Data and Coordinating Authority Data and prevent the corruption or loss of Authority Data and Coordinating Authority Data at all times that the relevant Authority Data and Coordinating Authority Data is under its control or the control of any Sub-contractor.
- 23.6 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 23.7 The Supplier shall perform secure back-ups of all Coordinating Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the relevant Coordinating Authority (or to such other person as the relevant Coordinating Authority may direct) at all times upon request and are delivered to the relevant Coordinating Authority at no less than six monthly intervals (or such other intervals as may be agreed in writing between the Supplier and the relevant Coordinating Authority).
- 23.8 The Supplier shall ensure that any system on which the Supplier holds any Authority Data and/or Coordinating Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 23.9 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 23.9.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 23 (*Service Continuity Plan*) and the Supplier shall do so as soon as practicable but not later than five Working Days from the date of receipt of the Authority's notice; and/or
  - 23.9.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 23 (*Service Continuity Plan*).
- 23.10 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 23.11 If Coordinating Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the relevant Coordinating Authority may:
- 23.11.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Coordinating Authority Data to the extent and in accordance with the requirements specified in Schedule 23 (*Service Continuity Plan*) and the Supplier shall do so as soon as practicable but not later than five Working Days from the date of receipt of the Coordinating Authority's notice; and/or

- 23.11.2 itself restore or procure the restoration of the Coordinating Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 23 (*Service Continuity Plan*).
- 23.12 If at any time the Supplier suspects or has reason to believe that Coordinating Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Coordinating Authority immediately and inform the Coordinating Authority of the remedial action the Supplier proposes to take.
- 23.13 In the event of the termination or expiry of this Agreement the Supplier shall comply with the requirements of Paragraph 5.7 of Schedule 22 (*Exit Management*) in relation to Authority Data.
- 23.14 In the event of the termination or expiry of this Agreement the Supplier shall (unless otherwise agreed in writing by the relevant Coordinating Authority):
- 23.14.1 notify in writing each Coordinating Authority for which it holds Coordinating Authority Data that this Agreement has terminated or expired (as the case may be);
- 23.14.2 immediately cease all use of the Coordinating Authority Data;
- 23.14.3 at the discretion of the relevant Coordinating Authority, return or destroy documents and other tangible materials that contain any of the Coordinating Authority Data provided that if the relevant Coordinating Authority has not made an election within six months of a notice being provided in accordance with Clause 23.14.1, the Supplier may destroy the documents and other tangible materials that contain any of the relevant Coordinating Authority Data; and
- 23.14.4 ensure, so far as reasonably practicable, that any Coordinating Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Coordinating Authority Data.
- 23.15 The Supplier shall comply with the requirements of Schedule 4 (*Security Management*).
- 23.16 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 23.17 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier 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 then be agreed in accordance with the Change Control Procedure.
- 23.18 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 23.17 the Supplier shall continue to provide the Services in accordance with its existing obligations.

## 24 **Confidentiality**

- 24.1 For the purposes of this Clause 24, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 24.2 Except to the extent set out in this Clause 24 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 24.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 24.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner’s prior written consent;
  - 24.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated pursuant to this Agreement; and
  - 24.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 24.3 The Recipient may disclose the Confidential Information of the Disclosing Party where:
- 24.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 25 (*Transparency and Freedom of Information*) shall apply to disclosures required pursuant to the FOIA or the EIRs;
  - 24.3.2 the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
    - (ii) the examination and certification of the Authority’s accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided pursuant to this Agreement; and/or
    - (iii) the conduct of a Central Government Body review in respect of this Agreement; and/or
  - 24.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence pursuant to the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

- 24.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 24.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 24.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations pursuant to this Agreement;
  - 24.5.2 its auditors; and
  - 24.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 24.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 24.6 The Authority may disclose the Confidential Information of the Supplier:
- 24.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
  - 24.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 24.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 24.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 24.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
  - 24.6.5 on a confidential basis for the purpose of the exercise of its rights pursuant to this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 33 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 32 (*Remedial Adviser*) and Exit Management rights; and/or
  - 24.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities pursuant to this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority pursuant to this Clause 24.

24.7 Nothing in this Clause 24 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## **25 Transparency and Freedom of Information**

25.1 The Parties acknowledge that:

25.1.1 the Transparency Reports;

25.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(ii) Commercially Sensitive Information; and

25.1.3 the Publishable Performance Information,

(together the "**Transparency Information**") are Confidential Information of the Authority but not Confidential Information of the Supplier.

25.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in part or in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

25.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish part or all of the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 21 (*Reports and Records Provisions*).

25.4 The Authority may at its discretion exclude part or all of the Transparency Information from publication.

25.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how this Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

25.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed pursuant to section 12 of the FOIA. The Authority may disclose such information pursuant to the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject



to Clause 24.6 (*Confidentiality*)) publish such Information. The Supplier shall provide to the Authority within five Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

- 25.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 25.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations pursuant to the FOIA and EIRs;
  - 25.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
  - 25.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 25.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 25.8 The Supplier acknowledges that the Authority may be required pursuant to the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities pursuant to Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **26 Protection of Personal Data**

### Status of the Controller

- 26.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor.
- 26.2 The only processing that the Processor is authorised to do is listed in Schedule 28 (*Processing Personal Data*) by the Controller.
- 26.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 26.4 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:
- 26.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

- 26.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 26.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 26.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 26.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations pursuant to this Agreement:
- 26.5.1 process that Personal Data only in accordance with Schedule 28 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 26.5.2 ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 23 (*Authority Data, Coordinating Authority Data and Security Requirements*), 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 Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - 26.5.3 ensure that:
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 28 (*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 pursuant to Clause 23 (*Authority Data, Coordinating Authority Data and Security Requirements*), Clause 24 (*Confidentiality*) and this Clause 26;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (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 this Agreement; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

26.5.4 not transfer Personal Data outside of the UK 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 UK GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations pursuant to 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

26.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Law to retain the Personal Data.

26.6 Subject to Clause 26.7, the Processor shall notify the Controller immediately if it:

26.6.1 receives a Data Subject Request (or purported Data Subject Request);

26.6.2 receives a request to rectify, block or erase any Personal Data;

26.6.3 receives any other request, complaint or communication relating to either Party's obligations pursuant to the Data Protection Legislation;

26.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed pursuant to this Agreement;

26.6.5 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; and/or

26.6.6 becomes aware of a Data Loss Event.

- 26.7 The Processor's obligation to notify pursuant to Clause 26.6 shall include the provision of further information to the Controller in phases, as details become available.
- 26.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations pursuant to Data Protection Legislation and any complaint, communication or request made pursuant to Clause 26.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 26.8.1 the Controller with full details and copies of the complaint, communication or request;
  - 26.8.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 26.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 26.8.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 26.8.5 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.
- 26.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 26. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 26.9.1 the Controller determines that the processing is not occasional;
  - 26.9.2 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; and/or
  - 26.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 26.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 26.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 26.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 26.12.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 26.12.2 obtain the written consent of the Controller;

- 26.12.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 26 such that they apply to the Sub-processor; and
- 26.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 26.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 26.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause 26 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 this Agreement).
- 26.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 26.16 Notwithstanding the general application of Clauses 26.1 to 26.15 to Personal Data, where the Supplier 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 and shall:
  - 26.16.1 process the Personal Data in compliance with its obligations pursuant to the Data Protection Legislation and not do anything to cause the other Party to be in breach of it; and
  - 26.16.2 be responsible for its own compliance with Articles 13 and 14 UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.

## **27 Publicity and Branding**

- 27.1 The Supplier shall not:
  - 27.1.1 make any press announcements or publicise this Agreement or its contents in any way;
  - 27.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders; or
  - 27.1.3 release any Captured Data,without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 27.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**

### **28 Indemnities**

28.1 The Supplier shall, subject to Clause 28.2, be responsible for, and shall release and indemnify the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents on demand from and against, all liability for:

28.1.1 death or personal injury;

28.1.2 loss or damage to property (including property carried on the Aircraft); and

28.1.3 third party actions, claims, demands, costs, charges and expenses brought against the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the performance or non-performance by the Supplier of its obligations pursuant to this Agreement or the presence on the Authority Premises of the Supplier or a Sub-contractor.

28.2 The Supplier shall not be responsible or be obliged to indemnify the Authority for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents (other than to the extent such negligence or wilful default would not have occurred but for a breach by the Supplier of its obligations pursuant to this Agreement) or by the breach by the Authority of its obligations pursuant to this Agreement.

28.3 An indemnity by either Party pursuant to any provision of this Agreement shall be without limitation to any indemnity by that Party pursuant to any other provision of this Agreement.

#### Conduct of indemnity claims

28.4 If the Authority receives any notice, demand, letter or other document concerning any claim for which it appears that the Authority is, or may become, entitled to indemnification pursuant to this Agreement, the Authority shall give notice in writing to the Supplier as soon as reasonably practicable and in any event within 20 Working Days of receipt of the same.

28.5 Subject to Clauses 28.6, 28.7 and 28.8, on the giving of a notice by the Authority pursuant to Clause 28.4, where it appears that the Authority is or may be entitled to indemnification from the Supplier in respect of all (but not part only) of the liability arising out of the claim, the Supplier shall (subject to providing the Authority with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Authority at the Supplier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Authority shall give the Supplier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

28.6 With respect to any claim conducted by the Supplier pursuant to Clause 28.5:

- 28.6.1 the Supplier shall keep the Authority fully informed and consult with it about material elements of the conduct of the claim;
  - 28.6.2 the Supplier shall not bring the name of the Authority into disrepute;
  - 28.6.3 the Supplier shall conduct the claim with all due diligence; and
  - 28.6.4 the Supplier shall not pay or settle such claims without the prior consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 28.7 The Authority shall be free at any time to give notice to the Supplier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations), or to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies pursuant to this Agreement.
- 28.8 On receipt of a notice pursuant to Clause 28.7 the Supplier shall promptly take all steps necessary to transfer the conduct of such claim to the Authority, and shall provide to the Authority all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Authority gives a notice pursuant to Clause 28.7 then, provided that the Supplier has complied with the provisions of Clause 28.6 and without prejudice to any accrued liabilities, the Supplier shall be released from any liability pursuant to its indemnity given pursuant to Clause 28.5 in respect of such claim.
- 28.9 If the Supplier pays to the Authority an amount in respect of an indemnity and the Authority subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim pursuant to the indemnity, the Authority shall forthwith repay to the Supplier whichever is the lesser of:
- 28.9.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Authority in recovering the same; and
  - 28.9.2 the amount paid to the Authority by the Supplier in respect of the claim pursuant to the relevant indemnity,
- provided that there shall be no obligation on the Authority to pursue such recovery and that the Supplier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Supplier exceeds any loss sustained by the Authority (including for this purpose indirect or consequential losses or claims for loss of profits excluded by this Agreement from being recovered from the Supplier pursuant to Clause 29.6 (*Consequential Losses*)).
- 28.10 Any person taking any of the steps contemplated by Clauses 28.1 to 28.9 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising pursuant to this Agreement.

#### Mitigation

- 28.11 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for

which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

## **29 Limitations on Liability**

### Unlimited liability

- 29.1 Neither Party limits its liability for:
- 29.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - 29.1.2 fraud or fraudulent misrepresentation by it or its employees;
  - 29.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 29.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 29.2 The Supplier's liability shall be [REDACTED] in respect of:
- 29.2.1 the indemnities in Clause 10.5 (*VAT*), Clause 15.7 (*Income tax and national insurance contributions*), Clause 22 (*IPR Indemnity*), Clause 28 (*Indemnities*), Schedule 24 (*Staff Transfer*) and the Annexes to Schedule 24 (*Staff Transfer*); and
  - 29.2.2 the wilful abandonment by the Supplier of its obligations in relation to the provision of the Services or transition to a Replacement Supplier.

### Financial and other limits

- 29.3 Subject to Clauses 29.1 and 29.2 (*Unlimited liability*) and Clause 29.6 (*Consequential Losses*) the Supplier's aggregate liability in respect of all Losses incurred by the Authority pursuant to or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed [REDACTED].
- 29.4 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability pursuant to Clause 29.3.
- 29.5 Subject to Clauses 29.1 and 29.2 (*Unlimited liability*) and Clause 29.6 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- 29.5.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier pursuant to or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 36.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 36.3 (*Termination by the Supplier*) shall in no event exceed the Compensation Payment; and
  - 29.5.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier pursuant to or in connection with this Agreement as a result of



Defaults of the Authority shall in no event exceed (in each case in respect of each Base):

- (i) in relation to Defaults first occurring between the Effective Date and the Planned Services Commencement Date at a Base, an amount equal to the Initial Payment for such Base;
- (ii) in relation to Defaults first occurring in the period from the Planned Services Commencement Date at a Base to the relevant Base Expiry Date, an amount equal to the aggregate Monthly Standing Charge payable by the Authority for such Base during the Contract Year in which the relevant Default first occurred; and
- (iii) in relation to Defaults first occurring after the Base Expiry Date, an amount equal to the aggregated Monthly Standing Charge for the Contract Year immediately preceding the relevant Base Expiry Date.

#### Consequential Losses

29.6 Subject to Clauses 29.1 and 29.2 (*Unlimited liability*) and Clause 29.7, neither Party shall be liable to the other Party for:

29.6.1 any indirect, special or consequential Loss; or

29.6.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

29.7 Notwithstanding Clause 29.6 but subject to Clause 29.3 (*Financial and other limits*), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

29.7.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

29.7.2 any wasted expenditure or charges;

29.7.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable pursuant to this Agreement;

29.7.4 any compensation or interest paid to a third party by the Authority; and

29.7.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

### **30 Insurance**

30.1 The Supplier shall comply with the provisions of Schedule 5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

## SECTION H – REMEDIES AND RELIEF

### 31 Rectification Plan Process

31.1 In the event that:

31.1.1 there is, or is reasonably likely to be, a Delay;

31.1.2 there has been an Intervention Trigger Event; and/or

31.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

#### Notification

31.2 If:

31.2.1 the Supplier notifies the Authority pursuant to Clause 31.1 (*Rectification Plan Process*) that a Notifiable Default has occurred; or

31.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

31.3 The “**Rectification Plan Process**” shall be as set out in Clauses 31.4 (*Submission of the draft Rectification Plan*) to 31.9 (*Agreement of the Rectification Plan*).

#### Submission of the draft Rectification Plan

31.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 31.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

31.5 The draft Rectification Plan shall set out:

- 31.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
  - 31.5.2 the actual or anticipated effect of the Notifiable Default; and
  - 31.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 31.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 5 of Schedule 20 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 31.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 31.7.1 is insufficiently detailed to be capable of proper evaluation;
  - 31.7.2 will take too long to complete;
  - 31.7.3 will not rectify the Notifiable Default;
  - 31.7.4 will not prevent reoccurrence of the Notifiable Default; and/or
  - 31.7.5 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 31.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 31.9 If the Authority consents to the Rectification Plan:
- 31.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - 31.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.
- 31.10 The Supplier shall reimburse the Authority all costs incurred by the Authority, including its internal management costs, in connection with the Rectification Plan Process.

## 32 Remedial Adviser

32.1 If:

32.1.1 any of the Intervention Trigger Events occur; or

32.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an “**Intervention Cause**”), the Authority may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:

- (i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 32.

If the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights pursuant to this Clause 32.1 prior to or instead of exercising its right to terminate this Agreement.

32.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

32.2.1 the Remedial Adviser shall be:

- (i) a person selected by the Supplier and approved by the Authority; or
- (ii) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

32.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and

32.2.3 any right of the Authority to terminate this Agreement pursuant to Clause 36.1.2 (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the “**Intervention Period**”).

32.3 The Remedial Adviser’s overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier’s responsibilities pursuant to this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

32.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;

- 32.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
  - 32.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
  - 32.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
  - 32.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 32.4 The Supplier shall:
- 32.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
  - 32.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the:
    - (i) Assets;
    - (ii) Sites;
    - (iii) Supplier System;
    - (iv) Supplier Personnel; and
    - (v) Documentation;
  - 32.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
  - 32.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
  - 32.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 32.5 The Supplier shall be responsible for:
- 32.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
  - 32.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 32.

- 32.6 If:
- 32.6.1 the Supplier:
- (i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
  - (ii) is in Default of any of its obligations pursuant to Clause 32.4; and/or
- 32.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,
- (each a “**Remedial Adviser Failure**”), the Authority may terminate this Agreement pursuant to Clause 36.1.2 (*Termination by the Authority*).

### **33 Step-In Rights**

- 33.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action pursuant to this Clause 33, either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 24 (*Confidentiality*)). The Step-In Notice shall set out the following:
- 33.1.1 the action the Authority wishes to take and in particular:
- (i) the Services that it wishes to control; and/or
  - (ii) the Bases and/or Assets that it wishes to control and/or use,
- (the “**Required Action**”);
- 33.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier’s Default;
- 33.1.3 the date on which it wishes to commence the Required Action;
- 33.1.4 the time period which it believes will be necessary for the Required Action;
- 33.1.5 whether the Authority will require access to the Supplier’s premises and/or the Sites; and
- 33.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier’s obligations to provide the Services during the period that the Required Action is being taken.
- 33.2 Following service of a Step-In Notice, the Authority shall:
- 33.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

- 33.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
  - 33.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
  - 33.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights pursuant to this Clause 33.
- 33.3 For so long as and to the extent that the Required Action is continuing, then:
- 33.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
  - 33.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 33.4 shall apply to Deductions from Charges in respect of other Services; and
  - 33.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 33.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 33.4.1 the degradation of any Services not subject to the Required Action; and/or
  - 33.4.2 the non-Achievement of an Achievement Criterion,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 33.5 Before ceasing to exercise its step in rights pursuant to this Clause 33 the Authority shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
- 33.5.1 the Required Action it has actually taken; and
  - 33.5.2 the date on which the Authority plans to end the Required Action (the **"Step-Out Date"**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 33.6.
- 33.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 33.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised

plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

33.8 The Supplier shall bear its own costs in connection with any step-in by the Authority pursuant to this Clause 33, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority pursuant to:

33.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

33.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### **34 Authority Cause**

34.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

34.1.1 Achieve an Achievement Criterion by its Planned Achievement Criterion Date; and/or

34.1.2 comply with its obligations pursuant to this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 34):

(i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(A) to terminate this Agreement pursuant to Clause 36.1.2 (*Termination by the Authority*); or

(B) to take action pursuant to Clauses 32 (*Remedial Adviser*) or 33 (*Step-In Rights*);

(iii) where the Supplier Non-Performance constitutes the failure to Achieve an Achievement Criterion by its Planned Achievement Criterion Date:

(A) the Planned Achievement Criterion Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(B) if the Authority, acting reasonably, considers it appropriate, the Transition and Acceptance Plan shall be amended to reflect any consequential revisions required to subsequent



Planned Achievement Criterion Dates resulting from the Authority Cause; and

(C) the Supplier may claim compensation subject to and in accordance with the principles set out in Paragraph 9.1 of Schedule 14 (*Charges and Invoicing*); and

(iv) the Supplier shall be granted relief from Deductions.

34.2 In order to claim any of the rights and/or relief referred to in Clause 34.1, the Supplier shall as soon as reasonably practicable (and in any event within ten Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

34.2.1 the Supplier Non-Performance;

34.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations pursuant to this Agreement;

34.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

34.2.4 the relief and/or compensation claimed by the Supplier.

34.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

34.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

34.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

34.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

34.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

34.6 Any Change that is required to the Transition and Acceptance Plan or to the Charges pursuant to this Clause 34 shall be implemented in accordance with the Change Control Procedure.

### **35 Force Majeure**

- 35.1 Subject to the remaining provisions of this Clause 35 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 23 (*Service Continuity Plan*)), a Party may claim relief pursuant to this Clause 35 from liability for failure to meet its obligations pursuant to this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations pursuant to this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 35.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 35.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief pursuant to this Clause 35 to the extent that consequences of the relevant Force Majeure Event:
- 35.3.1 are capable of being mitigated, but the Supplier has failed to do so;
  - 35.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement; or
  - 35.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 35.4 Subject to Clause 35.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 35.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 35.6 Where, as a result of a Force Majeure Event:
- 35.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 36.1.3 (*Termination by the Authority*); and
  - 35.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:

- (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights pursuant to Clause 32 (*Remedial Adviser*) as a result of such failure; and
- (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

35.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations pursuant to this Agreement.

35.8 Relief from liability for the Affected Party pursuant to this Clause 35 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations pursuant to this Agreement and shall not be dependent on the serving of notice pursuant to Clause 35.7.

## SECTION I – TERMINATION AND EXIT MANAGEMENT

### 36 Termination Rights

#### Termination by the Authority

36.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- 36.1.1 for convenience at any time;
- 36.1.2 if a Supplier Termination Event occurs;
- 36.1.3 if a Force Majeure Event endures for a continuous period of more than 90 days; or
- 36.1.4 if this Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

36.2 Where the Authority:

- 36.2.1 is terminating this Agreement pursuant to Clause 36.1.2 due to the occurrence of either limb (b), (h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 36.2.2 has the right to terminate this Agreement pursuant to Clause 36.1, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### Termination by the Supplier

36.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Agreement:

- 36.3.1 if the Authority fails to pay an undisputed sum due to the Supplier pursuant to this Agreement which in aggregate exceeds ██████████ and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; and
- 36.3.2 the Supplier has, between 40 and 50 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier, notified the Authority in writing that non-payment by the Authority could result in the issue of a Termination Notice pursuant to this Clause 36.3,

and this Agreement shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice).

#### Partial Termination

- 36.4 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 36.4.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 36.4.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 36.4.3 the Supplier shall not be entitled to reject the Change.

### **37 Consequences of Expiry or Termination**

#### General provisions on expiry or termination

- 37.1 The provisions of Clauses 2 (*Due Diligence*), 9 (*Assets*) 10.4 and 10.5 (*VAT*), 10.6, 10.7 and 10.8 (*Set-off and withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 15.7 (*Income tax and national insurance contributions*), 15.10 (*Employment Covenant*), 16.27 (*Retention of legal obligations*), 17 (*Intellectual Property Rights*), 18 (*Supplier Trade Marks and Authority Trade Marks*) 19 (*Operational Data and Captured Data*), 20 (*License Granted by the Supplier*), 21 (*Licenses Granted by the Authority*), 22 (*IPR Indemnity*), 23 (*Authority Data, Coordinating Authority Data and Security Requirements*), 24 (*Confidentiality*), 25 (*Transparency and Freedom of Information*), 26 (*Protection of Personal Data*), 27 (*Publicity and Branding*), 28 (*Indemnities*), 29 (*Limitations on Liability*), 37 (*Consequences of Expiry or Termination*), 43 (*Severance*), 45 (*Entire Agreement*), 46 (*Third Party Rights*), 39 (*Assignment and Novation*), 48 (*Disputes*) and 49 (*Governing Law and Jurisdiction*), and the provisions of Schedule 1 (*Definitions*), Schedule 14 (*Charges and Invoicing*), Schedule 15 (*Payments on Termination*), Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*), Schedule 20 (*Dispute Resolution Procedure*), Schedule 21 (*Reports and Records Provisions*), Schedule 22 (*Exit Management*), Schedule 24 (*Staff Transfer*), Schedule 28 (*Processing Personal Data*) and any other provision of this Agreement which is expressed to survive termination and/or which is required to give effect to such termination, the consequences of termination and/or any of the Clauses and Schedules listed in this Clause 37.1 shall survive the termination or expiry of this Agreement.

#### Exit Management

- 37.2 The Parties shall comply with the provisions of Schedule 22 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.
- 37.3 The Supplier shall take no action at any time during this Agreement or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make

more difficult for the Authority to ensure an efficient and orderly handover from the Supplier to the Authority or New Provider(s) on the latest Base Expiry Date or date of termination of this Agreement.

#### Payments by the Authority

- 37.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clause 36.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 36.3.2 (*Termination by the Supplier*), the Authority shall pay the Supplier the Compensation Payment.
- 37.5 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clause 36.1.2 (*Termination by the Authority*), the Authority shall in accordance with the process in Clause 10.8 (*Set-off and withholding*) be entitled to withhold from the Charges, or set off against the Charges, such proportion of the Charges as the Authority considers reasonable and appropriate until the sums properly payable pursuant to this Agreement have been ascertained to the reasonable satisfaction of the Authority.
- 37.6 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 36.1.2, 36.1.3 and/or 36.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 37.6.1 payments in respect of any Assets or apportionments in accordance with Schedule 22 (*Exit Management*); and
- 37.6.2 subject to Clause 37.5, payments in respect of unpaid Charges for Services received up until the Termination Date.
- 37.7 The costs of termination incurred by the Parties shall lie where they fall if:
- 37.7.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 36.1.3 or 36.2.2 (*Termination by the Authority*) or 36.3.2 (*Termination by the Supplier*); or
- 37.7.2 the Authority terminates this Agreement pursuant to Clause 36.1.4 (*Termination by the Authority*).

#### Payments by the Supplier

- 37.8 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 37.9 If the Authority terminates this Agreement pursuant to Clause 36.1.2 (*Termination by the Authority*):
- 37.9.1 the Authority may:
- (i) without prejudice to the Supplier's obligations pursuant to Schedule 22 (*Exit Management*), require the Supplier to make all arrangements which are in its view necessary to procure the orderly provision of Replacement Services for the period from such

termination until the latest Base Expiry Date, including the letting of another contract or contracts for Replacement Services; and

- (ii) where the total costs reasonably and properly incurred by the Authority pursuant to Clause 37.9.1(i) exceed the estimated Charges (as set out in the Financial Model) that would have been payable to the Supplier for the period from such termination until the latest Base Expiry Date, the Supplier shall pay the Authority, or allow the Authority to deduct from any sums due to the Supplier, such excess costs; and

37.9.2 in respect of each Base, the Supplier shall repay to the Authority 1/40 of the relevant Initial Payment for each partial or full three month period remaining before the relevant Base Expiry Date (as at the Effective Date).

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **38 Compliance**

#### Health and safety

- 38.1 The Supplier shall perform its obligations pursuant to this Agreement (including those in relation to the Services) in accordance with:
- 38.1.1 all safety precautions necessary for the protection of all persons;
  - 38.1.2 all applicable Laws regarding health and safety; and
  - 38.1.3 the Health and Safety Policy whilst at the Authority Premises.
- 38.2 The Supplier shall obtain and maintain ISO 45001 certification and shall implement and comply with all ISO 45001 requirements in performing its obligations pursuant to this Agreement.
- 38.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### Equality and diversity

- 38.4 The Supplier shall:
- 38.4.1 perform its obligations pursuant to this Agreement (including those in relation to the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
    - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time pursuant to applicable equality Law; and
  - 38.4.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### Official Secrets Act and Finance Act

- 38.5 The Supplier shall comply with the provisions of:



38.5.1 the Official Secrets Acts 1911 to 1989; and

38.5.2 section 182 of the Finance Act 1989.

### **39 Assignment and Novation**

39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities pursuant to this Agreement without the prior written consent of the Authority.

39.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities pursuant to this Agreement and/or any associated licences to:

39.2.1 any Central Government Body; or

39.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 39.2.

39.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 39.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

39.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities pursuant to this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority pursuant to limb (j) of the definition of Supplier Termination Event (as if references in that limb (j) to the Supplier and the Guarantor were references to the Successor Body).

### **40 Waiver and Cumulative Remedies**

40.1 The rights and remedies pursuant to this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided pursuant to this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

40.2 Unless otherwise provided in this Agreement, rights and remedies pursuant to this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

**41 Relationship of the Parties**

41.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

**42 Prevention of Fraud and Bribery**

42.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

42.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

42.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

42.2 The Supplier shall not during the term of this Agreement:

42.2.1 commit a Prohibited Act; and/or

42.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

42.3 The Supplier shall during the term of this Agreement:

42.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

42.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined pursuant to that Act;

42.3.3 keep appropriate records of its compliance with its obligations pursuant to Clause 42.3.1 and make such records available to the Authority on request; and

42.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

42.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 42.1 and/or 42.2, or has reason to believe that it has or any of the Supplier Personnel have:

- 42.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 42.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 42.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 42.5 If the Supplier makes a notification to the Authority pursuant to Clause 42.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 42.6 If the Supplier is in Default pursuant to Clauses 42.1 and/or 42.2, the Authority may by notice:
- 42.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - 42.6.2 immediately terminate this Agreement.
- 42.7 Any notice served by the Authority pursuant to Clause 42.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

### **43 Severance**

- 43.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 43.2 In the event that any deemed deletion pursuant to Clause 43.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 43.3 If the Parties are unable to agree on the revisions to this Agreement within five Working Days of the date of the notice given pursuant to Clause 43.2, the matter shall be dealt with in accordance with Paragraph 3 (*Commercial Negotiation*) of Schedule 20 (*Dispute Resolution Procedure*) except that if the representatives are

unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 43.3.

#### **44 Further Assurances**

44.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.

#### **45 Entire Agreement**

45.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

45.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

45.3 Nothing in this Clause 45 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **46 Third Party Rights**

46.1 The provisions of Clause 22.1 (*IPR Indemnity*), the provisions of Paragraph 6.11 of Schedule 22 (*Exit Management*) and the provisions of Paragraphs 3.1, 3.6, 4.1 and 4.3 of Part 1 and Paragraphs 1.5, 2.3 and 2.8 of Part 2 of Schedule 24 (*Staff Transfer*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

46.2 This Agreement is made for the benefit of Central Government Bodies other than the Authority, and the terms of this Agreement are intended to be enforceable by each of them by virtue of the CRTPA.

46.3 Subject to Clause 46.1 and Clause 46.2, a person who is not a Party to this Agreement has no right pursuant to the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

46.4 No:

46.4.1 Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision; and

46.4.2 Central Government Bodies other than the Authority may enforce, or take any step to enforce any term of this Agreement,

without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

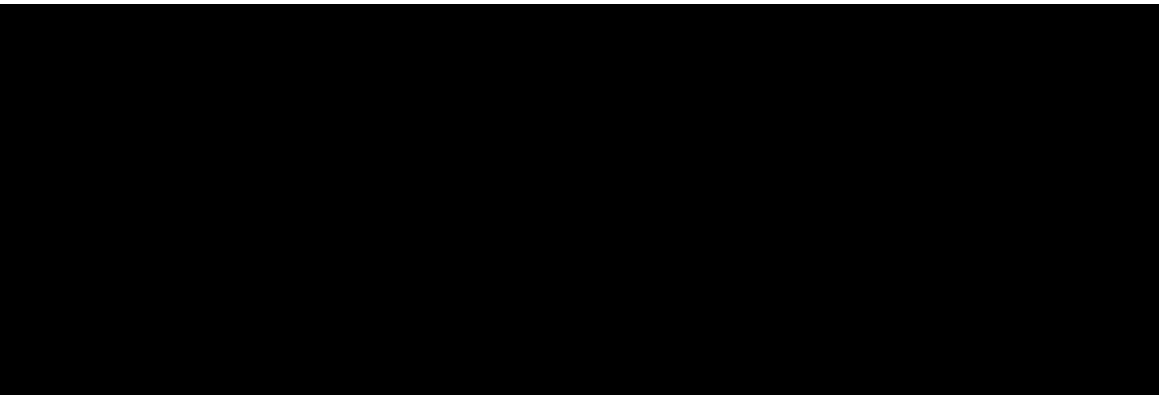
46.5 Any amendments or modifications to this Agreement may be made, and any rights created pursuant to Clause 46.1 and/or Clause 46.2 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary or any Central Government Bodies other than the Authority.

**47 Notices**

47.1 Any notices sent pursuant to this Agreement must be in writing.

47.2 Subject to Clause 47.4, the following table sets out the method by which notices may be served pursuant to this Agreement and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt



47.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 47.2:

- 47.4.1 Step-In Notices;
  - 47.4.2 Force Majeure Notices;
  - 47.4.3 notices issued by the Supplier pursuant to Clause 36.3 (*Termination by the Supplier*);
  - 47.4.4 Termination Notices; and
  - 47.4.5 Dispute Notices.
- 47.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 47.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 47.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 47.6 This Clause 47 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice pursuant to Schedule 20 (*Dispute Resolution Procedure*)).

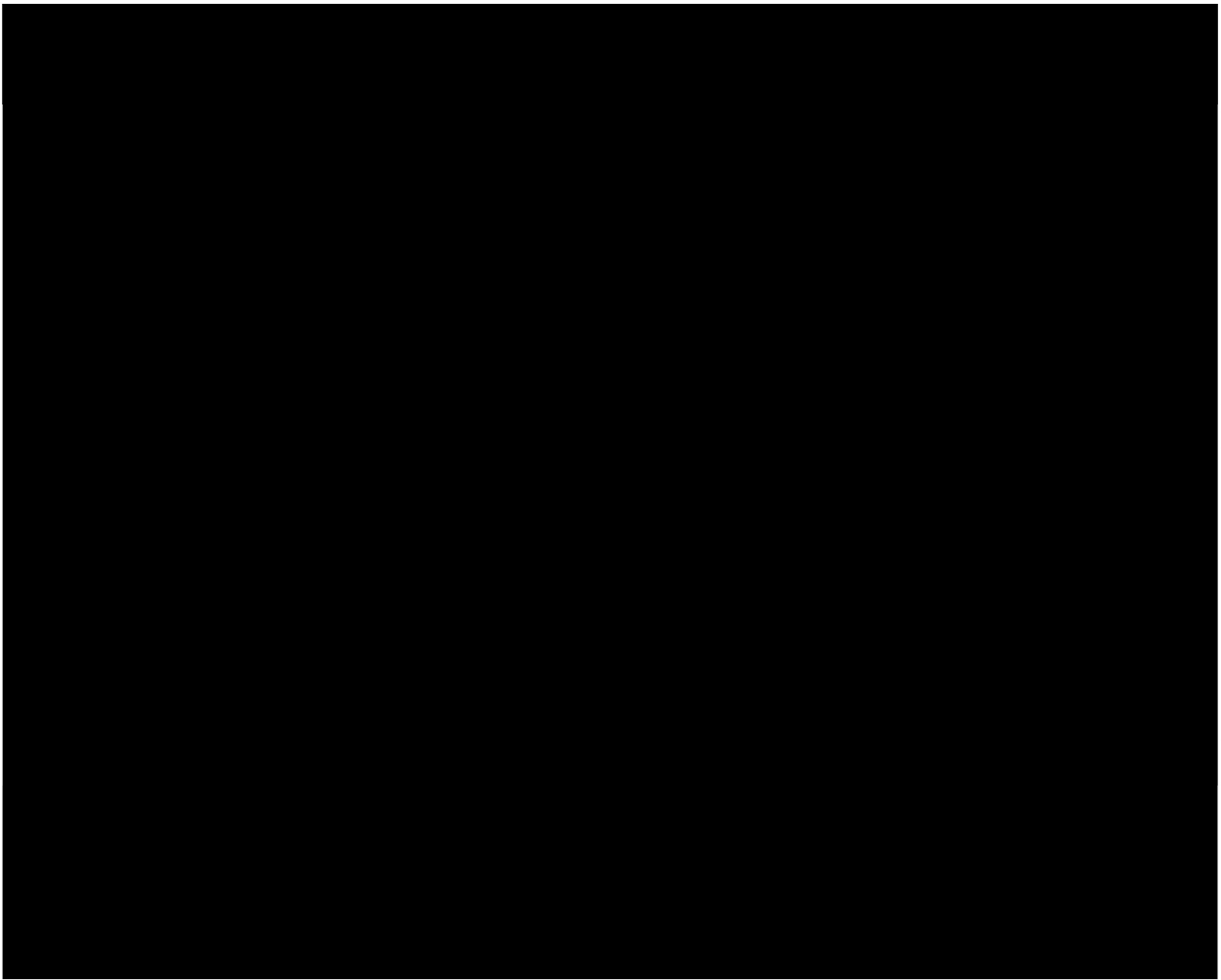
**48 Disputes**

- 48.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.
- 48.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

**49 Governing Law and Jurisdiction**

- 49.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 49.2 Subject to Clause 48 (*Disputes*) and Schedule 20 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

**IN WITNESS** of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.



## Schedule 1

### Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

**“Acceptance Procedures”** means the procedures including any tests set out in the Transition and Acceptance Plan to demonstrate that an Achievement Criterion has been Achieved;

**“Accepted”** means the Supplier has accepted any Task, and **“Accept”** and **“Acceptance”** shall be construed accordingly;

**“Accounting Reference Date”** means in each year the date to which the Supplier prepares its annual audited financial statements;

**“Accounting Year”** means the Supplier’s accounting year;

**“Achieve”** means in respect of an Achievement Criterion, the issue of an Achievement Criterion Achievement Certificate in respect of that Achievement Criterion in accordance with the provisions of Schedule 12 (*Transition and Acceptance Plan*), and **“Achieved”** and **“Achievement”** shall be construed accordingly;

**“Achievement Criterion”** means an event or task described as such in the Transition and Acceptance Plan;

**“Achievement Criterion Achievement Certificate”** means the certificate to be granted by the Authority when the Supplier has Achieved an Achievement Criterion, which shall be in substantially the same form as that set out in Annex 2 to Schedule 12 (*Transition and Acceptance Plan*);

**“ADS-B”** means Automatic Dependent Surveillance–Broadcast;

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

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

**“Agreed Fuel Price”** has the meaning given in Paragraph 5.11 of Schedule 14 (*Charges and Invoicing*);

**“Aircraft”** means each aircraft provided by the Supplier to deliver the Services and includes each aircraft’s engines and all associated equipment;

**“Aircraft Co-ordinator”** means a person or team who co-ordinates the involvement of multiple aircraft engaged in SAR operations in support of the On Scene Co-ordinator or the SAR Mission Co-ordinator;



**“Air Droppable Stores”** means defined equipment that can be deployed, whilst airborne, from an Asset;

**“AIS”** means the automatic identification system used for shipping;

**“Ancillary Charge”** means any reasonable and properly incurred airport-related charges, including landing charges and associated costs incurred when an Aircraft conducting a Task lands at a location that is not the Base from which it usually operates;

**“Annual Reporting Model”** means the annual reporting model to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part 2 of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**“Annual Revenue”** means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than twelve months should be scaled pro rata to produce a proforma figure for a twelve month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

**“ANO”** means Air Navigation Order;

**“Anti-Malicious Software”** means software that scans for and identifies possible Malicious Software in the IT Environment;

**“Applicable Financial Indicators”** means in relation to each Monitored Entity, the relevant financial indicators as set out in Paragraph 3.2 of Schedule 16 (*Financial Distress*);

**“Applicable Supplier Personnel”** means any Supplier Personnel who:

- (a) at the Termination Date:
  - (i) are employees of the Supplier;
  - (ii) are Dedicated Supplier Personnel; and
  - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (b) are dismissed or given notice of dismissal by the Supplier within:
  - (i) 40 Working Days of the Termination Date; or

- (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Authority:
  - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
  - (ii) are genuinely being dismissed for reasons of redundancy; and
  - (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement pursuant to this provision in respect of such employees;

**“Application Programming Interface (API)”** means an interface that defines interactions between multiple software applications or mixed hardware-software intermediaries;

**“ARCC”** means Aeronautical Rescue Coordination Centre;

**“Assets”** means

- (a) for the purposes of Schedule 2 (*Services Description*), Schedule 3 (*Key Performance Indicators*), Schedule 7 (*Supplier's Solution*) and the definitions of Air Disposable Stores, Commence, Crew, Normal Operating Base, Readiness State, Role Equipment and Taskable Asset: the aircraft/platforms used by the Supplier to provide the Services; and
- (b) for the purposes of all other parts of this Agreement: all assets and rights used by the Supplier to provide the Services in accordance with this Agreement (including hangars and Aircraft) but excluding the Authority Assets;

**“Associated Person”** has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

**“Associates”** means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

**“Assurance”** means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

**“Audit”** means any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audits and Open Book Data*) and Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**“Audit Agents”** means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) any successors or assigns of any of the above;

**"Audit Rights"** means the audit and access rights referred to in Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**"Authority Assets"** means the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

**"Authority Cause"** means any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; and/or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

**"Authority Data"** means:

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

**"Authority Information Security Policy"** means the Authority's information security policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

**"Authority Materials"** means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPR in which:

- (a) are owned or used by or on behalf of the Authority; and

(b) are or may be used in connection with the provision or receipt of the Services, but excluding any Supplier Software and Documentation relating to Supplier Software;

**“Authority Premises”** means premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

**“Authority Representative”** means the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

**“Authority Requirements”** means the requirements of the Authority set out in Schedule 2 (*Services Description*), Schedule 3 (*Key Performance Indicators*), Schedule 4 (*Security Management*), Schedule 5 (*Insurance Requirements*), Schedule 21 (*Reports and Records Provisions*) and Schedule 22 (*Exit Management*);

**“Authority Responsibilities”** means the responsibilities of the Authority specified in Schedule 6 (*Authority Responsibilities*);

**“Authority Software”** means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;

**“Authority System”** means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;

**“Authority Trade Marks”** means those trade marks or names and logos subject to Crown Copyright that are proprietary to the Authority and listed in Schedule 11 (*IPR*);

**“Autonomy”** means the System can perform desired tasks in unstructured environments without continuous human guidance;

**“Available”** means the System is fully serviceable and capable of Accepting a Task and **“Available”** and **“Availability”** shall be construed accordingly;

**“Base”** means one of the Supplier's bases, being Inverness, Doncaster, Prestwick (Lot 3), Newquay (Lot 3), Lydd, St Athan, Prestwick (Lot 1), Lee on Solent, Carlisle, Humberside, Caenarfon, Fort William, Newquay (Lot 2), Sumburgh or Stornoway;

**“Base Expiry Date”** means, in respect of:

- (a) Inverness: 30 September 2034;
- (b) Doncaster: 31 October 2034;
- (c) Prestwick (Lot 3): 31 October 2034;
- (d) Newquay (Lot 3): 31 October 2034;
- (e) Lydd: 31 December 2034;

- (f) St Athan: 31 March 2035;
- (g) Prestwick (Lot 1): 30 June 2035;
- (h) Lee on Solent: 30 September 2035;
- (i) Carlisle: 31 March 2036;
- (j) Humberside: 31 December 2035;
- (k) Caernarfon: 31 March 2036;
- (l) Fort William: 31 March 2036;
- (m) Newquay (Lot 2): 30 June 2036;
- (n) Sumburgh: 30 September 2036; and/or
- (o) Stornoway: 31 December 2036.

or such later date as extended by the Authority in accordance with Clause 4.2 (*Extension*);

“**Baseline**” means baseline security clearance;

“**Baseline Security Requirements**” means the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 to Schedule 4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier;

“**Base Services Period**” has the meaning given in Clause 5.1 (*Standard of Services*);

“**BCP**” means business continuity plan;

“**BLOS**” means beyond line-of-sight communication capabilities that link personnel or system too distant or too fully obscured by terrain for LOS communications;

“**Board**” means the Supplier’s board of directors;

“**Board Confirmation**” means the written confirmation from the Board in accordance with Paragraph 6 of Schedule 16 (*Financial Distress*);

“**Breach of Security**” an event that results, or could result, in:

- (a) any unauthorised access to and/or use of the Authority Data and/or Coordinating Authority Data, the Services and/or the Information Management System; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information, the Authority Data and/or Coordinating Authority Data), including any copies of such information or data, used by the Authority and/or Coordinating Authority Data and/or the Supplier in connection with this Agreement;

**“Breakage Costs Payment”** means an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 1 of Schedule 15 (*Payments on Termination*);

**“CAA”** means Civil Aviation Authority;

**“Cabinet Office Markets and Suppliers Team”** means the UK government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

**“Caldicott Principles”** means the principles outlined in the Department for Health’s document titled “Information: To share or not to share, Government response to the Caldicott Review” dated September 2013, a copy of which can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251750/9731-2901141-TSO-Caldicott-Government\\_Response\\_ACCESSIBLE.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/251750/9731-2901141-TSO-Caldicott-Government_Response_ACCESSIBLE.PDF);

**“Capability Integration Development Working Group”** or **“CIDWG”** means the body described in Paragraph 6 of Schedule 18 (*Governance*);

**“Captured Data”** means:

- (a) any photograph taken during any flight by the Supplier, Supplier Personnel, or a third party on board the Aircraft;
- (b) any video, audio or other recording made on any medium from which a moving image and/or audio file may by any means be produced, during any flight by the Supplier, the Supplier Personnel, or a third party on board the Aircraft; and
- (c) any data arising out of the performance by the Supplier (or any Sub-contractor) of the Services or anything made or derived from such data, including all reports, documents, drawings, materials and works, save for any Operational Data;

**“CEDR”** means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;

**“Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**“Certification Requirements”** means the information security requirements set out in Paragraph 4 of Schedule 4 (*Security Management*);

“**Change**” means any change to this Agreement;

“**Change Authorisation Note**” means a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 to Schedule 19 (*Change Control Procedure*);

“**Change Communication**” means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Schedule 19 (*Change Control Procedure*);

“**Change Control Procedure**” means the procedure for changing this Agreement set out in Schedule 19 (*Change Control Procedure*);

“**Change Estimate**” has the meaning given in Paragraph 3.3 of Schedule 19 (*Change Control Procedure*);

“**Change in Law**” means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;

“**Change Request**” means a written request for a Contract Change substantially in the form of Annex 1 to Schedule 19 (*Change Control Procedure*);

“**Charges**” means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 14 (*Charges and Invoicing*), including each Initial Payment, Ancillary Charge, Flying Charge, Fuel Charge, and Indexed Monthly Standing Charge;

“**CHECK Service Provider**” means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by Paragraph 6.1 of Schedule 4 (*Security Management*);

“**Clarification**” means any question raised by the Authority at any stage during the procurement process in respect of the Supplier’s Solution;

“**Class 1 Transaction**” has the meaning set out in the listing rules issued by the UK Listing Authority;

“**CNI**” means Critical National Infrastructure;

“**Co-Ordinated Extended Pollution Control Operations (CEPCO)**” means, pursuant to the Bonn Agreement, co-ordinated pollution control activity by aircraft, from multiple countries, in a specified area for over 24 hours;

“**Coast Guard Operations Centre (CGOC)**” means 10 CGOCs geographically located around the UK;

“**Coastguard Operations Management Team**” means the body described in Paragraph 10.3 of Schedule 18 (*Governance*);

“**Combined Tactical Air Cell (CTAC)**” has the meaning given in the document “Combined Tactical Air Cell, The Management of Multi-Agency Air Assets”, a copy of which can be found at [https://www.iesip.org.uk/uploads/media/Combined\\_Tactical\\_Air\\_Cell\\_CTAC\\_.pdf](https://www.iesip.org.uk/uploads/media/Combined_Tactical_Air_Cell_CTAC_.pdf);

“**Commence**” means the Asset is airborne and has initiated the response to the Accepted Task; and

“**Commercially Sensitive Information**” means the information listed in Schedule 8 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to:

- (a) the pricing of the Services;
- (b) details of the Supplier’s IPR; and
- (c) the Supplier’s business and investment plans;

which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

“**Comparable Supply**” means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

“**Compensation Payment**” means an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Costs;

“**Complete**” means all aspects of the relevant Task have been completed to the Tasking/Coordinating Authorities satisfaction and “**Completion**” shall be construed accordingly;

“**Condition Precedent**” has the meaning given in Clause 4.3 (*Condition Precedent*);

“**Confidential Information**” means:

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
  - (i) the Disclosing Party Group; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees,



consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; and/or
- (v) relates to the Supplier's:
  - (A) performance pursuant to this Agreement; or
  - (B) failure to pay any Sub-contractor as required pursuant to Clause 16.16.1 (*Supply chain protection*);

**“Contract Change”** means any change to this Agreement;

**“Contract Breakage Costs”** means the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts and/or Third Party Contracts as a direct result of the early termination of this Agreement;

**“Contract Fuel Price”** means in respect of each Base, the contract fuel price set out in the o.Sch 14 (HFR) tab of the Financial Model;

**“Contract Management Board”** means the body described in Paragraph 7 of Schedule 18 (*Governance*);

**“Contract Manager”** means

- (a) for the purposes of Schedule 2 (*Services Description*), Schedule 7 (*Supplier's Solution*) and the definition of Non-Tasked: the nominated Authority individual responsible for managing the Contract; and
- (b) for the purposes of all other parts of this Agreement: the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 3 of Schedule 18 (*Governance*);

**“Contract Year”** means:

- (a) a period of twelve months commencing on the Effective Date; or
- (b) thereafter a period of twelve months commencing on each anniversary of the Effective Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

**“Contracts Finder”** means the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contracts Regulations 2015;

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

**“Controller”** has the meaning given in the UK GDPR;

**“Coordinating Authority”** or **“Co-ordinating Authority”** means the relevant Emergency Services or OGD coordinating the Task as confirmed to the Supplier by the Tasking Authority;

**“Coordinating Authority Data”** means:

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

**“Corporate Change Event”** means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;

- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any twelve month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in limbs (e) to (g) above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“**Counter Notice**” has the meaning given in Paragraph 6.2 of Schedule 20 (*Dispute Resolution Procedure*);

“**Credit Rating Level**” means a credit rating level as specified in Annex 1 to Schedule 16 (*Financial Distress*);

“**Credit Rating Threshold**” means the minimum Credit Rating Level for each entity with an existing credit rating as set out in Annex 2 to Schedule 16 (*Financial Distress*);

“**CREST Service Provider**” means a company with a SOC Accreditation from CREST International;

“**Crew**” means those required to operate the Asset and operate the sensors;

“**Critical Care Patient**” means a patient that requires more detailed clinical support in terms of observation and/or support of failing organ systems. This includes support of a single failing organ system through to multiple organ support. In the majority of cases these would be patients that met the level 2 criteria or higher according to the Intensive Care Society (2009) levels of care classification;

“**Critical National Infrastructure**” means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on national security, national defence, or the functioning of the UK;

**“Critical Service Contract”** means a service contract which the Authority has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which the Authority otherwise considers should be classed as a Critical Service Contract;

**“Critical Success Factor”** means the critical success factors listed in the table at Annex 1 to Schedule 3 (*Key Performance Indicators*);

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including government ministers, government departments, government and particular bodies and government agencies;

**“CRP Information”** means, together, the:

- (a) Group Structure Information and Resolution Commentary set out in Annex 2 to Schedule 23 (*Service Continuity Plan*); and
- (b) UK Public Sector and CNI Contract Information set out in Annex 3 to Schedule 23 (*Service Continuity Plan*);

**“CRT”** means Coastal Rescue Team;

**“CRTPA”** means the Contracts (Rights of Third Parties) Act 1999;

**“CTC”** means Counter-Terrorism Clearance a clearance required for people who work in close proximity to public figures, or who have access to material or information that may be vulnerable to terrorist attack, or whose role involves unrestricted access to government or commercial establishments considered to be at risk from terrorist attack;

**“Cyber Essentials”** means the Cyber Essentials certificate issued pursuant to the Cyber Essentials Scheme;

**“Cyber Essentials Plus”** means the Cyber Essentials Plus certificate issued pursuant to the Cyber Essentials Scheme;

**“Cyber Essentials Scheme”** means the Cyber Essentials scheme operated by the National Cyber Security Centre;

**“Dangerous Goods”** means cargo deemed hazardous to flight as defined by the CAA;

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier pursuant to this Agreement, and/or

actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**“Data Protection Legislation”** means:

- (a) the UK GDPR;
- (b) the DPA to the extent that it relates to the use, processing and privacy of personal data; and
- (c) all applicable Law relating to the use, processing and privacy of personal data;

**“Data Subject”** has the meaning given in the UK GDPR;

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;

**“Day”** means sunrise to sunset;

**“Daylight”** means sunrise to sunset;

**“Dedicated Supplier Personnel”** means all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

**“Deductions”** means a deduction from the Indexed Monthly Standing Charge in accordance with Schedule 3 (*Key Performance Indicators*), and **“Deduct”** shall be construed accordingly;

**“Default”** means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of the Authority, of its employees, servants, agents; or
- (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

**“Delay”** means a delay in the Achievement of a Planned Achievement Criterion Date;

**“Delay Payments”** means the amounts payable by the Supplier to the Authority in accordance with Clauses 6.7 and/or 6.8 (*Transition and Acceptance Plan and Delays*);

**“Department”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department; or
- (b) Non-Ministerial Department;

**“Dependent Parent Undertaking”** means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including the provision of the Services in accordance with the terms of this Agreement;

**“Detailed Service Continuity Plan”** means the plan developed, approved and revised from time to time in accordance with Schedule 23 (*Service Continuity Plan*);

**“Disclosing Party”** has the meaning given in Clause 24.1 (*Confidentiality*);

**“Disclosing Party Group”** means:

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and
- (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;

**“Dispute”** means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

**“Dispute Notice”** means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

**“Dispute Resolution Procedure”** means the dispute resolution procedure set out in Schedule 20 (*Dispute Resolution Procedure*);

**“Documentation”** means descriptions of the Services and Key Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

- (a) is required to be supplied by the Supplier to the Authority pursuant to this Agreement;

- (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;
- (c) is required by the Supplier in order to provide the Services; and/or
- (d) has been or shall be generated for the purpose of providing the Services;

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

“**DPA**” means the Data Protection Act 2018;

“**Due Diligence Information**” means any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

“**EASA**” means the European Union Aviation Safety Agency;

“**Effective Date**” means the later of:

- (a) the date on which this Agreement is signed by both Parties; and
- (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.3 (*Condition Precedent*);

“**EIRs**” means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

“**ELT**” means Emergency Locator Transmitter;

“**Emergency Exit**” means any termination of this Agreement which is a:

- (a) termination of the whole or part of this Agreement in accordance with Clause 36 (*Termination Rights*), except where the period of notice given pursuant to Clause 36 (*Termination Rights*) is greater than or equal to six months;
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 36 (*Termination Rights*); or
- (c) wrongful termination or repudiation of this Agreement by either Party;

“**Emergency Exit Plan**” means the plan set out at Annex 2 to Schedule 22 (*Exit Management*) as updated from time to time in accordance with Paragraph 4 of Schedule 22 (*Exit Management*);

**“Emergency Services”** means the public and voluntary organisations that respond to and deal with emergencies when they occur;

**“Employee Liabilities”** means 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 related to employment 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; and
- (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;

**“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

**“EPIRB”** means Electronic Position Indicating Radio Beacon;

**“ERP”** means emergency rendezvous point;

**“Ethical Wall Agreement”** means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 3 to Schedule 22 (*Exit Management*);

**“Exclusive Assets”** means those Assets used by the Supplier or a Key Sub-contractor which are used exclusively or predominantly in the provision of the Services;

**“Exit Information”** means has the meaning given in Paragraph 2.1 of Schedule 22 (*Exit Management*);

**“Exit Management”** means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 22 (*Exit Management*);



**“Exit Manager”** means the person appointed by each Party pursuant to Paragraph 1.3 of Schedule 22 (*Exit Management*) for managing the Parties’ respective obligations pursuant to Schedule 22 (*Exit Management*);

**“Exit Plan”** means the Ordinary Exit Plan and the Emergency Exit Plan;

**“Expedited Dispute Timetable”** means the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 20 (*Dispute Resolution Procedure*);

**“Expert”** means in relation to a Dispute, a person appointed in accordance with Paragraph 5.2 of Schedule 20 (*Dispute Resolution Procedure*) to act as an expert in relation to that Dispute;

**“Expert Determination”** means determination by an Expert in accordance with Paragraph 5 of Schedule 20 (*Dispute Resolution Procedure*);

**“Fair Market Value”** means the fair market value of the relevant Asset(s) calculated in accordance with Paragraph 7 of Schedule 22 (*Exit Management*);

**“Fast-track Change”** means any Contract Change which the Parties agree to expedite in accordance with Paragraph 9 of Schedule 19 (*Change Control Procedure*);

**“FDE Group”** means the Supplier and the Guarantor(s);

**“Final Annual Reporting Model”** means the final annual reporting model to be provided by the Supplier to the Authority pursuant to Paragraph 2.1 of Part 2 of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**“Financial Distress Event”** means any of the following events:

- (a) the credit rating of an FDE Group entity, which have existing ratings, dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due pursuant to a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
  - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than [REDACTED] or obligations pursuant to a service contract with a total contract value greater than [REDACTED];

- (ii) non-payment by an FDE Group entity of any financial indebtedness;
- (iii) any fraudulent or wrongful trading by an FDE Group entity pursuant to section 213 or section 214 of the Insolvency Act 1986;
- (iv) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
- (v) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
- (vi) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that entity,

in each case which the Authority reasonably believes (or would be likely to reasonably believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and

- (g) any one of the Financial Indicators set out at Paragraph 3.1 of Schedule 16 (*Financial Distress*) for an FDE Group, Key Sub-contractors and/or Monitored Entities failing to meet the required Financial Target Threshold;

**“Financial Distress Remediation Plan”** means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;

**“Financial Indicators”** means:

- (a) in respect of the Supplier, the Guarantor(s) and Key Sub-contractors, each of the financial indicators set out at Paragraph 3.1 of Schedule 16 (*Financial Distress*); and
- (b) in respect of each Monitored Entity, the Applicable Financial Indicators;

**“Financial Model”** means the Initial Financial Model as replaced by any Updated Financial Model from time to time;

**“Financial Report”** means any of the Initial Financial Model, the Updated Financial Model, the Annual Reporting Model or the Final Annual Reporting Model;

**“Financial Representative”** means a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

**“Financial Target Thresholds”** means, in respect of the Supplier, the Guarantor(s) and Key Sub-contractors, the target thresholds for each of the Financial Indicators set out at Paragraph 3.1 of Schedule 16 (*Financial Distress*);

**“Financial Transparency Objectives”** has the meaning given in Paragraph 1 of Part 1 of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**“Flying Activity Returns”** means the monthly Transparency Report identified in the first row of the table at Annex 1 to Schedule 21 (*Reports and Records Provisions*);

**“Flying Charge”** has the meaning given in Paragraph 3.2 of Schedule 14 (*Charges and Invoicing*);

**“Flying Charge Net Indexation Factor”** means the figure calculated in accordance with Paragraph 3.10 of Schedule 14 (*Charges and Invoicing*);

**“Flying Hours”** means the agreed number of hours flown per month, per Aircraft, per Base in performance of the Services, which is comprised solely of hours flown in the performance of a Task;

**“Flying Programme”** means where the System has provided a calendar based representation of the intended flying in support of Tasks and Non-Tasks;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made pursuant to that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

**“Force Majeure Event”** means:

- (a) riot, invasion, insurrection of military or usurped power, act of foreign enemies, war, acts of terrorism, hostilities (whether war be declared or not), civil war, rebellion or revolution;
- (b) earthquake, flood, fire, explosion and/or other physical natural disaster that causes physical damage to any of the Bases;
- (c) strikes or industrial disputes at national level or strikes or industrial disputes by labour not employed by the Supplier and/or its Sub-contractors and which affect a substantial or essential portion of the Services;
- (d) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and/or
- (f) nationalisation, confiscation, sequestration or any other analogous event involving the deprivation of property or possession by any governmental or quasi-governmental body or agency, whether temporary or permanent;

**“Force Majeure Notice”** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

**“Former Supplier”** means a supplier supplying services to the Authority 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 sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

“**Fuel Burn Rate**” means the rate, expressed in litres per hour, set out per Aircraft type and per mode of flight in o.Sch 14 (HFR) of the Financial Model;

“**Fuel Charge**” has the meaning given in Paragraph 5 of Schedule 14 (*Charges and Invoicing*);

“**Fuel Price Variation**” has the meaning given in Paragraph 5.8 of Schedule 14 (*Charges and Invoicing*);

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679;

“**General Anti-Abuse Rule**” means:

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

“**General Change in Law**” means a Change in Law that is not a Specific Change in Law;

“**Good Industry Practice**” means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“**Governance Body Member**” means, in respect of each Governance Body, the initial persons appointed by the Authority and the Supplier to such Governance Body as set out in Annex 1 to Schedule 18 (*Governance*) and any replacements from time to time appointed in accordance with Paragraph 4 of Schedule 18 (*Governance*);

“**Governance Bodies**” means the Transition Working Group, the Capability Integration Development Working Group, the Contract Management Board, the Strategic Management Board and “**Governing Body**” shall mean any one of them;

“**Grid Reference System**” means is a geographic coordinate system that defines locations in maps using Cartesian coordinates based on a particular map projection;

“**Guarantee**” means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 26 (*Guarantee*)), or any guarantee acceptable to the Authority that replaces it from time to time;

“**Guarantor**” means **Bristow Group Inc.**, a public corporation whose registered office is situated at Corporation Trust Center, 1209 Orange Street, Delaware, 19801, United States of America and whose principal place of business is situated at 3151 Briarpark Drive, Suite 700, Houston, Texas 77042, United States of America;

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

“**Health and Safety Policy**” means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or

before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

“**HMCG**” means Her Majesty’s Coastguard;

“**HMRC**” means HM Revenue & Customs;

“**Hourly Flying Rate**” means the rate set out per Aircraft, per Base in the o.Sch 14 (HFR) tab of the Financial Model;

“**HQ**” means headquarters;

“**IAMSAR**” means International Aeronautical and Maritime Search and Rescue Manual;

“**Impact Assessment**” means an assessment of a Change Request in accordance with Paragraph 4 of Schedule 19 (*Change Control Procedure*);

“**Incident Management Process**” means the process which shall be prepared by the Supplier in accordance with Paragraph 3 of Schedule 4 (*Security Management*) using the template set out in Annex 3 of Schedule 4 (*Security Management*);

“**Indemnified Person**” means the Authority and each and every person to whom the Authority (or any direct or indirect sub licensee of the Authority) sub licenses, assigns or novates any Relevant IPR or rights in Relevant IPR in accordance with this Agreement;

“**Independent Controller**” means where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;

“**Indexed Hourly Flying Rate**” for each Service Period for each Aircraft at each Base in respect of each Lot, means the relevant Hourly Flying Rate multiplied by the value of the Flying Charge Net Indexation Factor applicable on the first day of the relevant Service Period;

“**Indexed Monthly Standing Charge**” means, in relation to any Service Period, the Monthly Standing Charge for that period multiplied by the value of the Monthly Standing Charge Net Indexation Factor applicable on the first day of the relevant Service Period;

“**Information**” means

- (a) for the purposes of Schedule 2 (*Services Description*) and Schedule 7 (*Supplier’s Response*): the provisions of facts, data and other details pertinent to the requirement; and
- (b) for the purposes of all other parts of this Agreement: all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

**“Information Management System”** means

- (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Authority Data and/or Coordinating Authority Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);

**“Information Security Approval Statement”** means a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:

- (a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;
- (b) the Authority has accepted the residual risks; and
- (c) the Supplier may use the Information Management System to Process Authority Data and/or Coordinating Authority Data;

**“Initial Financial Model”** means the financial model contained in the excel file titled “Contract Award Initial Financial Model.xlsx” contained on the USB titled “UKSAR2G Contract” initialled as at the date of the Agreement;

**“Initial Payment”** means, for each Base in respect of each Lot, the value set out against the relevant Base for the relevant Lot in the o.Sch 14 (MSC) tab of the Financial Model;

**“Initial Upload Date”** means the occurrence of an event detailed in Annex 3 to Schedule 21 (*Reports and Records Provisions*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;

**“Innovation”** means:

- (a) the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services;

**“Innovation IPR”** means any Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement or arising as a result of the performance of the Services or whose development is funded by the Charges paid by the Authority pursuant to this Agreement, but shall not include the Software;

**“Innovation Plan”** means the plan set out at Schedule 13 (*Innovation Plan*) as updated from time to time in accordance with this Agreement;

**“Insolvency Event”** with respect to any person (which shall include a partnership, whether unlimited, limited, or limited liability, and for this purpose “it” or “its” shall refer to such partnership and any reference to specific procedures in this definition by reference to parts of legislation shall include all those procedures as applied to all partnerships) means:

- (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
  - (i) (being a company or LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in section 123(1)(e) or section 123(2); or
  - (ii) (being a general or limited partnership) is deemed unable to pay its debts within the meaning of section 224 of the Insolvency Act 1986 as if the words “it is proved to the satisfaction of the court” did not appear in section 224(1)(d) or section 224(2), or has any partner that is a company or LLP that falls within (a)(i) above, or has any partner that is an individual who is deemed either unable to pay their debts or as having no reasonable prospect of so doing in either case within the meaning of section 268 of the Insolvency Act 1986;
- (b) that person commences negotiations with one or more of its creditors with a view to rescheduling any of its debts; or that person makes a proposal for or any formal step is taken in relation to, or it enters into any compromise, composition, scheme, arrangement, plan and/or reconstruction with one or more of its creditors, including for a voluntary arrangement pursuant to the Insolvency Act 1986, a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 or a composition, arrangement, reconstruction or any other type of restructuring or plan pursuant to Part 26A of the Companies Act 2006, other than a scheme of arrangement pursuant to Part 26 of the Companies Act 2006 which is a solvent scheme of arrangement for the purposes of amalgamation or reconstruction;
- (c) any formal step is taken in relation to or that person enters a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- (d) any other person (including the Authority) becomes entitled to appoint a receiver over any of the assets of that person or a receiver is appointed over any of the assets of that person;
- (e) a creditor or encumbrancer of that person (including the Authority) attaches or takes possession of, or a distress, execution or other such process is levied

or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;

- (f) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (g) where:
  - (i) a petition is presented to the court by the person itself or its directors, or a petition is presented to the court by any other person (including the Authority) that is not dismissed within 14 days of its service, or a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person, other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person, or if a provisional liquidator is appointed to that person;
  - (ii) an application is made to court by the person itself or its directors, or an application is made to the court by any other person (including the Authority) which is not dismissed within 14 days of its service, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given, or if an administrator is appointed, over that person;
  - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrator or an administrative receiver; or
  - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an administrator or an agricultural receiver; or
- (h) any event occurs, or any action, proceedings, procedure or formal step is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**"Intellectual Property Rights"** or **"IPR"** means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"Intervention Cause"** has the meaning given in Clause 32.1 (*Remedial Adviser*);

**"Intervention Notice"** has the meaning given in Clause 32.1 (*Remedial Adviser*);



**“Intervention Period”** has the meaning given in Clause 32.2.3 (*Remedial Adviser*);

**“Intervention Trigger Event”** means:

- (a) any event falling within limb (a), (b), (c), (d), (e), (f) or (g) of the definition of a Supplier Termination Event; and/or
- (b) the Supplier not Achieving an Achievement Criterion within 28 days of its Planned Achievement Criterion Date;

**“IPR Claim”** means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPR save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPR, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from Schedule 2 (*Services Description*) or the provisions of this Agreement;

**“IT”** means information and communications technology;

**“IT Environment”** the Authority System and the Supplier System;

**“IT Health Check”** has the meaning given in Paragraph 6.1 of Schedule 4 (*Security Management*);

**“JESIP”** means Joint Emergency Services Interoperability Programme;

**“Joint Controllers”** means where two or more Controllers jointly determine the purposes and means of processing;

**“Key Performance Indicator”** or **“KPIs”** means the key performance indicators set out in Schedule 3 (*Key Performance Indicators*);

**“Key Personnel”** means

- (a) for the purposes of Schedule 2 (*Services Description*) and Schedule 7 (*Supplier’s Response*): personnel who are fundamental to the provision of the solution and critical for flight safety; and
- (b) for the purposes of all other parts of this Agreement: those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 25 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 15.6 (*Key Personnel*);

**“Key Roles”** means a role described as a Key Role in Schedule 25 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 15.5 (*Key Personnel*);

**“Key Sub-contract”** means each Sub-contract with a Key Sub-contractor;

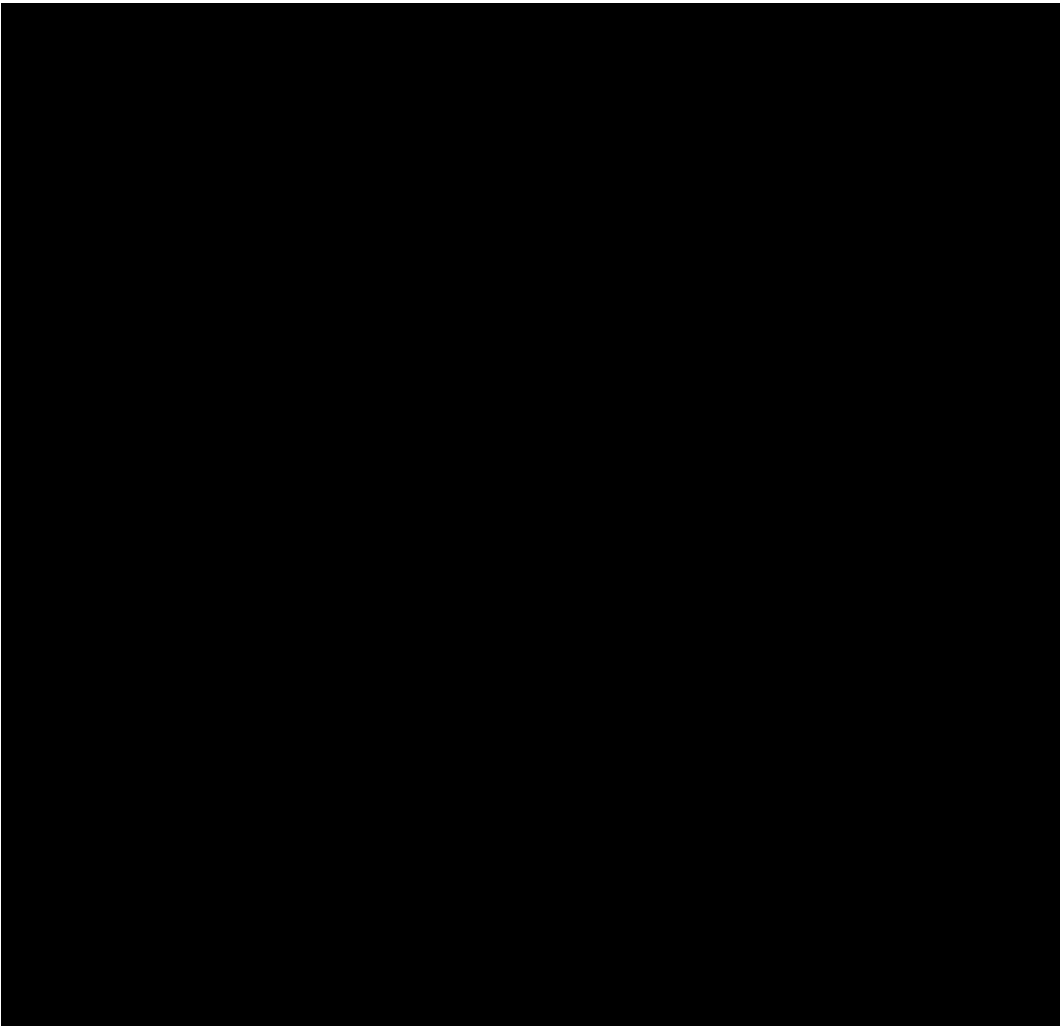
**“Key Sub-contractor”** means any Sub-contractor:

- (a) who, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services;
- (b) who provides any rights in connection with any Base and/or Aircraft; and/or
- (c) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable pursuant to this Agreement (as set out in the Financial Model);

**“Know-How”** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;

**“KPI Reports”** has the meaning given in Schedule 3 (*Key Performance Indicators*);

**“KPI Termination Event”** means that the Supplier has:



**“Law”** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance

or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

**“Life Support Equipment”** means equipment used to maintain life including incubators, ventilators and membrane oxygenators;

**“LOS”** means Line-of-Sight communication systems that can transmit and receive data only where transmit and receive stations are in direct view of each other without any sort of an obstacle between them;

**“Losses”** means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

**“Lot”** means Lot means any of Lot 1, Lot 2 and/or Lot 3 as the context requires

**“Lot 1”** means the Authority’s procurement for: fast, urgent, short-range rescue and response at short notice to respond;

**“Lot 2”** means the Authority’s procurement for: high endurance, long-range rescue and response, for less frequent tasks requiring the ability to respond to mass casualty and civil contingencies, events and/or events involving international coordination;

**“Lot 3”** means the Authority’s procurement for: fixed wing and potentially unmanned air vehicle (UAV) rapid search only, surveillance and pollution response to identify risky, polluting, dangerous, illegal or anticompetitive activity and verification to the appropriate authority;

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

**“Management Information”** means the management information specified in Schedule 3 (*Key Performance Indicators*), Schedule 14 (*Charges and Invoicing*) and Schedule 18 (*Governance*) to be provided by the Supplier to the Authority;

**“Market Fuel Price”** means the market price for fuel determined in accordance with Paragraph 5.4 of Schedule 14 (*Charges and Invoicing*);

**“Maximum Compensation Payment”** means the amount stated in Annex 1 to Schedule 15 (*Payments on Termination*) for the relevant quarter in which the Termination Date occurs for the relevant Base in respect of the relevant Lot;

**“Maximum Fuel Price”** has the meaning given in Paragraph 5.9 of Schedule 14 (*Charges and Invoicing*);

**“Mediation Notice”** has the meaning given in Paragraph 3.2 of Schedule 20 (*Dispute Resolution Procedure*);

“**Mediator**” means the independent third party appointed in accordance with Paragraph 4.2 of Schedule 20 (*Dispute Resolution Procedure*) to mediate a Dispute;

“**Minimum Fuel Price**” has the meaning given in Paragraph 5.10 of Schedule 14 (*Charges and Invoicing*);

“**MMO**” means Marine Management Organisation;

“**Monitored Entities**” means those entities specified at Paragraph 3.2 of Schedule 16 (*Financial Distress*);

“**month**” means a calendar month and “**monthly**” shall be interpreted accordingly;

“**Monthly Standing Charge**” means, in relation to each Base, the amount set out against the relevant Base for the relevant Lot in the o.Sch 14 (MSC) tab of the Financial Model;

“**Monthly Standing Charge Net Indexation Factor**” means the figure calculated in accordance with Paragraph 2.7 of Schedule 14 (*Charges and Invoicing*);

“**Multi-Party Dispute**” means a Dispute which involves the Parties and one or more Related Third Parties;

“**Multi-Party Dispute Representatives**” has the meaning given in Paragraph 8.6 of Schedule 20 (*Dispute Resolution Procedure*);

“**Multi-Party Dispute Resolution Board**” has the meaning given in Paragraph 8.6 of Schedule 20 (*Dispute Resolution Procedure*);

“**Multi-Party Dispute Resolution Procedure**” has the meaning given in Paragraph 8.1 of Schedule 20 (*Dispute Resolution Procedure*);

“**Multi-Party Procedure Initiation Notice**” has the meaning given in Paragraph 8.2 of Schedule 20 (*Dispute Resolution Procedure*);

“**Near Real Time**” means denoting or relating to a data-processing system that has a sub-30 second degree of latency compared to real-time;

“**Neighbouring States**” means countries bordering the UKSRR and/or UKEEZ, including areas within the UKSRR and the Channel Islands, which have their own Air Navigation Order and/or Aviation Regulations;

“**Net Book Value**” means the net book value of the relevant Asset(s) calculated in accordance with the depreciation and fixed assets policy of the Supplier;

“**Night**” means any hour or time which is not Daylight;

“**Night Time Hours**” means any hour or time which is not Daylight;

“**Night Vision Goggle (NVG) Hours**” means the number of hours a Crew member has utilised night vision goggles whilst on a Task;

**“Non-Exclusive Assets”** means those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are not Exclusive Assets;

**“Non-Tasks”** means activities associated with training and maintenance, or previously agreed with the Contract Manager and Tasking Authority;

**“Non-Tasked”** means activities associated with training and maintenance, or previously agreed with the Contract Manager and Tasking Authority;

**“Normal Operating Base”** means the location from which the Asset is routinely expected to operate;

**“Notifiable Default”** has the meaning given in Clause 31.1 (*Rectification Plan Process*);

**“Notified Sub-contractor”** means a Sub-contractor identified in Annex 1 to Schedule 24 (*Staff Transfer*) to whom Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

**“Objectives”** means:

- (a) the delivery of high quality services to the Authority;
- (b) compliance by the Supplier with their contracts with the Authority;
- (c) the achievement of value for money; and
- (d) the achievement of continuous improvement;

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

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

**“OGD”** means Other Government Departments in addition to the Authority;

**“On Scene Co-ordinator”** means a person designated to co-ordinate SAR operations within a specified area;

**“Oil”** means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

**“Open Book Data”** means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier’s costs for the Service broken down by Base, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Service including an analysis showing:
  - (i) the unit costs and quantity of consumables and bought-in services;
  - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iii) a list of costs underpinning those rates for each manpower grade; and
  - (iv) Ancillary Charges;
- (c) overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual costs profile for each Service Period;

**“Operating Environment”** means the Authority System and the Sites;

**“Operational Data”** means any data arising or created during or for the purposes of any flight on board the Aircraft to fulfil a legal or regulatory requirement, or relating to the mechanical or physical operation of the Aircraft, including any reports, specifications, drawings, items and know-how derived from such data and data;

**“Operators”** means an individual delivering an aspect of the System;

**“Ordinary Exit”** means any termination of the whole or any part of this Agreement which occurs:

- (a) pursuant to Clause 36 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to Clause 36 (*Termination Rights*) is greater than or equal to six months; or
- (b) as a result of any Base Expiry Date;

**“Ordinary Exit Plan”** means the plan set out at Annex 1 to Schedule 22 (*Exit Management*) as updated from time to time in accordance with Paragraph 4 of Schedule 22 (*Exit Management*);

**“Other Supplier”** means any other supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

**“Outline Service Continuity Plan”** means the outline plan set out at Annex 1 to Schedule 23 (*Service Continuity Plan*);

**“PACE”** means Police and Criminal Evidence Act of 1984;

**“Parent Undertaking”** has the meaning set out in section 1162 of the Companies Act 2006;

**“Partial Termination”** means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 36.2.2 (*Termination by the Authority*) or otherwise by mutual agreement by the Parties;

**“Parties”** and **“Party”** have the meanings respectively given on page 1 of this Agreement;

**“Performance Score”** means the performance score in respect of a KPI as calculated in accordance with Schedule 3 (*Key Performance Indicators*);

**“Personal Data”** has the meaning given in the UK GDPR;

**“Personal Data Processing Statement”** means a document setting out:

- (a) the types of Personal Data which the Supplier and/or its Sub-contractors Processes or will Process pursuant to this Agreement;
- (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process pursuant to this Agreement;
- (c) the nature and purpose of such Processing;
- (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data pursuant to this Agreement; and
- (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed pursuant

to this Agreement against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;

**“Personal Data Breach”** has the meaning given in the UK GDPR;

**“Pilot in Command (PIC) Hours”** means the number of flying hours that a pilot has been in command of an aircraft;

**“Planned Achievement Criterion Date”** means the target date set out against the relevant Achievement Criterion in the Transition and Acceptance Plan by which the Achievement Criterion must be Achieved;

**“Planned Services Commencement Date”** means in relation to each Lot and each Base, the target date for the commencement of the provision of the Services identified in the Supplier’s Solution;

**“Planned Tasks”** means Tasks included in the Programme;

**“PLB”** means personal locator beacon;

**“PLN”** means port letter number.

**“Pollutant / Pollution”** means substances which are likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate users of the sea;

**“Post Flight Checklist”** means the post flight checklist in the form set out in Annex 1 of Schedule 3 (*Key Performance Indicators*) to be populated by the Supplier in accordance with Schedule 3 (*Key Performance Indicators*);

**“PPE”** means personal protective equipment;

**“Process”** means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

**“Processor”** has the meaning given to it pursuant to the UK GDPR;

**“Processor Personnel”** means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations pursuant to this Agreement;

**“Programme”** means the programme of Tasks provided by the Authority to the Supplier each month and updated as required;

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or



- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
  - (i) pursuant to the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) pursuant to legislation or common law concerning fraudulent acts (including offences by the Supplier pursuant to Part 3 of the Criminal Finances Act 2017); or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**“Public Contracts Regulations 2015”** means the Public Contracts Regulations 2015 (SI 2015/102) as amended, extended, consolidated or re-enacted from time to time, including the amendments made by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1319) (as amended, extended, consolidated or re-enacted from time to time);

**“Public Sector Dependent Supplier”** means a supplier where that supplier, or that supplier’s Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;

**“Publishable Performance Information”** means any of the information in the KPI Reports;

**“Quality Plans”** has the meaning given in Clause 6.1 (*Quality Plans*);

**“Quarter”** means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement) and **“Quarterly”** shall be construed accordingly;

**“Rating Agencies”** means the rating agencies listed in Annex 1 to Schedule 16 (*Financial Distress*);

**“Readiness State”** means in relation to each Asset, the notice to move period, from notification of the Task (provided that the notification shall be deemed to occur on the

earlier of: verbal notification to the Supplier, issue of a Base read receipt, Acceptance or other acknowledgement of the notification by the Supplier) to airborne as set out in:

- (a) the document titled Lot 4 Lot 1 UR 3.2 in Part 2 of Schedule 7 (*Supplier's Solution*), in respect of Lot 1;
- (b) the document titled Lot 4 Lot 2 UR 3.2 in Part 2 of Schedule 7 (*Supplier's Solution*), in respect of Lot 2; and
- (c) the document titled Lot 4 Lot 3 UR 3.3 in Part 2 of Schedule 7 (*Supplier's Solution*), in respect of Lot 3,

as may be amended in accordance with this Agreement, including (where applicable) Paragraph 3 of Part 1 of Schedule 7 (*Supplier's Solution*);

**"Recipient"** has the meaning given in Clause 24.1 (*Confidentiality*);

**"Records"** has the meaning given in Schedule 21 (*Reports and Records Provisions*);

**"Rectification Plan"** means a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

**"Rectification Plan Failure"** means:

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 31.4 (*Submission of the draft Rectification Plan*) or 31.8 (*Agreement of the Rectification Plan*);
- (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 31.7 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
  - (i) 30 Working Days of a notification made pursuant to Clause 31.2 (*Notification*); and
  - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; and/or
- (d) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six months for the same (or substantially the same) root cause as that of the original Notifiable Default;

**"Rectification Plan Process"** means the process set out in Clauses 31.4 (*Submission of the draft Rectification Plan*) to 31.9 (*Agreement of the Rectification Plan*);

**"Redundancy Costs"** means the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and

the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and
- (b) in respect of an employee who was a Transferring Former Supplier Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier pursuant to the Employment Regulations;

**“Registered Medical Professional”** means a professional as defined by the Health Care Professional Council, Royal College of Nursing or the General Medical Council;

**“Registers”** means the register and configuration database referred to in Paragraphs 1.1.1 and 1.1.2 of Schedule 22 (*Exit Management*);

**“Reimbursable Expenses”** has the meaning given in Schedule 14 (*Charges and Invoicing*);

**“Related Third Party”** means a party to:

- (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or
- (b) a Sub-contract;

**“Relevant Authority”** or **“Relevant Authorities”** means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

**“Relevant IPR”** means IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations pursuant to this Agreement including IPR in the Supplier Software and the Third Party IPR but excluding any IPR in the Authority Software;

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

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

**“Relevant Transfer”** means a transfer of employment to which the Employment Regulations applies;

**“Relevant Transfer Date”** means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place

**“Relief Notice”** has the meaning given in Clause 34.2 (*Authority Cause*);

**“Remedial Adviser”** means the person appointed pursuant to Clause 32.2 (*Remedial Adviser*);

**“Remedial Adviser Failure”** has the meaning given in Clause 32.6 (*Remedial Adviser*);

**“Replacement Services”** means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

**“Replacement Sub-contractor”** means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

**“Replacement Supplier”** means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

**“Request for Estimate”** means a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Compensation Payment that would be payable if the Authority exercised its right pursuant to Clause 36.1.1 (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;

**“Request For Information”** means a Request for Information pursuant to the FOIA or the EIRs;

**“Required Action”** has the meaning given in Clause 33.1.1 (*Step-In Rights*);

**“Required Changes Register”** mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 4.2 of Schedule 4 (*Security Management*) together with the date by which such change shall be implemented and the date on which such change was implemented;

**“Rescue System”** means the equipment and resources used by the Supplier to conduct the rescue;

**“Review Date”** means the date of the twice annual review of the Market Fuel Price as specified in Paragraph 5.3.1 and Paragraph 5.3.2 of Schedule 14 (*Charges and Invoicing*);

**“RoA”** or **“Radius of Action”** means the maximum distance of the airborne system at cruise speed in still air with 30 minutes on scene to include searching, winching, if applicable, or other activity relevant to the Task, followed by landing at the point of departure with VFR fuel minima; to be calculated at mean sea level in ISA conditions (ICAO Standard Atmosphere);

**“Risk and Hazard Register”** means the register that details all technical, operational and support risks or hazards associated with the System;

“**Role**” means the configuration for which the System is fitted;

“**Role Equipment**” means the equipment required to meet the Role configuration of the Asset;

“**Role Sensor**” means detectors and sensors used to identify a target or object of interest, including Radar, Electro-Optical, Infra-red and human sensors;

“**Role Sensor Data**” means data produced by the Role Sensors;

“**SAR**” means Search and Rescue;

“**SAR Mission Co-ordinator**” means the official temporarily assigned to coordinate response to an actual or apparent distress situation;

“**SAR Commander**” has the meaning given in CAP 999 – UK Helicopter Search and Rescue (SAR) National Approval Guidance, Definitions for use in CAP 999 section;

“**SAR Passenger**” has the meaning given in CAP 999 – UK Helicopter Search and Rescue (SAR) National Approval Guidance, Definitions for use in CAP 999 section;

“**SART**” means a search and rescue transponder;

“**Security Management Plan**” means the document prepared by the Supplier using the template in Annex 3 to *Schedule 4 (Security Management)*, including

- (a) the Personal Data Processing Statement;
- (b) the Required Changes Register; and
- (c) the Incident Management Process

as may be amended from time to time;

“**Service Continuity Plan**” means the plan set out in Schedule 23 (*Service Continuity Plan*), as may be amended from time to time in accordance with this Agreement;

“**Service Interruption Event**” means:

- (a) any loss of a critical part of the Services; and/or
- (b) the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services, will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services, or a material part of the Services, will be unavailable for a period of 24 hours;

“**Service Period**” means a calendar month, save that:

- (a) the first service period shall begin on the first Services Commencement Date and shall expire at the end of the calendar month in which the first Services Commencement Date falls; and

- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

**“Service Transfer”** means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

**“Service Transfer Date”** means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

**“Services”** means any and all of the services to be provided by the Supplier pursuant to this Agreement, including those set out in Schedule 2 (*Services Description*);

**“Services Commencement Date”** means in relation to each Base the later of:

- (a) the date identified in the Transition and Acceptance Plan upon which the Supplier must provide the Services for that Base;
- (b) where the Transition and Acceptance Plan states that the Supplier must have Achieved the relevant Achievement Criterion before it can commence the provision of the Services from such Base, the date upon which the Supplier Achieves the final relevant Achievement Criterion;

**“Services Description”** means the description of the Services set out in Schedule 2 (*Services Description*);

**“Sites”** means any premises (including the Authority Premises, the Supplier’s premises or third party premises):

- (a) from, to or at which:
  - (i) the Services are (or are to be) provided; and/or
  - (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; and/or
- (b) where:
  - (i) any part of the Supplier System is situated; and/or
  - (ii) any physical interface with the Authority System takes place;

**“Social Value Plan”** means the plan set out at Schedule 30 (*Social Value Plan*) as updated from time to time in accordance with this Agreement;

**“Software”** means the Supplier Software and any Third Party IPR;

**“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**“SMS”** means safety management system;

“**SOLAS**” means the International Convention for Safety of Life at Sea;

“**SOLAS Approved**” means the equipment approved by the International Convention for Safety of Life at Sea;

“**SOP**” means standard operating procedure;

“**Special Category Personal Data**” means the categories of Personal Data set out in article 9(1) of the UK GDPR;

“**Specific Change in Law**” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

“**Staffing Information**” means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex 2 (*Staffing Information*) to Schedule 24 (*Staff Transfer*) in the format specified and with the identities of Data Subjects anonymised where possible as may be amended from time to time in accordance with Schedule 24 (*Staff Transfer*).

“**Step-In Notice**” has the meaning given in Clause 33.1 (*Step-In Rights*);

“**Step-In Trigger Event**” means:

- (a) any event falling within the definition of a Supplier Termination Event;
- (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations pursuant to this Agreement;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights pursuant to Clause 33 (*Step-In Rights*) is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services;
- (f) a need by the Authority to take action to discharge a statutory duty; and/or
- (g) a notice being received by the Authority from a Key Sub-contractor pursuant to a provision of a Key Sub-contract as referred to in Clause 16.12.4;

“**Step-Out Date**” has the meaning given in Clause 33.5.2 (*Step-In Rights*);

“**Step-Out Notice**” has the meaning given in Clause 33.5 (*Step-In Rights*);

“**Step-Out Plan**” has the meaning given in Clause 33.6 (*Step-In Rights*);

“**Strategic Management Board**” means the body described in Paragraph 8 of Schedule 18 (*Governance*);

**“Strategic Supplier”** means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;

**“Sub-contract”** means any contract, agreement, arrangement, lease, licence and/or other right (or any proposed contract, agreement, arrangement, lease, licence and/or other right) between the Supplier (or a Sub-contractor (of whatever tier)) and any third party whereby that third party provides to the Supplier (or the Sub-contractor):

- (a) any services;
- (b) any facilities; and/or
- (c) any rights in connection with:
  - (i) any Base and/or other location; and/or
  - (ii) any Assets,

in connection with this Agreement;

**“Sub-contractor”** means any third party who enters into a Sub-Contract (of whatever tier) and/or the servants or agents of that third party;

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement;

**“Subsidiary Undertaking”** has the meaning set out in section 1162 of the Companies Act 2006;

**“Successor Body”** has the meaning given in Clause 39.4 (*Assignment and Novation*);

**“Super Co-ordinated Extended Pollution Control Operations (SCEPCO)”** means, pursuant to the Bonn Agreement, co-ordinated pollution control activity by aircraft, from multiple countries, in a specified area for over 7 days;

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

**“Supplier Group”** means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;

**“Supplier Non-Performance”** has the meaning given in Clause 34.1 (*Authority Cause*);

**“Supplier Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations pursuant to this Agreement;

**“Supplier Representative”** means the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives*);



**“Supplier Request”** means a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute;

**“Supplier Software”** means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 11 (*IPR*) and any enhancements or development of such;

**“Supplier’s Final Supplier Personnel List”** means a list provided by the Supplier of all Supplier Personnel who will transfer pursuant to the Employment Regulations on the Service Transfer Date;

**“Supplier’s Provisional Supplier Personnel List”** means a list prepared and updated by the Supplier of all Supplier Personnel 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 Supplier;

**“Supplier’s Solution”** means the Supplier’s solution for the Services set out in Schedule 7 (*Supplier’s Solution*) including any Annexes to Schedule 7 (*Supplier’s Solution*);

**“Supplier System”** means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

**“Supplier Termination Event”** means:

- (a) a KPI Termination Event;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier’s Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 29.5.1 (*Financial Limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
  - (i) Clause 22 (*IPR Indemnity*);
  - (ii) Clause 42.6.2 (*Prevention of Fraud and Bribery*); and/or
  - (iii) Paragraph 4 of Schedule 16 (*Financial Distress*);
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.2.9 (*Warranties*) being materially untrue or misleading;

- (h) the Supplier committing a material Default pursuant to Clause 10.10 (*Promoting tax compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting tax compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default pursuant to any of the following Clauses:
  - (i) Clause 5.5.23 (*Services*);
  - (ii) Clause 26 (*Protection of Personal Data*);
  - (iii) Clause 25 (*Transparency and Freedom of Information*);
  - (iv) Clause 24 (*Confidentiality*);
  - (v) Clause 38 (*Compliance*); and/or

in respect of any security requirements set out in Schedule 2 (*Services Description*), Schedule 4 (*Security Management*) or the Baseline Security Requirements; and/or

in respect of any requirements set out in Schedule 24 (*Staff Transfer*);
- (j) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (k) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (l) a change of Control of the Supplier or a Guarantor unless:
  - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control;
- (m) a change of Control of a Key Sub-contractor unless, within six months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 16.10 (*Appointment of Key Sub-contractors*);
- (n) the Supplier entering into a Key Sub-contract:
  - (i) without obtaining the Authority's consent pursuant to Clause 16.10 and/or 16.11 (*Appointment of Key Sub-contractors*); and/or
  - (ii) which does not comply with the requirements of Clause 16.12 (*Appointment of Key Sub-contractors*);

- (o) the Authority has become aware that the Supplier should have been excluded pursuant to Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;
- (p) in relation to Schedule 23 (*Service Continuity Plan*) a failure by the Supplier to:
  - (i) provide the CRP Information within four months of the Effective Date; and/or
  - (ii) to obtain an Assurance from the Relevant Authority or Relevant Authorities within four months of the date that it was first required to provide the CRP Information pursuant to this Agreement;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;
- (r) in relation to Schedule 4 (*Security Management*):
  - (i) the Authority has issued two rejection notices in respect of the Security Management Plan pursuant to Paragraph 3.6.1 of Schedule 4 (*Security Management*);
  - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
  - (iii) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or,
  - (iv) the Supplier fails to comply with the Incident Management Process; and/or
- (s) any failure by the Supplier to take out and/or maintain any of the Required Insurances in accordance with Schedule 5 (*Insurance Requirements*);

**“Supplier Trade Marks”** means those trade marks that are proprietary to the Supplier and listed in Schedule 11 (*IPR*);

**“Supporting Documentation”** means sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Deductions, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable documents demonstrating Achievement of the Achievement Criteria or receipts;

**“System”** means the entire solution including all resources required to deliver the Services.

**“System Automation”** means technology by which a process or procedure is performed with minimal human assistance;

**“Target”** means the object of interest defined by the Tasking/Coordinating Authority;

**“Target Performance Levels”** means:



“**Task**” means an activity included in the Programme and/or instructed by the Tasking Authority;

“**Task Line**” means the number of Assets the System uses per Lot to meet the Availability;

“**Taskable Asset**” means each Asset (and the System it relies on) that, in accordance with the Supplier’s Solution, should be fully capable to Accept and Complete all and any Tasks.

“**Tasking**” means the request issued to the Supplier by the Tasking Authority describing the activity it wishes to be conducted;

“**Tasking Authority**” means the ARCC who will issue all Tasks;

“**Technical Crew**” has the meaning given in CAP 999 – UK Helicopter Search and Rescue (SAR) National Approval Guidance, Definitions for use in CAP 999 section;

“**Term**” means the period commencing on the Effective Date and ending on the latest Base Expiry Date or on such earlier date as this Agreement is terminated by operation of Law or in accordance with Clause 36 (*Termination Rights*);

“**Termination Assistance Notice**” has the meaning given in Paragraph 4.1 of Schedule 22 (*Exit Management*);

“**Termination Assistance Period**” means the period specified in the Termination Assistance Notice in which the Supplier shall provide the Termination Services as may be extended pursuant to Paragraph 5.4 of Schedule 22 (*Exit Management*);

“**Termination Date**” means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

“**Termination Estimate**” has the meaning given in Paragraph 8.2 of Schedule 15 (*Payments on Termination*);

“**Termination Notice**” means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;

“**Termination Services**” means the services and activities to be performed by the Supplier pursuant to the relevant Exit Plan, and any other services required pursuant to the Termination Assistance Notice;

**“Third Party Auditor”** means an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 21 (*Reports and Records Provisions*);

**“Third Party Beneficiary”** has the meaning given in Clause 46.1 (*Third Party Rights*);

**“Third Party Contract”** means a Sub-contract entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 10 (*Third Party Contracts*);

**“Third Party IPR”** means Intellectual Property Rights owned by a third party which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;

**“Third Party Provisions”** has the meaning given in Clause 46.1 (*Third Party Rights*);

**“Tour d’Horizon (TdH)”** means the programme for aerial surveillance, pursuant to the Bonn Agreement, of offshore oil and gas installations. Patrol flights by individual countries, covering predetermined routes, are co-ordinated during the year in order to provide maximum coverage;

**“Transferable Assets”** means those of the Exclusive Assets which are capable of legal transfer to the Authority and/or any Replacement Supplier;

**“Transferable Contracts”** means the Sub-contracts, licences for Supplier Software, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;

**“Transferring Assets”** has the meaning given in Paragraph 6.2.1 of Schedule 22 (*Exit Management*);

**“Transferring Contracts”** has the meaning given in Paragraph 6.2.3 of Schedule 22 (*Exit Management*);

**“Transferring Former Supplier Employees”** means, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

**“Transferring Supplier Employees”** means those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date;

**“Transition and Acceptance Plan”** means the Transition and Acceptance Plan set out in Annex 1 to Schedule 12 (*Transition and Acceptance Plan*) as updated in accordance with Paragraph 3 of Schedule 12 (*Transition and Acceptance Plan*) from time to time;

**“Transition Working Group”** means the body described in Paragraph 5 of Schedule 18 (*Governance*);

“**Transparency Information**” has the meaning given in Clause 25.1 (*Transparency and Freedom of Information*);

“**Transparency Reports**” has the meaning given in Schedule 21 (*Reports and Records Provisions*);

“**UHF**” means Ultra High Frequency within the band 300-3000 MHz;

“**UK**” means the United Kingdom;

“**UKEEZ**” means the UK Exclusive Economic Zone as illustrated at <https://www.gov.uk/guidance/uk-maritime-limits-and-law-of-the-sea> ;

“**UK GDPR**” means the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

“**UK Public Sector Business**” means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;

“**UK Search and Rescue Operators Group**” means the body described in Paragraph 10.1 of Schedule 18 (*Governance*);

“**UK Search and Rescue Strategic Board**” means the body described in Paragraph 10.2 of Schedule 18 (*Governance*);

“**UKSAR2G**” has the meaning set out in recital (A) of this Agreement;

“**UKSRR**” means UK Search and Rescue Region (approx 2,000,000 sq miles) as detailed in Annex A of [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593127/mca\\_uksar.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593127/mca_uksar.pdf) ;

“**UK Weather**” means all weather characteristics routinely and historically (last 50 years) experienced in the UKSRR and the Channel Islands;

“**Unconnected Sub-contract**” means any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract pursuant to regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;

“**Unconnected Sub-contractor**” means any third party with whom the Supplier enters into an Unconnected Sub-contract;

“**Unplanned Tasks**” means Tasks which are of a reactive nature and not included in the Programme;

“**Unrecovered Costs**” means the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the

termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 14 (*Charges and Invoicing*);

**“Updated Annual Reporting Model”** means an updated model prepared by the Supplier in accordance with Paragraph 1.3 of Part 2 of Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);

**“Updated Financial Model”** means any updated financial model provided by the Supplier to the Authority in accordance with Paragraph 3.4 of Schedule 19 (*Change Control Procedure*);

**“Update Requirement”** means the time period specified or the occurrence of an event detailed in Annex 3 (*Virtual Library*) to Schedule 21 (*Reports and Records Provisions*) which requires the Supplier to update the relevant information hosted on the Virtual Library;

**“User Requirement”** or **“URs”** means a user requirement set out in Schedule 2 (*Service Descriptions*);

**“Valuation”** means has the meaning given in Paragraph 7.1.2(i) of Schedule 22 (*Exit Management*);

**“Valuer”** means has the meaning given in Paragraph 7.1.1 of Schedule 22 (*Exit Management*);

**“VAT”** means value added tax as provided for in the Value Added Tax Act 1994;

**“VCSE”** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

**“VHF”** means Very High Frequency within the band 30-300 MHz;

**“VHF Marine Band”** means VHF within the band 156-174 MHz;

**“Vessel Monitoring System”** or **“VMS”** means a satellite-based monitoring system which at regular intervals provides data to the Fisheries Authorities on the location, course and speed of fishing vessels;

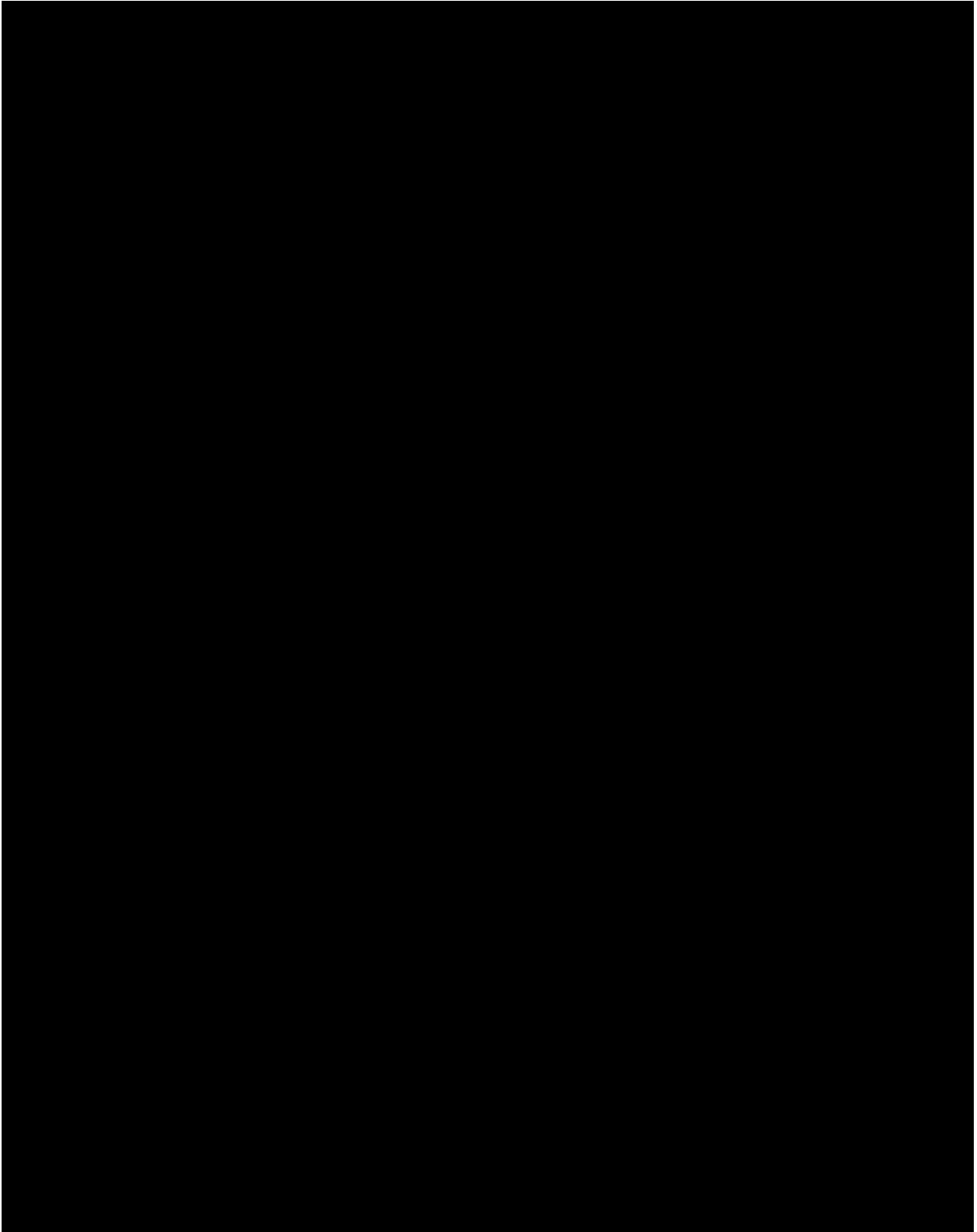
**“Virtual Library”** means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided pursuant to it in accordance with Schedule 21 (*Reports and Records Provisions*);

**“Vulnerability Correction Plan”** has the meaning given in Paragraph 6.3.3 of Schedule 4 (*Security Management*);

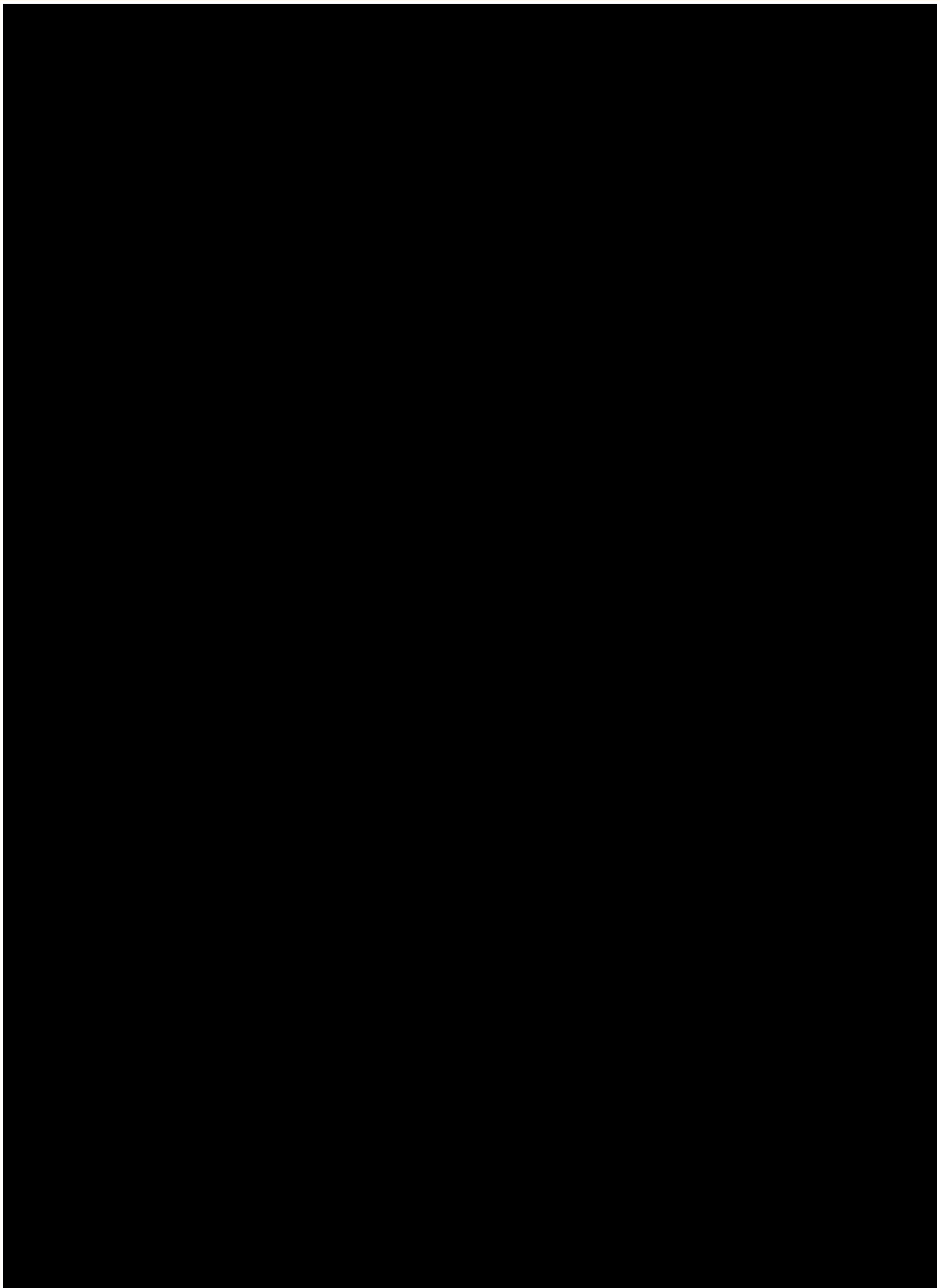
**“WGS84”** means World Geodetic System 1984 which is a standard that provides Latitude, Longitude and date/time stamp for position fix of the Target; and

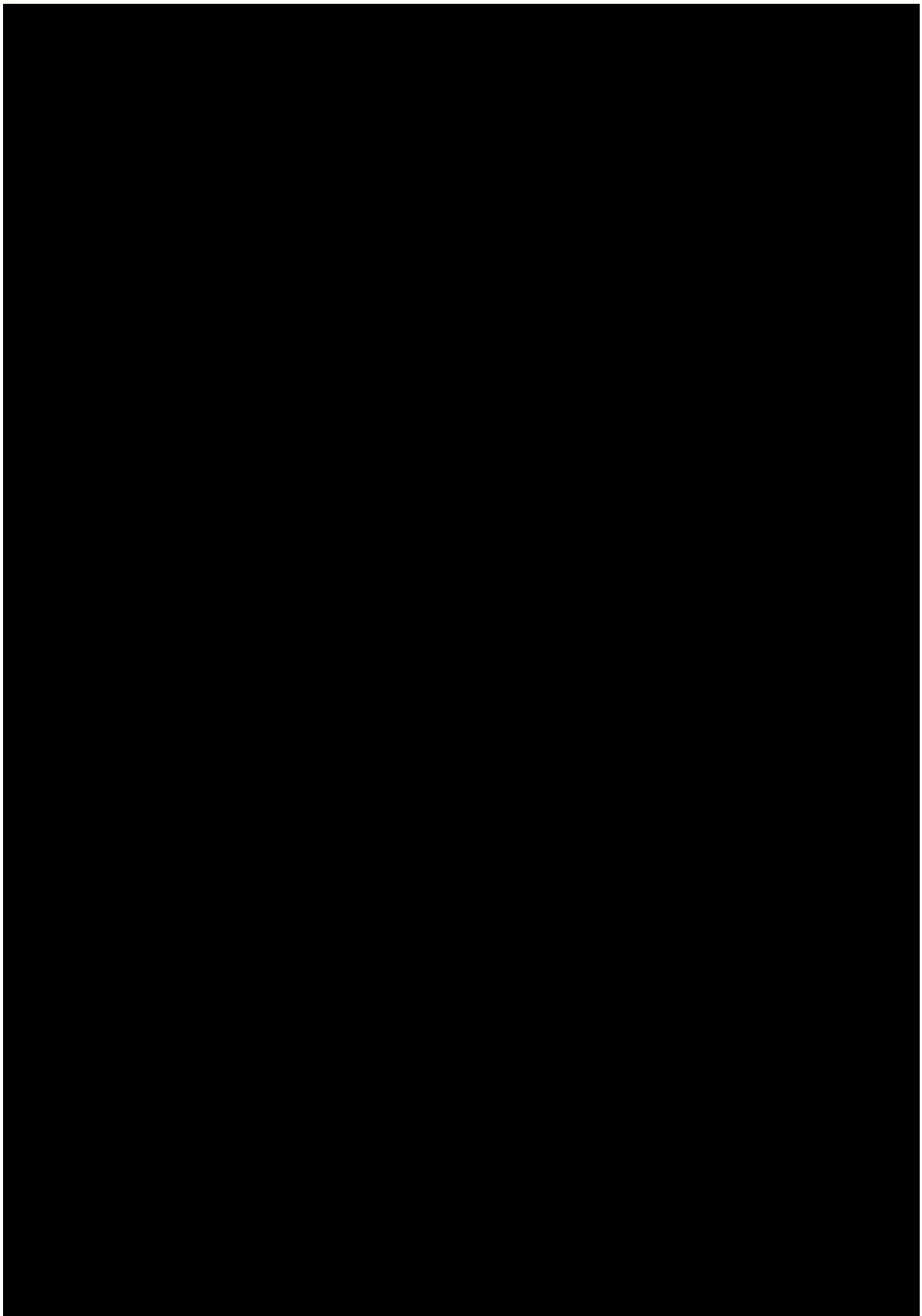
**“Working Day”** means any day other than a Saturday, Sunday or public holiday in England and Wales.

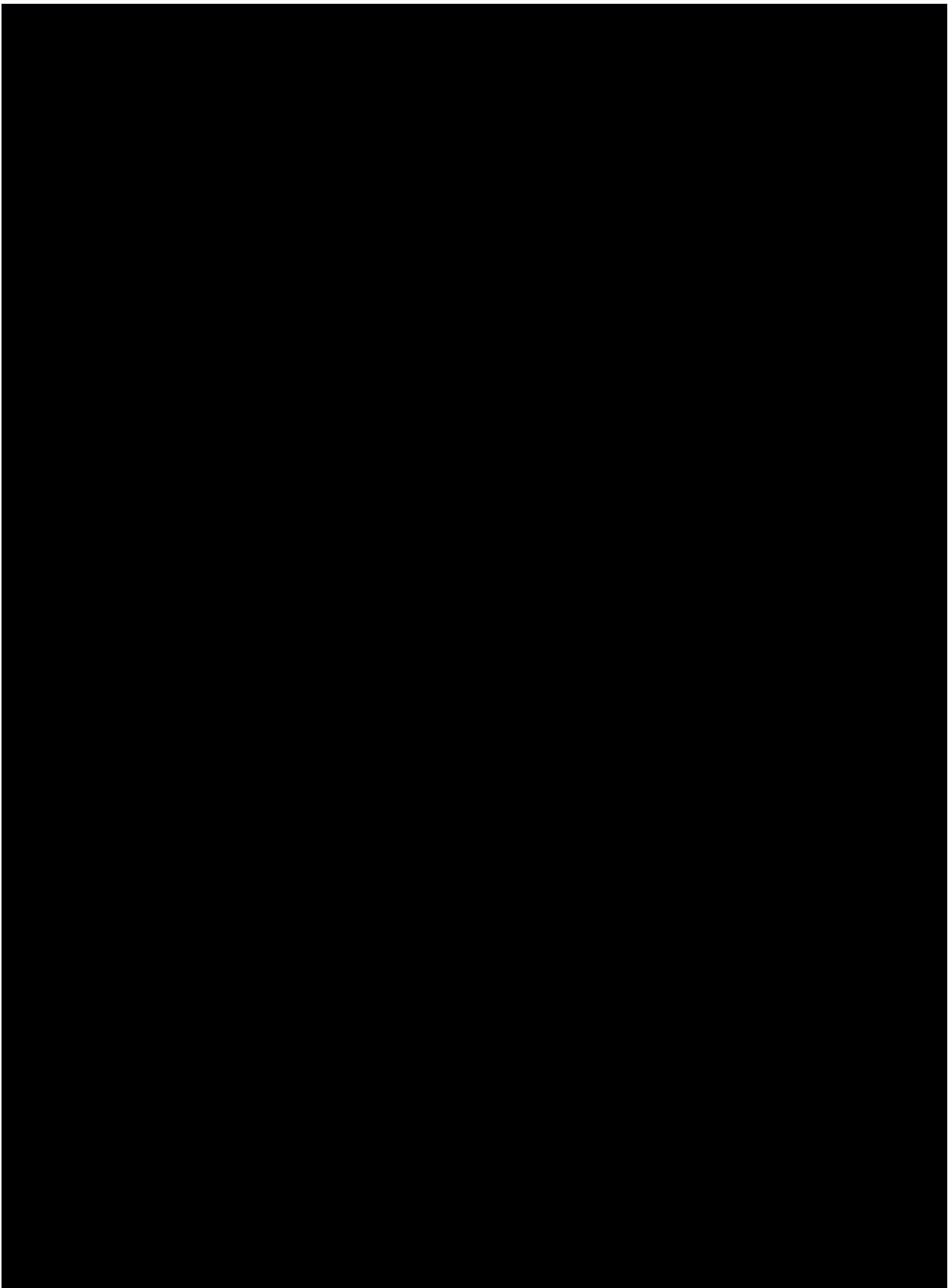
Schedule 2

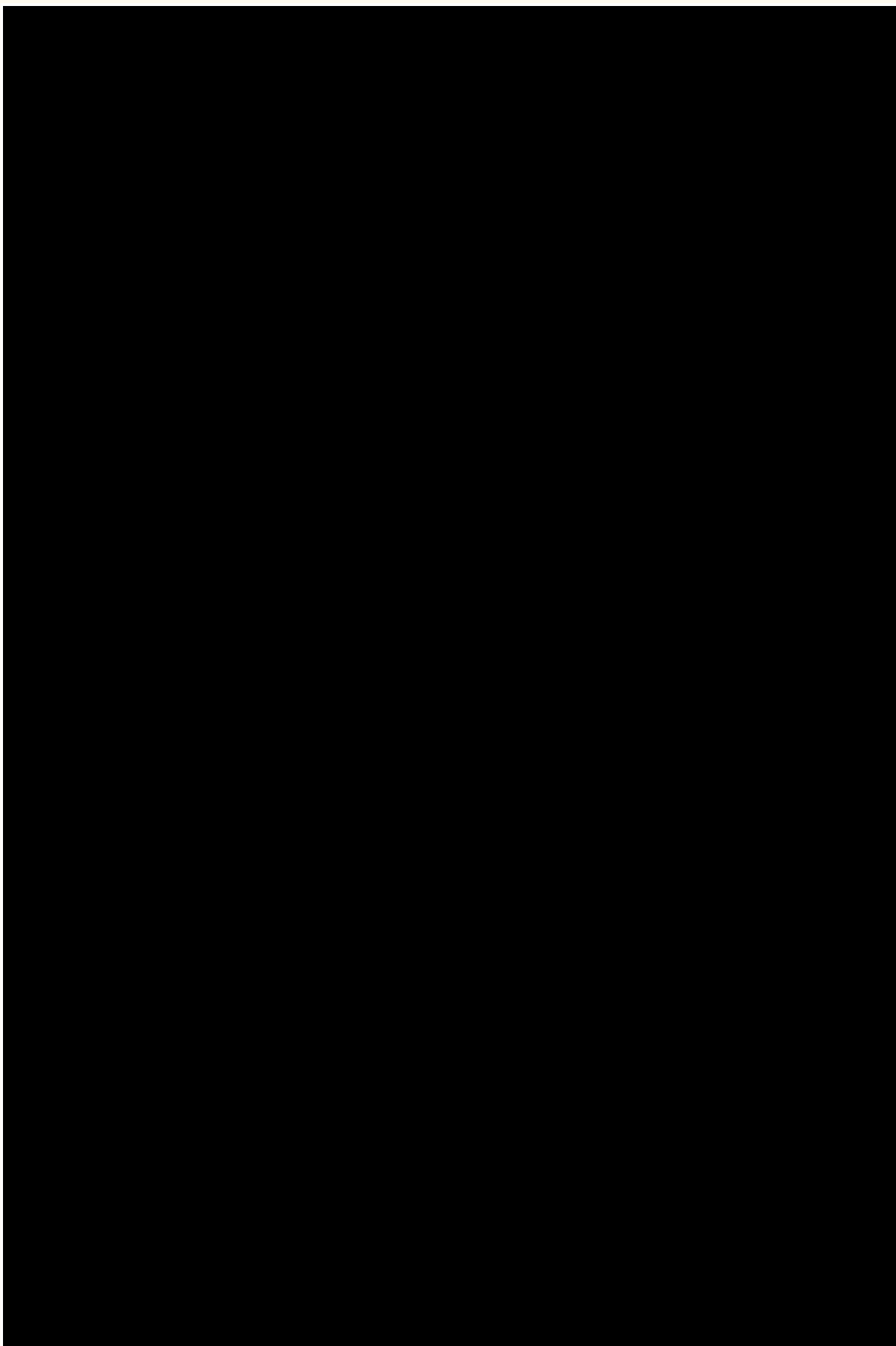


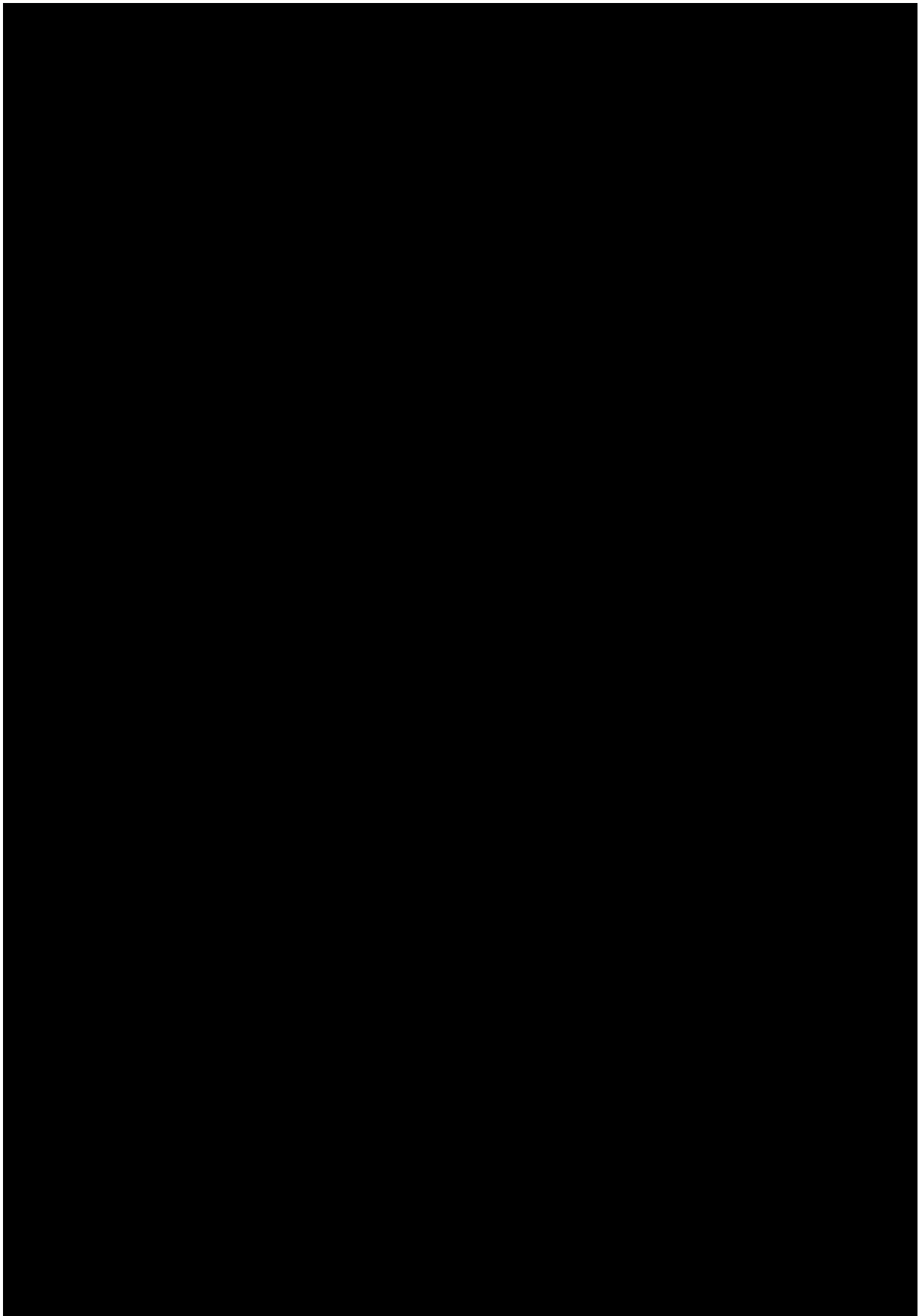


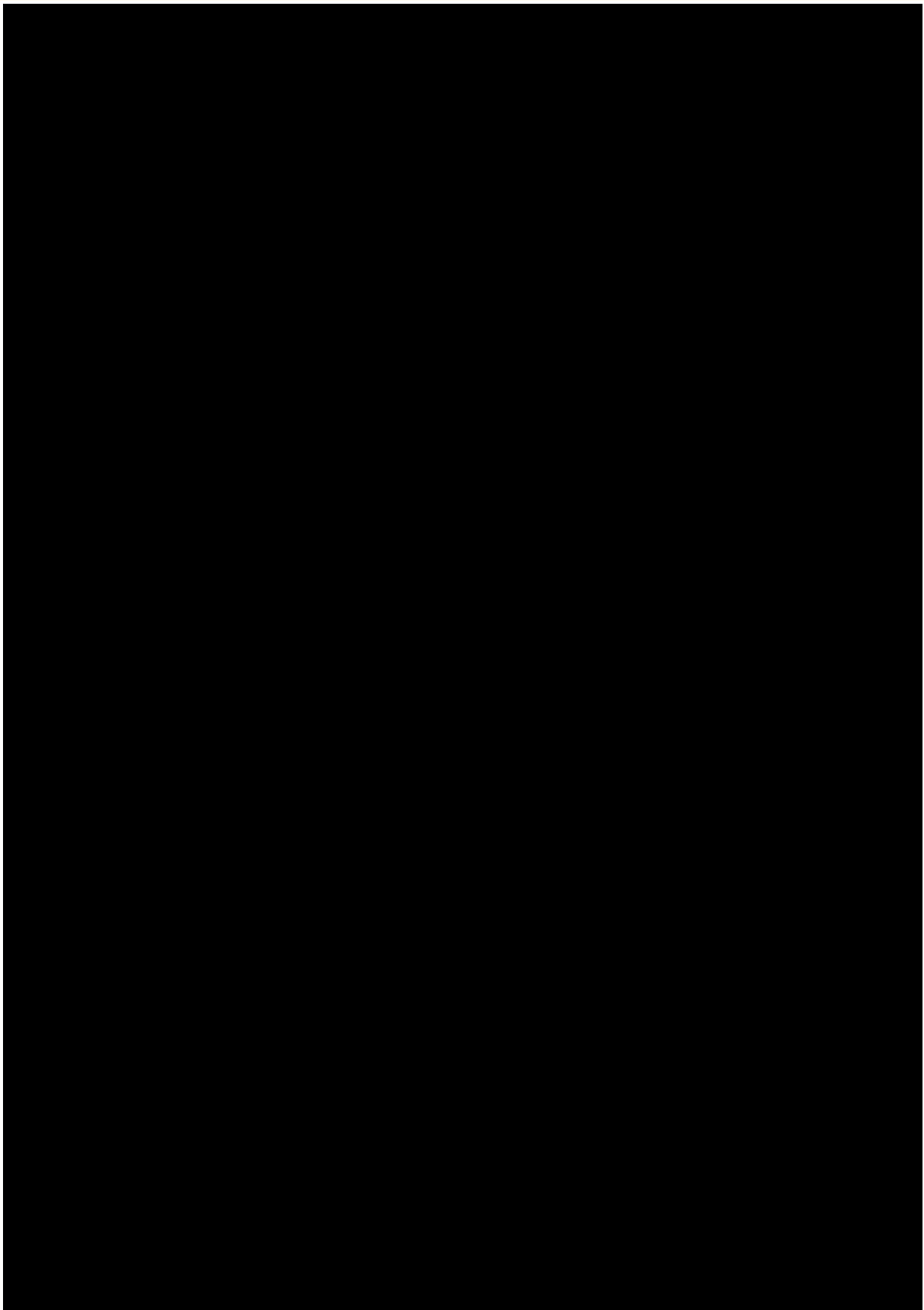


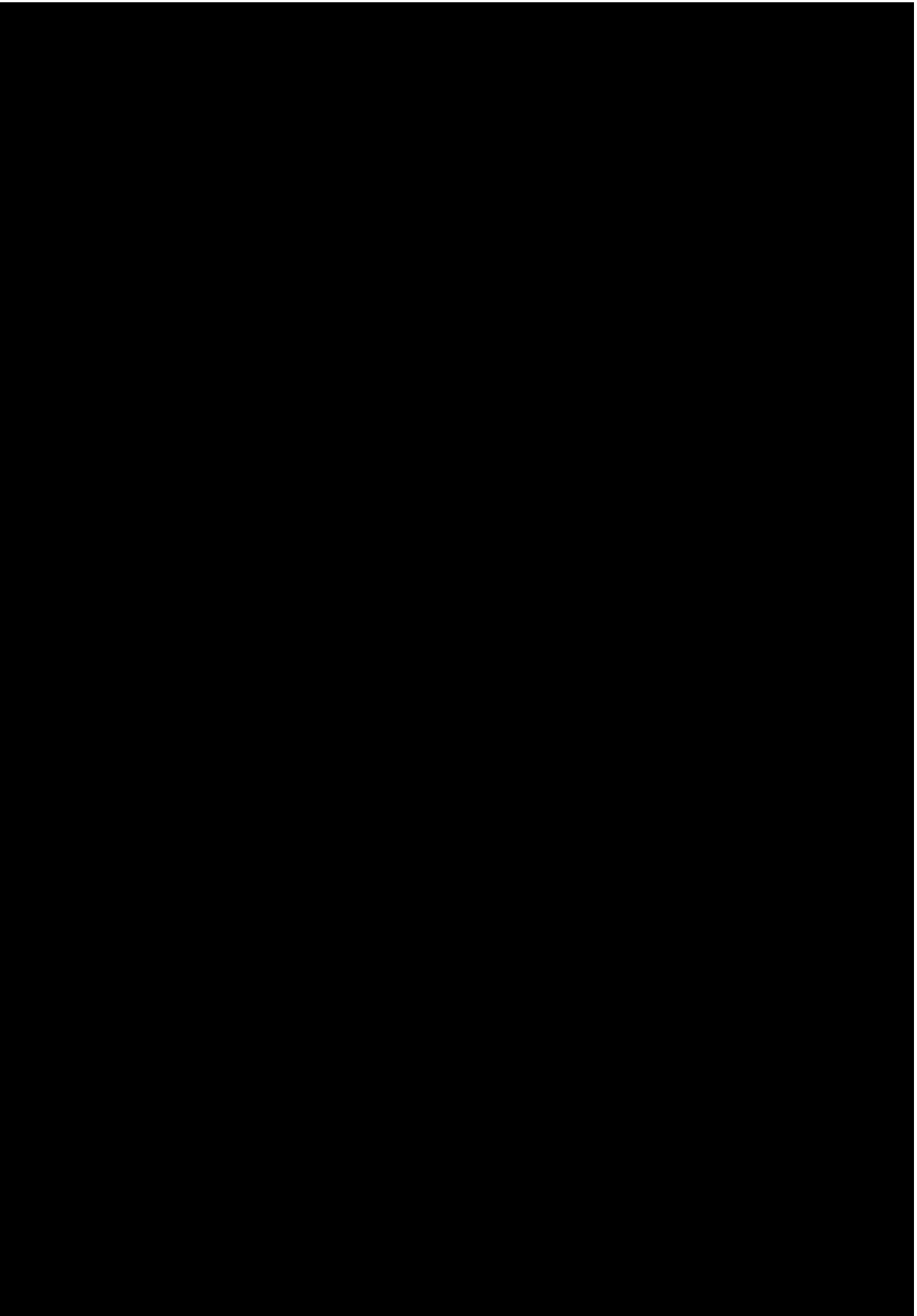


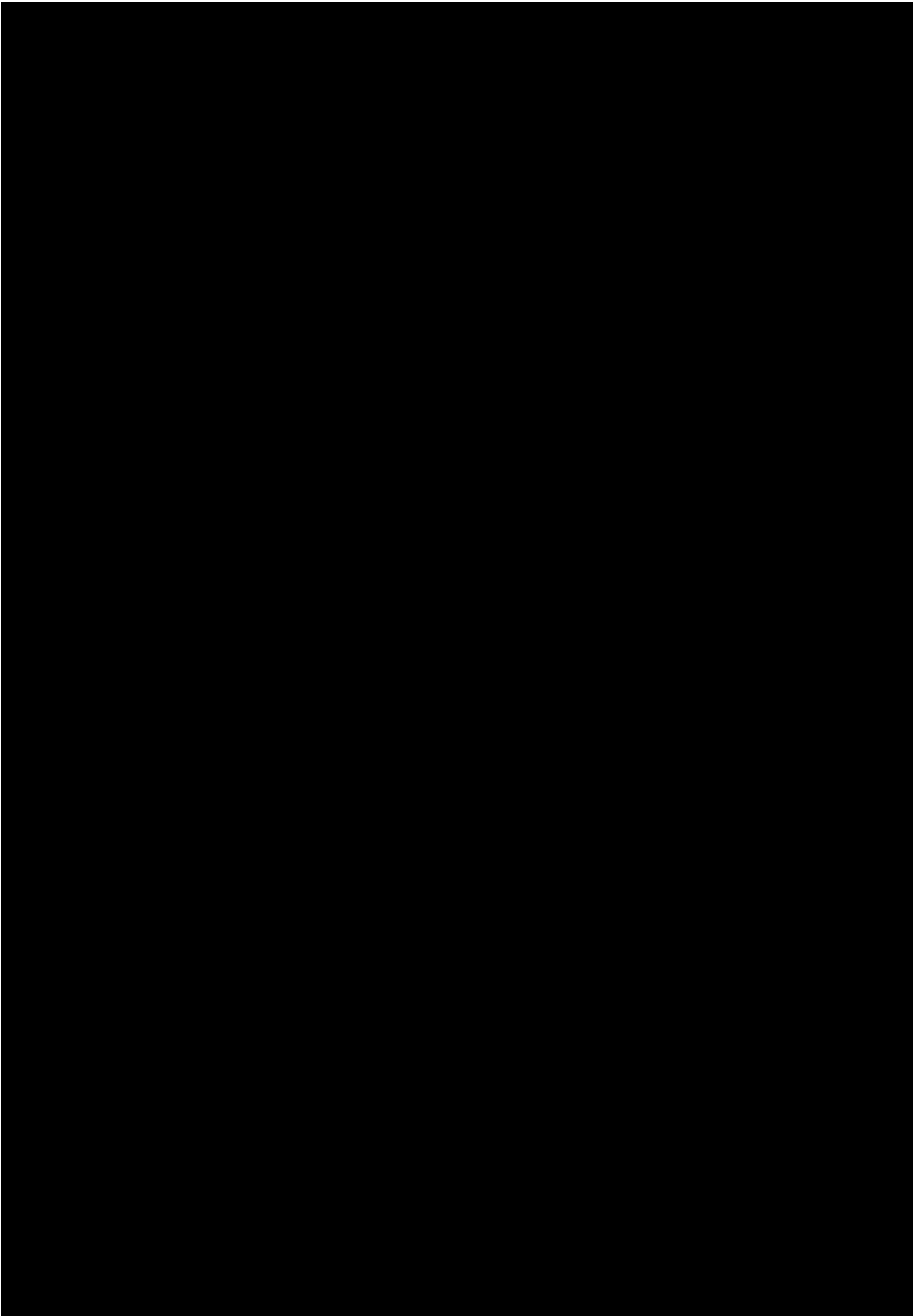




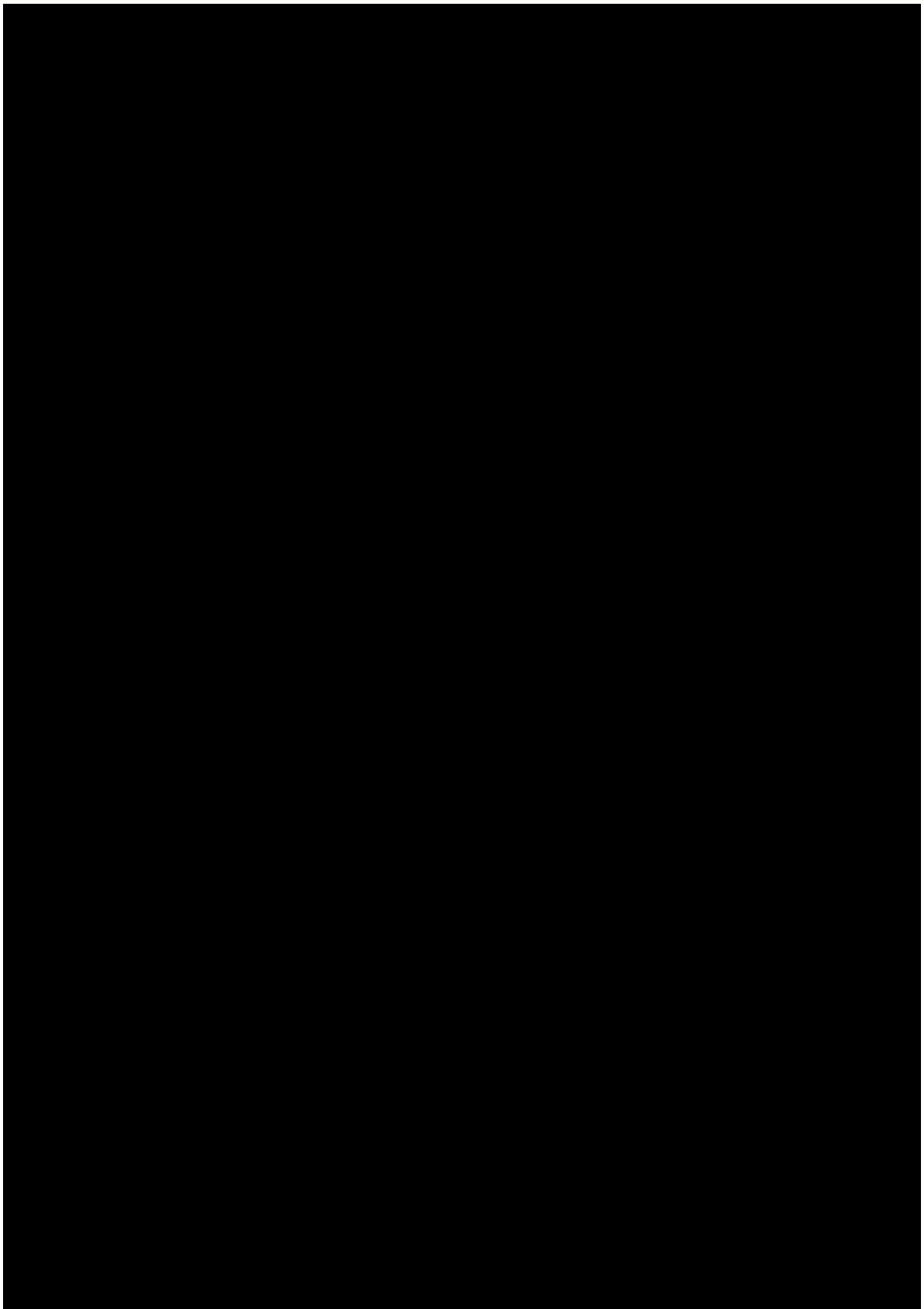


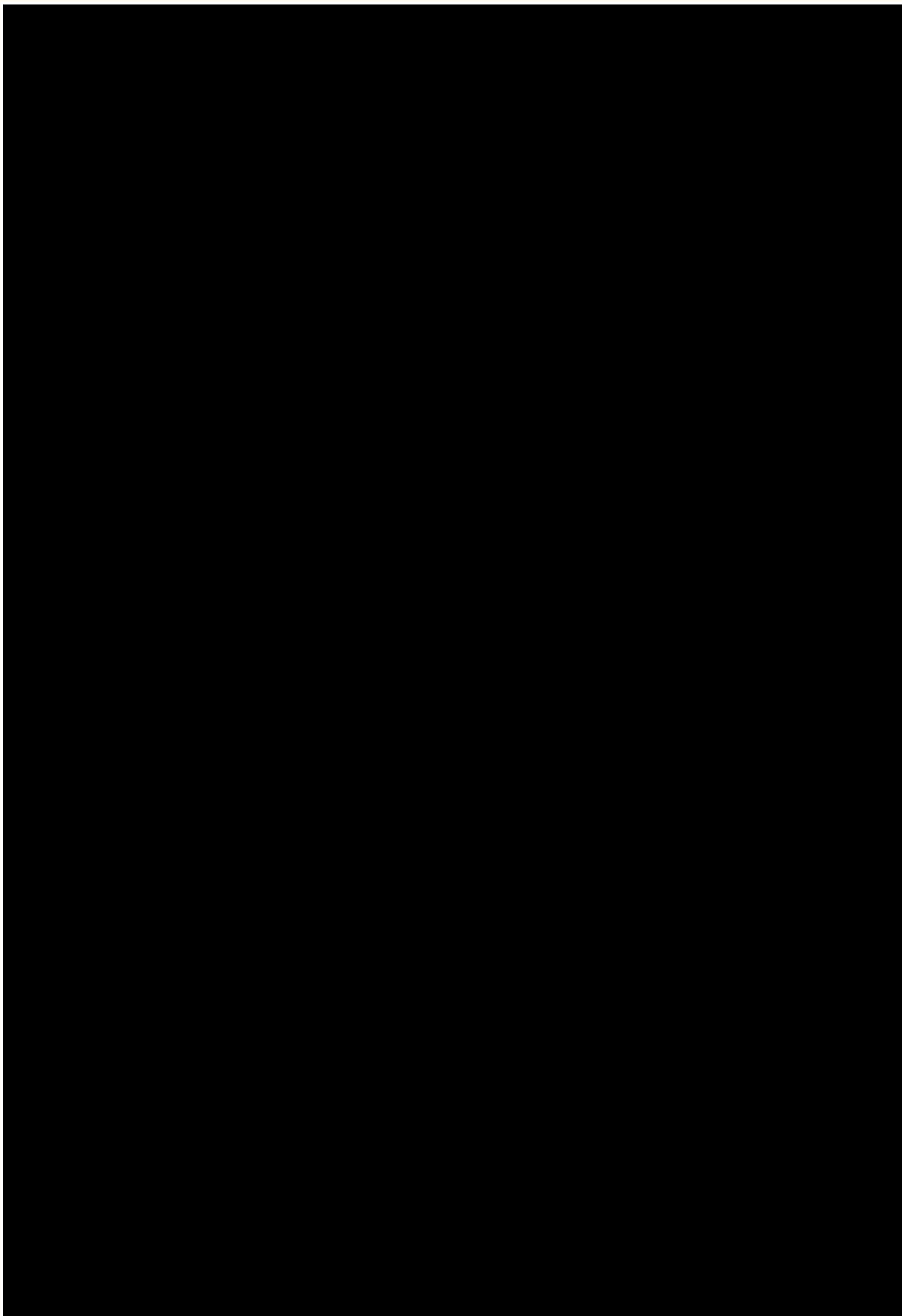


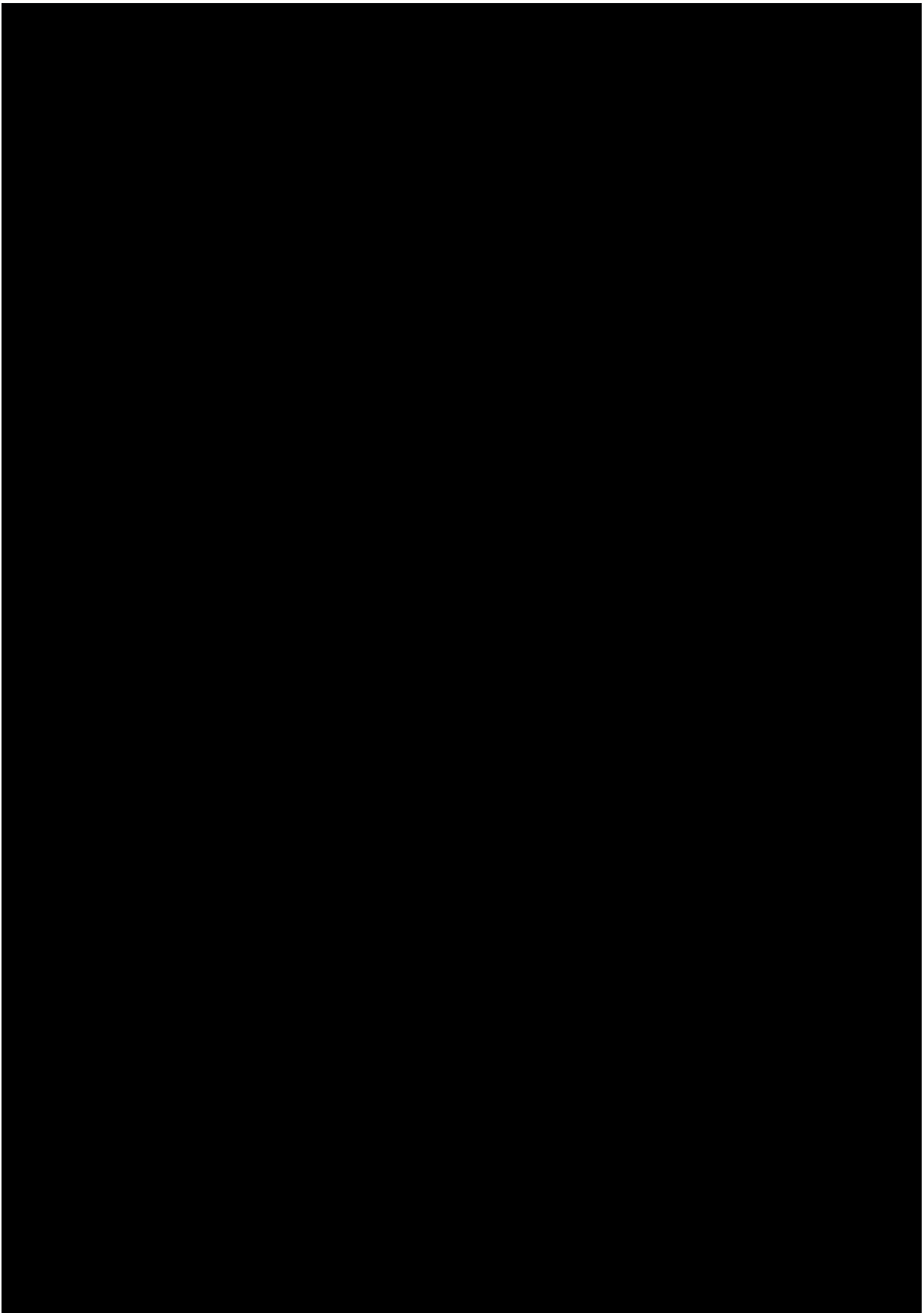


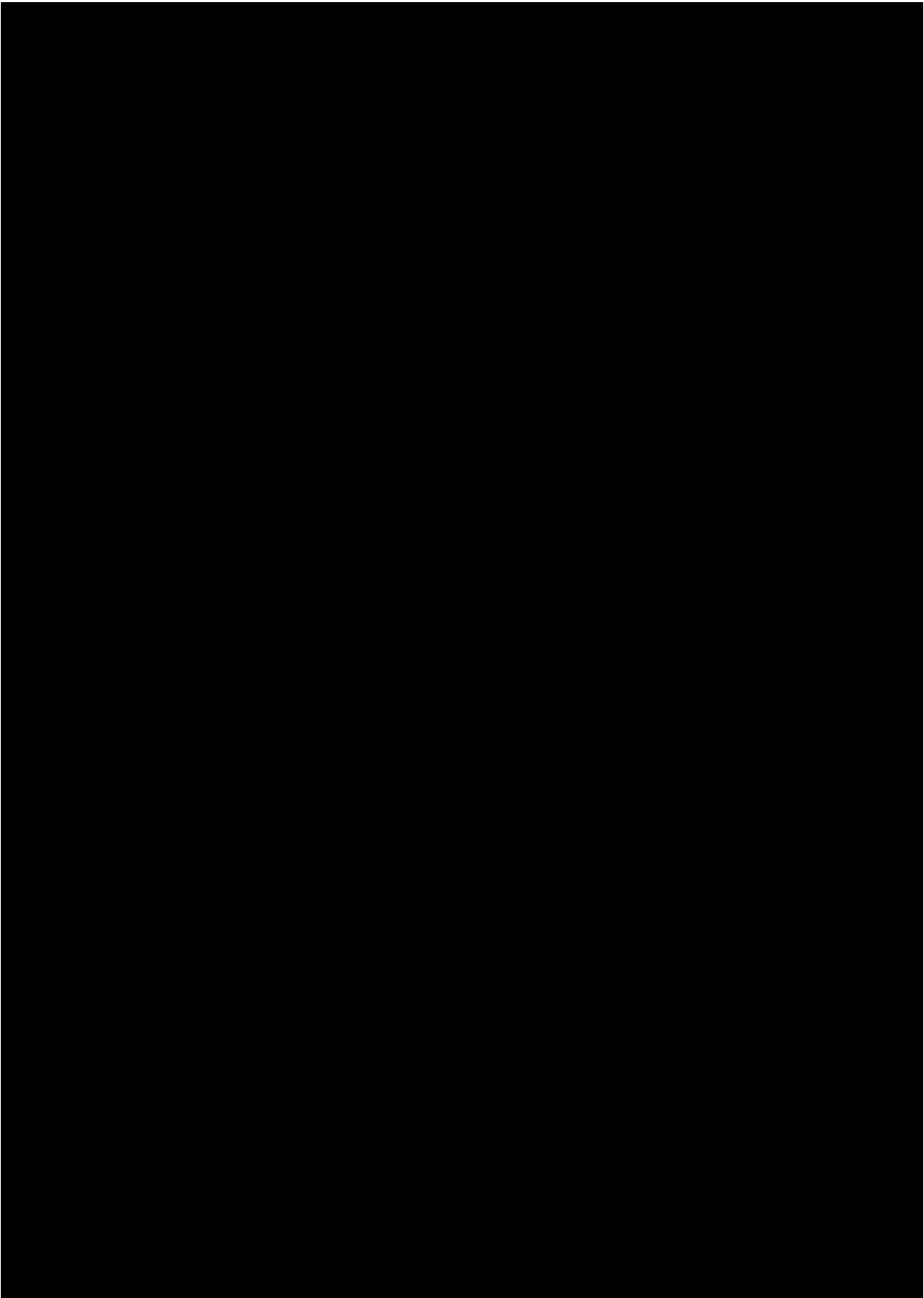


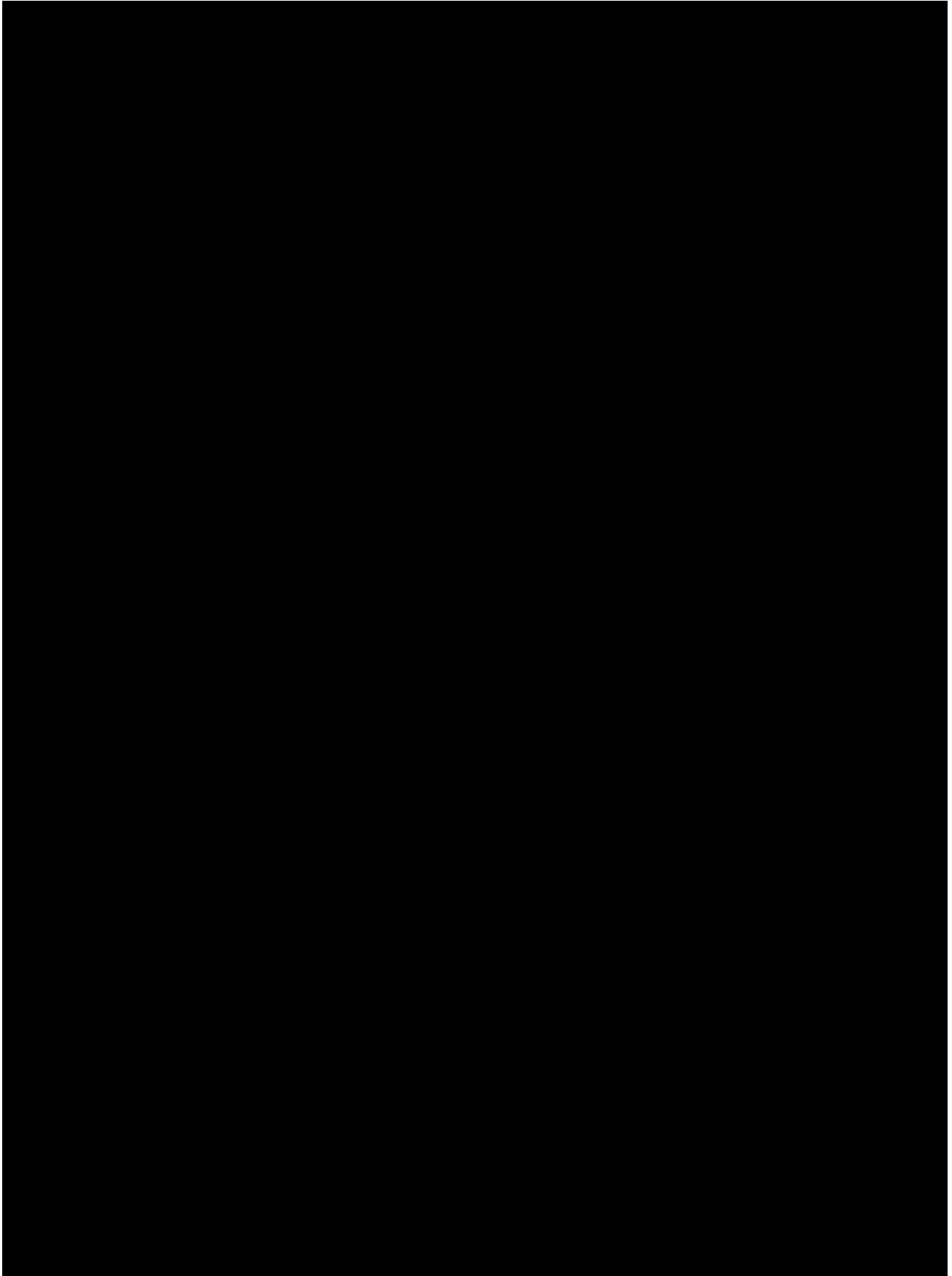


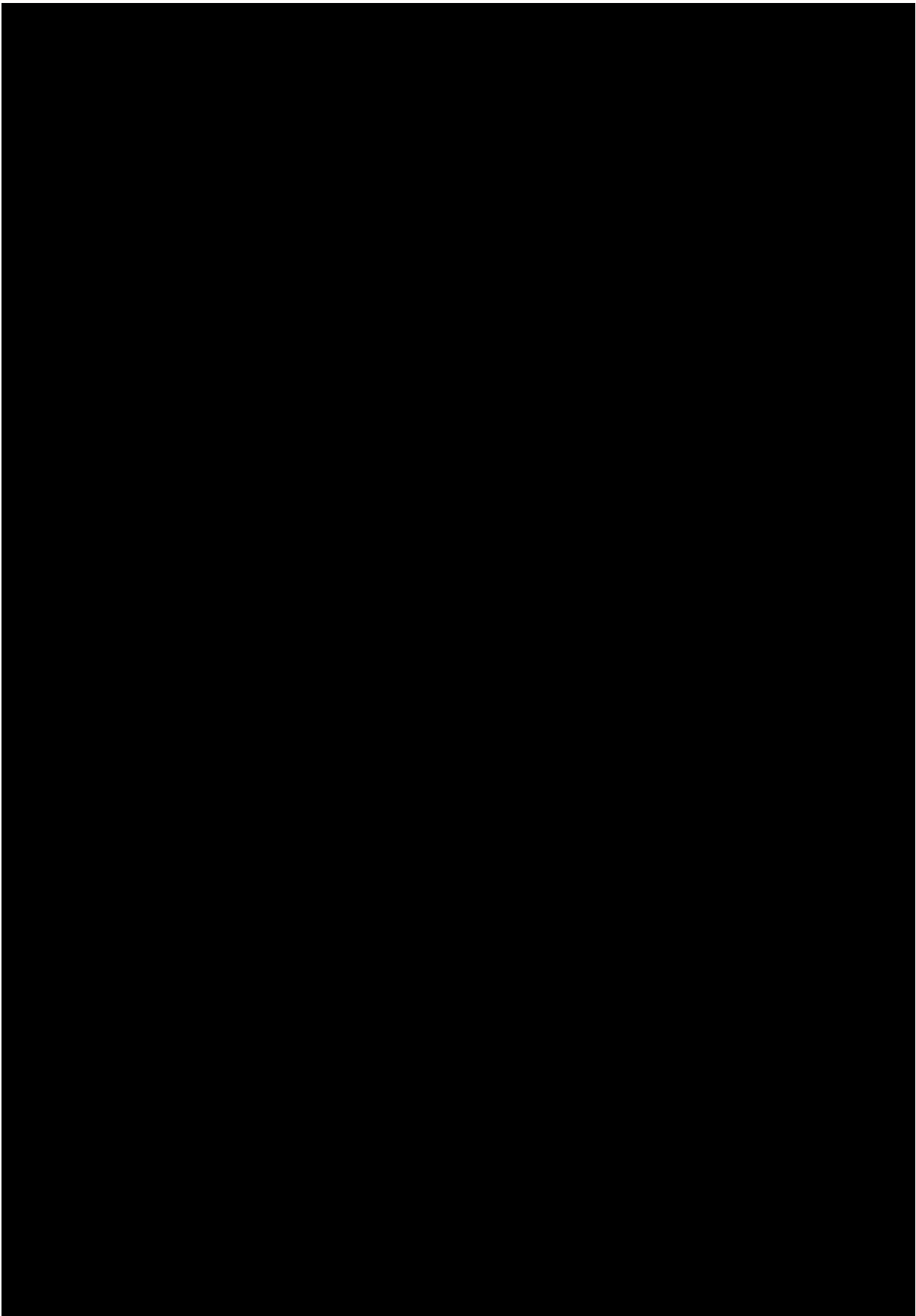


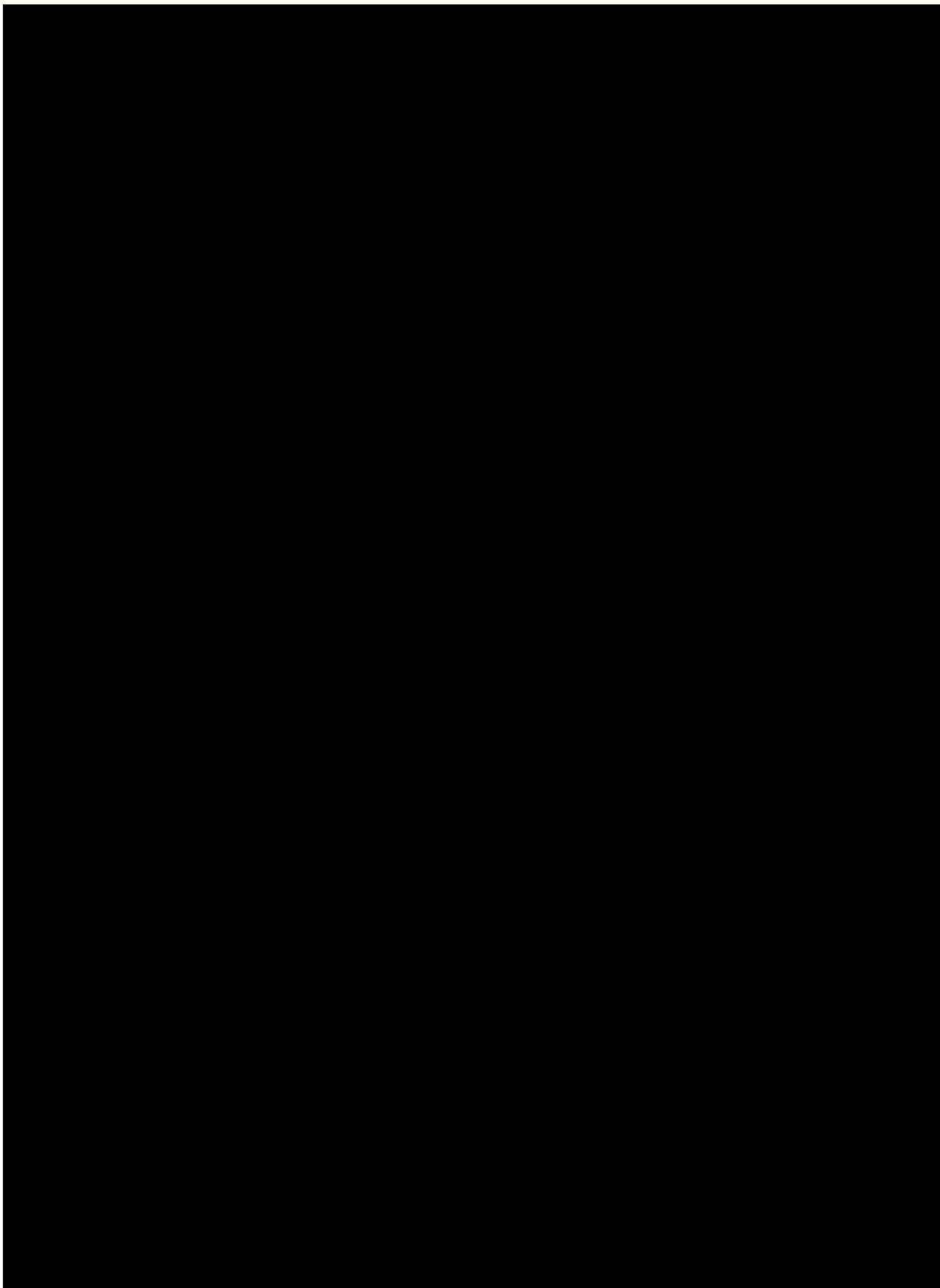


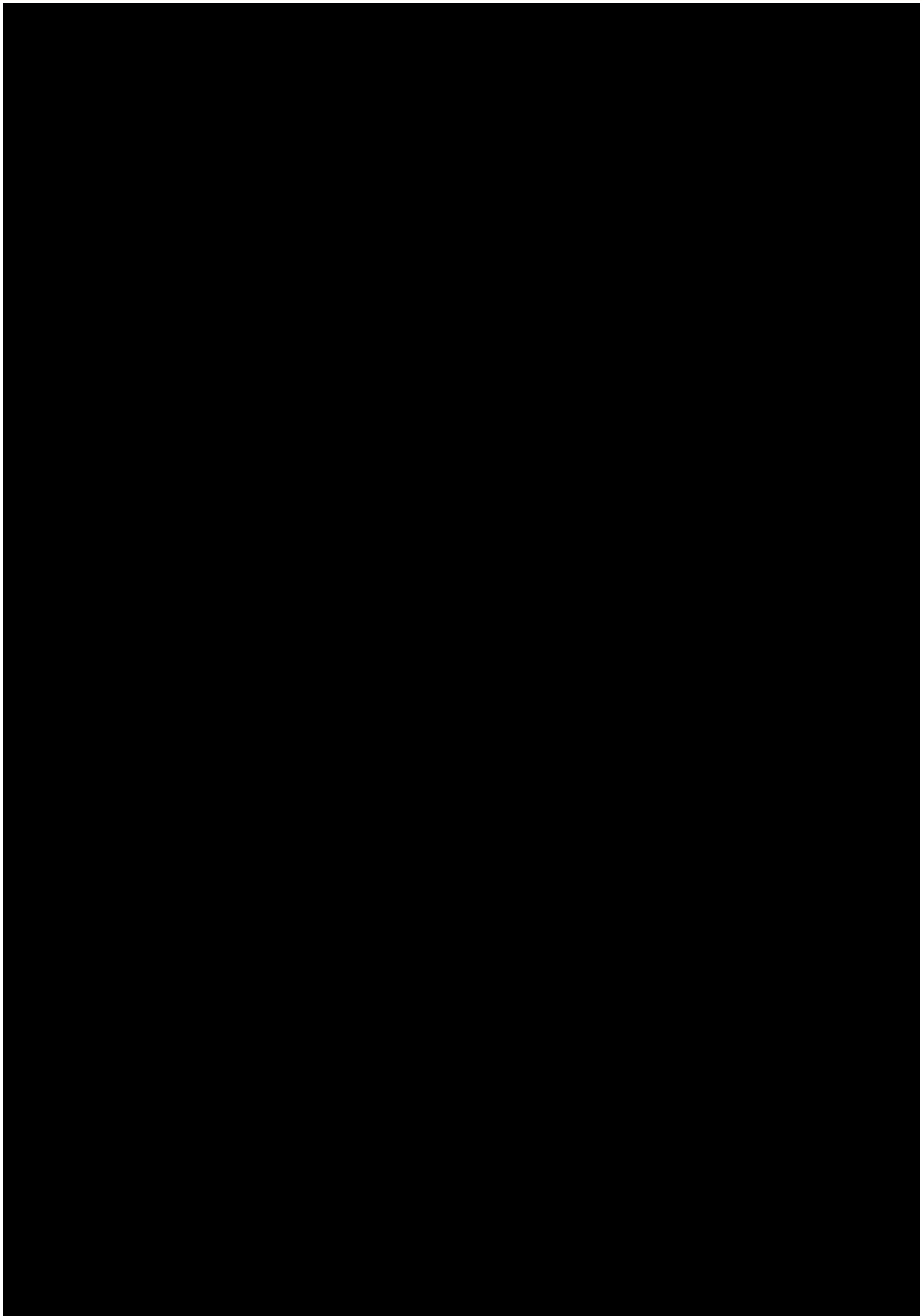




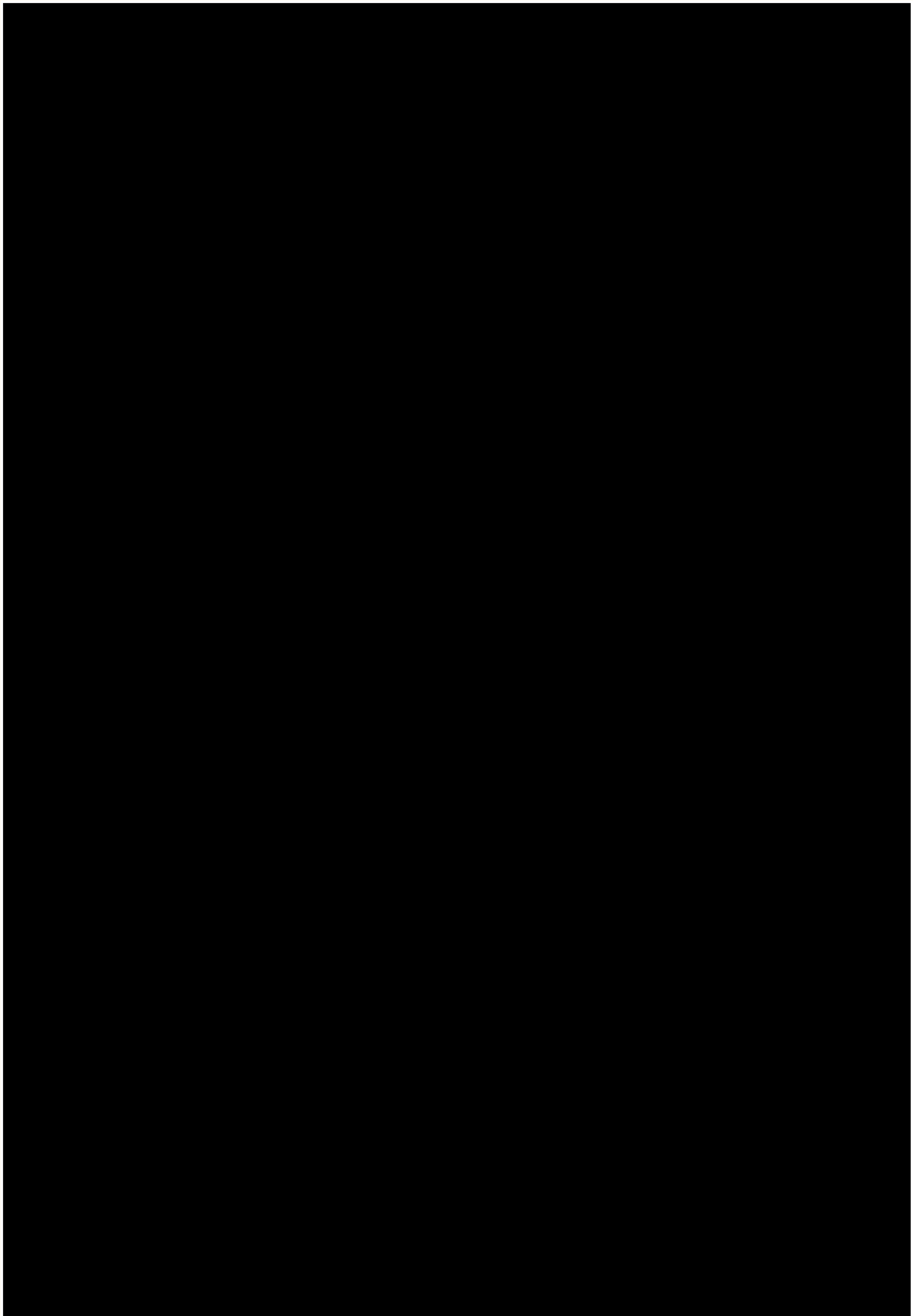


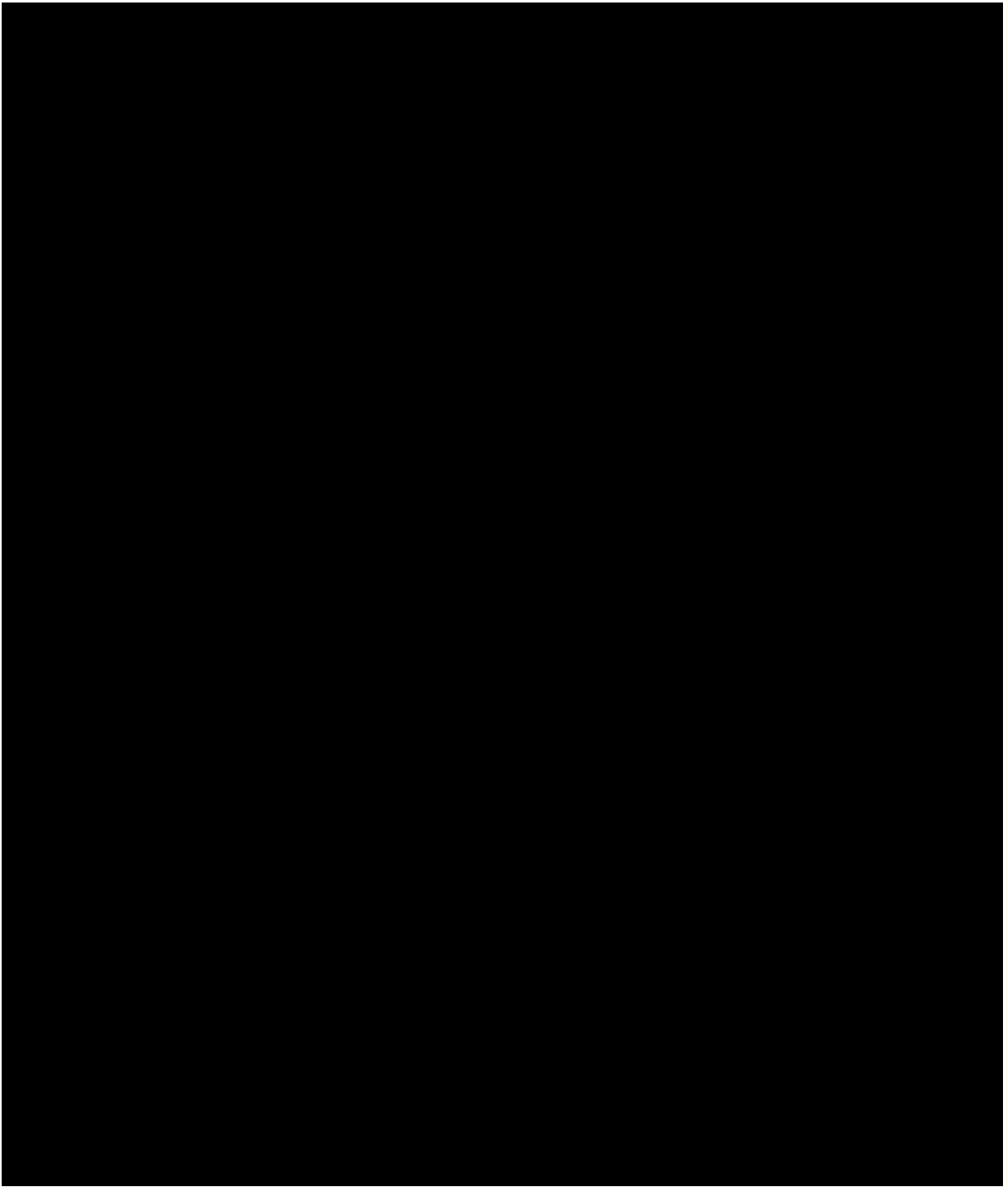


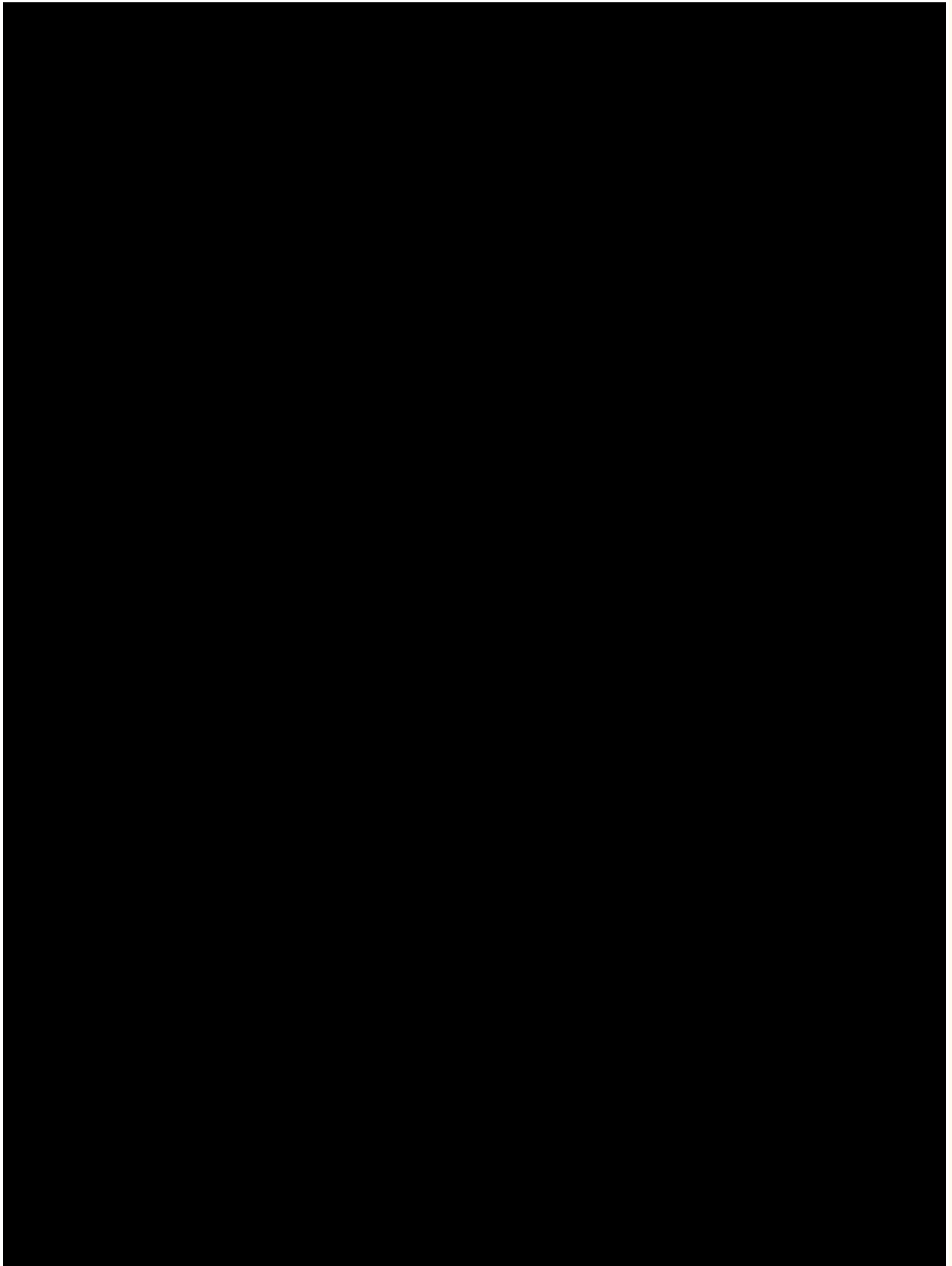


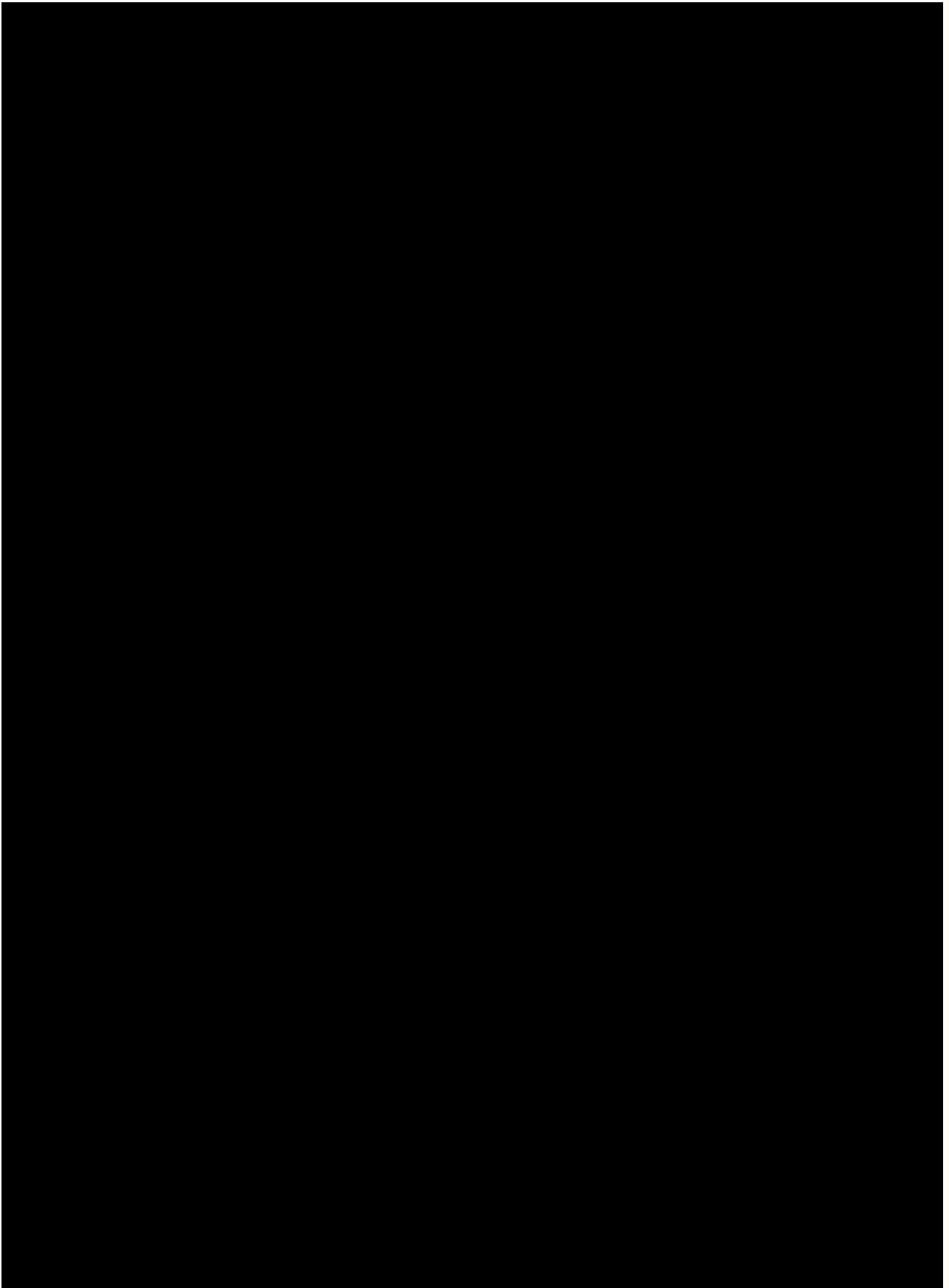


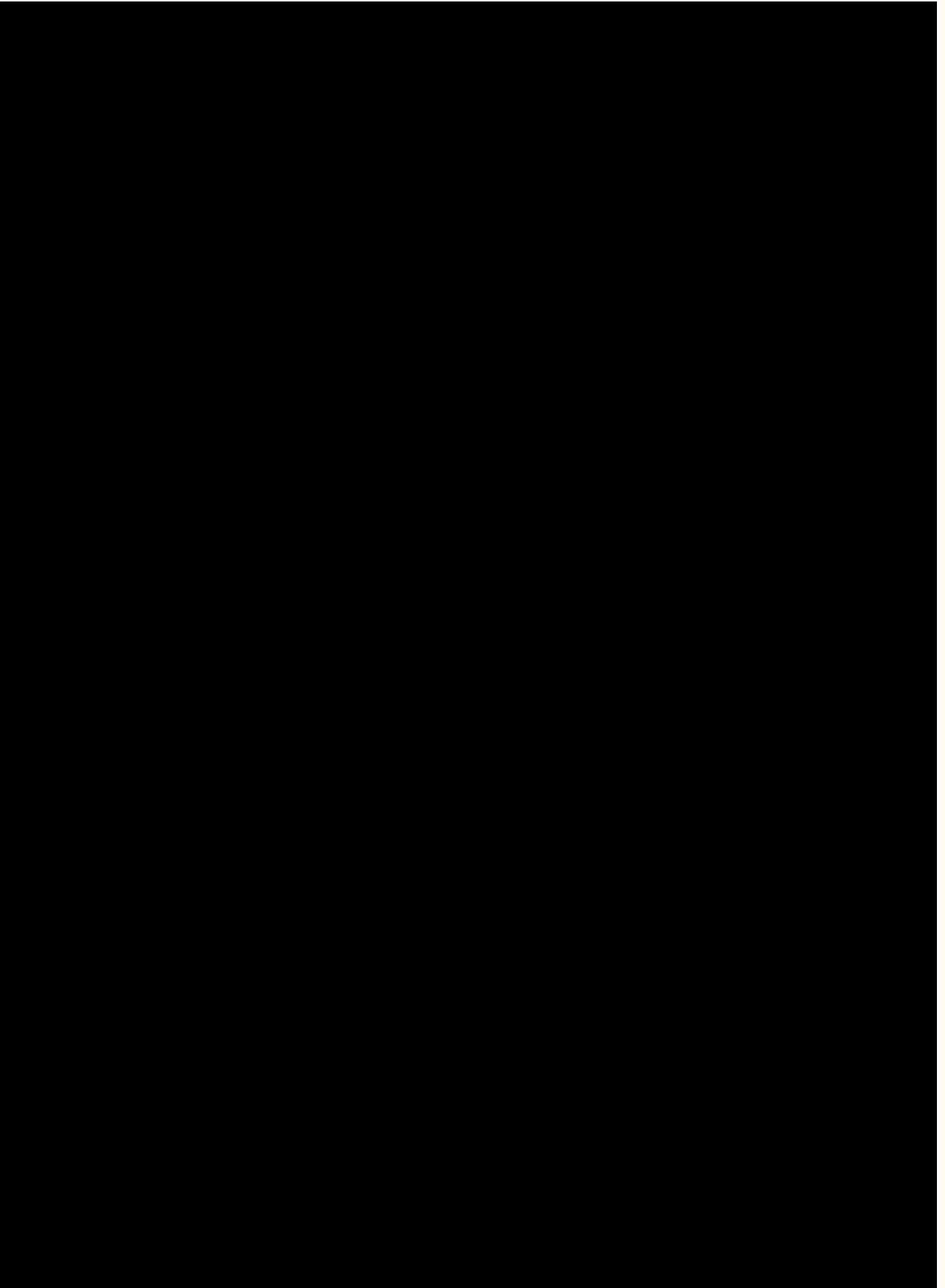


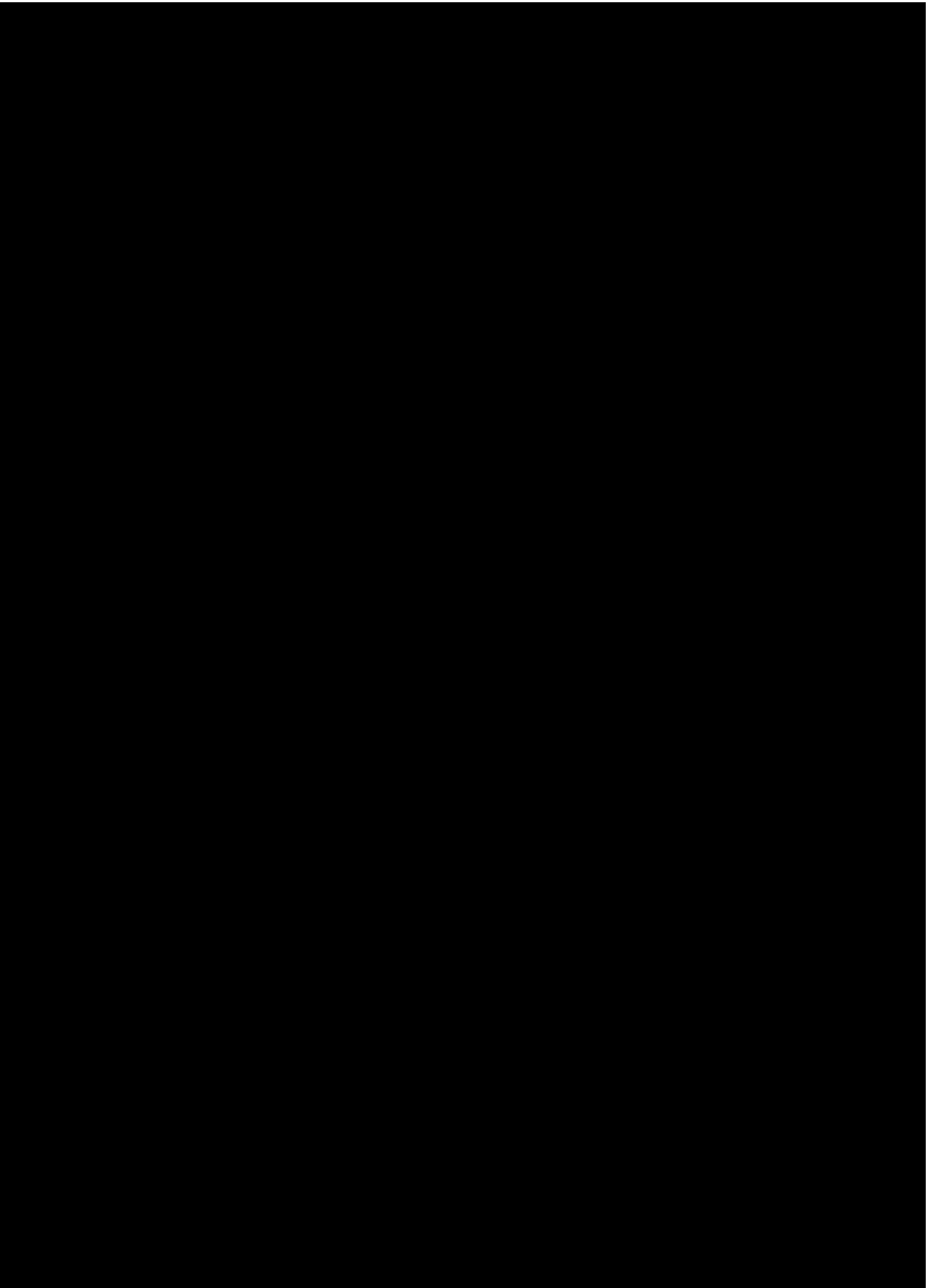


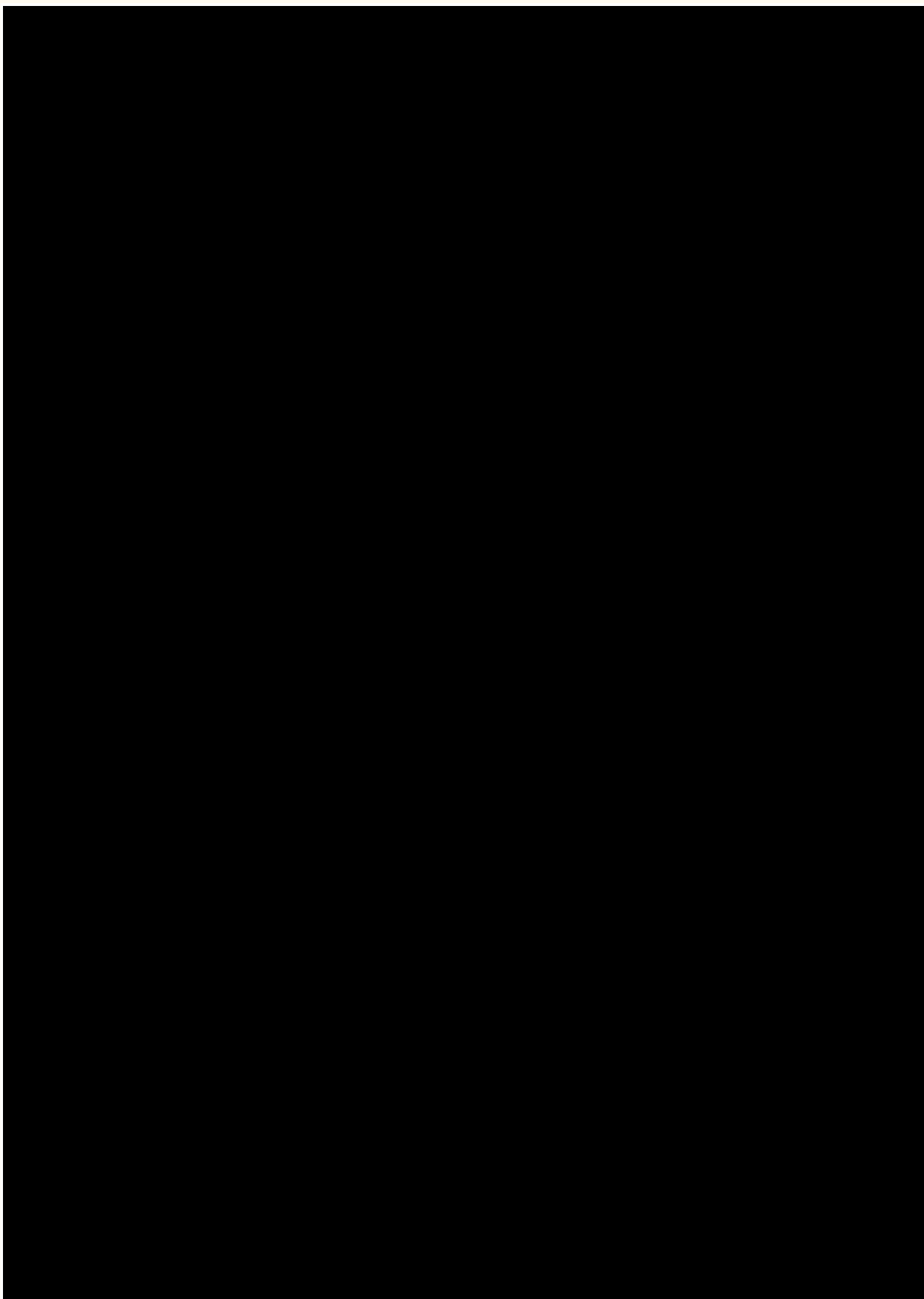


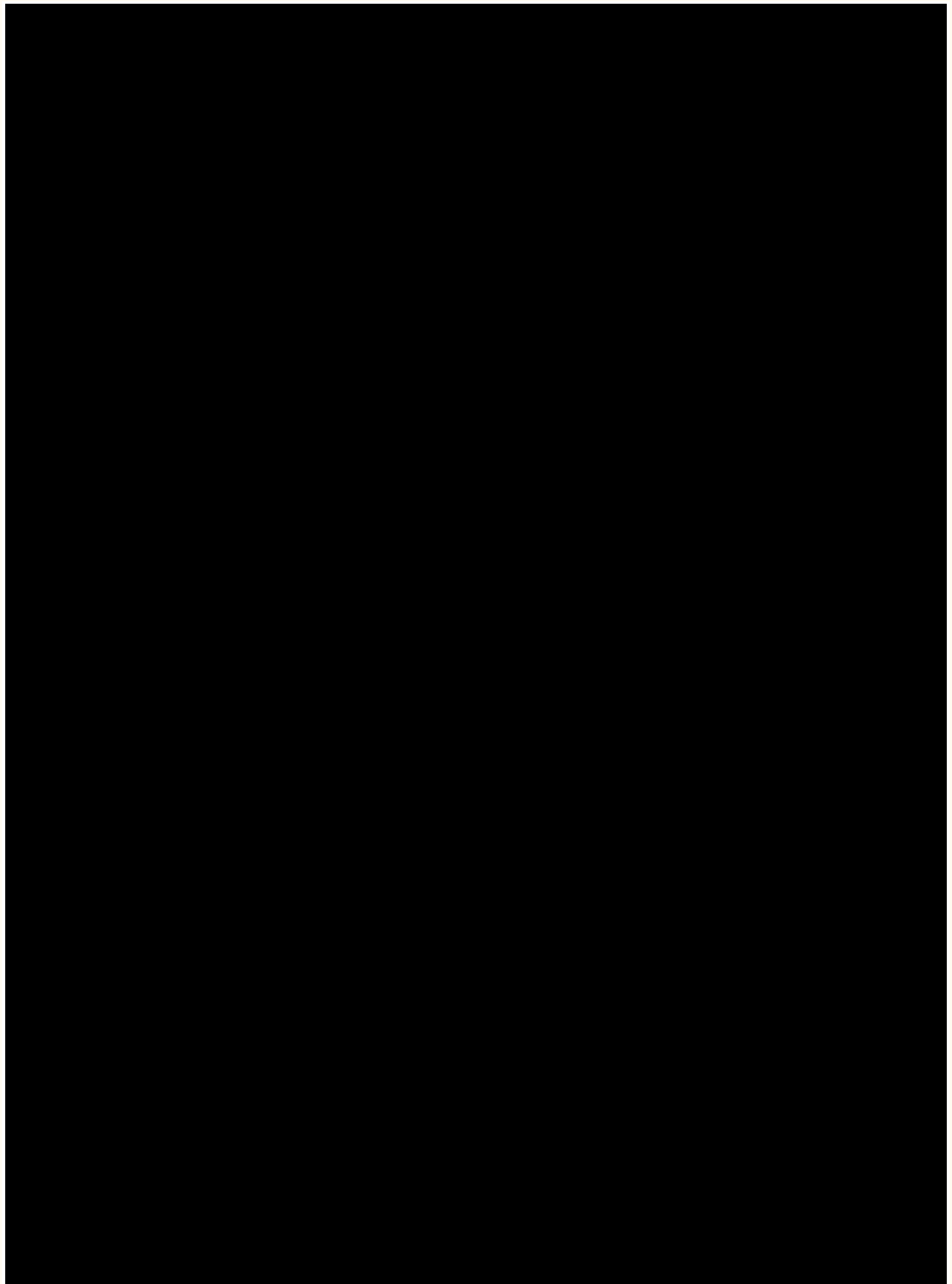




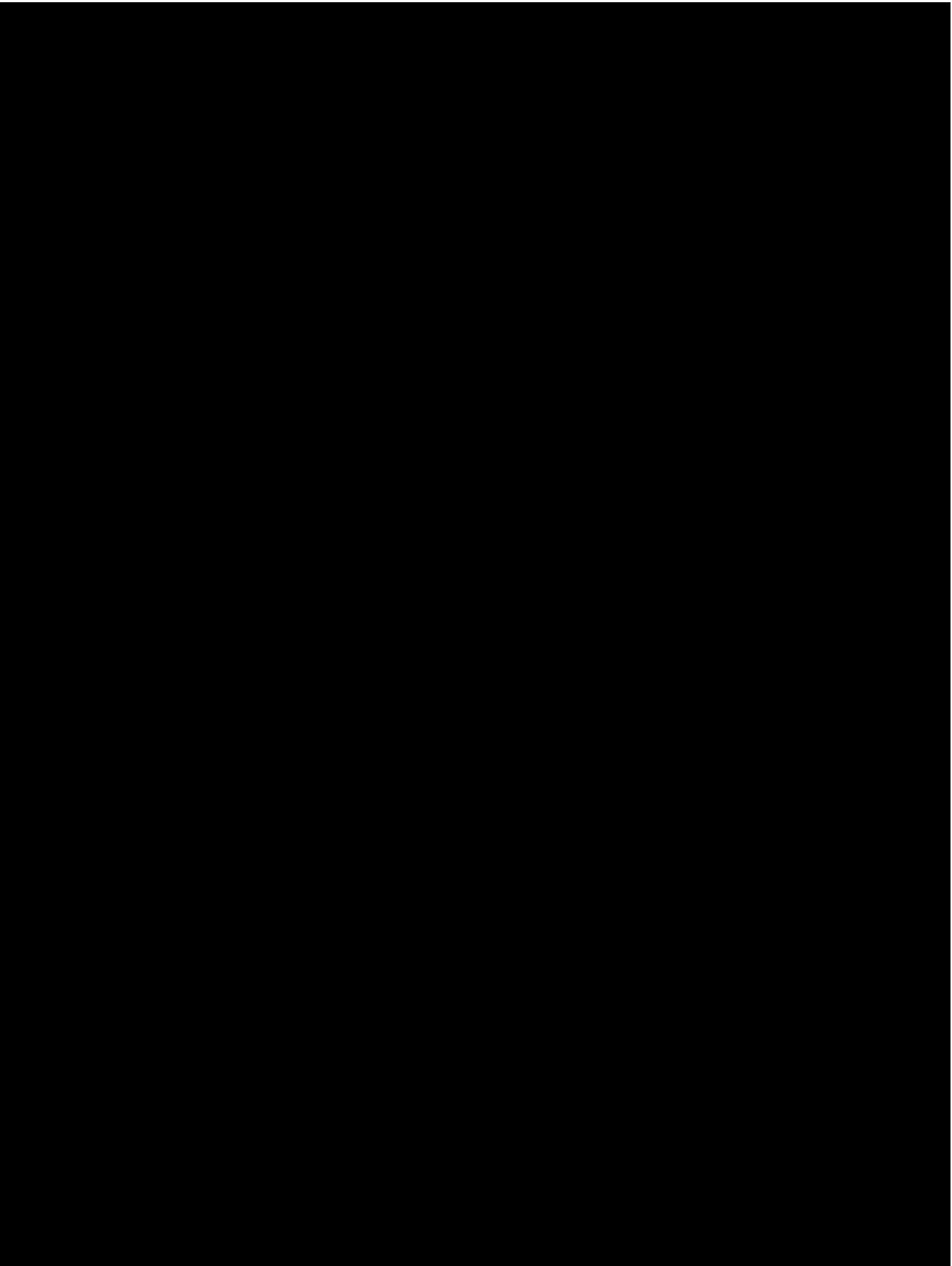


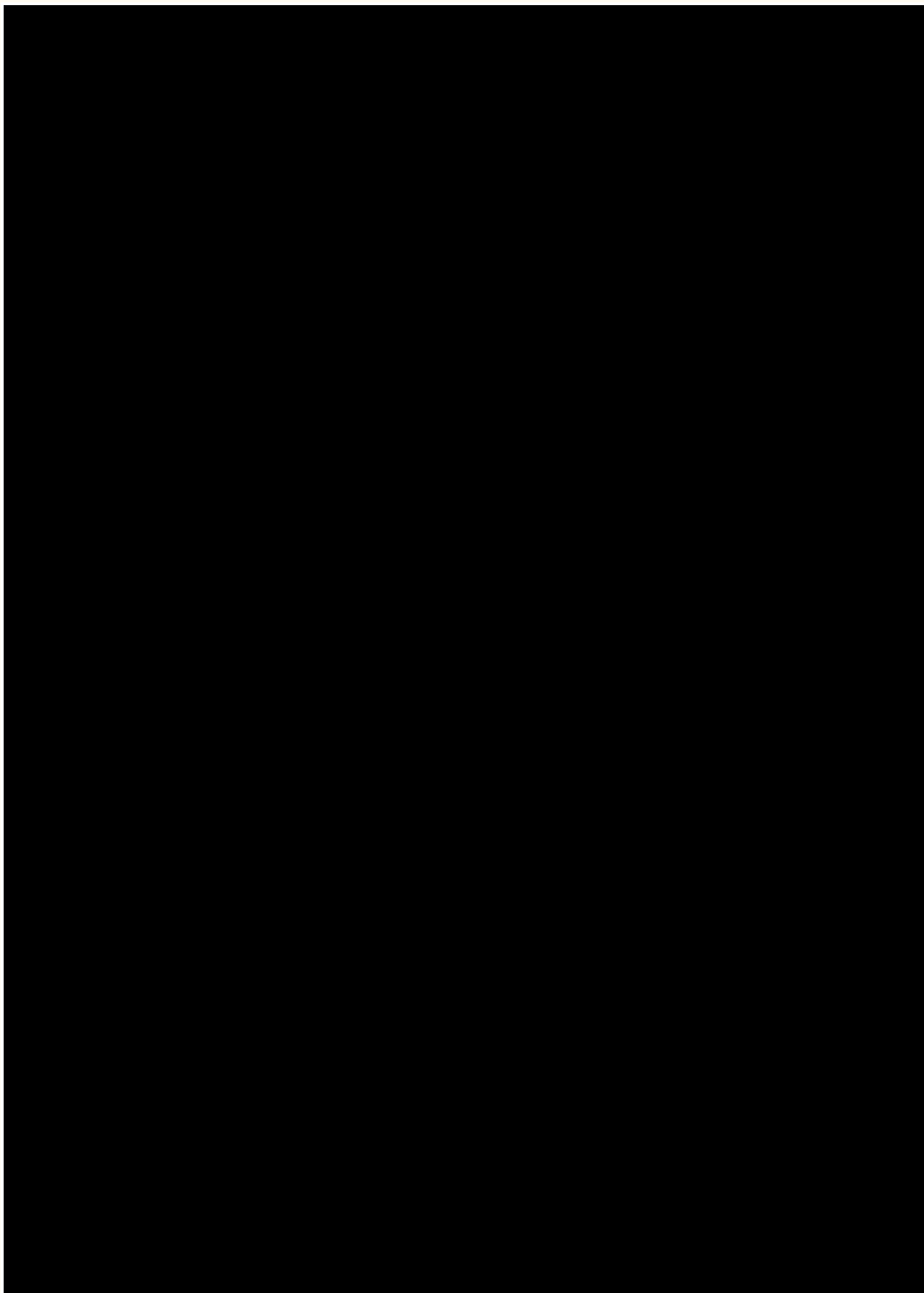


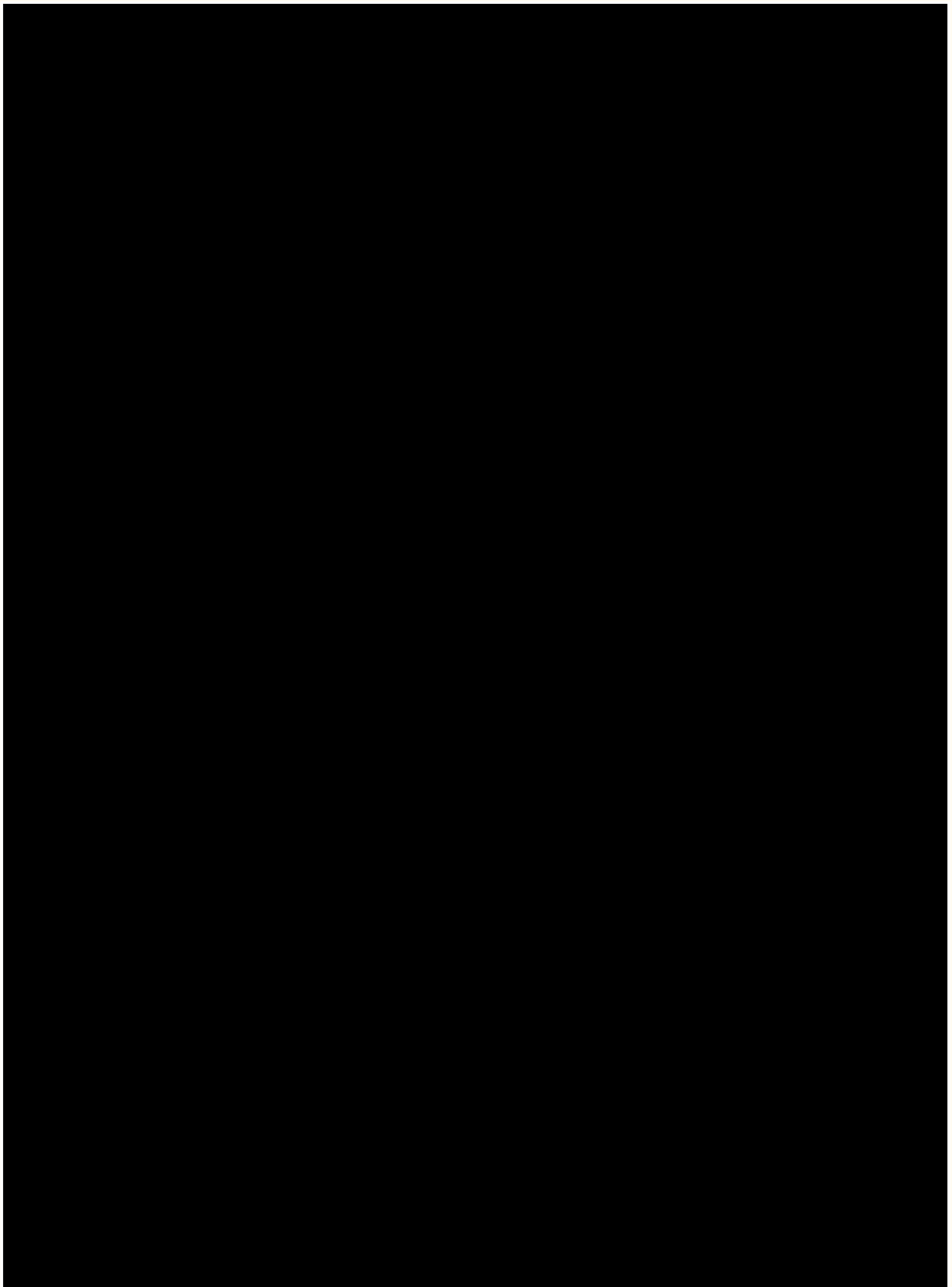


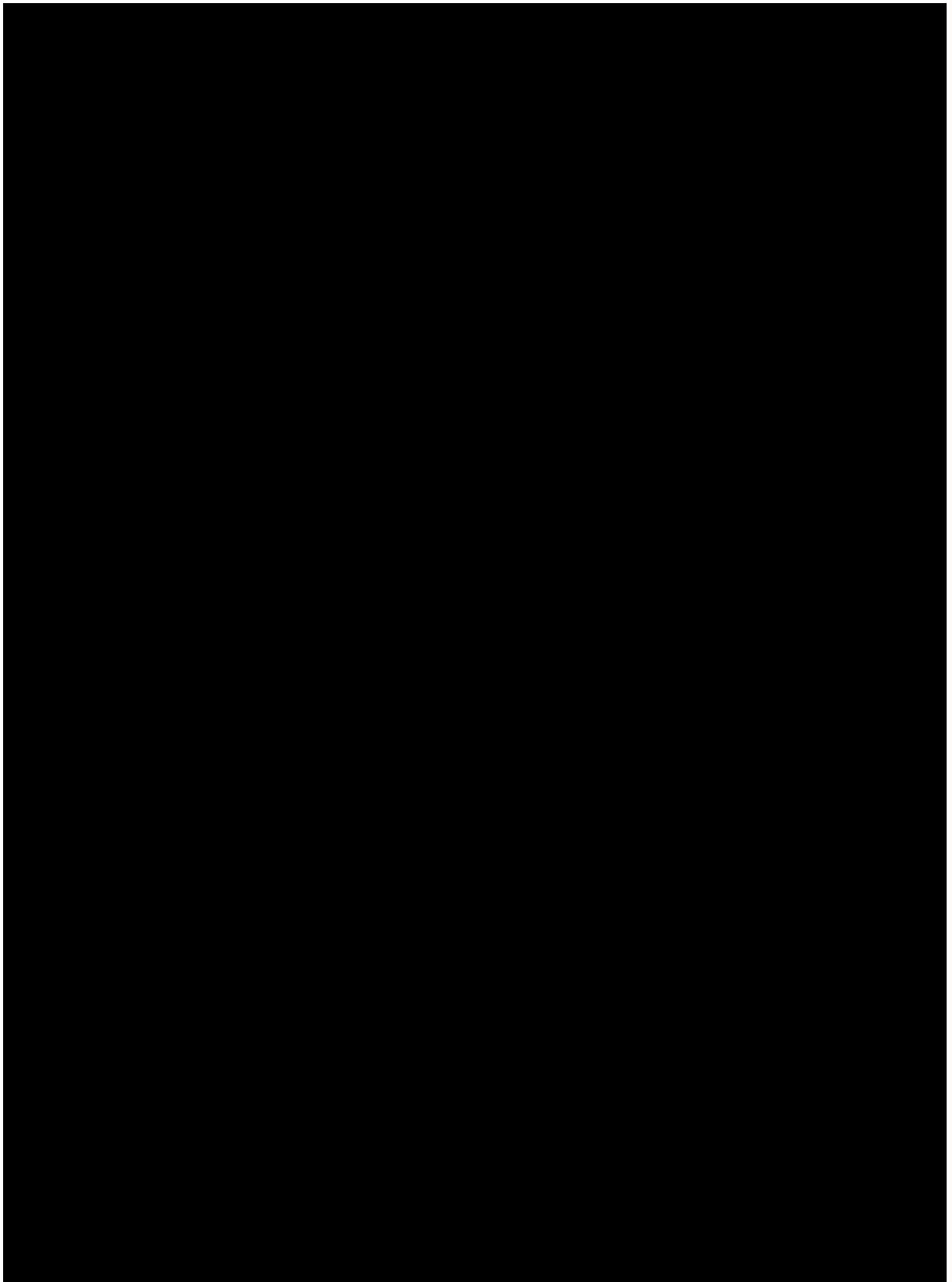


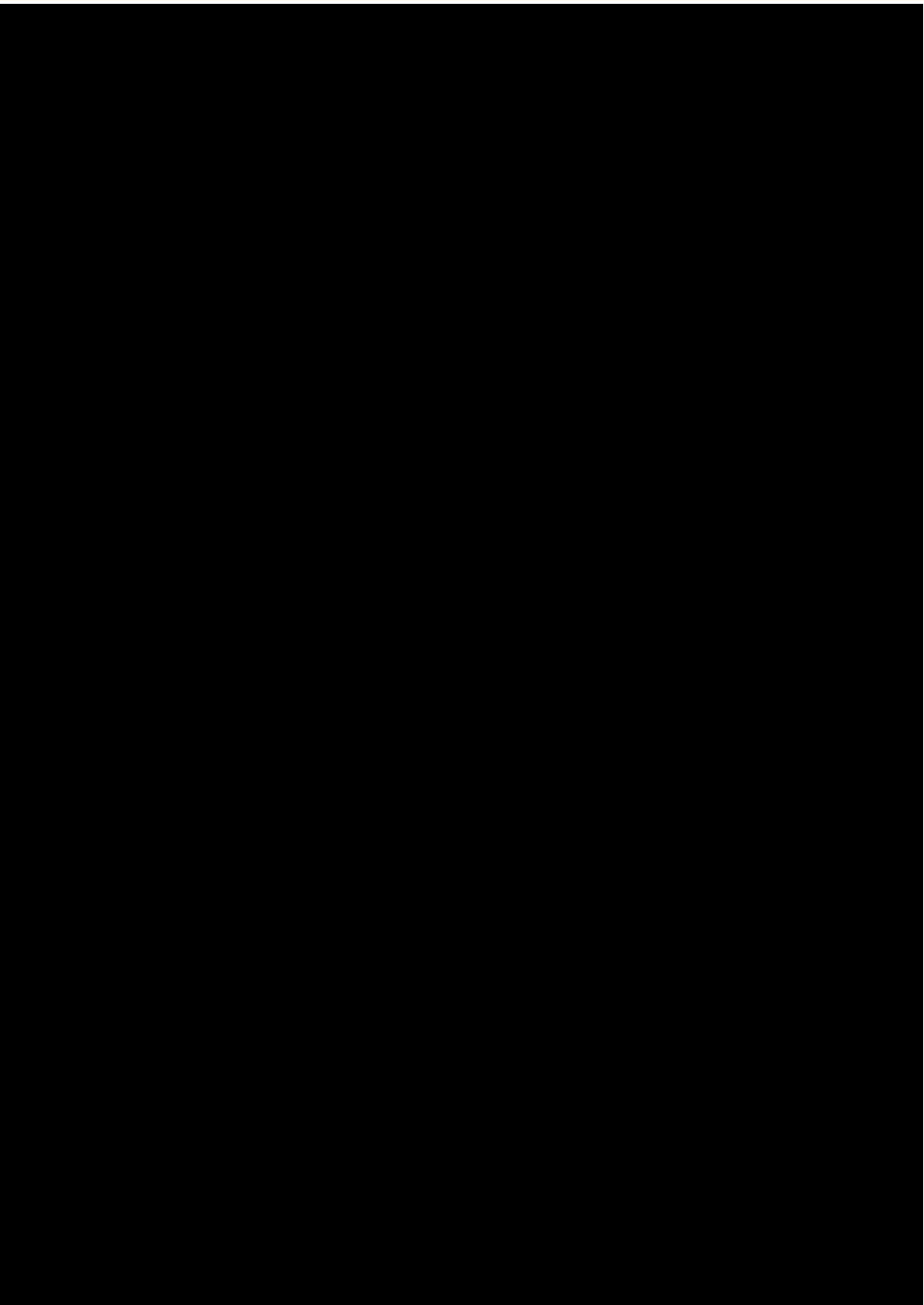


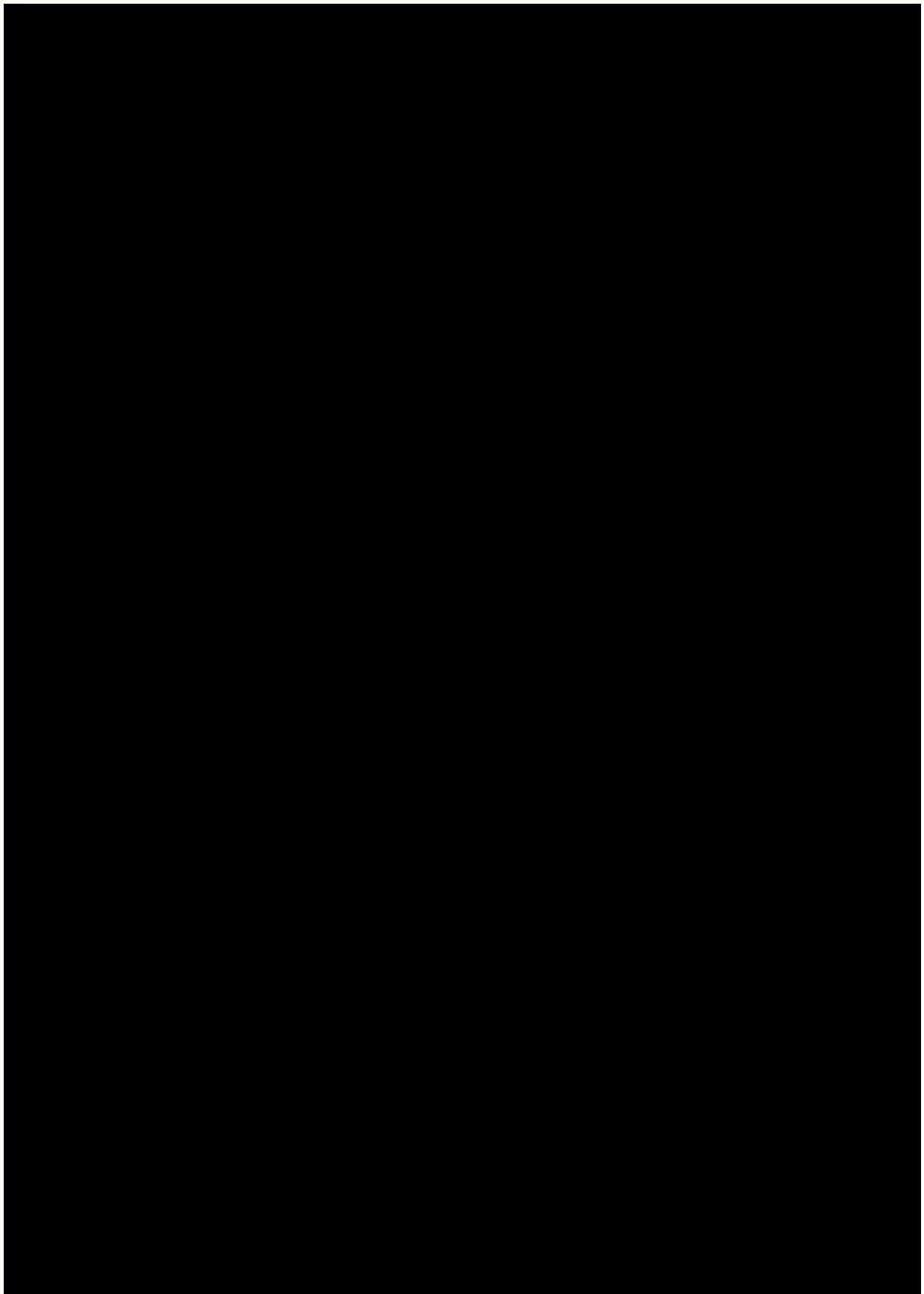


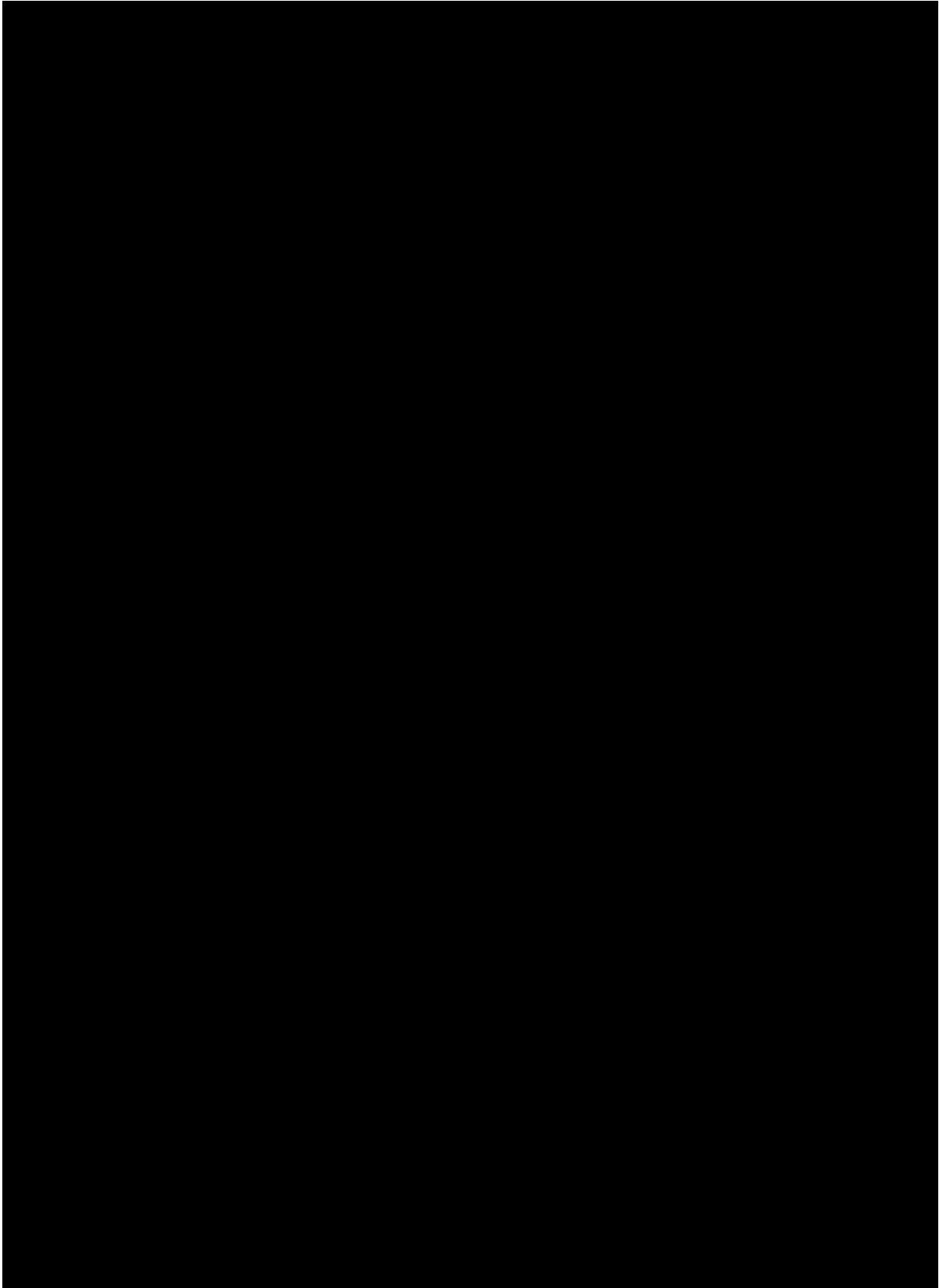


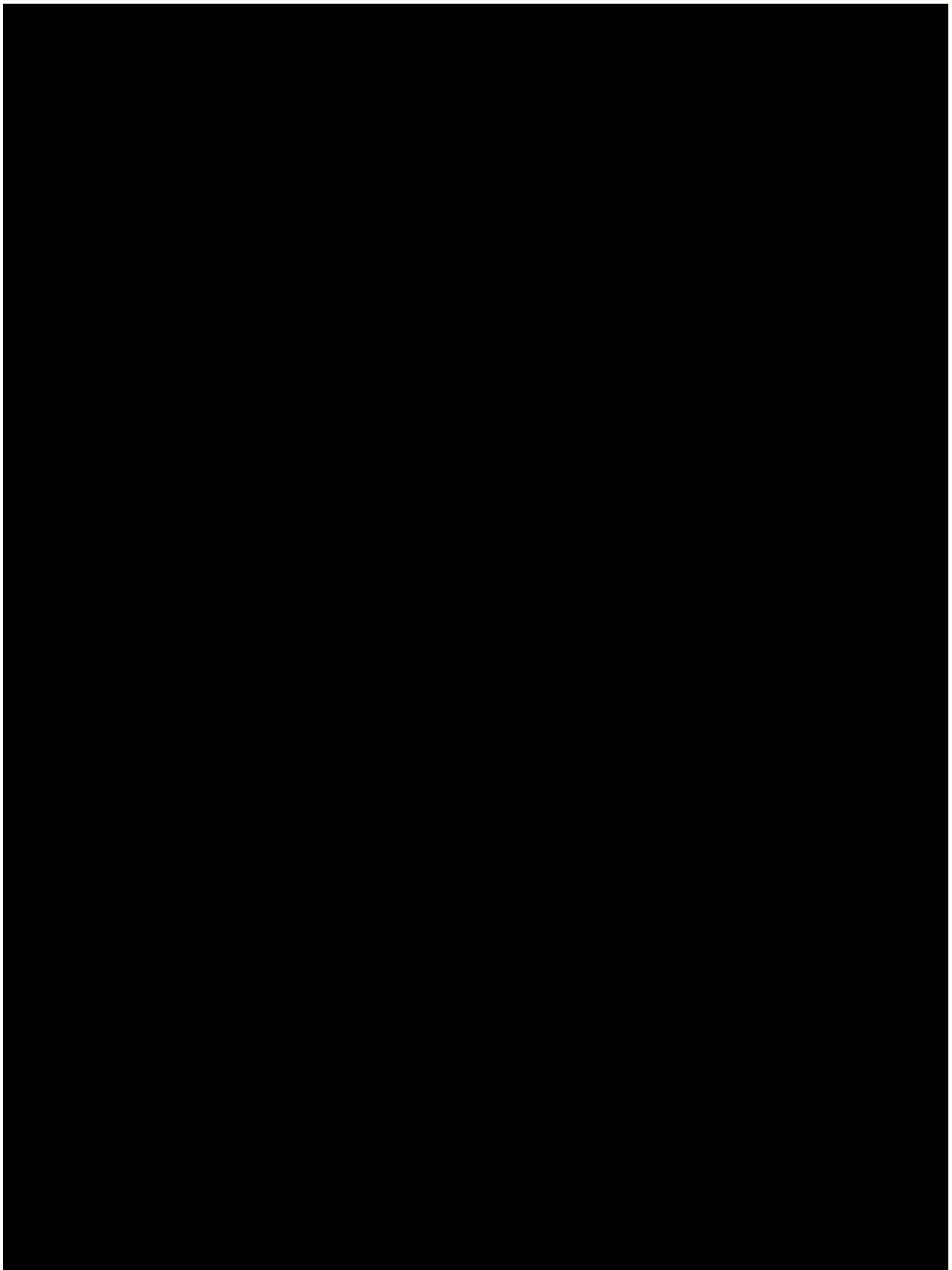




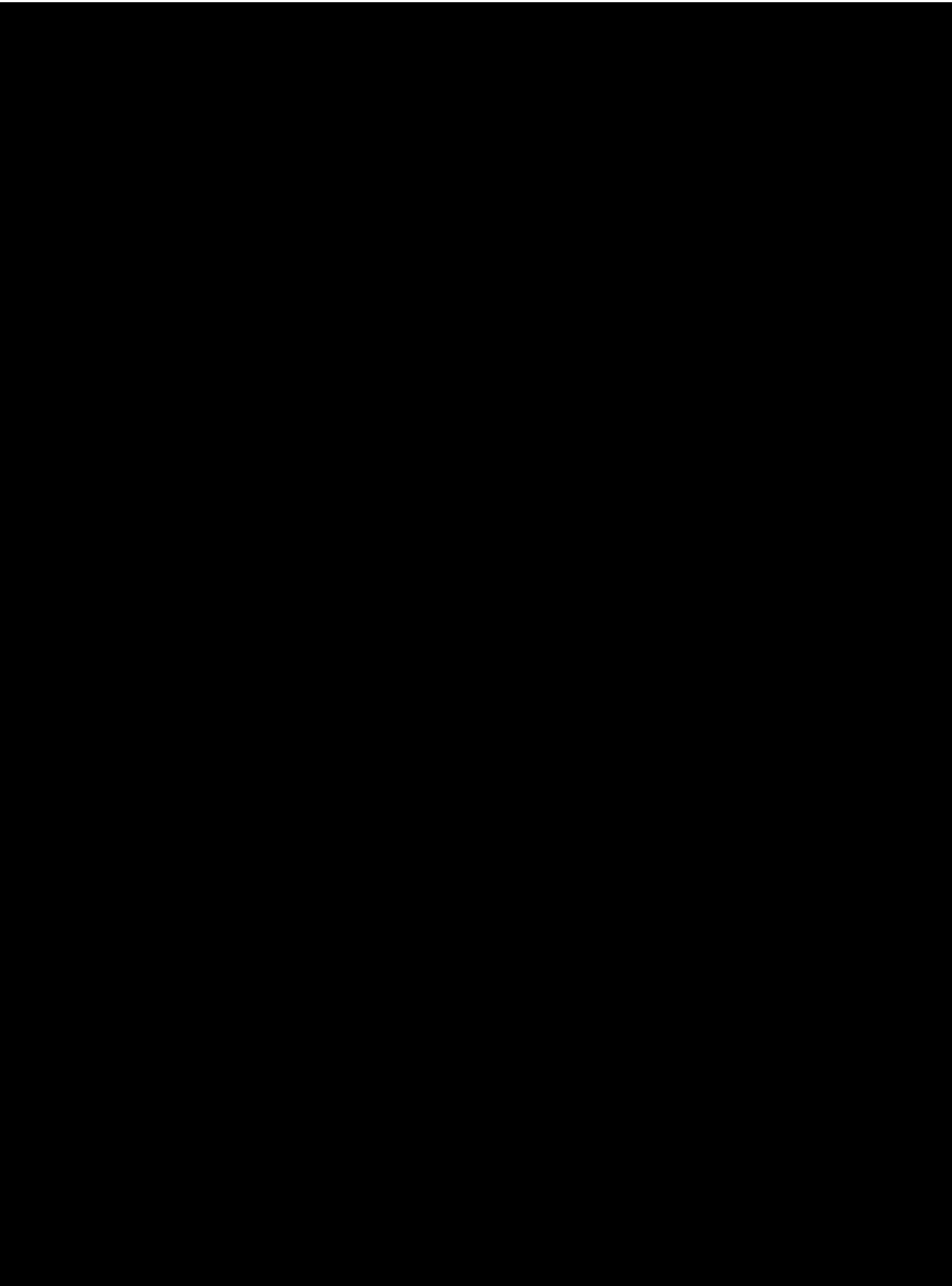


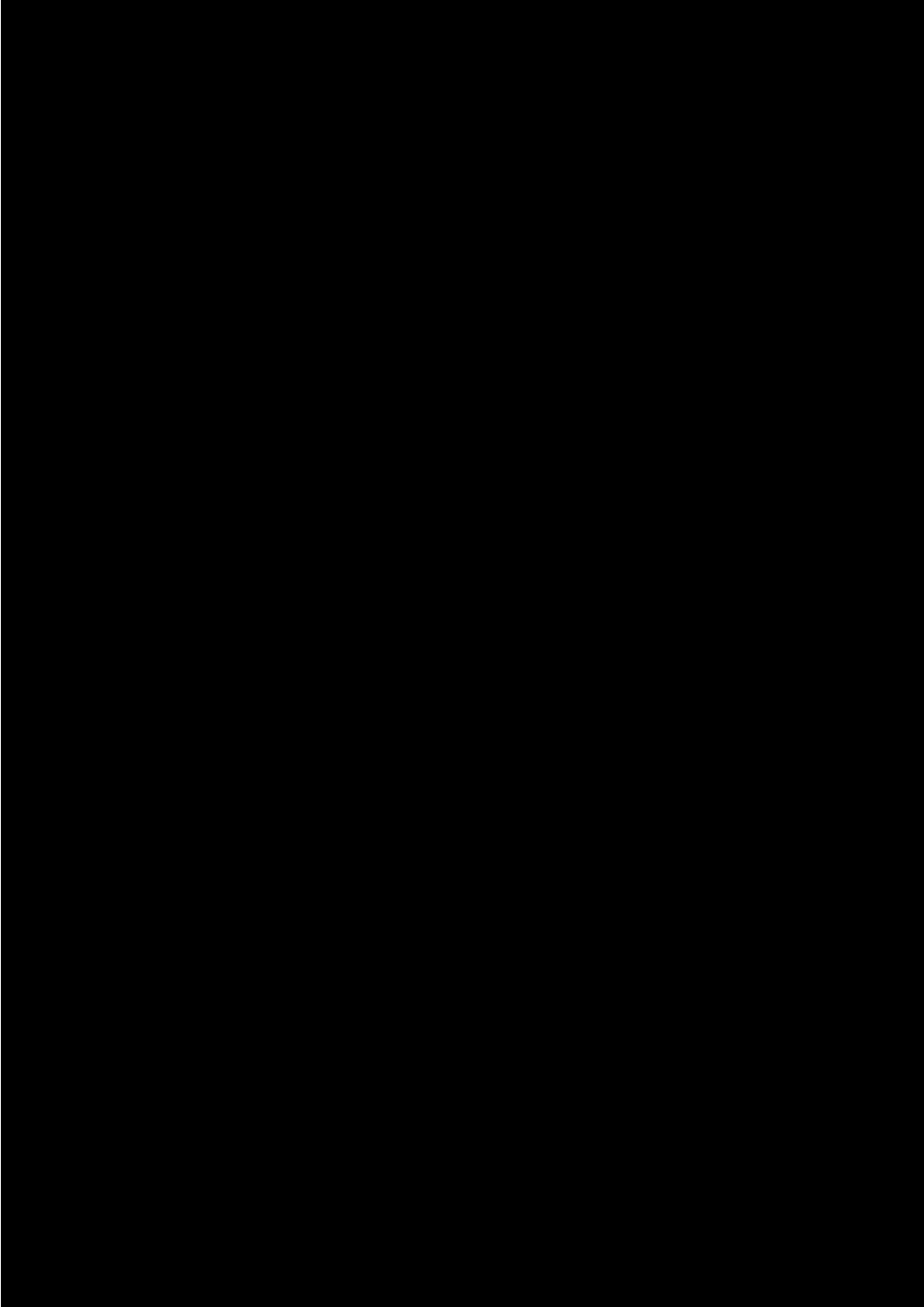


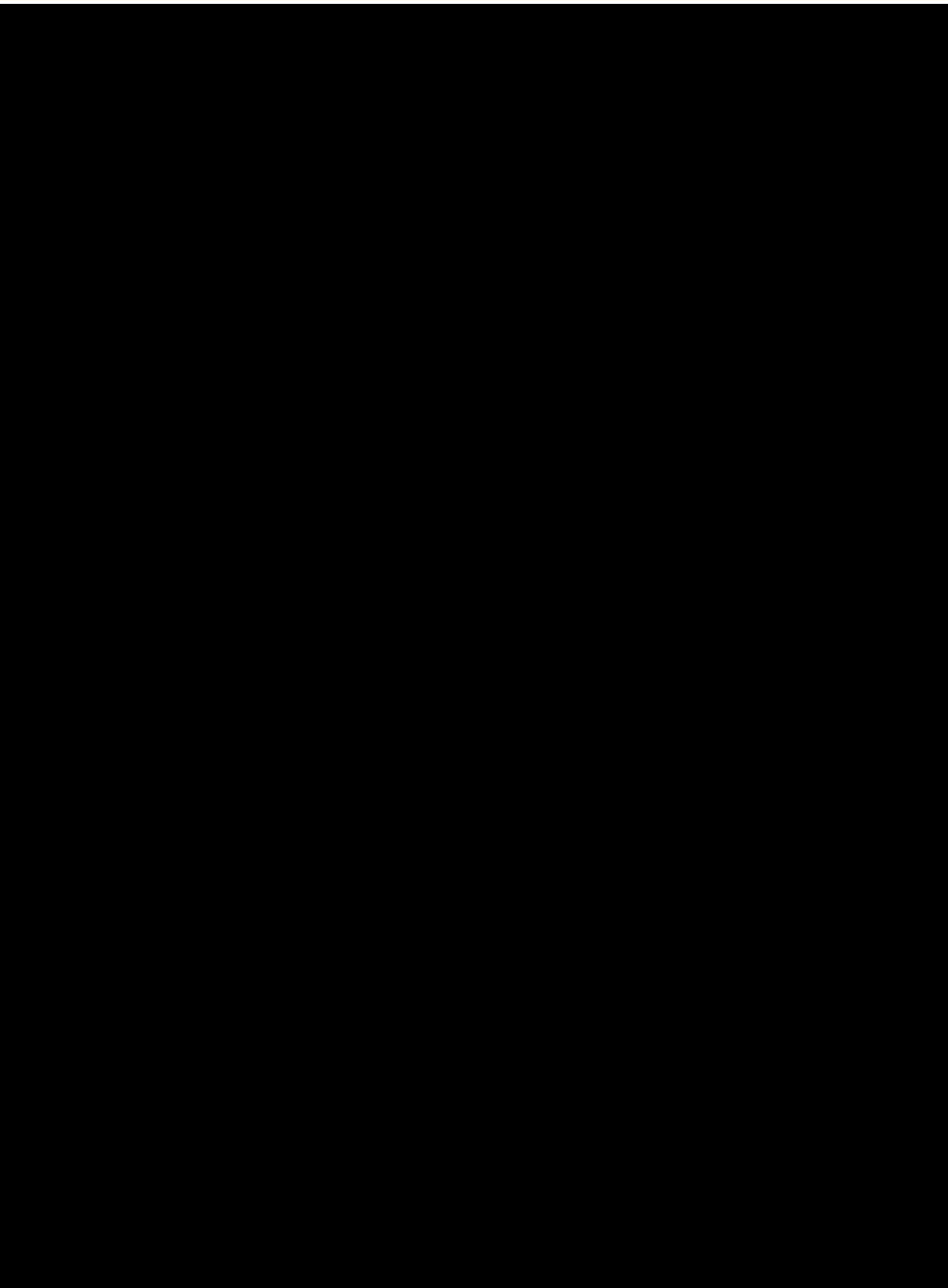


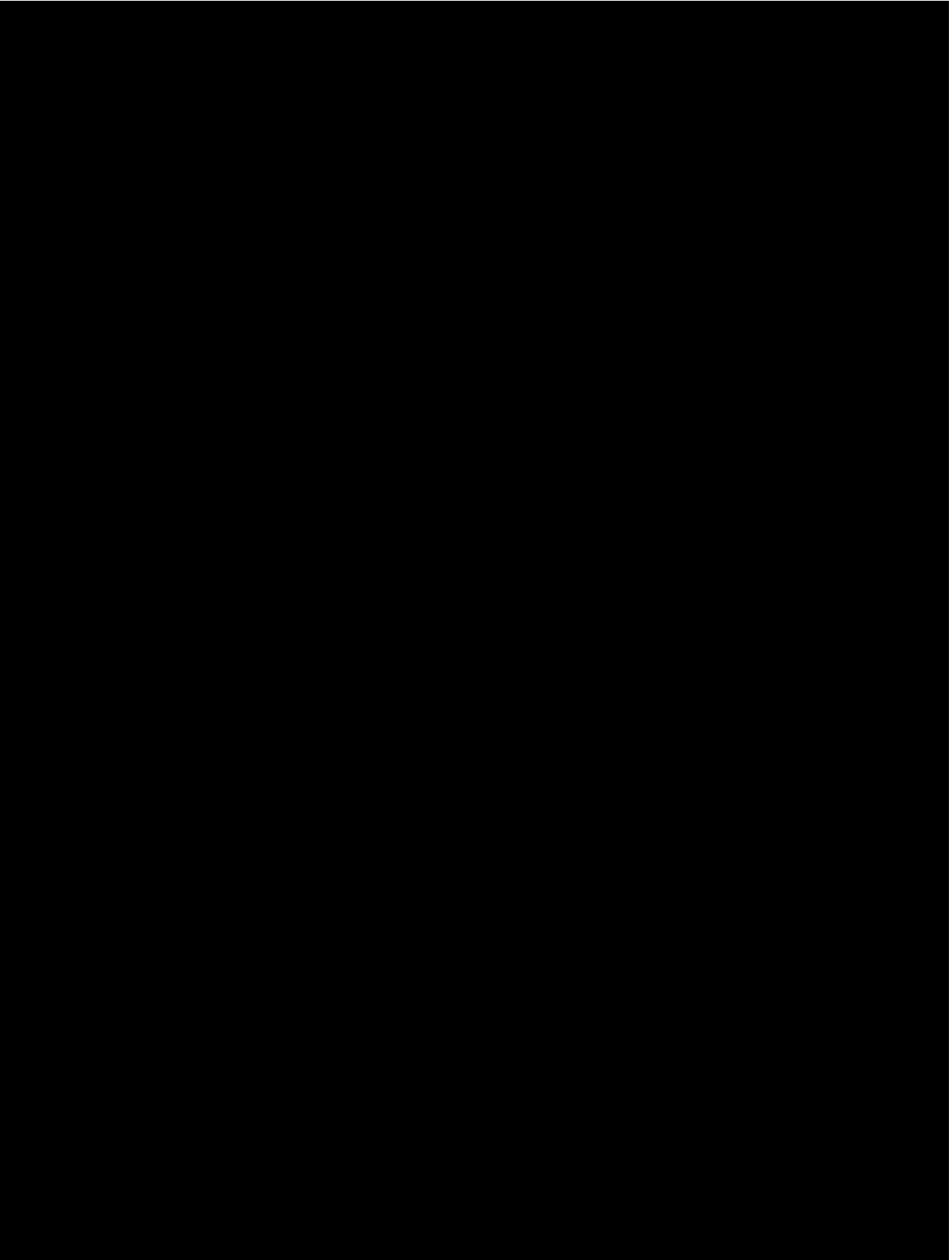


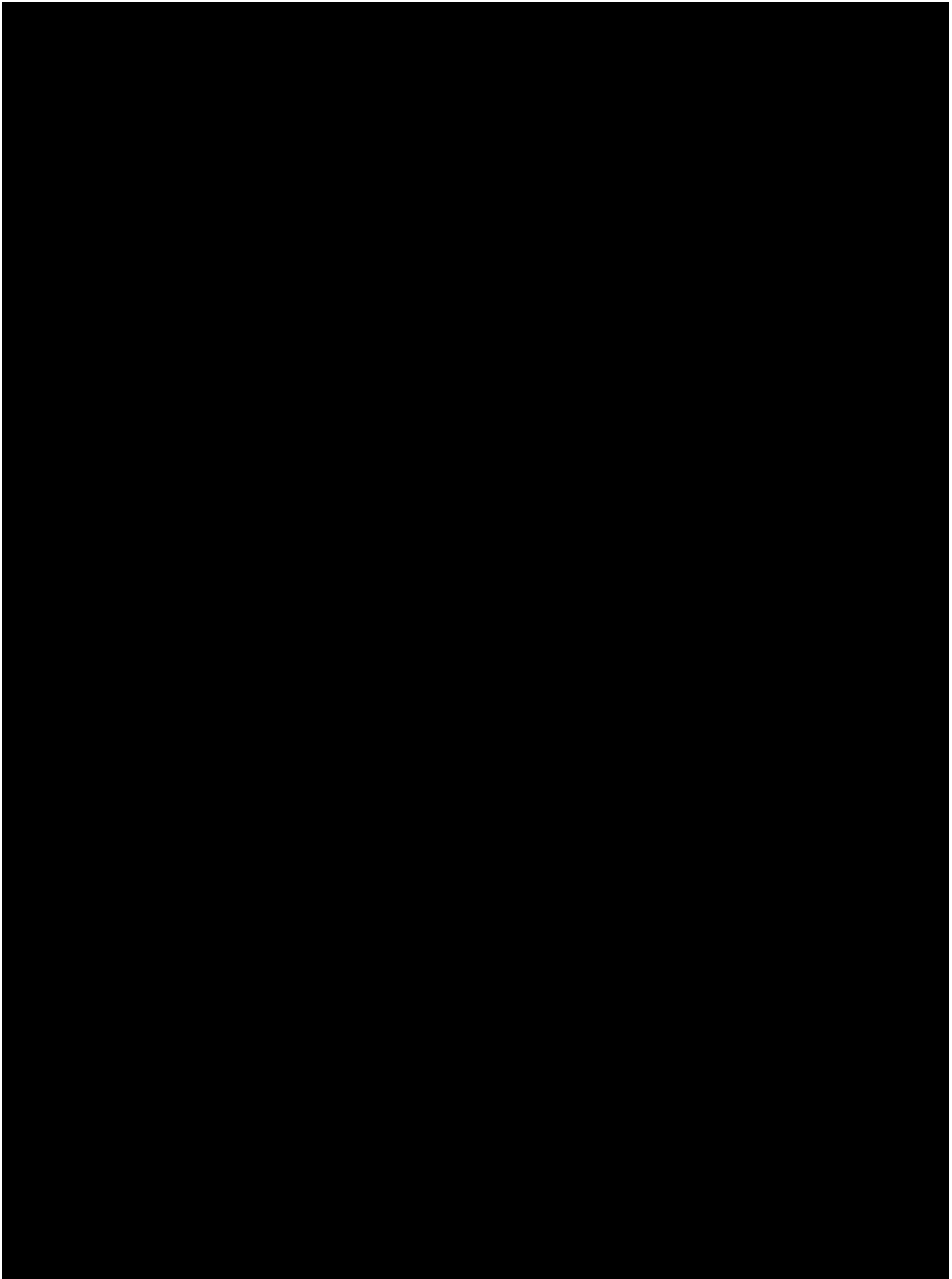


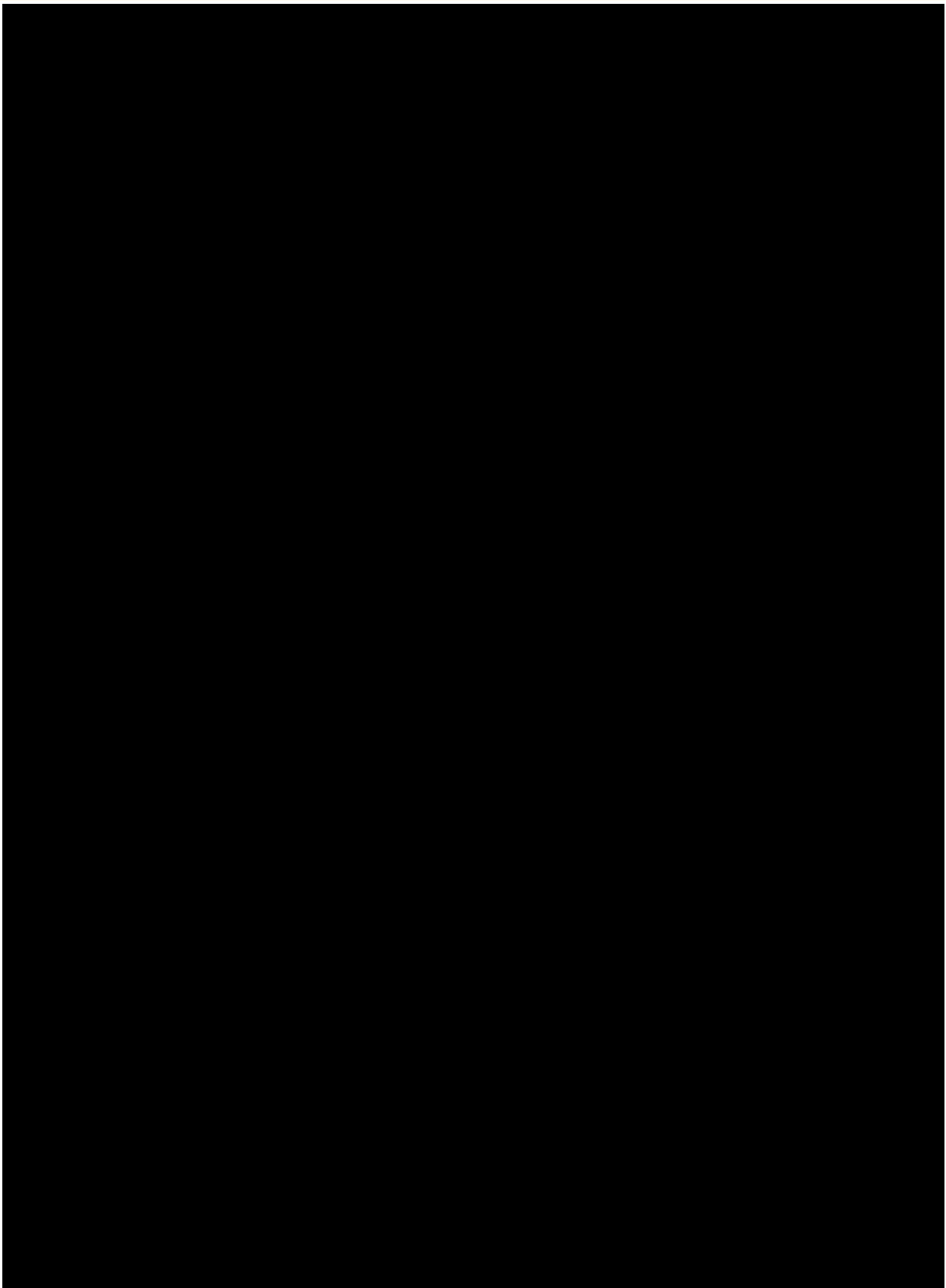


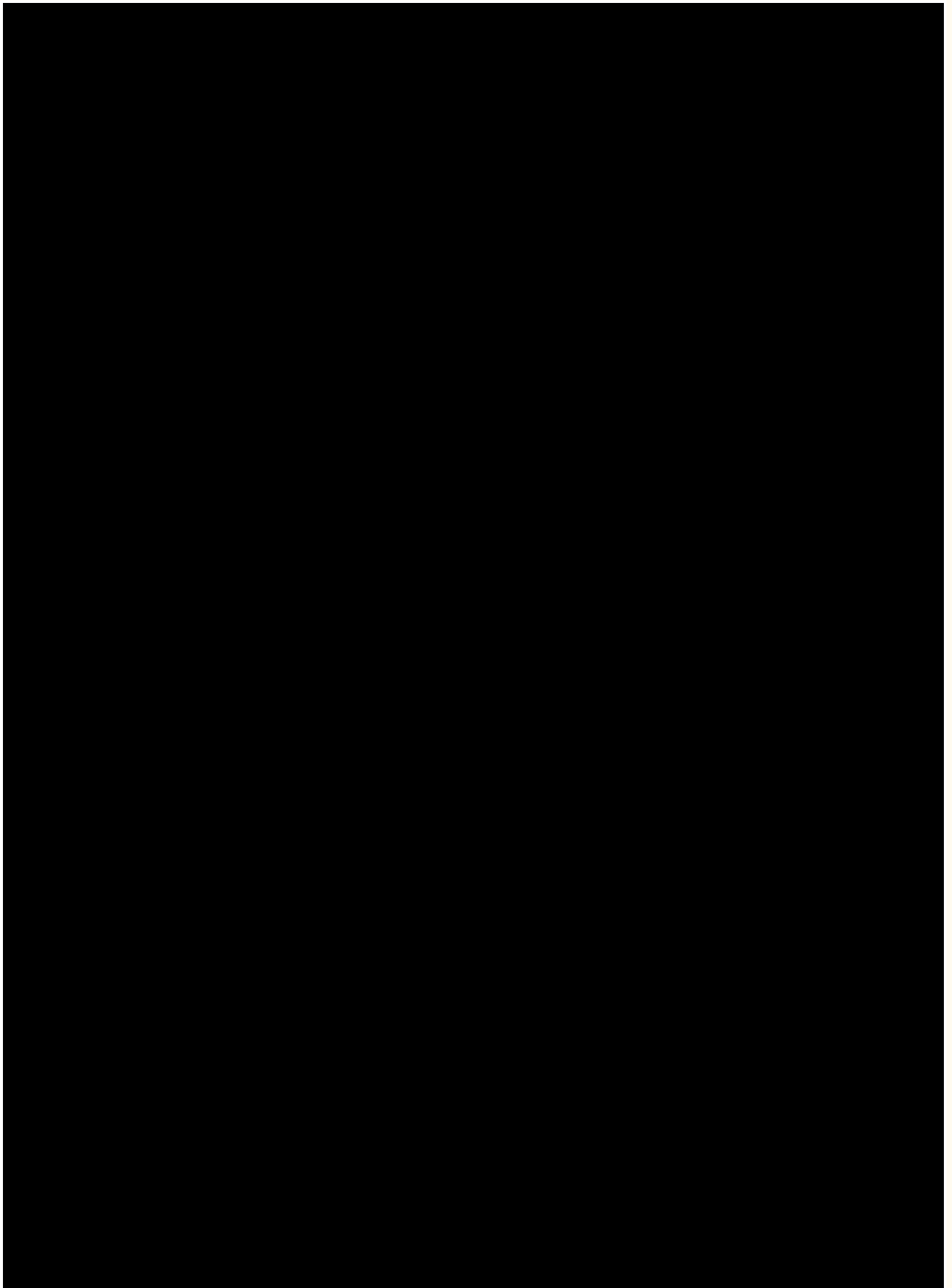


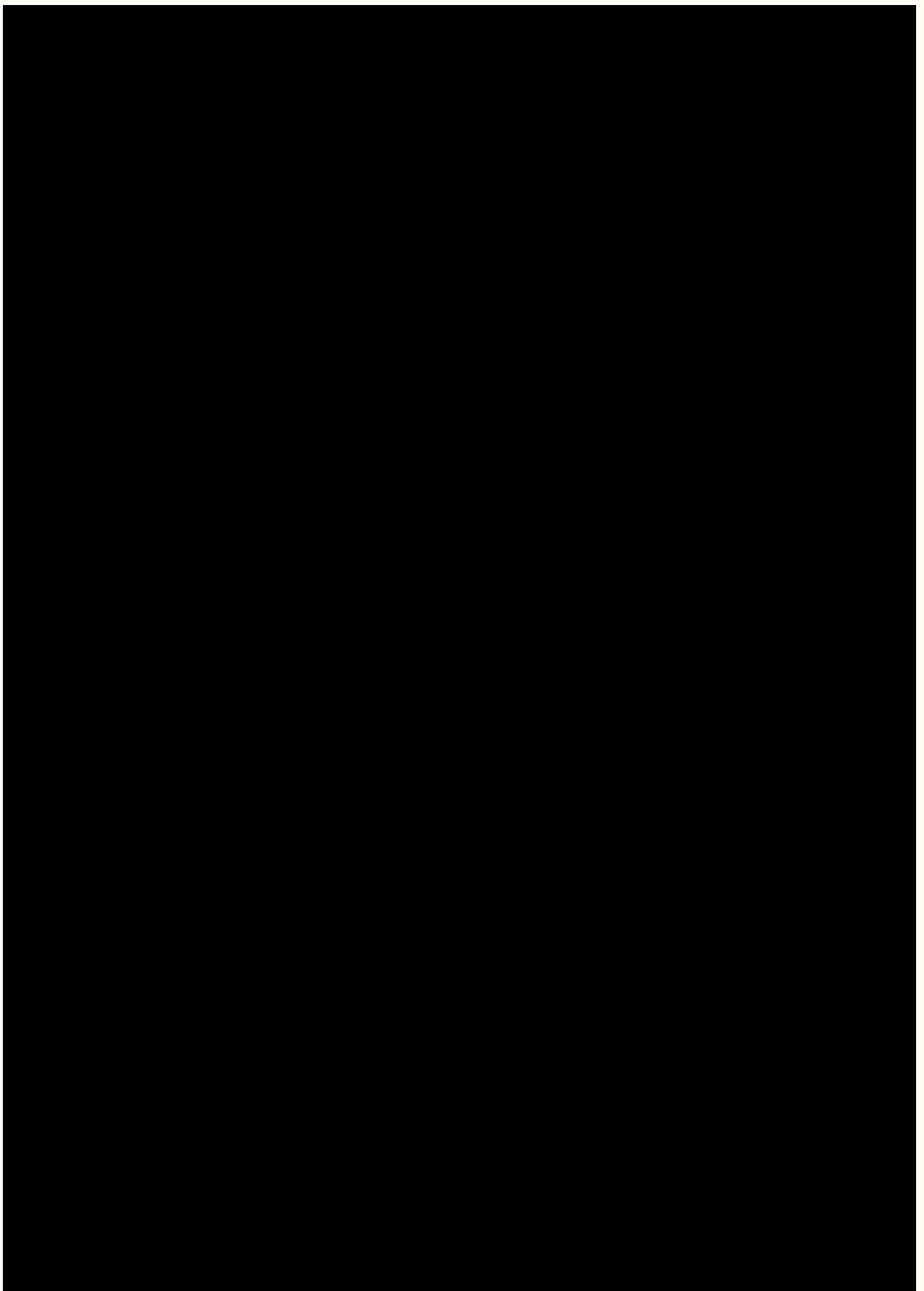




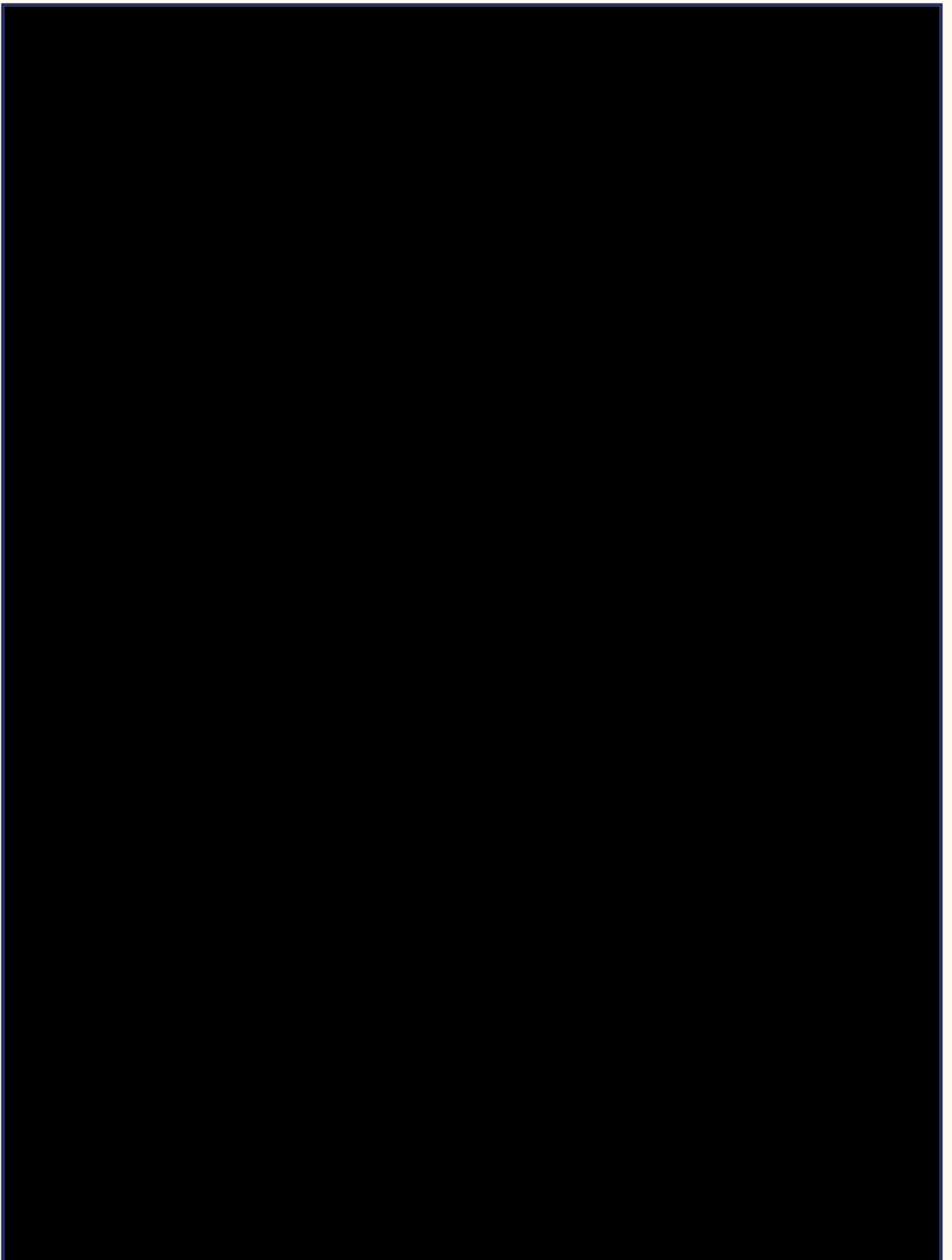


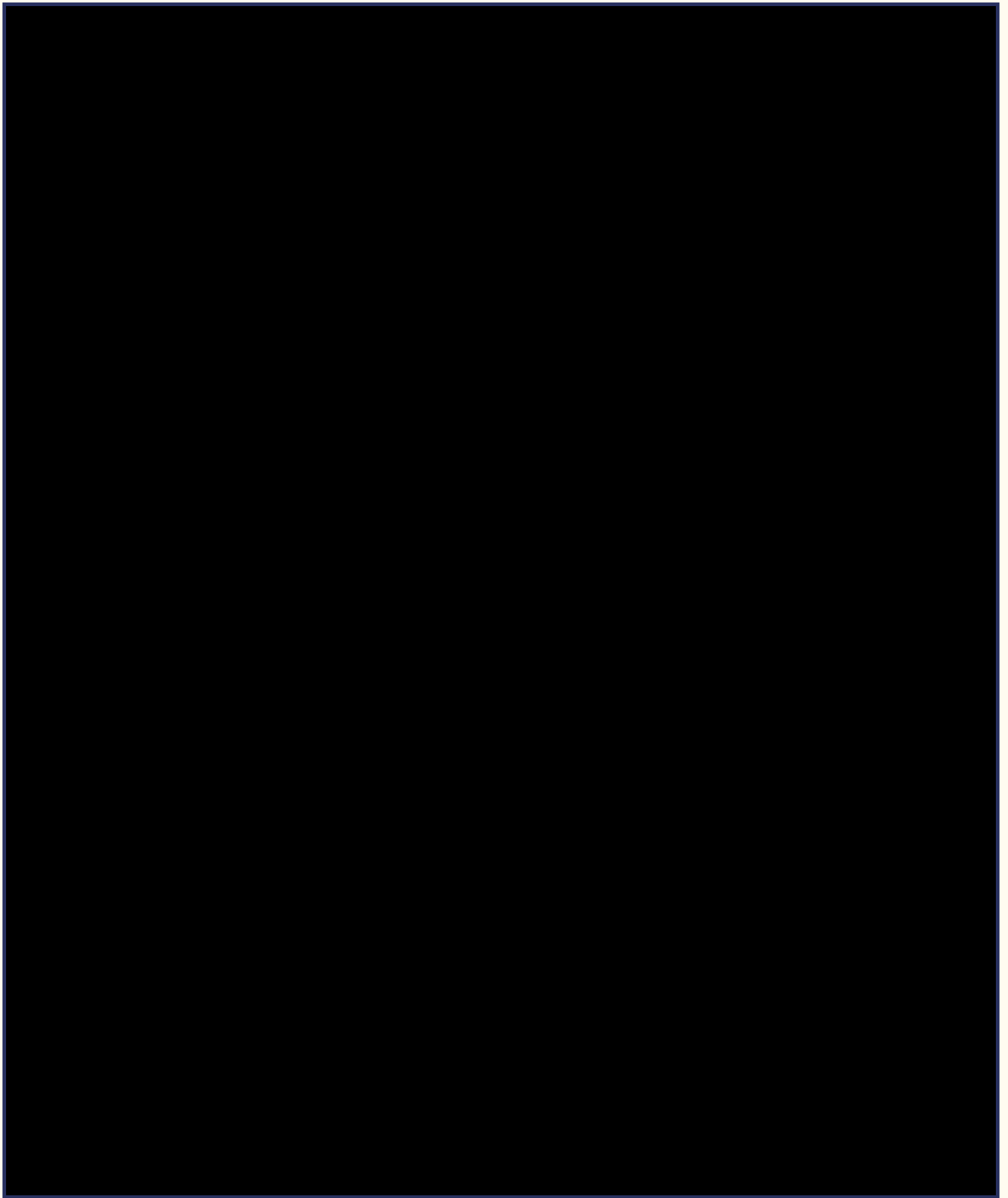


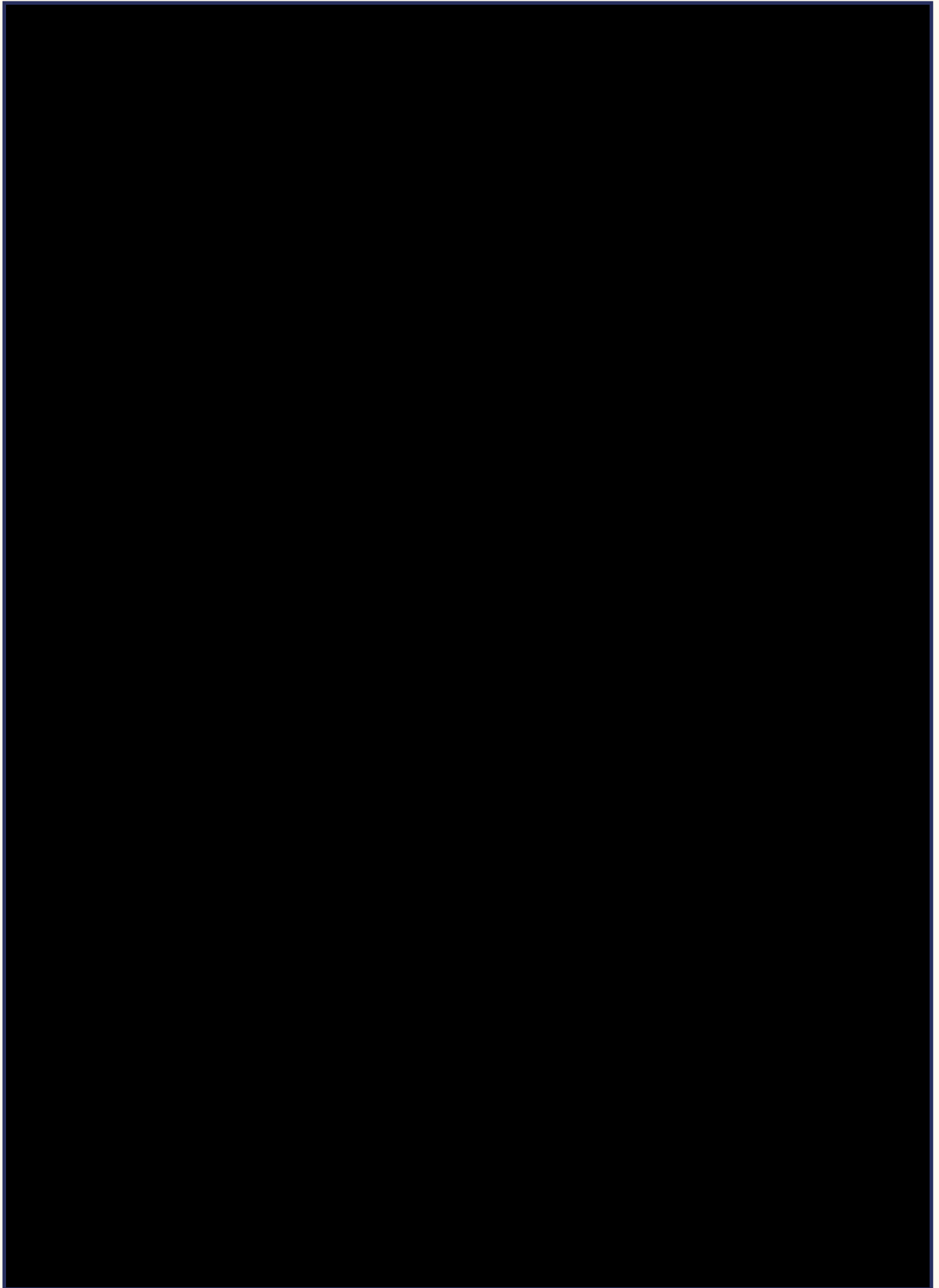


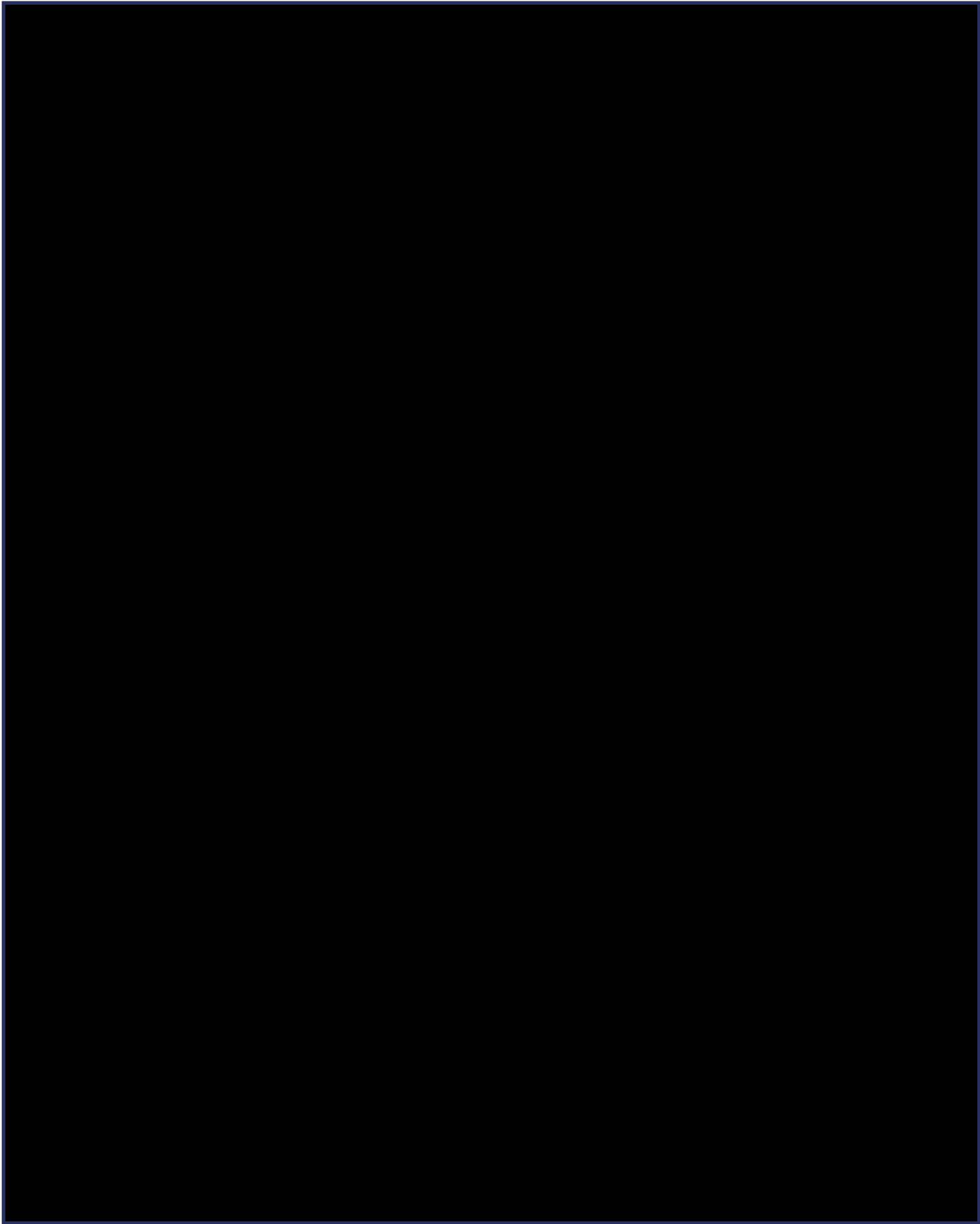


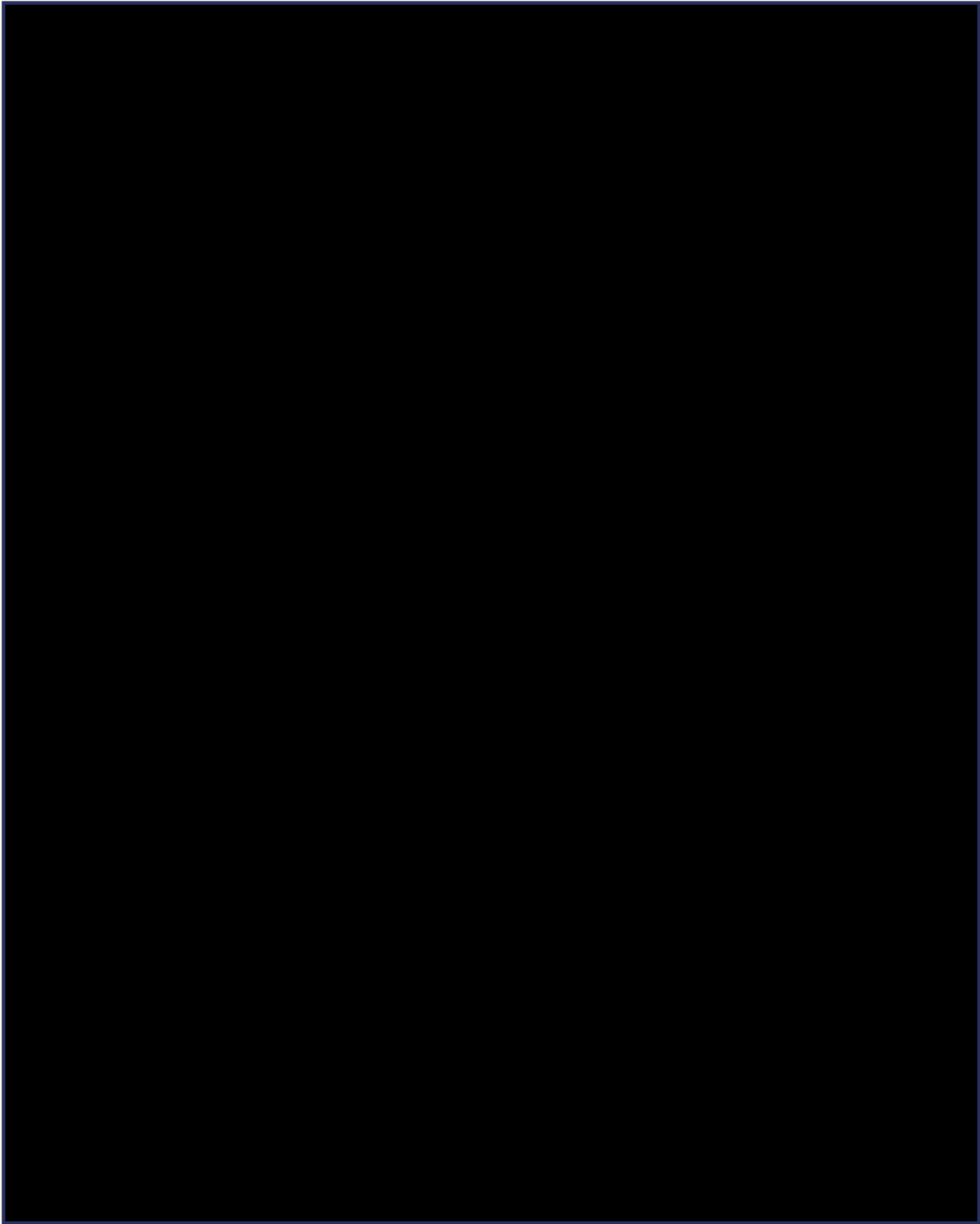


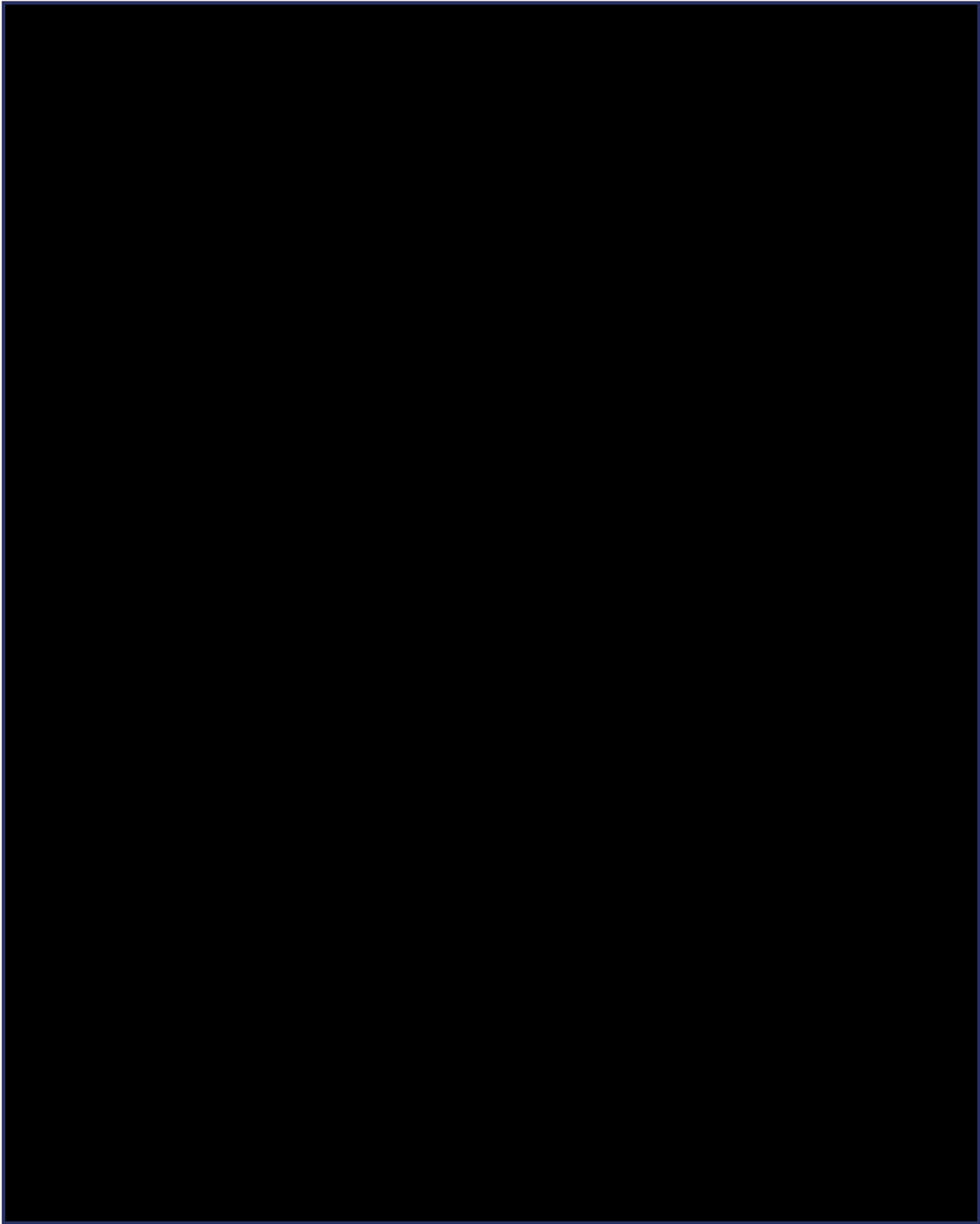


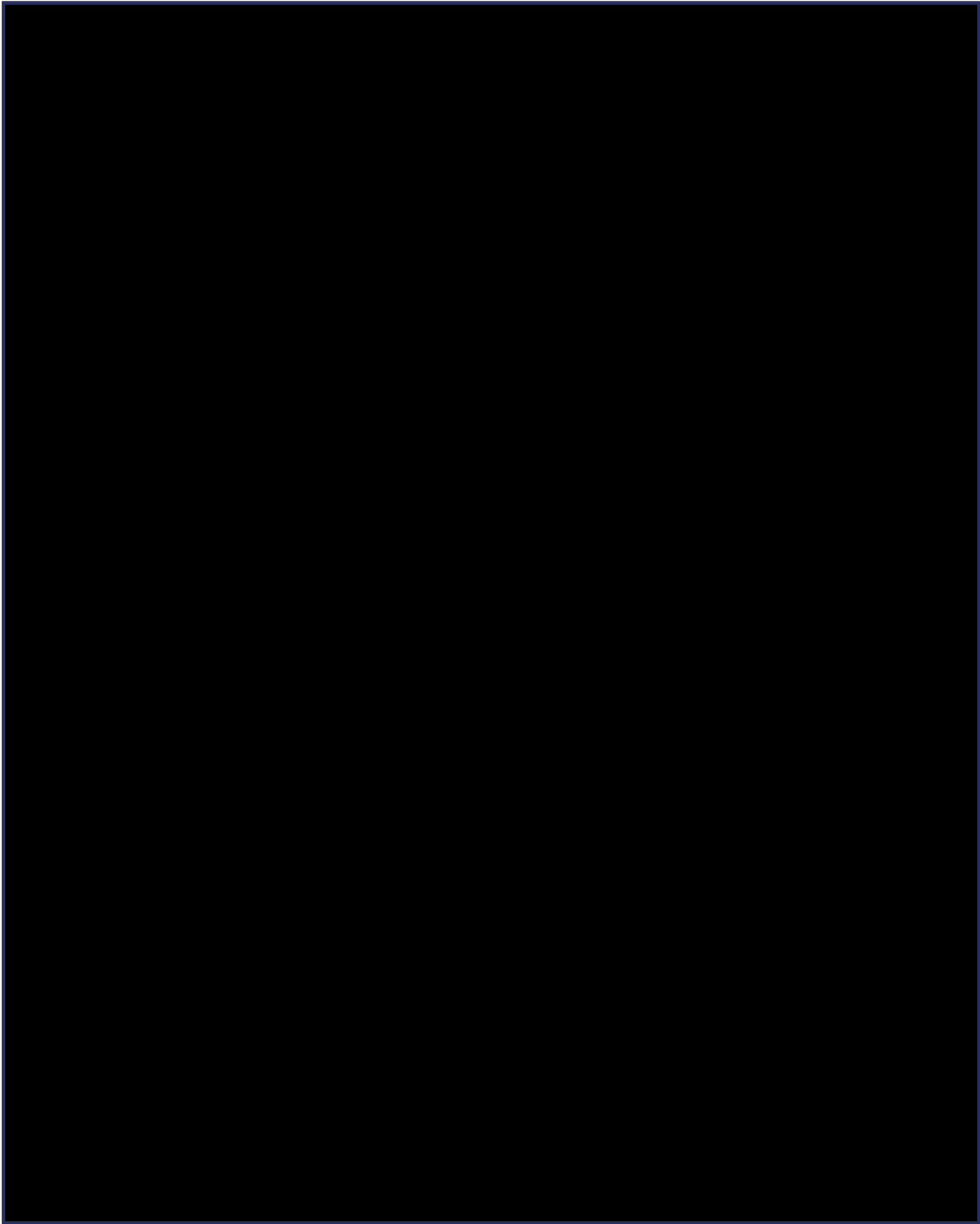


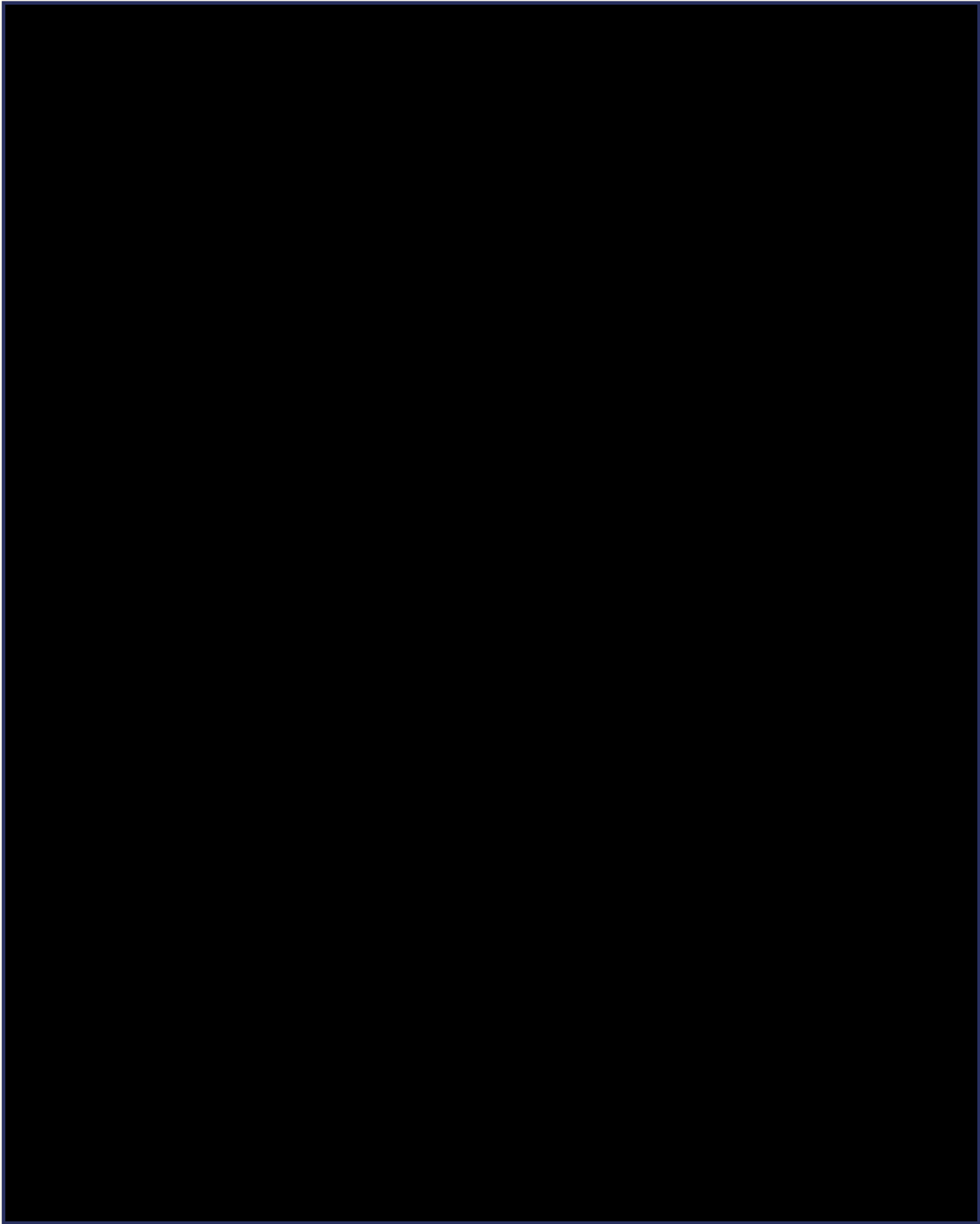




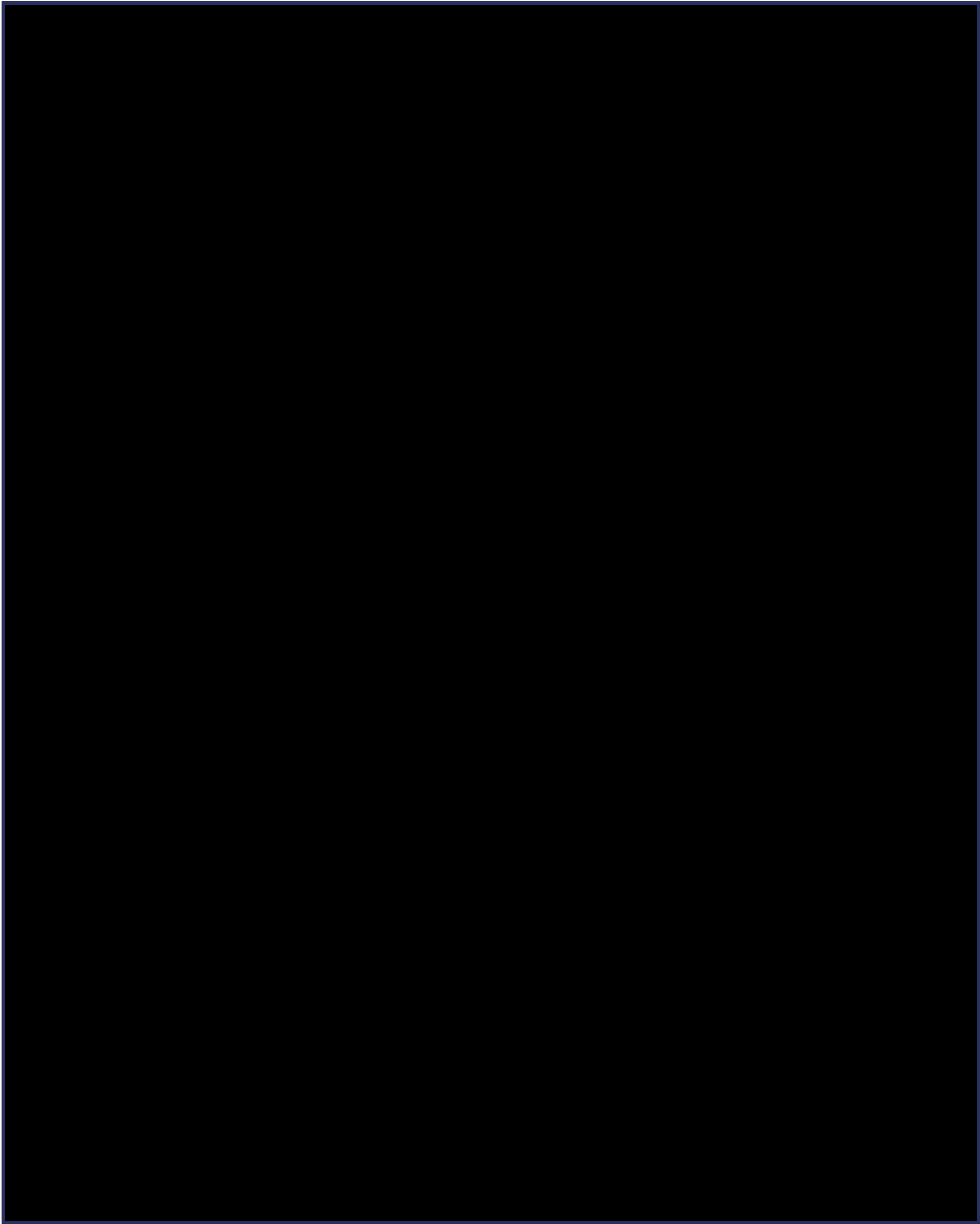


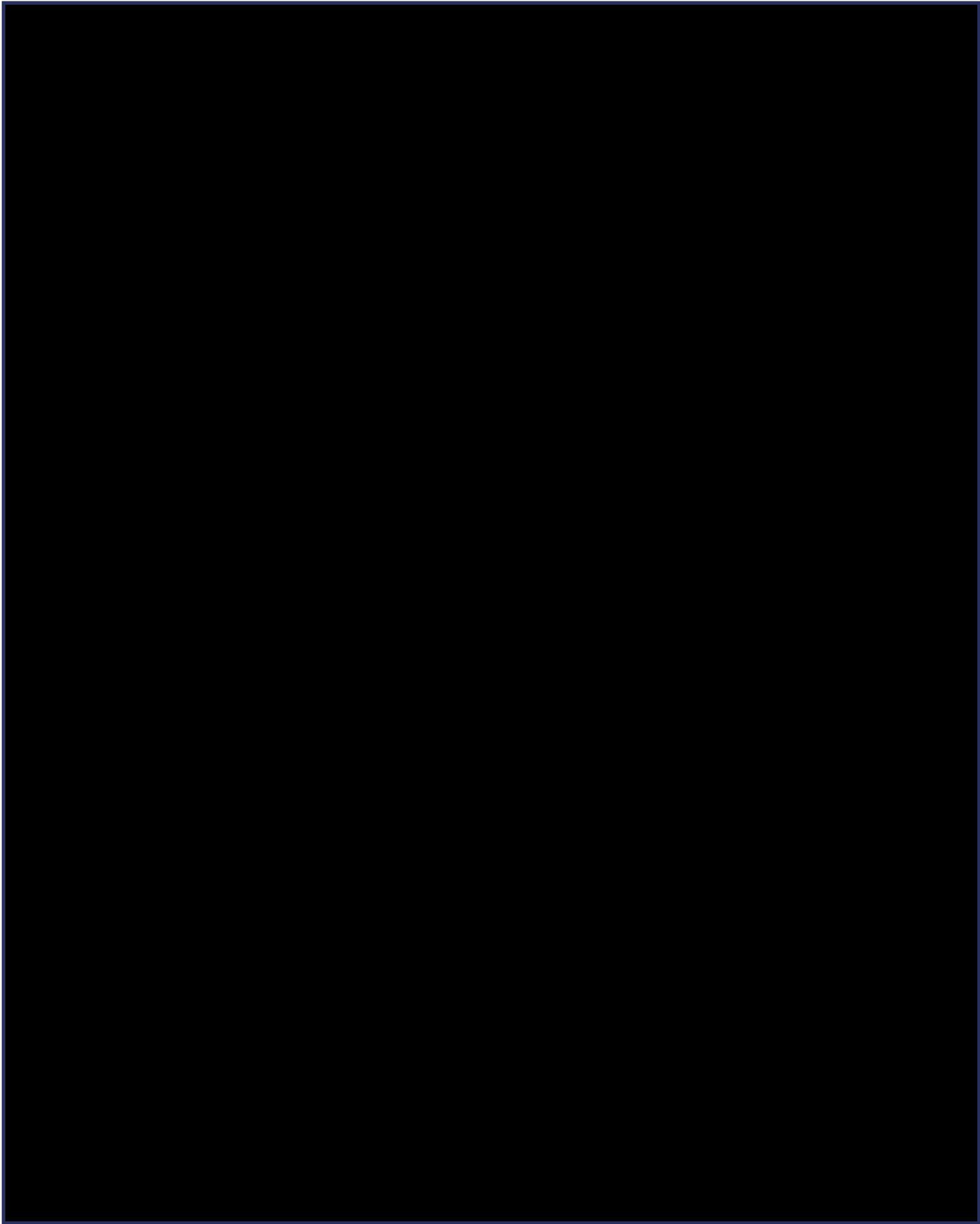


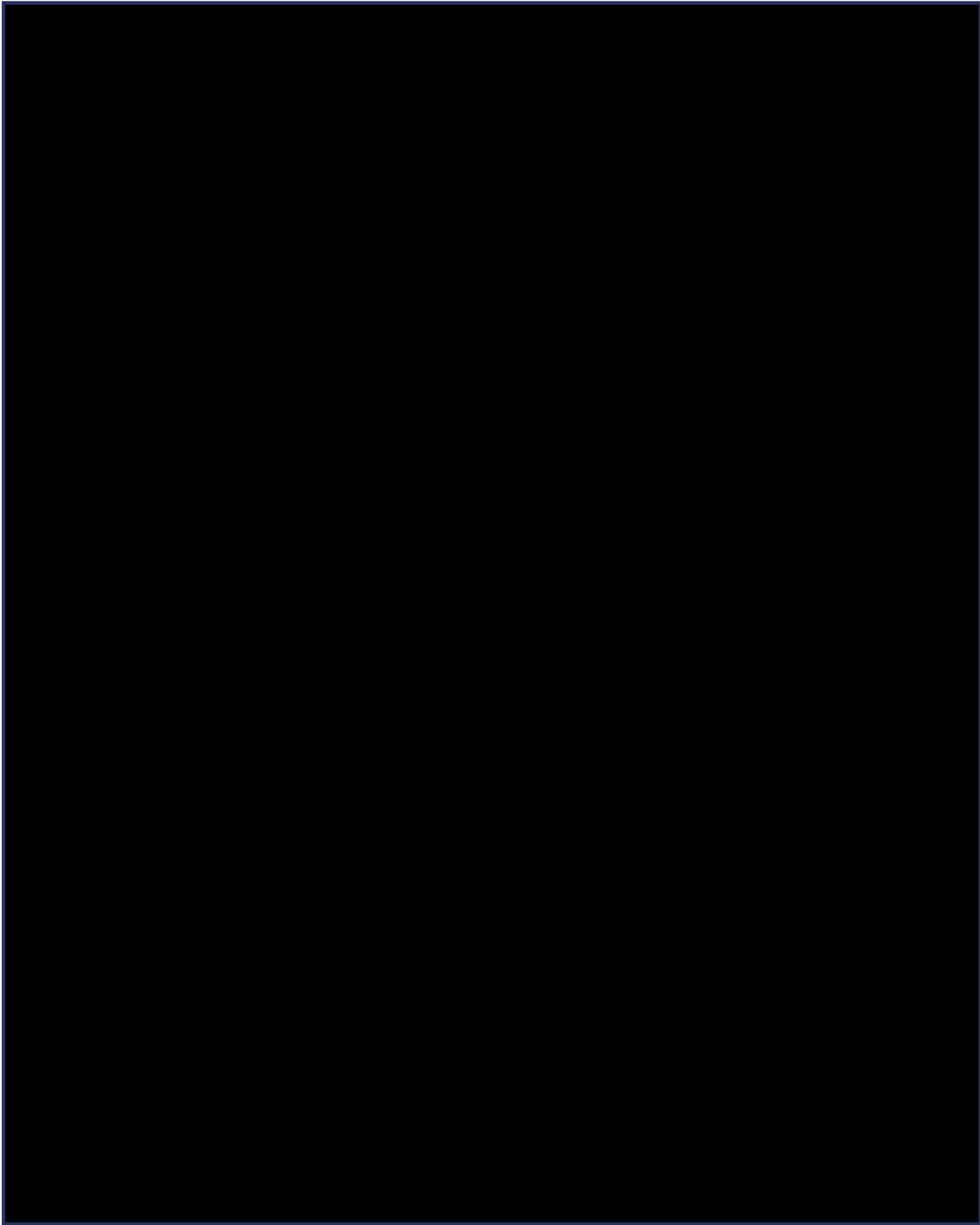


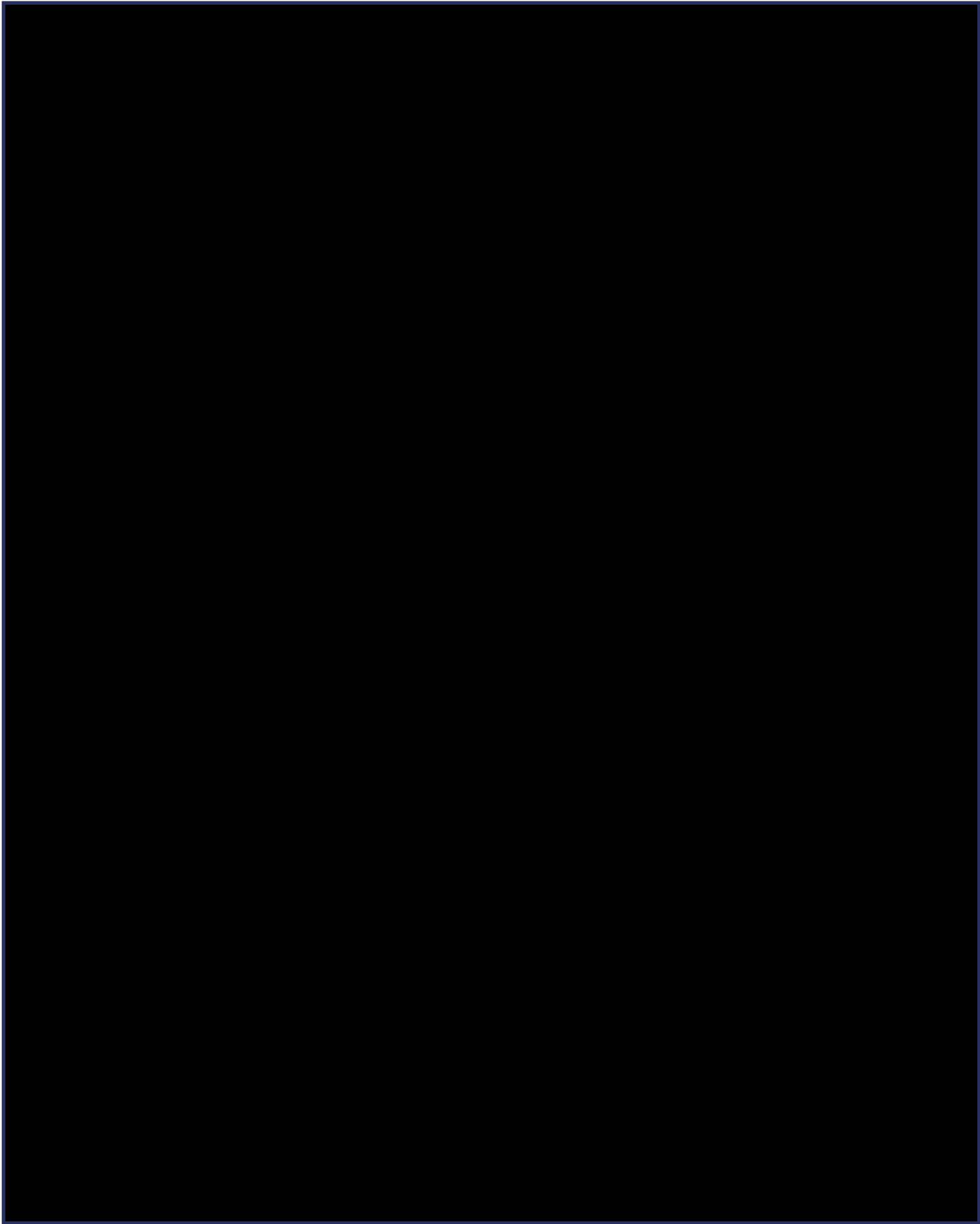


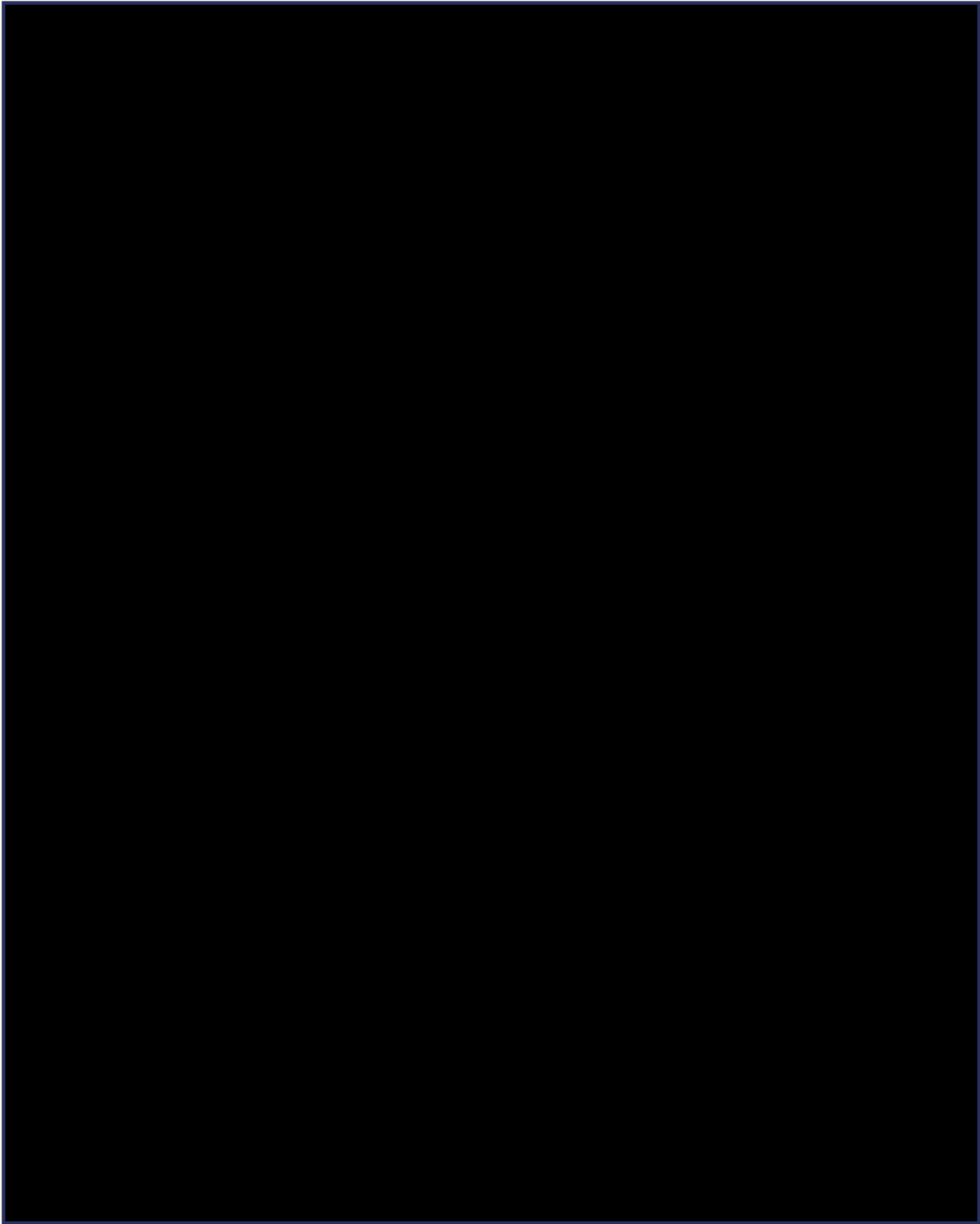


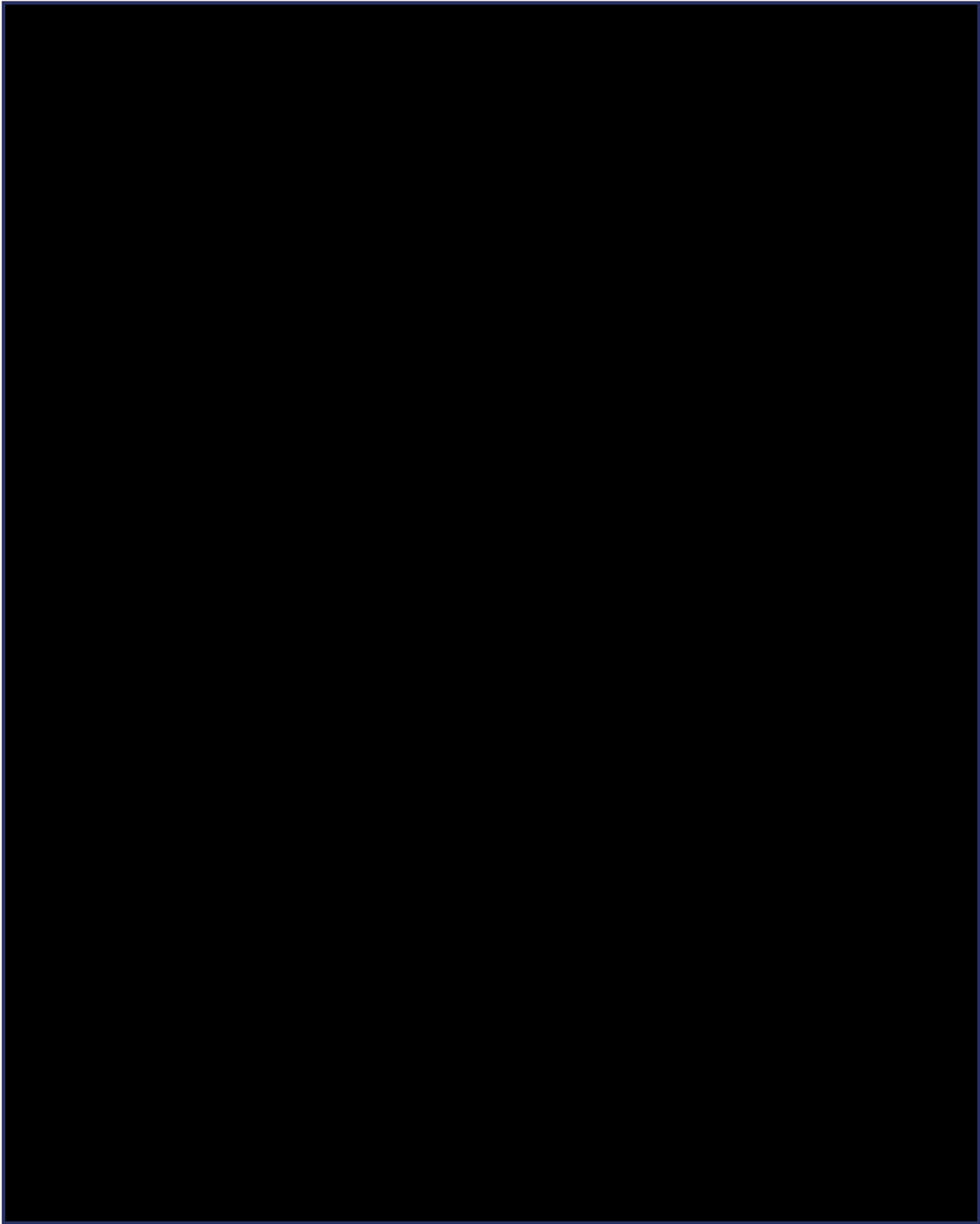


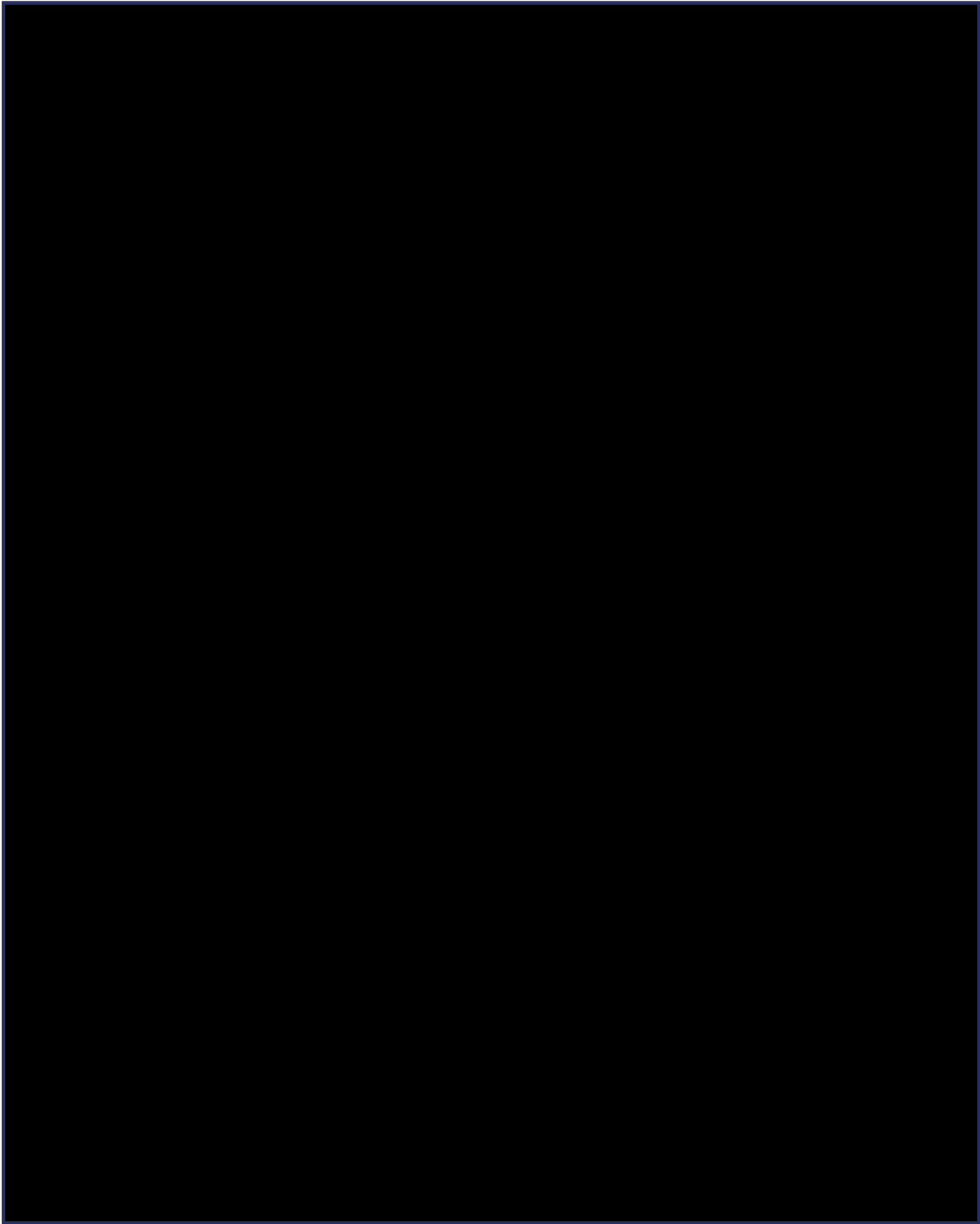


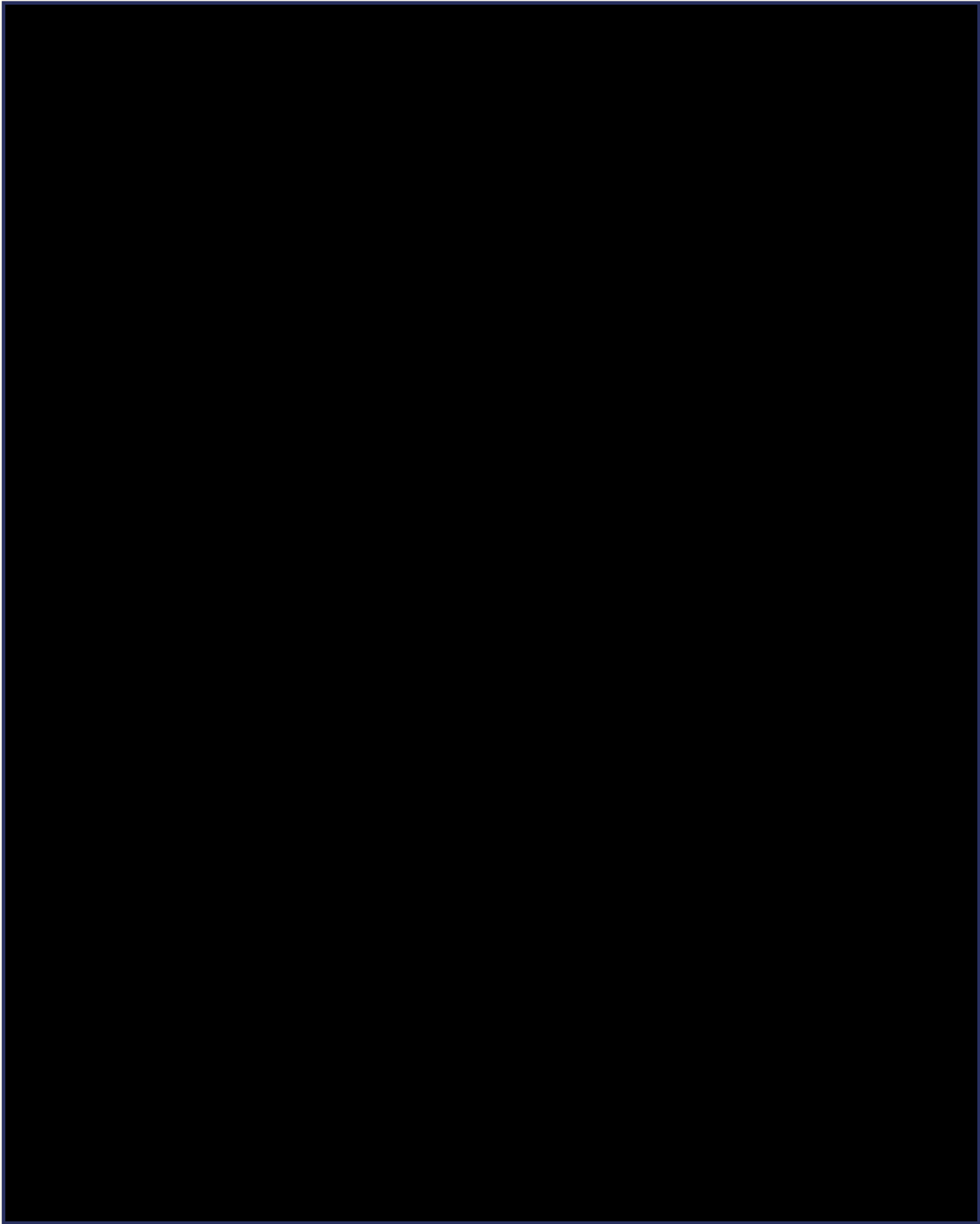




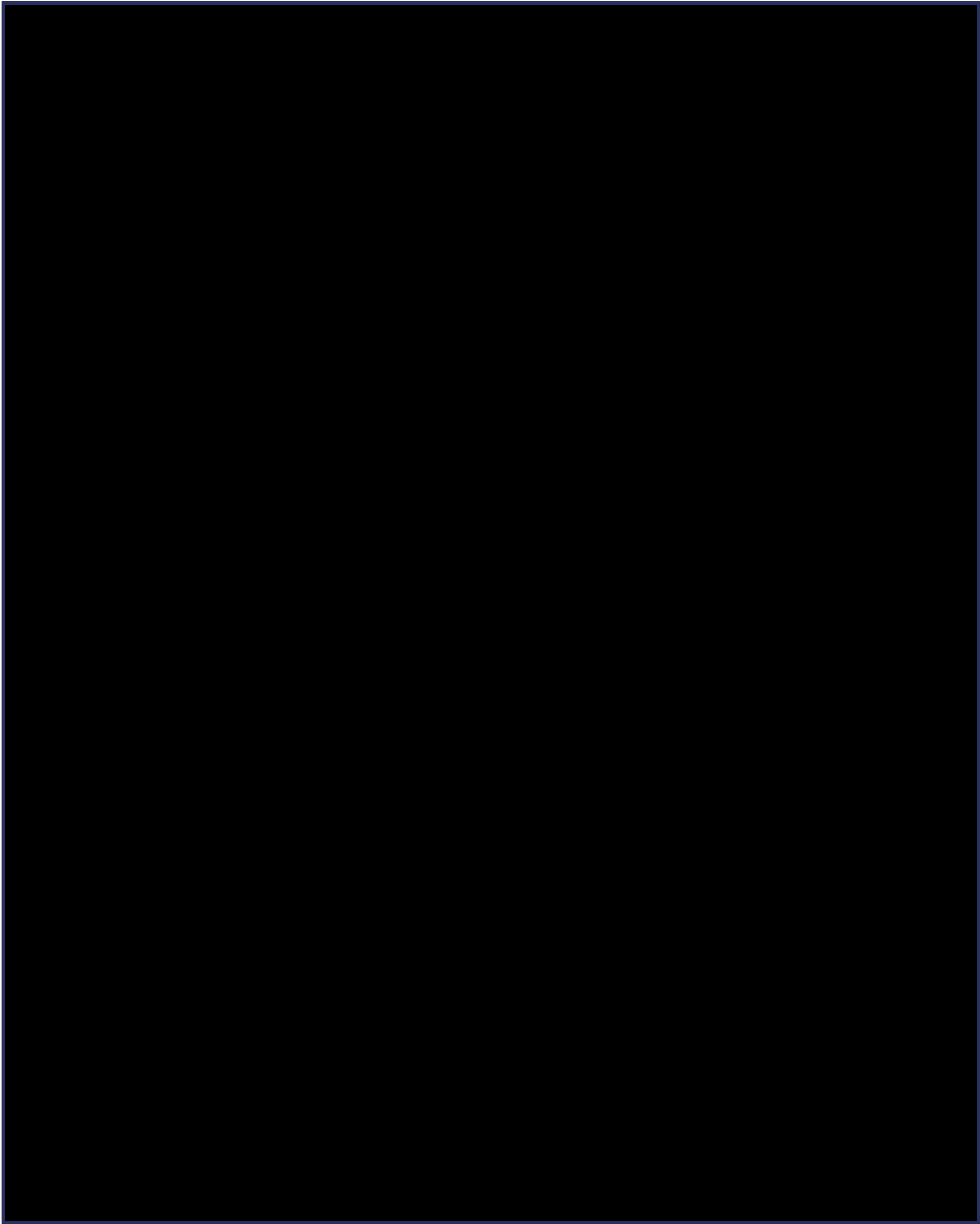


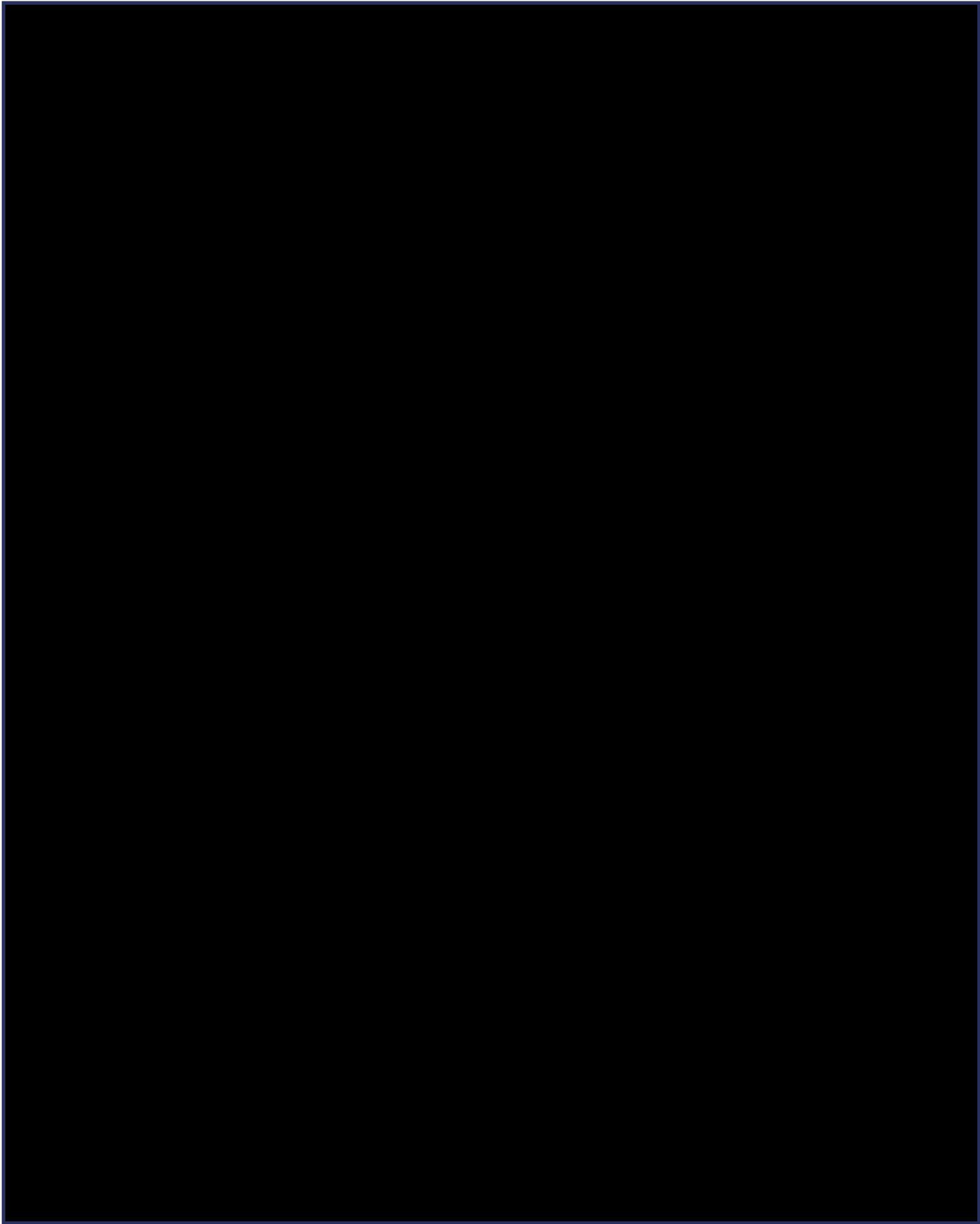












### **Schedule 3**

#### **Key Performance Indicators**

**1 Not used**

**2 Introduction**

2.1 This Schedule sets out the Key Performance Indicators (KPIs) that will be used to assess the Supplier's performance pursuant to this Agreement. The assessment of performance will be used to determine any Deductions.

2.2 The KPIs set out and detailed in Paragraphs 4 to 7 of this Schedule are:

2.2.1 KPI 1 – Take off Time;

2.2.2 KPI 2 – System Cover;

2.2.3 KPI 3 – Task Completion; and

2.2.4 KPI 4 – National Cover.

2.3 Nothing in this Schedule shall:

2.3.1 limit the Supplier's obligations or liability; or

2.3.2 restrict or limit the Authority's rights,  
pursuant to this Agreement or otherwise.

2.4 Overachievement against a KPI cannot be used to offset underperformance against that KPI or any other KPI.

2.5 Overachievement in respect of one Base cannot be used to offset underperformance against that Base or any other Base.

2.6 The Parties confirm that the Authority's rights to make Deductions as set out in this Schedule are reasonable and proportionate to protect the Authority's legitimate interest in performance.

**3 Measurement and Reporting**

3.1 For each Base in respect of the relevant Lot, the Supplier shall provide to the Authority a record which shall detail:

3.1.1 all monthly activity; and

3.1.2 its performance in respect of the KPIs as set out in each of Paragraphs 4 to 7 of this Schedule,

and the Supplier shall make such record available in Near Real Time on a web based application for which the Authority has viewing access, with the data also made available through an API.

3.2 The Supplier shall submit to the Authority written reports in a form reasonably requested by the Authority on the results of its performance in respect of the KPIs by the tenth day of the end of each:

3.2.1 month during the Base Services Period, setting out:

- (i) the Performance Score for KPI 1 for the previous month in respect of each Base in respect of the relevant Lot calculated in accordance with Paragraph 4 of this Schedule;
- (ii) the Performance Score for KPI 2 for the previous month in respect of each Base in respect of the relevant Lot calculated in accordance with Paragraph 5 of this Schedule; and
- (iii) the Performance Score for KPI 3 for the previous month in respect of each Base in respect of the relevant Lot calculated in accordance with Paragraph 6 of this Schedule; and

3.2.2 Quarter during the Base Services Period, setting out the Performance Score for KPI 4 for the previous Quarter in respect of each Base in respect of each Lot calculated in accordance with Paragraph 7 of this Schedule,

(the "**KPI Reports**").

3.3 The Parties shall attempt in good faith to resolve any disputes relating to the KPI Reports and if such disputes are not resolved, Schedule 20 (*Dispute Resolution Procedure*) shall apply.

3.4 The Authority may undertake checks and verification audits of the KPI Reports and the Supplier shall provide all information, documents or records as may reasonably be requested by the Authority to support any such activity.

3.5 If, following a check or verification audit undertaken pursuant to Paragraph 3.4 of this Schedule, the Authority (acting reasonably) determines that a KPI Report is not an accurate reflection of the Supplier's performance against the KPIs, the KPI Report shall be amended to reflect the Supplier's actual performance in the relevant Service Period.

#### Service Improvement Plan

3.6 If the Supplier does not meet the Target Performance Level of any KPI in a month (in respect of KPI 1, KPI 2 and KPI 3) or in a Quarter (in relation to KPI 4), the Authority may request that the Supplier shall provide a service improvement plan to the Authority within ten Business Days of the relevant KPI Report.

3.7 The draft service improvement plan shall set out proposed corrective action which shall ensure that the Supplier's performance is restored to the Target Performance Level and the timescales in which the Service shall be restored to the Target Performance Level.

3.8 Within ten Business Days of receiving the draft service improvement plan the Authority shall either:

- 3.8.1 agree the draft service improvement plan; or
- 3.8.2 propose reasonable amendments to the draft recovery plan.
- 3.9 The Supplier shall amend the draft service improvement plan in accordance with any Authority feedback and shall resubmit the draft service improvement plan to the Authority within such timescales as the Authority shall reasonably specify. The process set out in Paragraph 3.8 of this Schedule shall apply to such an amended draft service improvement plan.
- 3.10 If a draft service improvement plan is agreed by the Authority, the Supplier shall implement the service improvement plan.
- 3.11 The presence or implementation of a service improvement plan shall not:
  - 3.11.1 constitute a Change; and
  - 3.11.2 limit the Authority's rights to make Deductions and/or any other rights or remedies of the Authority under this Agreement or otherwise.

Post Flight Checklist

- 3.12 The Supplier shall populate a Post Flight Checklist, in the format set out in Annex 1 to this Schedule, for each Planned Task and Unplanned Task, within 24 hours of such Planned Task or Unplanned Task being undertaken and the Supplier shall make each populated Post Flight Checklist available to the Authority in Near Real Time on a web based application for which the Authority has viewing access, with the data also made available through an API.
- 3.13 The Post Flight Checklist shall be used to assist the Authority in determining whether Tasks have been Completed. The Post Flight Checklist lists the Critical Success Factors which may be applicable to each Task. When populating the Post Flight Checklist, the Supplier shall record whether it has achieved or not achieved each Critical Success Factor listed or specify where a Critical Success Factor is not applicable to the relevant Task. A Critical Success Factor shall be achieved where the Supplier has delivered all of the applicable User Requirements in accordance with this Agreement.
- 3.14 Where a Critical Success Factor has not been achieved, the Supplier shall record an explanation in the relevant column. The non-achievement of an applicable Critical Success Factor, where no mitigating circumstances can be substantiated, shall result in a Task being deemed as not Completed for the purposes of this Schedule.

**4 KPI 1 – Take off Time**

- 4.1 The Supplier shall Commence Accepted Unplanned Tasks within the relevant Readiness State.
- 4.2 Subject to Paragraph 4.3 of this Schedule, each day throughout the relevant Base Services Period, the Supplier shall record for the relevant Base in respect of the relevant Lot:

- 4.2.1 the number of Accepted Unplanned Tasks for such relevant Base in respect of the relevant Lot that the Supplier did Commence within the relevant Readiness State;
- 4.2.2 the number of Accepted Unplanned Tasks for such relevant Base in respect of the relevant Lot that the Supplier failed to Commence within the relevant Readiness State; and
- 4.2.3 the number of Unplanned Tasks for such relevant Base in respect of the relevant Lot that the Supplier failed to Accept other than on grounds deemed reasonable by the Authority on the advice of ARCC,

provided that the “relevant Base” for the purpose of this Paragraph 4.2 shall mean the Tasked Base and the “relevant Lot” shall be construed accordingly.

4.3 Accepted Unplanned Tasks shall not be recorded for the purpose of Paragraph 4.2 of this Schedule where:

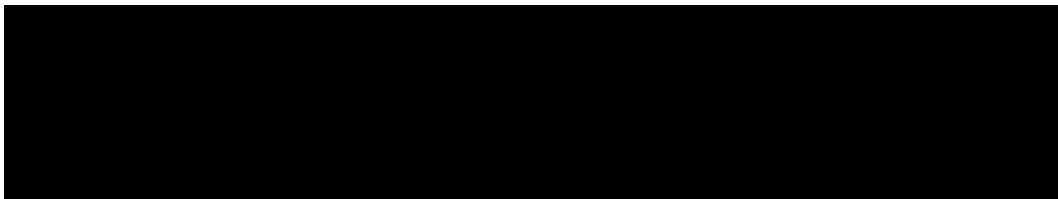
- 4.3.1 the Authority has deemed it reasonable that the relevant Readiness State should be disapplied or extended in respect of such Task; or
- 4.3.2 the relevant Asset is already airborne when the Supplier Accepted such Task.

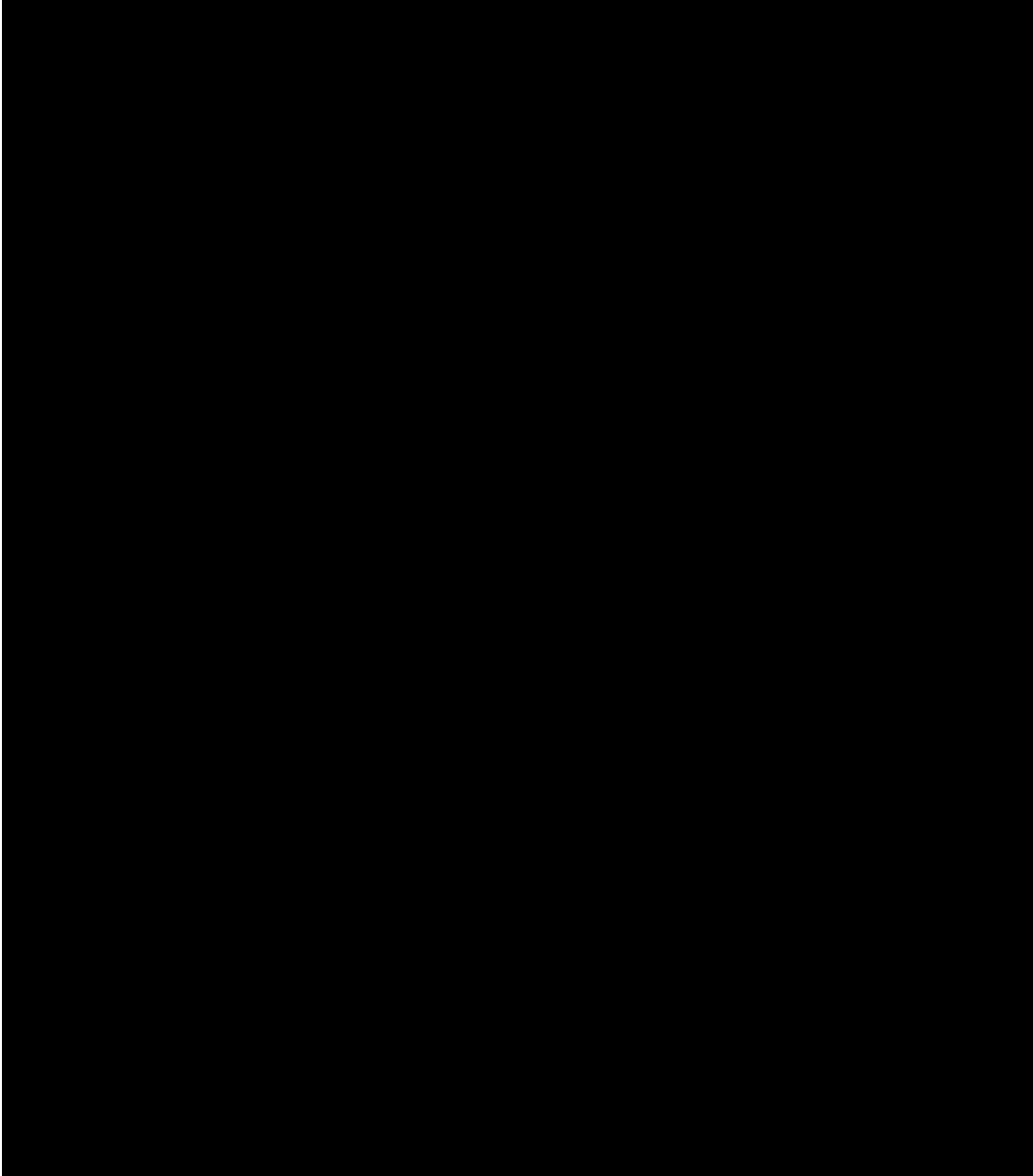
4.4 For each month during the Base Services Period the Performance Score for KPI 1 in respect of each Base in respect of the relevant Lot shall be calculated as  $(A/(A+B+C)) \times 100$  where:

- 4.4.1 A is the total number recorded pursuant to Paragraph 4.2.1 of this Schedule in the relevant month for such Base in respect of the relevant Lot;
- 4.4.2 B is the total number recorded pursuant to Paragraph 4.2.2 of this Schedule in the relevant month for such Base in respect of the relevant Lot; and
- 4.4.3 C is the total number recorded pursuant to Paragraph 4.2.3 of this Schedule in the relevant month for such Base in respect of the relevant Lot.

4.5 Subject to Paragraph 8 of this Schedule, if the Performance Score for KPI 1 in a month in respect of a Base, in respect of the relevant Lot, is less than 95 the Authority may Deduct a percentage of the Indexed Monthly Standing Charge for the relevant Base(s) in respect of the relevant Lot as set out in the table below where:

**IMSC** is the Indexed Monthly Standing Charge for the relevant month for the relevant Base(s) in respect of the relevant Lot.





**5 KPI 2 – System Cover**

- 5.1 The Supplier shall ensure that the System is able to Accept Tasks 24 hours a day, seven days a week.
- 5.2 Each day throughout the relevant Base Service Period, the Supplier shall record for the relevant Base in respect of the relevant Lot:
  - 5.2.1 the number of Accepted Tasks for such relevant Base in respect of the relevant Lot; and
  - 5.2.2 the number of occasions where, due to any Taskable Asset assigned to the relevant Base not being able to Accept Tasks 24 hours a day, seven days a week:

- (i) an Asset has been required to conduct a Task outside of the Radius of Action (RoA) for such Asset; and/or
- (ii) another supplier has been required to carry out the relevant Task,

provided that the “relevant Base” for the purpose of this Paragraph 5.2 shall mean the Base which the ARCC attempted to Task (or would have attempted to Task had such Base been able to Accept Tasks) and “the relevant Lot” shall be construed accordingly.

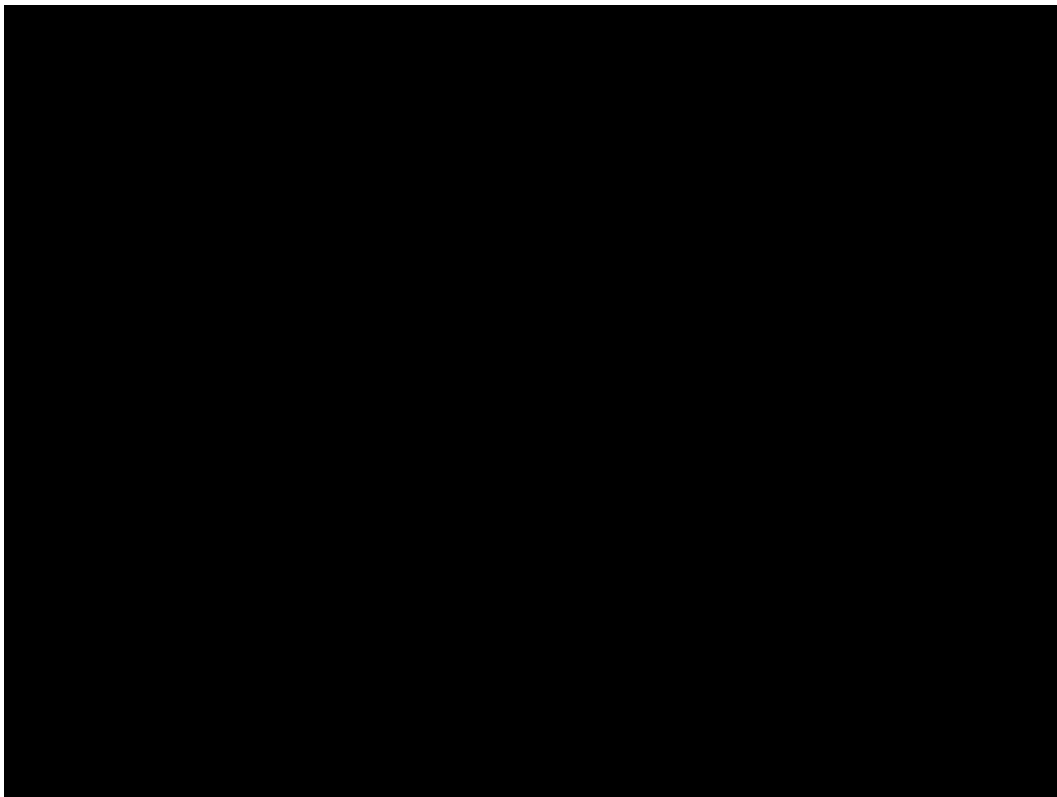
5.3 For each month during the Base Services Period the Performance Score for KPI 2 in respect of each Base in respect of the relevant Lot shall be calculated as  $(A/(A+B)) \times 100$  where:

5.3.1 A is the total number recorded pursuant to Paragraph 5.2.2 of this Schedule in the relevant month for such Base; and

5.3.2 B is the total number recorded pursuant to Paragraph 5.2.1 of this Schedule in the relevant month for such Base.

5.4 Subject to Paragraph 8 of this Schedule, if the Performance Score for KPI 2 in a month in respect of a Base, in respect of the relevant Lot, is less than 95, the Authority may Deduct a percentage of the Indexed Monthly Standing Charge for the relevant Base(s) in respect of the relevant Lot as set out in the table below where:

**IMSC** is the Indexed Monthly Standing Charge for the relevant month for the relevant Base(s) in respect of the relevant Lot.



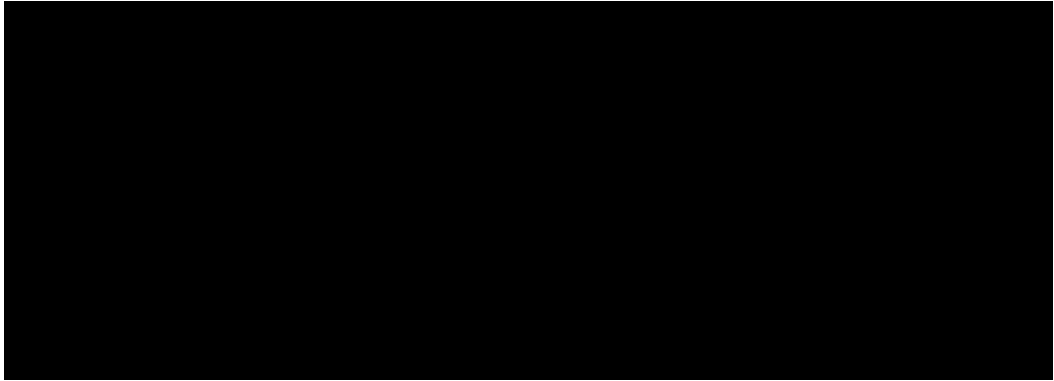


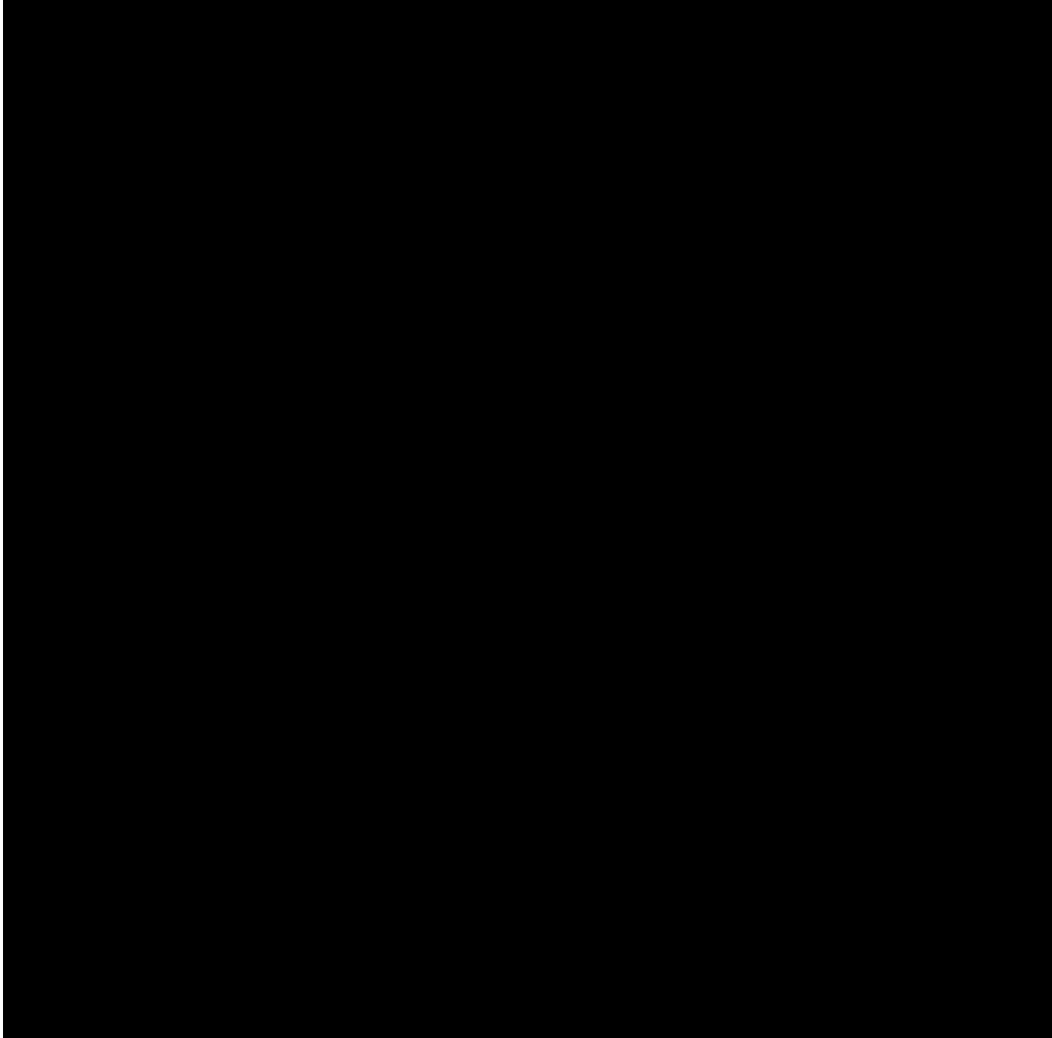


**6 KPI 3 – Task Completion**

- 6.1 The Supplier shall Complete, as determined by the Tasking Authority or Coordinating Authority (as relevant), all Planned Tasks and all Unplanned Tasks.
- 6.2 Each day throughout the relevant Base Service Period, the Supplier shall record for the relevant Base in respect of the relevant Lot:
- 6.2.1 the number of Accepted Tasks for such relevant Base in respect of the relevant Lot that were Completed; and
- 6.2.2 the number of Accepted Tasks for such relevant Base in respect of the relevant Lot that were not Completed,
- provided that the “relevant Base” for the purpose of this Paragraph 6.2 shall mean the Tasked Base and “the relevant Lot” shall be construed accordingly.
- 6.3 For each month during the Base Services Period the Performance Score for KPI 3 in respect of each Base in respect of the relevant Lot shall be calculated as  $(A/(A+B)) \times 100$  where:
- 6.3.1 A is the total number recorded pursuant to Paragraph 6.2.1 of this Schedule in the relevant month for such Base in respect of the relevant Lot; and
- 6.3.2 B is the total number recorded pursuant to Paragraph 6.2.2 of this Schedule in the relevant month for such Base in respect of the relevant Lot.
- 6.4 Subject to Paragraph 8 of this Schedule, if the Performance Score for KPI 3 in a month in respect of a Base, in respect of the relevant Lot, is less than 95 the Authority may Deduct a percentage of the Indexed Monthly Standing Charge for the relevant Base(s) in respect of the relevant Lot as set out in the table below where:

**IMSC** is the Indexed Monthly Standing Charge for the relevant month for the relevant Base(s) in respect of the relevant Lot.





**7 KPI 4 – National Cover**

- 7.1 The Supplier shall ensure that the System is able to Accept Tasks 24 hours a day, seven days a week.
- 7.2 Subject to Paragraph 7.3 of this Schedule, each day throughout the relevant Base Services Period, the Supplier shall record for each Taskable Asset in respect of the relevant Lot the number of hours during the relevant 24 hour period that the Taskable Asset was able to Accept Tasks so that, by way of example only, if the Supplier has ten Taskable Assets and:
  - 7.2.1 all ten Taskable Assets were able to Accept Tasks for the relevant 24 hour period, the number recorded for the relevant day would be 240; and
  - 7.2.2 nine of the Taskable Assets were able to Accept Tasks for the relevant 24 hour period whilst one Taskable Asset was able to Accept Tasks for 23 hours and 45 minutes, the number recorded for the relevant day would be 239.
- 7.3 Where a Taskable Asset is not able to Accept Tasks for any part of an hour, such hour shall not be recorded for the purpose of Paragraph 7.2 of this Schedule.

7.4 For each Quarter during the Base Services Period the Performance Score for KPI 4 in respect of the relevant Lot shall be calculated as  $(A/(B \times C)) \times 100$  where:

7.4.1 A is the total number of hours recorded pursuant to Paragraph 7.2 of this Schedule for all days in the relevant Quarter;

7.4.2 B is the total number of hours in the relevant Quarter; and

7.4.3 C is the total number of Taskable Assets provided in accordance with the Supplier's Solution.

7.5 If the Performance Score for KPI 4 in a Quarter in respect of the relevant Lot is less than:

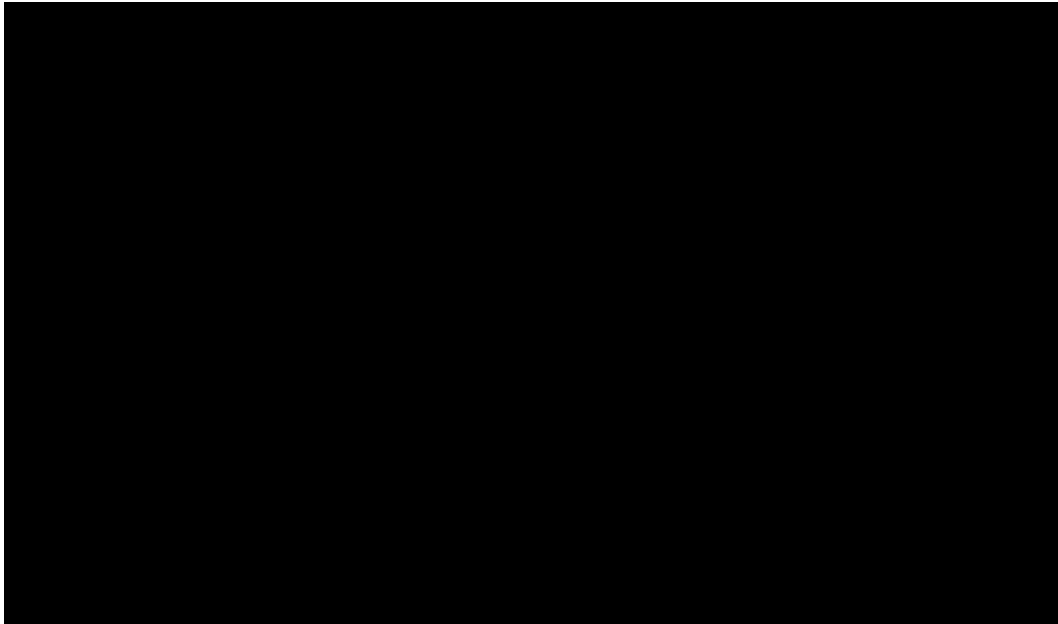
7.5.1 97 for Lot 1;

7.5.2 97 for Lot 2; and/or

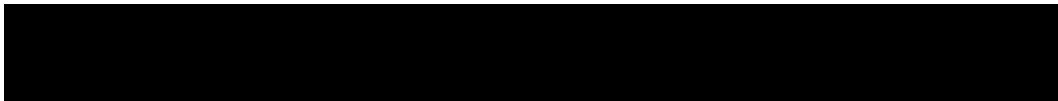
7.5.3 96 for Lot 3,

the Authority may Deduct an amount calculated in accordance with the table below where:

**QIMSC** is the aggregate Indexed Monthly Standing Charge for all Bases during the three Service Periods in the relevant Quarter in respect of the relevant Lot.

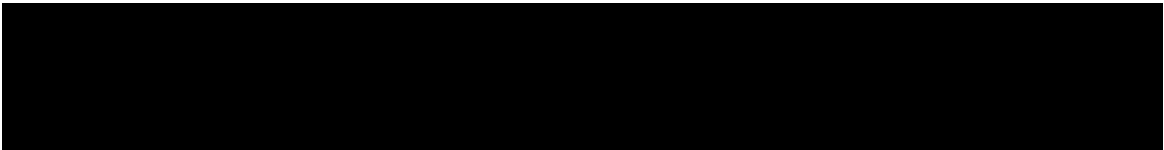


**Lot 3**





**8 Cap on monthly Deductions**



**9 Social Value KPI**

- 9.1 The Parties acknowledge that a Social Value KPI (to be defined) shall be included in the Agreement via a Change.
- 9.2 The Authority shall within 60 days of the date of this Agreement issue a draft Change Request to the Supplier which shall set out the proposed drafting for a Social Value KPI and the Parties shall meet within 14 days of such draft Change Request to discuss the proposed terms.
- 9.3 The Parties shall (both acting reasonably) seek to agree the drafting for a Social Value KPI within 90 days of the date of this Agreement and following any such agreement the Authority shall issue a Change Request to the Supplier setting out the agreed terms.
- 9.4 The Parties agree that there shall be no change to the Charges due to this Change.
- 9.5 Each Party shall pay its own costs in relation to the Change Request.

## Annex 1

### Post Flight Checklist

Applicable UR(s)	Critical Success Factor	Achieved	Explanation	Notes
3.1, 3.6, 3.7 and 4.3.2	<p>Does the Supplier consider that the System successfully Completed the Task to the satisfaction of the Tasking Authority and/or the Co-ordinating Authority, achieving the objectives of the Task as defined by the Tasking Authority or Co-Ordinating Authority?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
3.6	<p>If a Planned Task, does the Supplier consider that it Completed it in accordance with the programme?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
3.5, 4.1.3	<p>Did the Supplier liaise in Near Real Time with the relevant Co-Ordinating Authority after issue of the Task and comply, where possible, with any instructions issued by the Co-Ordinating Authority prior to or during the execution of that Task?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
3.4, 6.6 and 6.7	<p>Was communication maintained between:</p> <ul style="list-style-type: none"> <li>i. the Supplier and the Tasking Authority;</li> <li>ii. all occupants of the Asset;</li> <li>iii. the Asset and any off-board member(s) of the Crew; and</li> <li>iv. (as required) all other persons/assets involved in the Task</li> </ul> <p>in accordance with the Services Description and the Supplier Solution?</p>			

	<p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
4.1.2	<p>Did the System produce, display and share mission plans in accordance with the Services Description and the Supplier Solution?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
4.2.21	<p>Did the System provide all required video, still imagery and Role Sensor data to the Tasking Authority and/or Co-ordinating Authority during a Task in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
4.1.5 and 4.2.4	<p>Did the System produce, display and share (with the Tasking Authority or Coordinating Authority) overlays of the area planned to be covered by all of the Asset's sensors in support of the Task, as well as the sensor and camera data obtained, in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
4.2.19 and 4.2.20	<p>Did the System identify, prioritise and present all transponders and emergency emitters in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No / Not required for the Task</p> <p>If answered 'No', please provide a brief explanation.</p>			
3.7 and 4.2.24	<p>Did the Asset rescue the casualty(ies) and/or people in distress and deliver them to an</p>			Only applicable

	<p>appropriate place of safety, using the Rescue System described in, and in accordance with, the Services Description and the Supplier's Solution?</p> <p>Yes / No / Not required for the Task</p> <p>If answered 'No', please provide a brief explanation.</p>			for Lots 1 and 2
4.2.24, 4.2.25, 4.2.26 and 4.2.29	<p>Were all pertinent:</p> <ul style="list-style-type: none"> <li>i. Rescue Systems;</li> <li>ii. SAR equipment; and</li> <li>iii. the Air Droppable Stores</li> </ul> <p>available and deployed in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No / Not required for the Task</p> <p>If answered 'No', please provide a brief explanation.</p>			Note that (i) and (ii) are only applicable for Lots 1 and 2
4.2.37, 4.2.38 and 4.2.39	<p>Did the System detect, classify and report on oil and pollutants in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No / Not required for the Task</p> <p>If answered 'No', please provide a brief explanation.</p>			Only applicable to Lot 3
4.3.4 and 4.3.6	<p>Did the Supplier:</p> <ul style="list-style-type: none"> <li>i. conduct a Task debrief;</li> <li>ii. inform the Tasking Authority of the time when the System will be returned to the relevant Readiness State; and</li> <li>ii. upload all data captured</li> </ul> <p>in accordance with the Services Description and the Supplier's Solution?</p> <p>Yes / No</p> <p>If answered 'No', please provide a brief explanation.</p>			
4.2.21 and 4.3.1	<p>Did the System appropriately collect data pertinent to the Task in accordance with the Services Description and the Supplier's Solution and make this available to the</p>			

	Tasking Authority and Co-Ordinating Authority post Task?			
	Yes / No If answered 'No', please provide a brief explanation.			
4.13 and 7.12	Was all medical care provided in accordance with the relevant medical standard, utilising correct equipment and/or drugs, and administered by the appropriately trained crew member?			Only applicable for Lots 1 and 2
	Yes / No / Not required for the Task If answered 'No', please provide a brief explanation.			
4.2.27 and 4.2.28	If required by the Task, did the system transport all SAR passengers and associated equipment safely and effectively, in accordance with all relevant aviation legislation and standards to achieve the Task as defined by the Tasking Authority?			Only applicable for Lots 1 and 2
	Yes / No / Not required for the Task If answered 'No', please provide a brief explanation.			
4.3.1	Did the Supplier complete and submit to the Authority within the agreed timeframes a Post Flight Checklist in line with the Tasking Authority and Co-Ordinating requirements?			
	Yes/No If answered 'No', please provide a brief explanation			
4.2.1	Did the Base or on-scene environmental conditions effect in any way the System successfully achieving the Task as defined by the Tasking Authority?			
	Yes / No If answered 'Yes', please provide a brief explanation.			





## **Schedule 4**

### **Security Management**

#### **1 Introduction**

1.1 This Schedule sets out:

1.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations pursuant to this Agreement to ensure the security of the Authority Data and Coordinating Authority Data and the Information Management System;

1.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Authority and/or Coordinating Authority Data;

1.1.3 the security requirements in Annex 1 to this Schedule, with which the Supplier must comply;

(i) the tests which the Supplier shall conduct on the Information Management System during the Term;

(ii) the Supplier's obligations to:

(A) return or destroy Authority Data and/or Coordinating Authority Data on the expiry or earlier termination of this Agreement; and

(B) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 7 of this Schedule; and

(C) report Breaches of Security to the Authority.

#### **2 Principles of Security**

2.1 The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of the Authority Data and/or Coordinating Authority Data, and consequently on the security of:

2.1.1 the Sites;

2.1.2 the IT Environment;

2.1.3 the Information Management System; and

2.1.4 the Services.

2.2 Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier implements to ensure the security of the Authority Data and/or

Coordinating Authority Data and the Information Management System, the Supplier shall be responsible for:

- 2.2.1 the security, confidentiality, integrity and availability of the Authority Data and Coordinating Authority Data whilst that Authority Data and Coordinating Authority Data is under the control of the Supplier or any of its Sub-contractors; and
  - 2.2.2 the security of the Information Management System.
- 2.3 The Supplier shall:
- 2.3.1 comply with the security requirements in Annex 1 to this Schedule; and
  - 2.3.2 ensure that each Sub-contractor that Processes Authority Data and/or Coordinating Authority Data complies with the security requirements in Annex 2 to this Schedule.
- 2.4 The Supplier shall provide the Authority with access to Supplier Personnel responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

### **3 Information Security Approval Statement**

- 3.1 The Supplier shall ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2 to this Schedule, from the first Services Commencement Date.
- 3.2 The Supplier may not use the Information Management System to Process Authority Data and/or Coordinating Authority Data unless and until:
  - 3.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 6.1 of this Schedule; and
  - 3.2.2 the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 3.
- 3.3 The Supplier shall prepare and submit to the Authority within 20 Working Days of the Effective Date of this Agreement, the Security Management Plan.
- 3.4 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and this Agreement in order to ensure the security of the Authority Data and/or Coordinating Authority Data and the Information Management System.
- 3.5 The Supplier shall document in the Incident Management Process the steps required to restore normal operations as quickly as possible, minimise any adverse impact on the Authority Data, Coordinating Authority Data, the Authority, any relevant Coordinating Authority the Services and/or users of the Services and shall, as a

minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

- 3.5.1 immediately take all reasonable steps necessary to:
  - (i) minimise the extent of actual or potential harm caused by such Breach of Security;
  - (ii) remedy such Breach of Security to the extent possible;
  - (iii) apply a tested mitigation against any such Breach of Security; and
  - (iv) prevent a further Breach of Security in the future which exploits the same root cause failure; and

3.5.2 as soon as reasonably practicable and in any event within 48 hours of being identified, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

3.6 The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and in any event within 20 Working Days of receipt and shall either issue the Supplier with:

3.6.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data and/or Coordinating Authority Data; or

3.6.2 a rejection notice, which shall set out the Authority's reasons for rejecting the proposed Security Management Plan.

3.7 If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within ten Working Days of the Authority rejecting the Supplier's proposed Security Management Plan or such other timescale as agreed with the Authority.

3.8 If required by the Authority, the Supplier shall provide the Authority and its authorised representatives with:

3.8.1 access to the Supplier Personnel;

3.8.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Agreement; and

3.8.3 such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

to assist the Authority to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Authority Data and Coordinating Authority Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Authority in accordance with this Paragraph

3.8 within ten Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Authority with the access that it requires within 24 hours of receipt of such request.

#### **4 Compliance Reviews**

4.1 The Supplier shall regularly review and update the Security Management Plan, and provide the updated Security Management Plan to the Authority, at least once each year and as required by this Paragraph 4.

4.2 The Supplier shall notify the Authority within two Working Days after becoming aware of:

4.2.1 a significant change to the components or architecture of the Information Management System;

4.2.2 a new risk to the components or architecture of the Information Management System;

4.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;

4.2.4 a change in the threat profile;

4.2.5 a significant change to any risk component;

4.2.6 a significant change in the quantity of Personal Data held within the Service;

4.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or

4.2.8 an ISO27001 audit report produced in connection with the Certification Requirements which indicates significant concerns.

4.3 Within ten Working Days of the Supplier giving notice in accordance with Paragraph 4.2 of this Schedule or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register to the Authority for review and approval.

4.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

#### **5 Certification Requirements**

5.1 The Supplier shall be certified as compliant with:

5.1.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

- 5.1.2 Cyber Essentials PLUS,
- and shall provide the Authority and/or any relevant Coordinating Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Authority Data or Coordinating Authority Data.
- 5.2 The Supplier shall ensure that each Sub-contractor is certified as compliant with either:
- 5.2.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; or
- 5.2.2 Cyber Essentials PLUS,
- and shall provide the Authority and/or any relevant Coordinating Authority with a copy of each such certificate of compliance before the Sub-contractor shall be permitted to receive, store or Process Authority Data and/or Coordinating Authority Data.
- 5.3 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data and Coordinating Authority Data:
- 5.3.1 securely destroys Authority Data and/or Coordinating Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- 5.3.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority.
- 5.4 The Supplier shall provide the Authority and/or any relevant Coordinating Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in Paragraphs 4 and 5 of this Schedule before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Authority Data and/or Coordinating Authority Data.
- 5.5 The Supplier shall notify the Authority and/or any relevant Coordinating Authority as soon as reasonably practicable and in any event within two Working Days if the Supplier and/or any Sub-contractor ceases to be compliant with the Certification Requirements and:
- 5.5.1 on request from the Authority, shall and/or shall procure that the relevant Sub-contractor shall:
- (i) immediately cease using the Authority Data; and
  - (ii) promptly return, destroy and/or erase the Authority Data in accordance with the requirements set out in this Paragraph 5; and
- 5.5.2 on request from any relevant Coordinating Authority, shall and/or shall procure that the relevant Sub-contractor shall:

- 5.5.3 immediately cease using such Coordinating Authority's Coordinating Authority Data; and
- 5.5.4 promptly return, destroy and/or erase such Coordinating Authority Data in accordance with the requirements set out in this Paragraph 5.
- 5.6 The Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 5 in relation to Authority Data. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.
- 5.7 A Coordinating Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 5 in relation to its Coordinating Authority Data. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

## **6 Security Testing**

- 6.1 The Supplier shall, at its own cost and expense procure and conduct:
  - 6.1.1 testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**"); and
  - 6.1.2 such other security tests as may be required by the Authority.
- 6.2 The Supplier shall complete all of the above security tests before the Supplier submits the Security Management Plan to the Authority for review in accordance with Paragraph 3 of this Schedule and it shall repeat the IT Health Check not less than once every twelve months during the Term and submit the results of each such test to the Authority for review in accordance with this Paragraph 6 .
- 6.3 In relation to each IT Health Check, the Supplier shall:
  - 6.3.1 agree with the Authority the aim and scope of the IT Health Check;
  - 6.3.2 promptly, and no later than ten Working Days following the receipt of each IT Health Check report, provide the Authority with a copy of the full report;
  - 6.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
    - (i) prepare a remedial plan for approval by the Authority (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:
      - (A) how the vulnerability will be remedied;
      - (B) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
        - 1) within three months of the date the Supplier received the IT Health Check report in the case of

- any vulnerability categorised with a severity of “medium”;
      - 2) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
      - 3) within ten Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
    - (C) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;
  - (ii) comply with the Vulnerability Correction Plan; and
  - (iii) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 6.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.
- 6.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within two Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Authority with a copy of the test report and:
- 6.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and
  - 6.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.
- 6.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations.
- 6.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.



## **7 Security Monitoring and Reporting**

- 7.1 The Supplier shall:
- 7.1.1 monitor the delivery of assurance activities;
  - 7.1.2 maintain and update the Security Management Plan in accordance with Paragraph 3 of this Schedule;
  - 7.1.3 agree a document which presents the residual security risks to inform the Authority's and any relevant Coordinating Authority's decision to give approval to the Supplier to Process, store and transit the Authority Data and/or Coordinating Authority Data;
  - 7.1.4 monitor security risk impacting upon the operation of the Service;
  - 7.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
  - 7.1.6 agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within 20 Working Days of the Effective Date.

## **8 Malicious Software**

- 8.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and/or Coordinating Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 8.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data and/or Coordinating Authority Data, assist each other to mitigate any Losses and to continue the provision of the Services.
- 8.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 8.2 of this Schedule shall be borne by the Parties as follows:
- 8.3.1 by the Authority and/or Coordinating Authority, if the Supplier can demonstrate that such costs did not arise out of any breach by the Supplier of its obligations pursuant to this Agreement and that the Malicious Software was present in data transmitted by the Authority and/or Coordinating Authority and was not quarantined or otherwise identified by the Authority and/or Coordinating Authority when provided to the Supplier; and
  - 8.3.2 by the Supplier, in any other circumstances.

**9 Breach of Security**

- 9.1 If either Party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process and the Supplier shall comply with the Incident Management Process.
- 9.2 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security then such remedial action shall be completed at no additional cost to the Authority.

## **Annex 1**

### **Security Requirements**

#### **1 Security Classification of Information**

- 1.1 If the provision of the Services requires the Supplier to Process Authority Data and/or Coordinating Authority Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable standards.

#### **2 End User Devices**

- 2.1 The Supplier shall ensure that any Authority Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Supplier shall ensure that any Coordinating Authority Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the relevant Coordinating Authority except where the relevant Coordinating Authority has given its prior written consent to an alternative arrangement.
- 2.3 The Supplier shall ensure that any device which is used to Process Authority Data and/or Coordinating Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>.

#### **3 Networking**

- 3.1 The Supplier shall ensure that any Authority Data and/or Coordinating Authority Data which it causes to be transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

#### **4 Personnel Security**

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and/or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist

Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data and/or Coordinating Authority Data or data which, if it were Authority Data or Coordinating Authority Data, would be classified as OFFICIAL-SENSITIVE.

- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 of this Annex to be involved in the management and/or provision of the Services except where the Authority, having been notified by the Supplier in writing that the relevant Supplier Personnel failed the security checks required by Paragraphs 4.1 and 4.2 of this Annex, has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data and/or Coordinating Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities in connection with the Services.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data and/or Coordinating Authority Data (e.g. if they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data and/or Coordinating Authority Data revoked as soon as reasonably possible and in any case within one Working Day.
- 4.6 The Supplier shall ensure that the Supplier Personnel that have access to the Sites, the IT Environment and/or the Authority Data and/or Coordinating Authority Data, receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment and/or the Authority Data and/or Coordinating Authority Data.
- 4.7 The Supplier shall ensure that the training provided to the Supplier Personnel pursuant to Paragraph 4.6 of this Annex includes training on the identification and reporting of fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Authority Data and/or Coordinating Authority Data (“phishing”).

## **5 Identity, Authentication and Access Control**

- 5.1 The Supplier shall operate an access control regime to ensure that:
  - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
  - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require for the purpose of providing the Services.

- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such records available to the Authority on request.

## **6 Data Destruction or Deletion**

- 6.1 The Supplier shall:
- 6.1.1 prior to securely sanitising any Authority Data or when requested, provide the Authority with all Authority Data in an agreed open format;
  - 6.1.2 prior to securely sanitising any Coordinating Authority Data or when requested, provide any relevant Coordinating Authority with its Coordinating Authority Data in an agreed open format;
  - 6.1.3 have documented processes to ensure the availability of Authority Data and/or Coordinating Authority Data in the event of an Insolvency Event of the Supplier and/or Supplier Group;
  - 6.1.4 securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority;
  - 6.1.5 securely erase in a manner agreed with any relevant Coordinating Authority any or all of its Coordinating Authority Data held by the Supplier when requested to do so by such relevant Coordinating Authority;
  - 6.1.6 securely destroy in a manner agreed with the Authority all media that has at any point held Authority Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, when requested to do so by the Authority;
  - 6.1.7 securely destroy in a manner agreed with any relevant Coordinating Authority all media that has at any point held such Coordinating Authority's Coordinating Authority Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, when requested to do so by the relevant Coordinating Authority; and
  - 6.1.8 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

## **7 Audit and Protective Monitoring**

- 7.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data and/or Coordinating Authority Data.
- 7.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Information Management System.

- 7.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Security Management Plan.

## **8 Location of Authority Data and/or Coordinating Authority Data**

- 8.1 The Supplier shall not and shall procure that none of its Sub-contractors Process Authority Data outside the United Kingdom without the prior written consent of the Authority, which may be subject to conditions.
- 8.2 The Supplier shall not and shall procure that none of its Sub-contractors Process Coordinating Authority Data outside the United Kingdom without the prior written consent of the relevant Coordinating Authority, which may be subject to conditions.

## **9 Vulnerabilities and Corrective Action**

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data and/or Coordinating Authority Data.
- 9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
  - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4 of this Annex, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
- 9.3.1 seven days after the public release of patches for those vulnerabilities categorised as 'Critical';
  - 9.3.2 30 days after the public release of patches for those vulnerabilities categorised as 'Important'; and
  - 9.3.3 60 days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 of this Annex shall be extended where:
- 9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

- 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five days, provided the Supplier has followed and continues to follow the security patch test plan agreed with the Authority; or
  - 9.4.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier pursuant to the processes defined in the Security Management Plan.
- 9.5 The Supplier shall ensure that the Security Management Plan includes provisions for major version upgrades of all COTS Software to be kept up to date by the Supplier such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing. The Supplier shall ensure that all COTS Software is no more than N-1 versions behind the latest software release.

## **10 Secure Architecture**

- 10.1 The Supplier shall design the Information Management System in accordance with:
- 10.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
  - 10.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
  - 10.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
    - (i) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
    - (ii) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
    - (iii) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
    - (iv) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
    - (v) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and

managed securely in order to impede, detect or prevent a Breach of Security;

- (vi) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or Coordinating Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;
- (vii) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (viii) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (ix) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority's use of the Service;
- (x) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (xi) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (xii) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (xiii) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data and/or Coordinating Authority Data held by the Supplier and/or its Sub-contractors; and
- (xiv) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.



## **Annex 2**

### **Security Requirements for Sub-contractors**

#### **1 Application of Annex**

- 1.1 This Annex applies to all Sub-contractors that Process Authority Data and/or Coordinating Authority Data.
- 1.2 The Supplier must:
  - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;
  - 1.2.2 keep sufficient records to demonstrate that compliance to the Authority; and
  - 1.2.3 ensure that its Implementation Plan includes deliverable items, milestones and milestone dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Authority Data and/or Coordinating Authority Data.

#### **2 Designing and managing secure solutions**

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to the Authority on the Authority's request.

#### **3 Data Processing, Storage, Management and Destruction**

- 3.1 The Sub-contractor must not Process any Authority Data and/or Coordinating Authority Data outside the United Kingdom.
- 3.2 The Authority may permit the Sub-contractor to Process Authority outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any such permission must be in writing to be effective.
- 3.3 A Coordinating Authority may permit the Sub-contractor to Process its Coordinating Authority Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any such permission must be in writing to be effective.
- 3.4 The Sub-contractor must securely erase any or all Authority Data held by the Sub-contractor when requested to do so by the Authority; and securely destroy all media

that has at any point held Authority Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Authority.

- 3.5 The Sub-contractor must securely erase any or all Coordinating Authority Data held by the Sub-contractor when requested to do so by the relevant Coordinating Authority; and securely destroy all media that has at any point held Coordinating Authority Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Authority.

#### **4 Personnel Security**

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and/or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.
- 4.2 The Sub-contractor must, if the Authority requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Authority Data containing Personal Data above certain volumes specified by the Authority, or containing Special Category Personal Data.
- 4.3 The Sub-contractor must, if any relevant Coordinating Authority requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Coordinating Authority Data containing Personal Data above certain volumes specified by the relevant Coordinating Authority, or containing Special Category Personal Data.
- 4.4 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

#### **5 End User Devices**

- 5.1 The Sub-contractor shall ensure that any Authority Data and/or Coordinating Authority Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.
- 5.2 The Supplier shall ensure that any device used to Process Authority Data and/or Coordinating Authority Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

## **6 Networking**

- 6.1 The Supplier shall ensure that any Authority Data and/or Coordinating Authority Data which it causes to be transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

## **7 Patching and Vulnerability Scanning**

- 7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

## **8 Third Party Sub-contractors**

- 8.1 The Sub-contractor must not transmit or disseminate the Authority Data to any other person unless specifically authorised by the Authority. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not transmit or disseminate any Coordinating Authority Data to any other person unless specifically authorised by the relevant Coordinating Authority. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.3 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Authority Data and/or Coordinating Authority Data where the licence terms of that software purport to grant the licensor rights to Process the Authority Data and/or Coordinating Authority Data greater than those rights strictly necessary for the use of the software.

## **Annex 3**

### **Security Management Plan Template**

Security Management Plan Template (Accreditation)

[Project/Service and Supplier Name]

#### **1 Executive Summary**

*<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>*

#### **2 System Description**

##### 2.1 Background

*<A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>*

##### 2.2 Organisational Ownership/Structure

*<Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>*

##### 2.3 Information assets and flows

*<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>*

##### 2.4 System Architecture

*<A description of the physical system architecture, to include the system management. A diagram will be needed here>*

##### 2.5 Users

*<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>*

##### 2.6 Locations

*<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>*

##### 2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Key roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor >

**3 Risk Assessment**

3.1 Accreditation/Assurance Scope

<This section describes the scope of the Accreditation/Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed, but against which assurance will not be done, clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SIRO/SRO and included here.>

3.3 Business impact assessment

<A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks. >

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users' bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users' home addresses when bank details are altered. C15. Staff awareness training	Low

### 3.5 Controls

*<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>*

ID	Control title	Control description	Further information and assurance status
----	---------------	---------------------	--

C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

### 3.6 Residual risks and actions

*<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>*

## 4 **In-service controls**

*<This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:*

- (a) *information risk management and timescales and triggers for a review;*
- (b) *contractual patching requirements and timescales for the different priorities of patch;*
- (c) *protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;*
- (d) *configuration and change management;*
- (e) *incident management;*
- (f) *vulnerability management;*
- (g) *user access management; and*
- (h) *data sanitisation and disposal.>*

**5 Security Operating Procedures (SyOPs)**

*< If needed any SyOps requirements should be included and referenced here.>*

**6 Major Hardware and Software and end of support dates**

*< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>*

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

**7 Incident Management Process**

*<The suppliers' process, as agreed with the Authority/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Authority/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>*

**8 Security Requirements for User Organisations**

*<Any security requirements for connecting organisations or departments should be included or referenced here.>*

**9 Required Changes Register**

*<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>*

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Authority name	11/11/2018	Jul-2019	Open

**10 Personal Data Processing Statement**

*<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Sub-contractors Process Authority Data and/or Coordinating Authority Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect the*



*Authority Data and/or Coordinating Authority Data against a Security Breach including a Personal Data Breach.>*

**11 Annex A. ISO27001 and/or Cyber Essential Plus certificates**

*<Any certifications relied upon should have their certificates included>*

**12 Annex B. Cloud Security Principles assessment**

*<A spreadsheet may be attached>*

**13 Annex C. Protecting Bulk Data assessment if required by the Authority/Customer**

*<A spreadsheet may be attached>*

**14 Annex E. Latest ITHC report and Vulnerability Correction Plan**

## Schedule 5

### Insurance Requirements

#### **1 Obligation to Maintain Insurances**

- 1.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority pursuant to this Agreement, the Supplier shall for the periods specified in Annex 1 to this Schedule take out and maintain or procure the taking out and maintenance of the insurances as set out pursuant to this Schedule and Annex 1 to this Schedule and any other insurances as may be required by applicable Law, together the Required Insurances. The Supplier shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 1.2 The Required Insurances shall be taken out and maintained with insurers who are:
  - 1.2.1 of good financial standing;
  - 1.2.2 regulated by the applicable regulatory body and is in good standing with that regulator; and
  - 1.2.3 of good repute in the international insurance market.
- 1.3 Where specified in Annex 1 to this Schedule the Supplier shall ensure that the relevant policy of insurance:
  - 1.3.1 shall contain an indemnity to principals clause or additional insureds equivalent, pursuant to which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Supplier is legally liable in respect of this Agreement; and
  - 1.3.2 names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 1.4 Where any Required Insurance is subject to the Insurance Act 2015, the Supplier shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending the Required Insurances, including in circumstances where the Supplier is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 1.5 Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate" and there is a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement.

## **2 Failure to Insure**

- 2.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 2.2 The Authority may elect (but shall not be obliged) where notice has been provided to the Supplier to purchase any insurance which the Supplier is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority may recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

## **3 Evidence of Insurances**

- 3.1 The Supplier shall from the Effective Date and within 15 Working Days after the renewal or replacement of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet in full the requirements of this Schedule and Annex 1 to this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations pursuant to this Agreement.

## **4 Cancellation**

- 4.1 Subject to Paragraph 4.2 of this Schedule, the Supplier shall notify the Authority in writing at least ten days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 4.2 Without prejudice to the Supplier's obligations pursuant to Paragraph 3 of this Schedule, Paragraph 4.1 of this Schedule shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Schedule.

## **5 Insurance Claims, Premiums and Deductibles**

- 5.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including providing information and documentation in a timely manner.
- 5.2 The Supplier shall maintain a register of all claims under the Required Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.
- 5.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 5.4 Where any insurance referred to in this Schedule and Annex 1 to this Schedule is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or

deductible under the Required Insurances whether pursuant to the terms of this Agreement or otherwise.

- 5.5 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of [REDACTED] relating to or arising out of the provision of the Services and/or this Agreement on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

**6 Application of Proceeds**

- 6.1 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Annex 1 to this Schedule shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

## Annex 1

### Insurance

#### **1 Third Party (Non-Aviation) Public Liability Insurance**

##### 1.1 Insured

Supplier.

##### 1.2 Interest

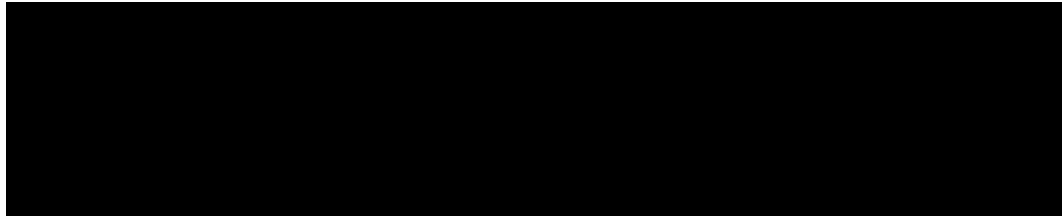
To indemnify the insured (as set out in Paragraph 1.1 of this Annex) in respect of all sums which the insured (as set out in Paragraph 1.1 of this Annex) shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

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

1.2.2 loss of or damage to property,

happening during the period of insurance (as set out in Paragraph 1.4 of this Annex) and arising out of or in connection with this Agreement.

##### 1.3 Limit of indemnity



##### 1.4 Period of insurance

From the Effective Date and throughout the Term of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

##### 1.5 Territorial limits

United Kingdom and elsewhere in respect of non-manual visits.

##### 1.6 Cover features and extensions

1.6.1 Indemnity to principal's clause.

1.6.2 Legal defence costs in addition to limit.

1.6.3 Contingent motor liability.

##### 1.7 Principal exclusions

- 1.7.1 War and related perils.
- 1.7.2 Nuclear and radioactive risks.
- 1.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the insured (as set out in Paragraph 1.1 of this Annex) arising out of the course of their employment.
- 1.7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 1.7.5 Liability in respect of predetermined penalties or liquidated damages imposed pursuant to any contract entered into by the insured (as set out in Paragraph 1.1 of this Annex).
- 1.7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 1.7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 1.7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

1.8 Maximum deductible threshold



**2 Aviation Third Party Liability Insurance**

2.1 Insured

Supplier.

2.2 Interest

To indemnify the insured (as set out in Paragraph 2.1 of this Annex) in respect of all sums that the insured (as set out in Paragraph 2.1 of this Annex) may become legally liable to pay as damages in respect of:

2.2.1 death or bodily injury contracted by any person; and

2.2.2 loss of or damage to property,

happening during the period of insurance and arising out of or in connection with this Agreement excluding legal liability in respect of non-aviation liability coverage specified in Paragraph 1 of this Annex.

2.3 Limit of indemnity



2.4 Period of insurance

From the earlier of the first Services Commencement Date to occur and the date upon which the relevant Aviation Third Party Liability Insurance risk commences until expiry or earlier termination of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

2.5 Territorial limits

Worldwide subject to the geographical areas exclusion clause in accordance with prevailing aviation insurance market practice LSW617G (or equivalent).

2.6 Cover features and extensions

2.6.1 Personal injury extension clause AVN60A (or equivalent).

2.6.2 Extended coverage endorsement (aviation liability) AVN52E (or equivalent).

2.7 Principal exclusions

2.7.1 Nuclear risks exclusion clause (AVN38B or equivalent).

2.7.2 War, hijacking and other perils exclusion clause (AVN48B or equivalent).

2.7.3 Noise and pollution and other perils exclusion clause (AVN46B or equivalent).

2.7.4 Date recognition exclusion (AVN2000A subject to AVN2001A or equivalent).

2.7.5 Asbestos (AGM248800003) or equivalent).

2.7.6 Contracts (Rights of Third Parties) Act 1999 (AVN72 or equivalent).

2.8 Maximum deductible threshold



**3 Errors and Omissions Liability Insurance for Paramedics**

3.1 Insured

Supplier.

3.2 Interest

To indemnify the insured (as set out in Paragraph 3.1 of this Annex) in respect of all sums that they become legally liable to pay (including claimant's costs and expenses) as damages in respect of any act, error, omission or mistake by a medical practitioner performing medical services happening during the period of insurance and arising out of or in connection with this Agreement and the provision of the Services but only for, or on behalf of the insured (as set out in Paragraph 3.1 of this Annex) in the provision of emergency medical relief insofar as these are the responsibility of the Supplier.

3.3 Limit of indemnity

[REDACTED]

3.4 Maximum deductible:

[REDACTED]

3.5 Territorial limits

Worldwide excluding USA and Canada.

3.6 Period of insurance

From the earlier of the first Services Commencement Date to occur and the date upon which the relevant Errors and Omissions Liability Insurance for Paramedics risk commences until the expiry or earlier termination of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

3.7 Cover features extensions

Extensions in accordance with prevailing errors and omissions in the insurance market practice from time to time.

3.8 Principal exclusions

3.8.1 Aids and Hepatitis A.

3.8.2 UK MDO Notifications.

**4 Compulsory Insurances (Employers Liability Insurance and Third Party Motor Liability insurance)**

4.1 The Supplier is required to meet its United Kingdom and all other statutory or insurances required by law worldwide in full. Insurances are required to comply with



all statutory requirements including United Kingdom employers' liability insurance and motor third party liability insurance.

- 4.2 Where relevant, motor third party airside liability insurance with a limit of indemnity of not less than [REDACTED] in respect of any one occurrence the number of occurrences being unlimited in any annual period of insurance in respect of any relevant claims associated with this Agreement.

## **5 Property Damage "All Risks" Insurance**

### **5.1 Insureds**

5.1.1 Supplier;

5.1.2 Authority,

each for their separate interests.

### **5.2 Insured property**

The Property (as defined in the Lee-on-Solent Lease).

### **5.3 Coverage**

"All Risks" of physical loss or damage to the insured property (as set out in Paragraph 5.2 of this Annex) from any cause not excluded.

### **5.4 Sum insured**

[REDACTED]

### **5.5 Territorial limits**

United Kingdom.

### **5.6 Period of insurance**

From the first day of the Term for which the Property is leased (as defined in the Lee-on-Solent Lease) until the expiry or earlier termination of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

### **5.7 Cover features and extensions**

5.7.1 Terrorism.

5.7.2 Automatic reinstatement of sum insured.

5.7.3 Capital additions clause.

5.7.4 72 hour clause.

5.7.5 European Union local authority's clause.

- 5.7.6 Professional fees.
- 5.7.7 Debris removal.
- 5.7.8 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.
- 5.7.9 Temporary off-site storage.
- 5.7.10 Authority co-insurance with attendant non vitiation, waiver of subrogation and notice of cancellation clause.

5.8 Principal exclusions

- 5.8.1 War and related perils.
- 5.8.2 Nuclear/radioactive risks.
- 5.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 5.8.4 Wear, tear and gradual deterioration.
- 5.8.5 Consequential financial losses.
- 5.8.6 Cyber risks.

5.9 Maximum deductible threshold



**6 Aircraft Hull "All Risks" Insurance**

6.1 Insureds

- 6.1.1 Supplier;
  - 6.1.2 Authority,
- each for their separate interests.

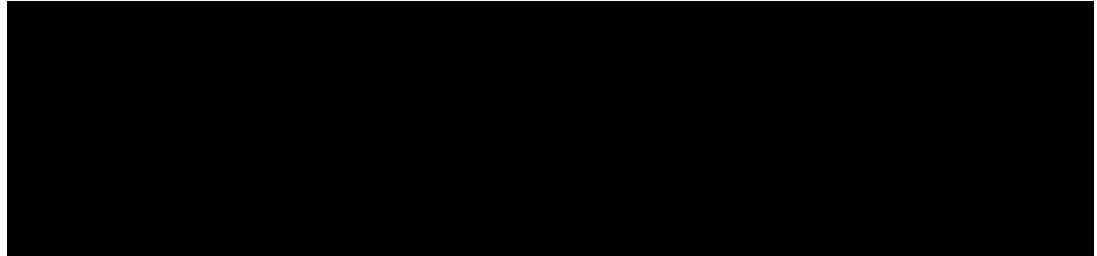
6.2 Insured property

- 6.2.1 Aircraft operated by the insured (as set out in Paragraph 6.1.1 of this Annex), the property of the insureds (as set out in Paragraph 6.1 of this Annex), leased or loaned to insured (as set out in Paragraph 6.1.1 of this Annex) or in their care, custody or control, for which the insured (as set out in Paragraph 6.1.1 of this Annex) will deliver the Services.
- 6.2.2 Aircraft spare engines, spare parts, components and equipment (including equipment fitted to aircraft and employees' tools), ground support equipment, medical equipment and all other equipment used in connection with the insured's (as set out in Paragraph 6.1.1 of this Annex) aviation operations related to the Services.

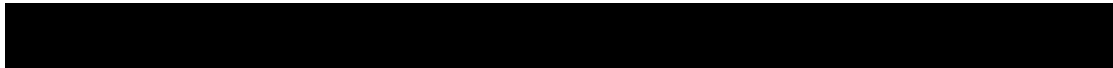
6.3 Coverage

"All Risks" of physical loss of, or damage to the insured property (as set out in Paragraph 6.2 of this Annex) from any cause not excluded.

6.4 Sum insured



6.5 Maximum deductible



6.6 Period of insurance

From the earlier of the first Services Commencement Date to occur and the date upon which the relevant Aircraft Hull "All Risks" Insurance risk commences until expiry or earlier termination of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

6.7 Principal exclusions

- 6.7.1 Nuclear risk exclusion clause in accordance with prevailing aviation insurance market practice AVN38B.
- 6.7.2 War, hi-jacking and other perils exclusion clause in accordance with prevailing aviation insurance market practice AVN48B.
- 6.7.3 Contracts (Rights of Third Parties) Act exclusion clause in accordance with prevailing aviation insurance market practice AVN72.
- 6.7.4 Mechanical breakdown.
- 6.7.5 Wear, tear and gradual deterioration.
- 6.7.6 Date recognition exclusion in accordance with prevailing aviation insurance market practice AVN2000A subject to AVN2001A.

**7 Aircraft Hull War Risks Insurance**

7.1 Insureds

- 7.1.1 Supplier; and
  - 7.1.2 Authority,
- each for their separate interests.

7.2 Insured property

In accordance with Paragraph 6.2.1 of this Annex (Aircraft Hull “All Risks” Insurance).

7.3 Coverage

Physical loss or damage to the insured property (as set out in Paragraph 7.2 of this Annex) arising from:

7.3.1 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power;

7.3.2 Strikes, riots, civil commotions or labour disturbances;

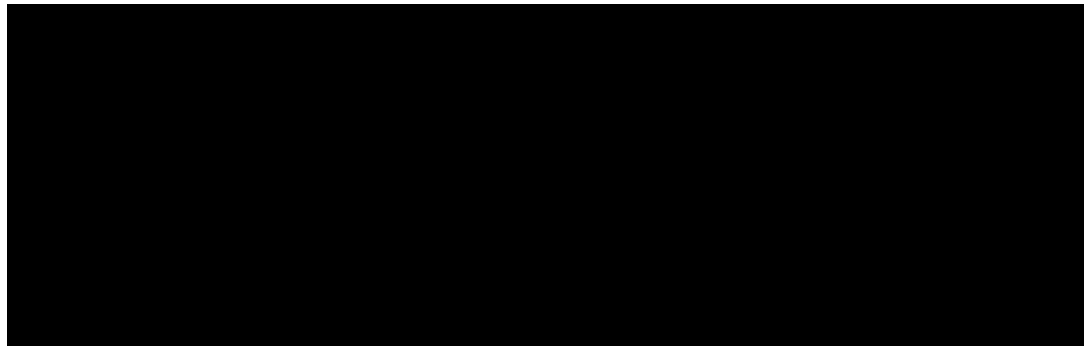
7.3.3 Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting there from is accidental or intentional;

7.3.4 Any malicious act or act of sabotage;

7.3.5 Confiscation, nationalisation, seizure, restraint, detention, appropriations, requisition for title or use by or pursuant to the order of any Government (whether civil military or de facto) or public or local authority; and

7.3.6 Hi-jacking or any unlawful seizure or wrongful exercise of control of the aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the aircraft acting without the consent of the Insured.

7.4 Sum insured:



7.5 Maximum deductible:



7.6 Territorial limits:

Worldwide subject to the geographical areas exclusion clause in accordance with prevailing aviation insurance market practice LSW617G.

7.7 Period of insurance

From the earlier of the first Services Commencement Date to occur and the date upon which the relevant Aircraft Hull "All Risks" Insurance risk commences until expiry or earlier termination of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties.

7.8 Principal exclusions

In the event of an outbreak of war between any of China, France, Russia, the United Kingdom and/or the United States, coverage shall terminate automatically.

## **Schedule 6**

### **Authority Responsibilities**

#### **1 Introduction**

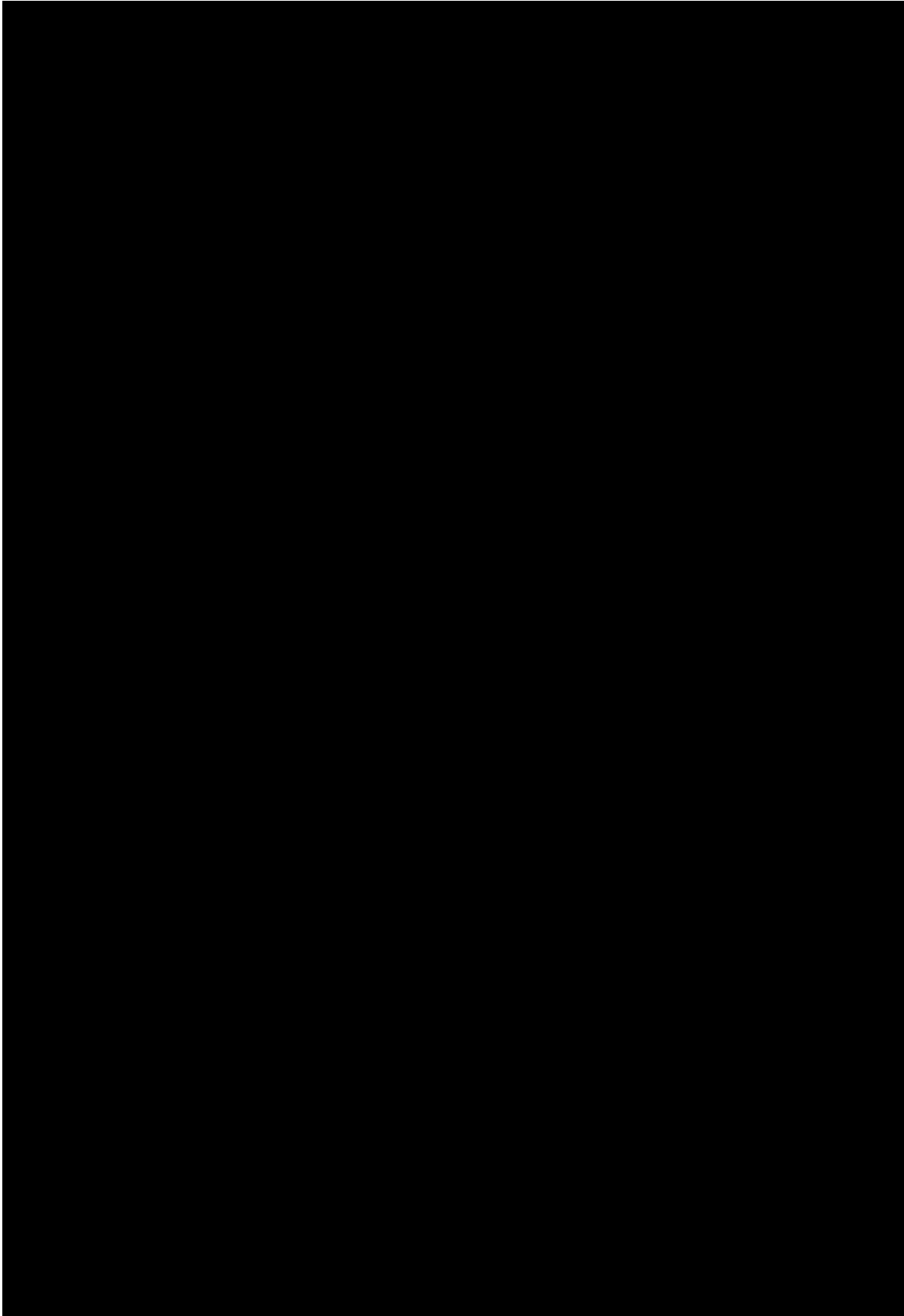
- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities pursuant to this Agreement. Any obligations of the Authority in Schedule 2 (*Services Description*) and Schedule 7 (*Supplier's Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

#### **2 General Obligations**

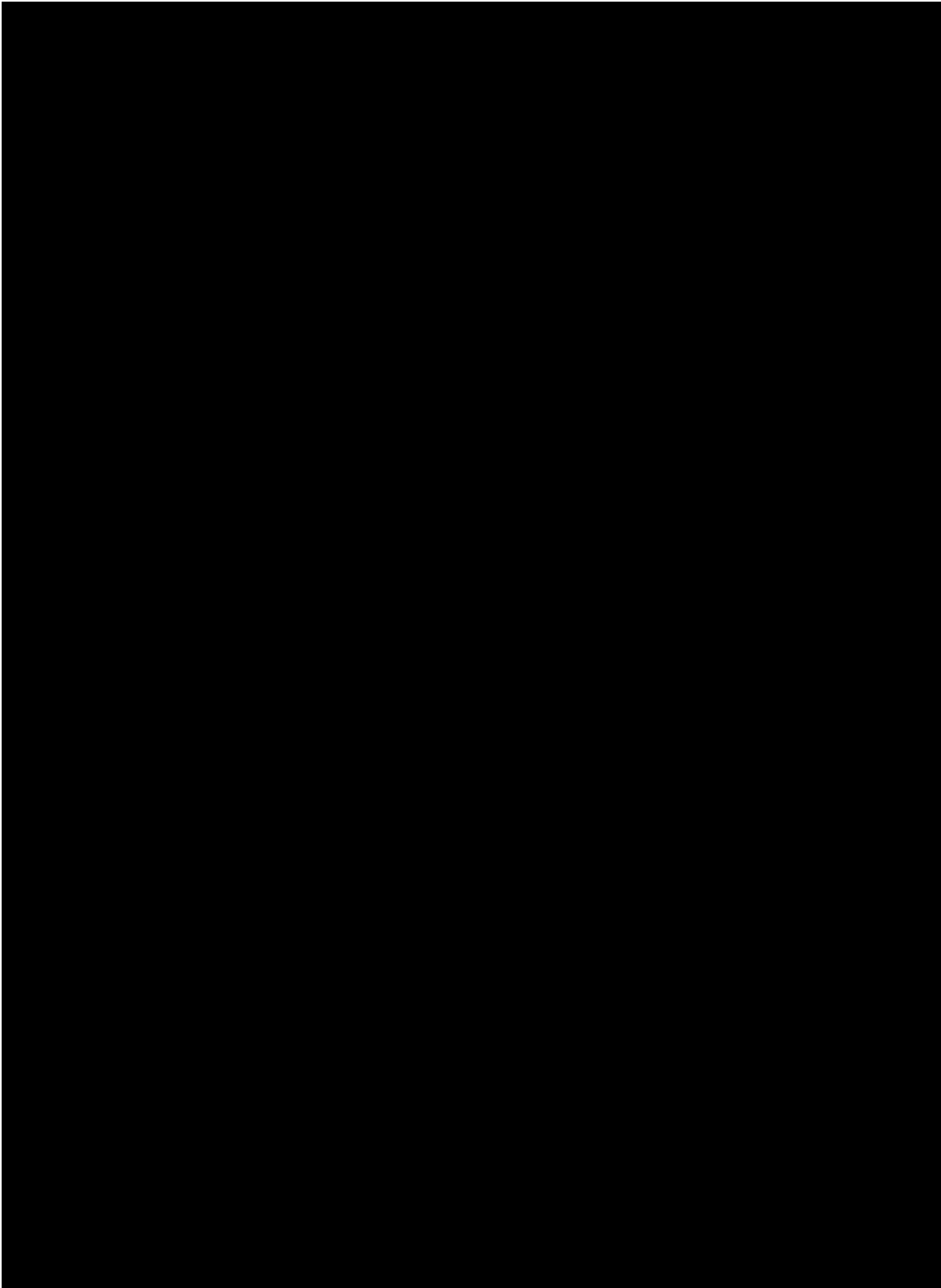
- 2.1 The Authority shall:
  - 2.1.1 perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2 (*Services Description*) and Schedule 7 (*Supplier's Solution*));
  - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
  - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties pursuant to this Agreement as defined in the Transition and Acceptance Plan; and
  - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations pursuant to the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority.

**Schedule 7**  
**Suppliers Solution**

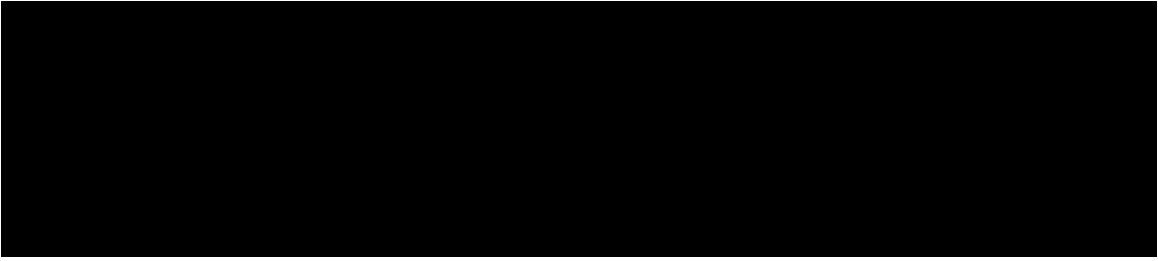
Schedule 7 has been redacted.







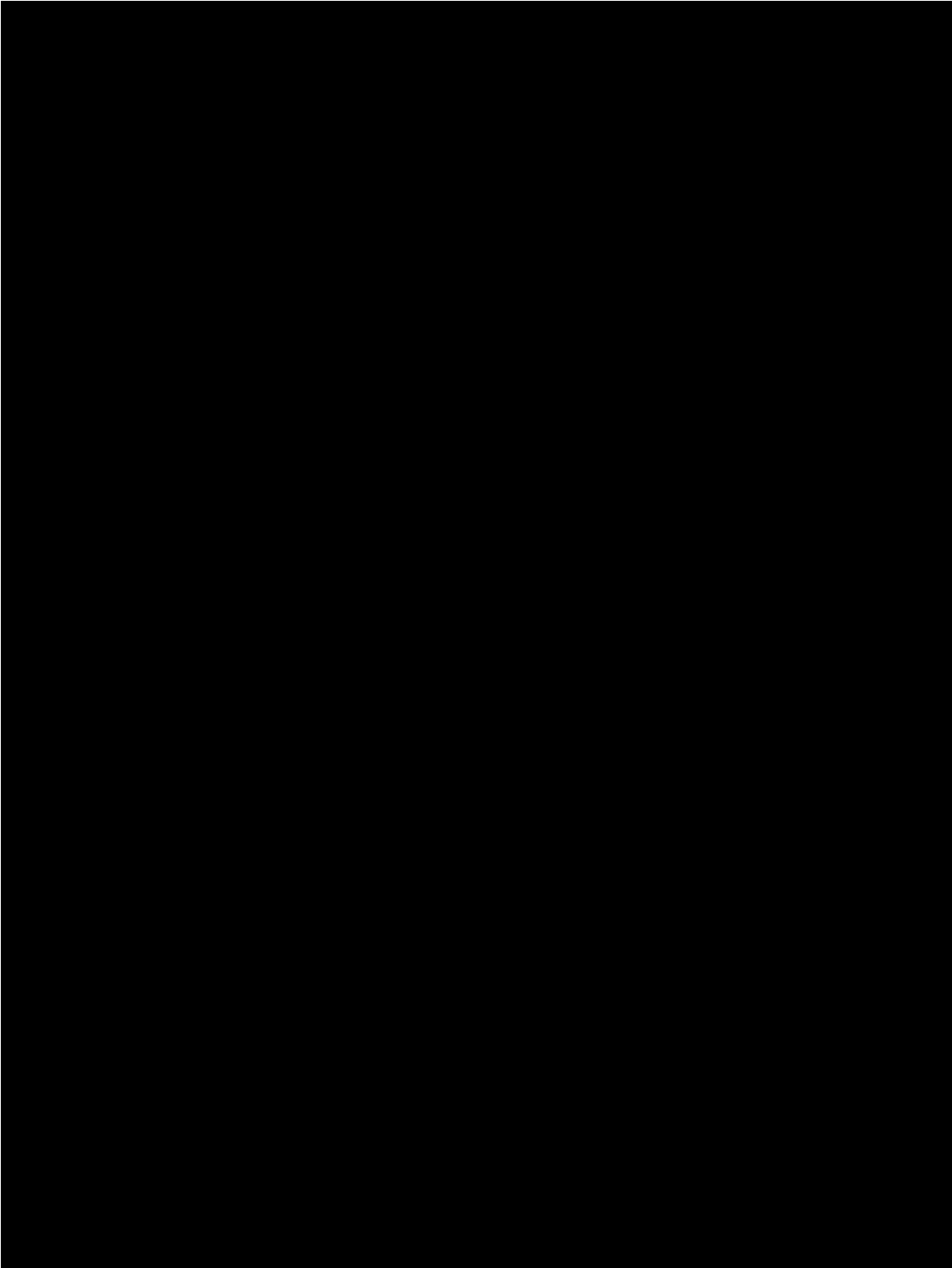


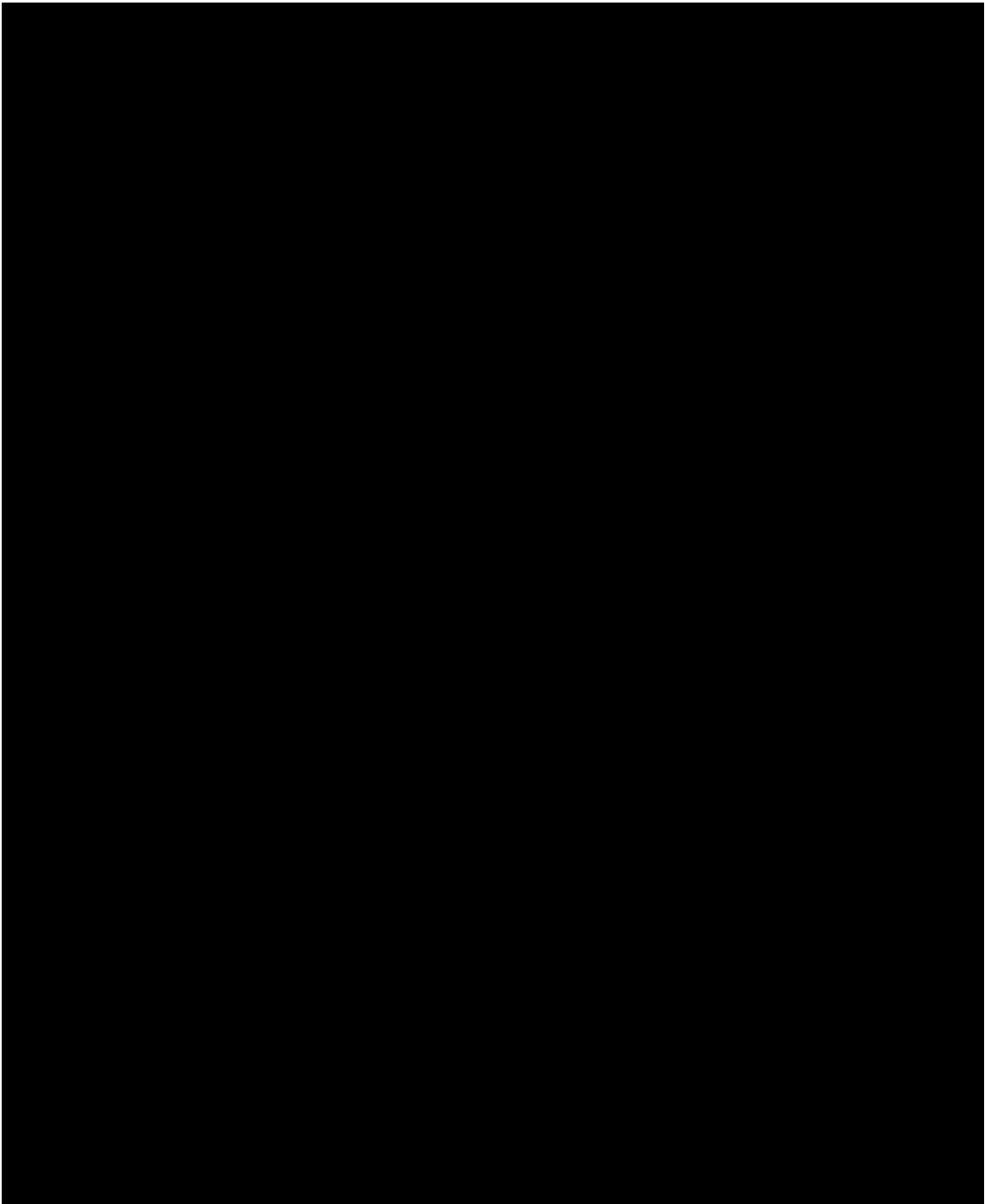




**Schedule 8**

**Commercially Sensitive Information**



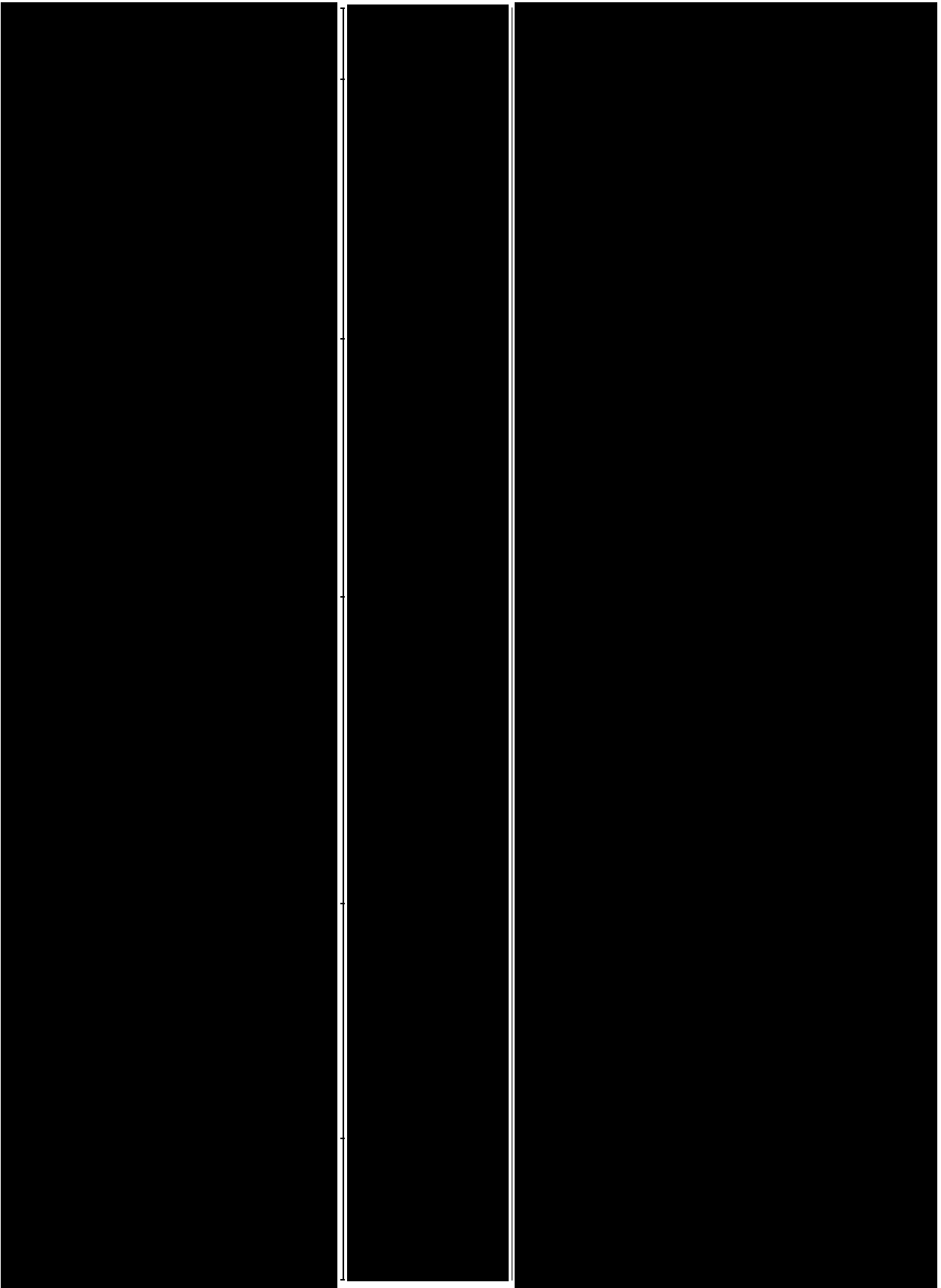


**Schedule 9**

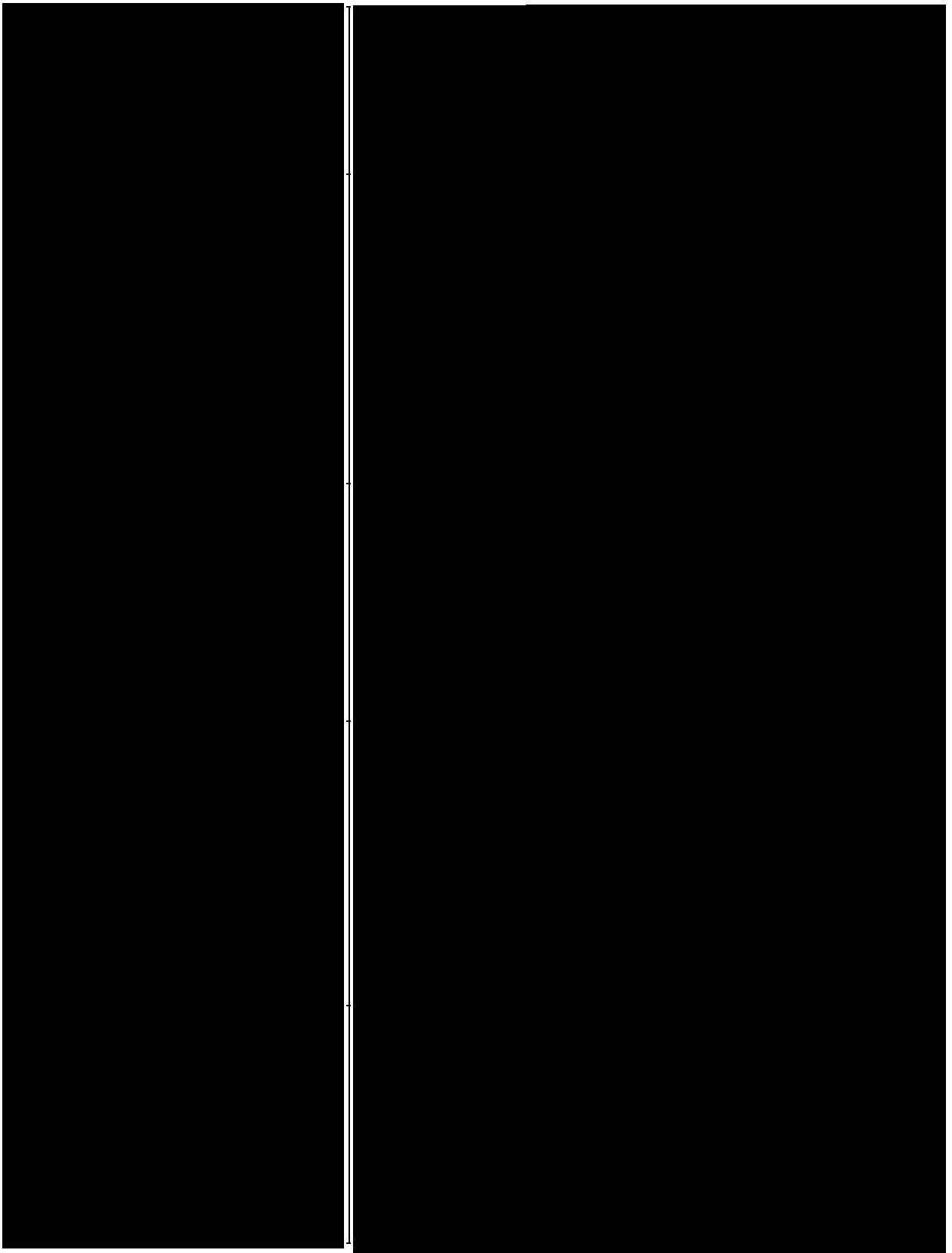
**Notified Key Sub-contractors**

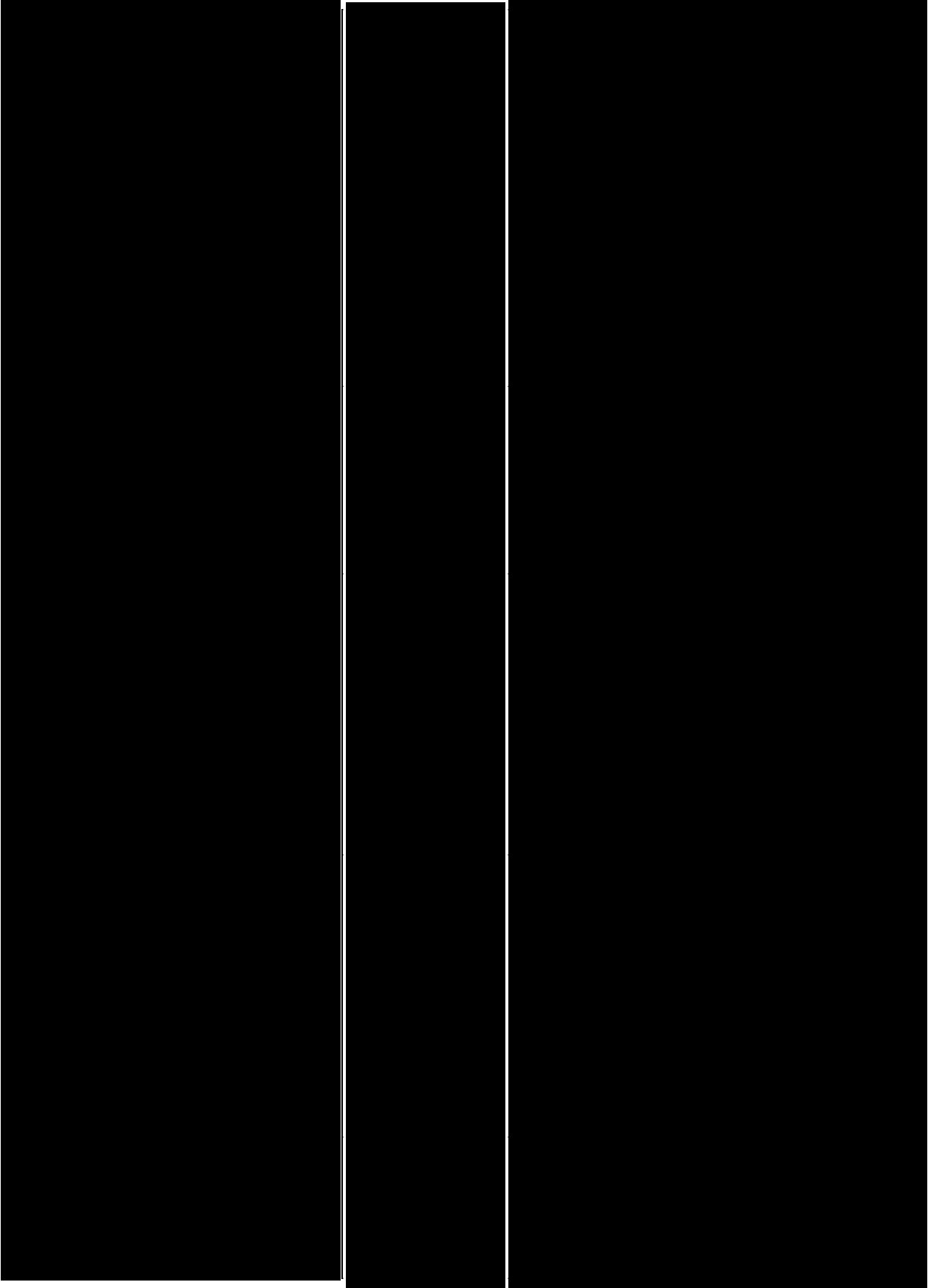
- 1 In accordance with Clause 16.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations pursuant to this Agreement to the Key Sub-contractors listed in the table below.
  
- 2 The Parties agree that they will update this Schedule as required to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority in accordance with Clause 16.10 (*Appointment of Key Sub-contractors*) after the Effective Date for the purposes of the delivery of the Services.

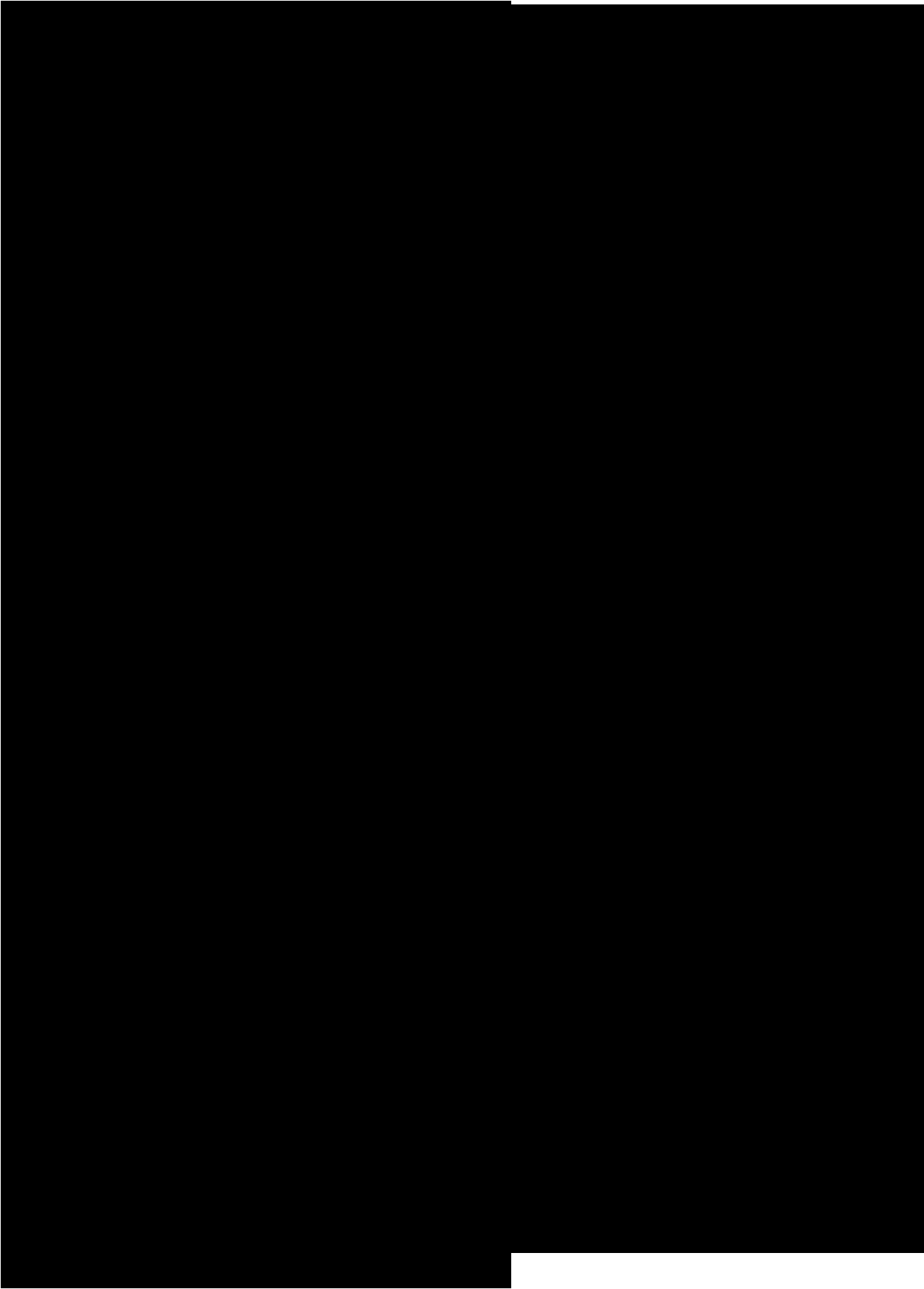
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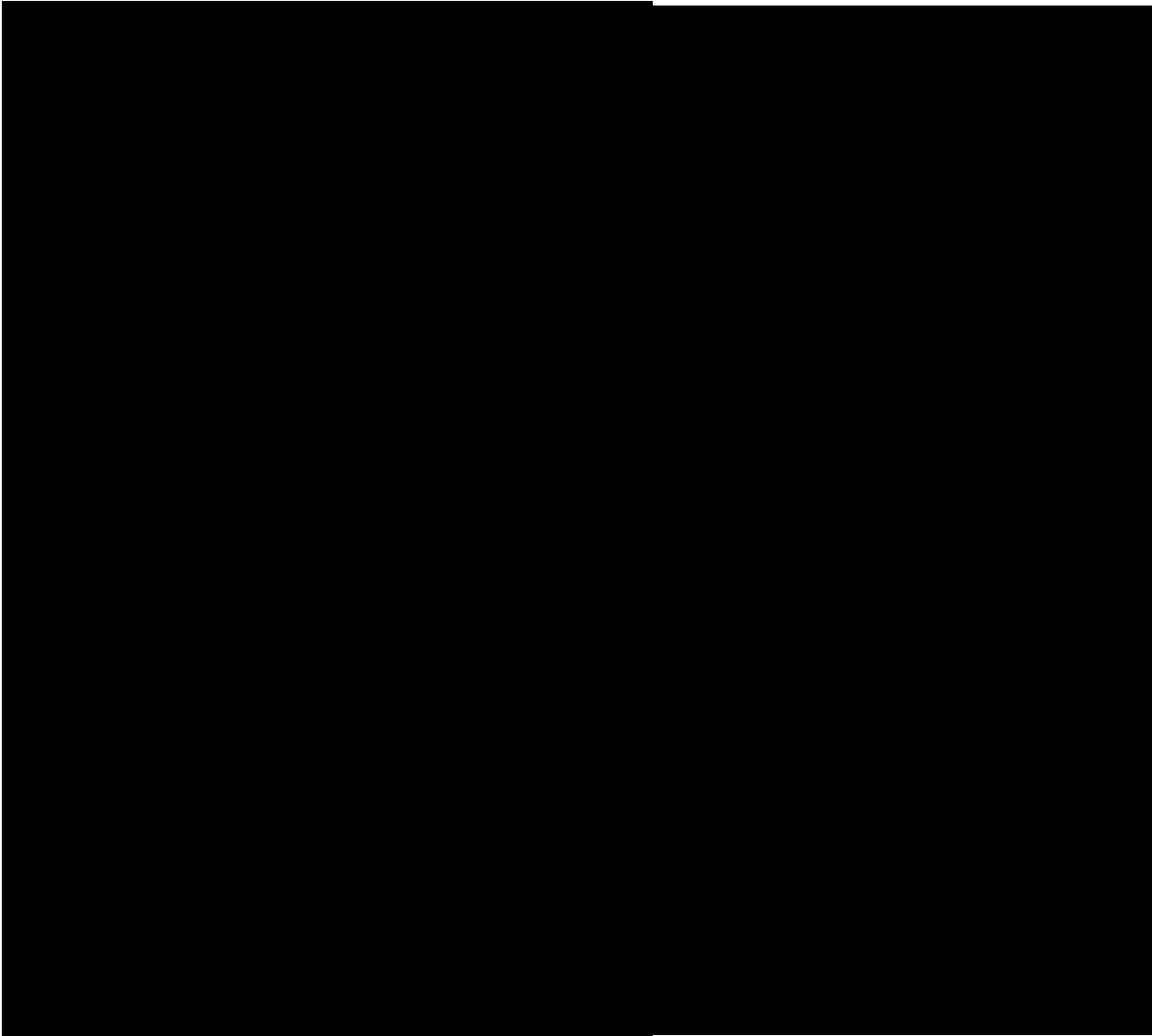













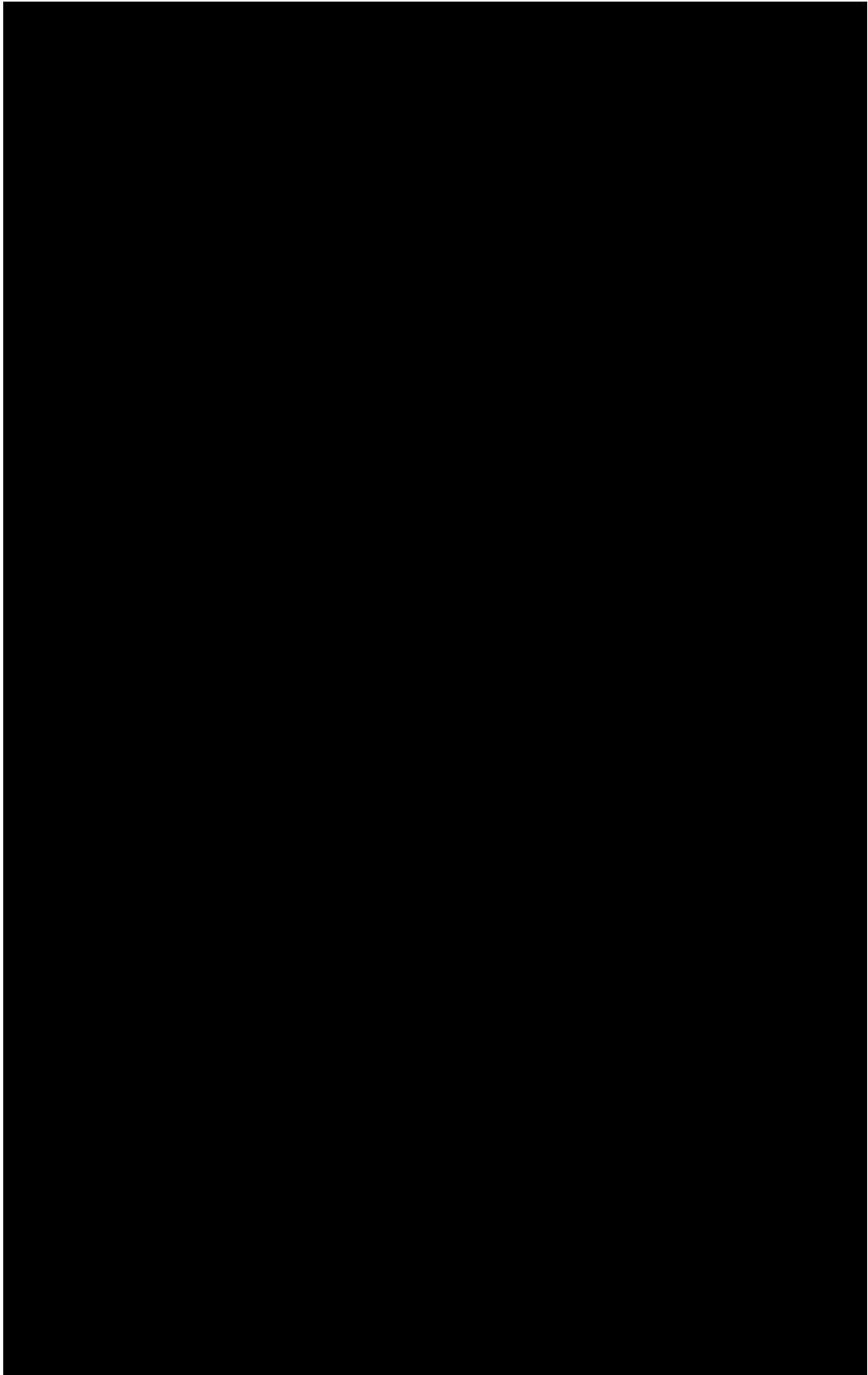
**Schedule 10**

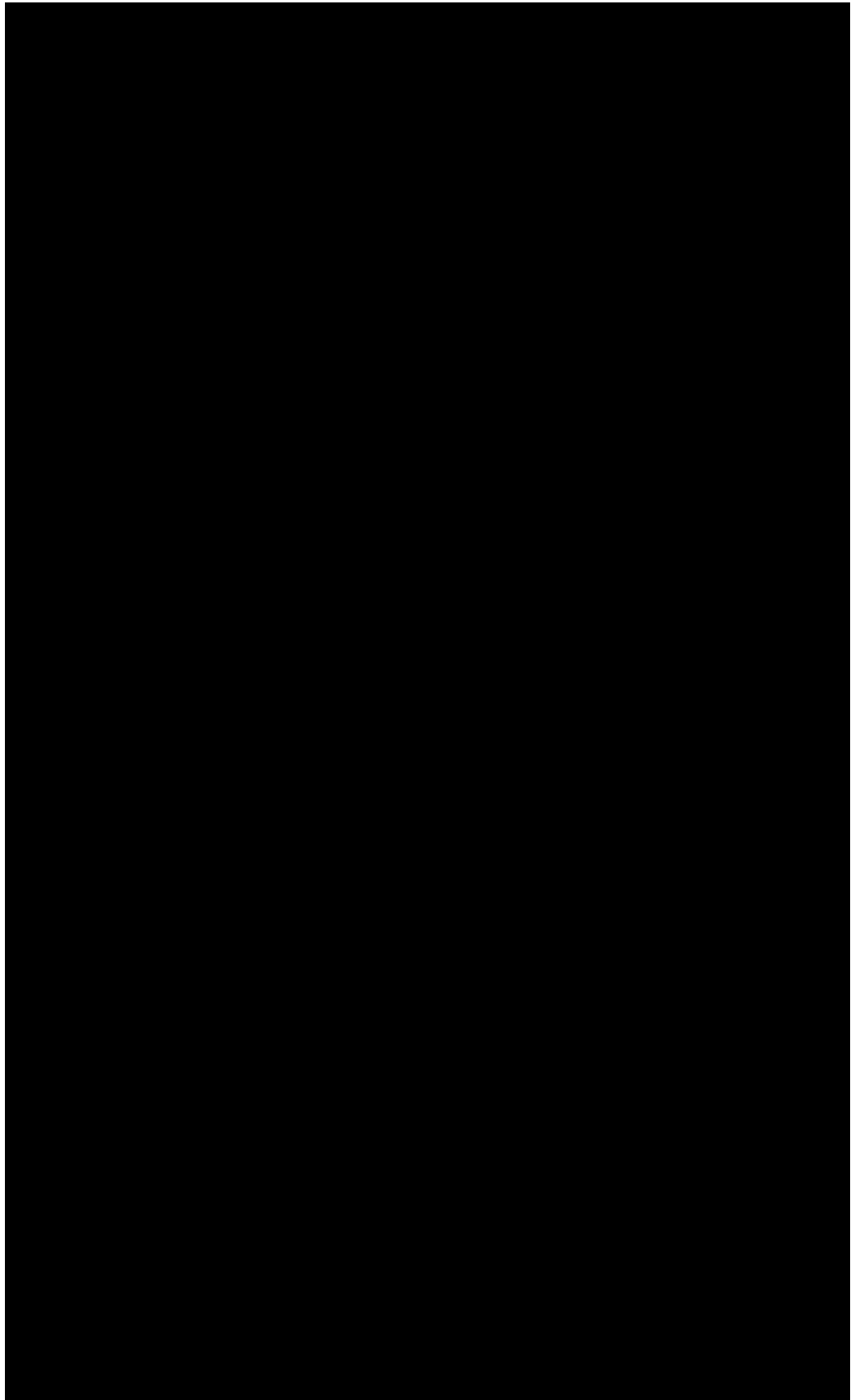
**Third Party Contracts**

- 1 The contracts listed in the table below constitute Third Party Contracts.
- 2 The Parties agree that they will update this Schedule as required to record any Third Party Contracts entered into by the Supplier in accordance with Clause 16.9 (*Appointment of Sub-contractors*) after the Effective Date for the purposes of the delivery of the Services.

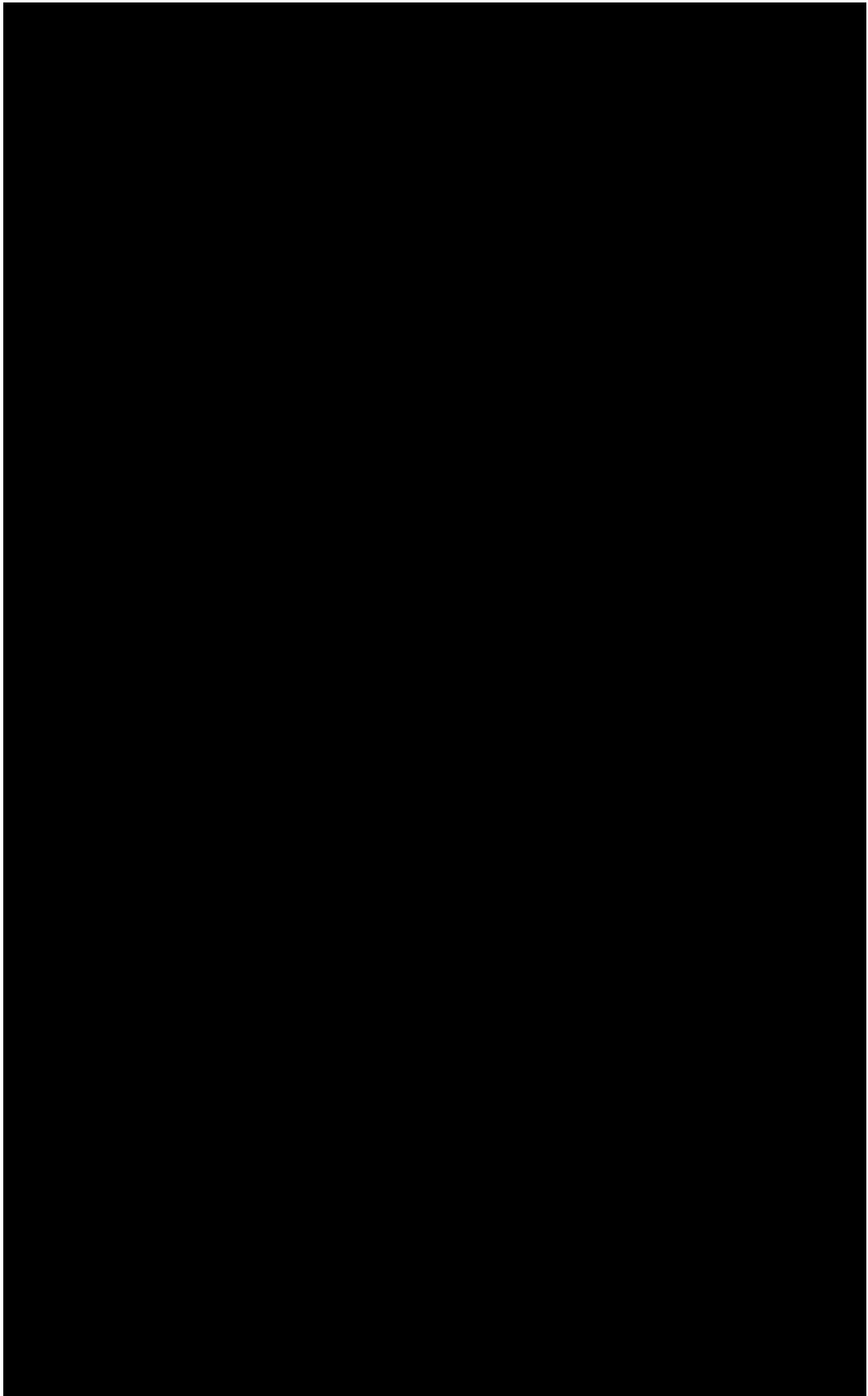


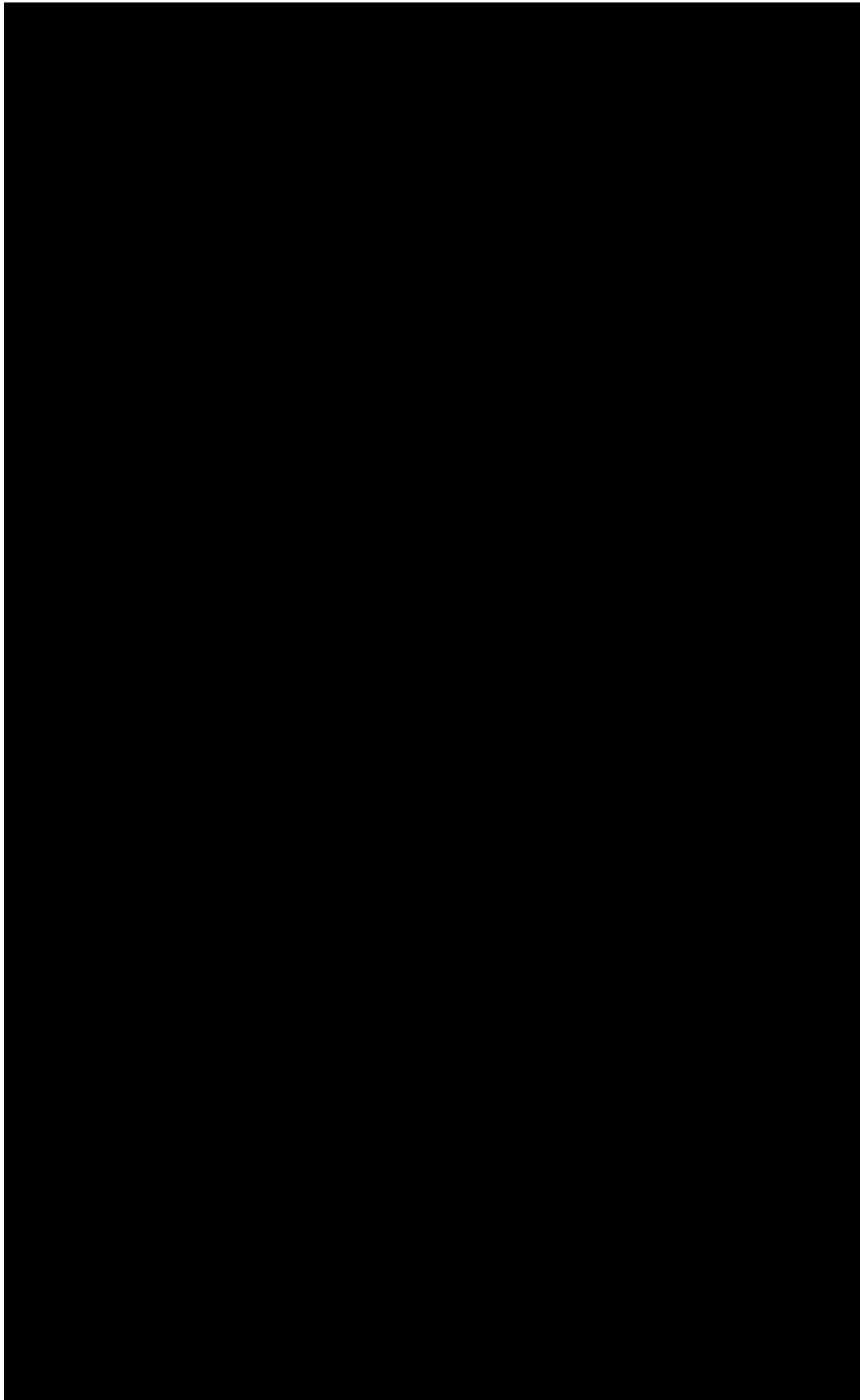


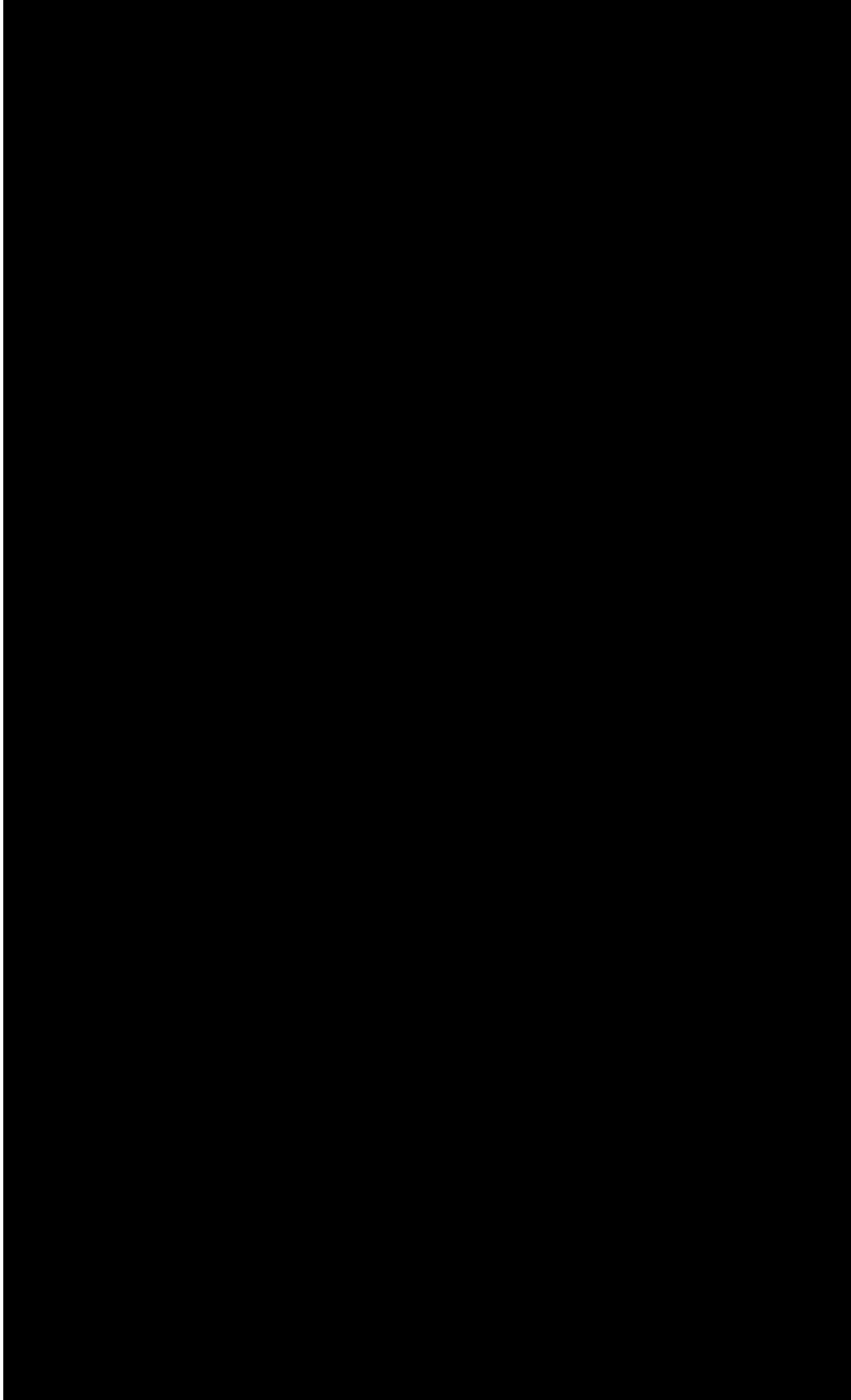


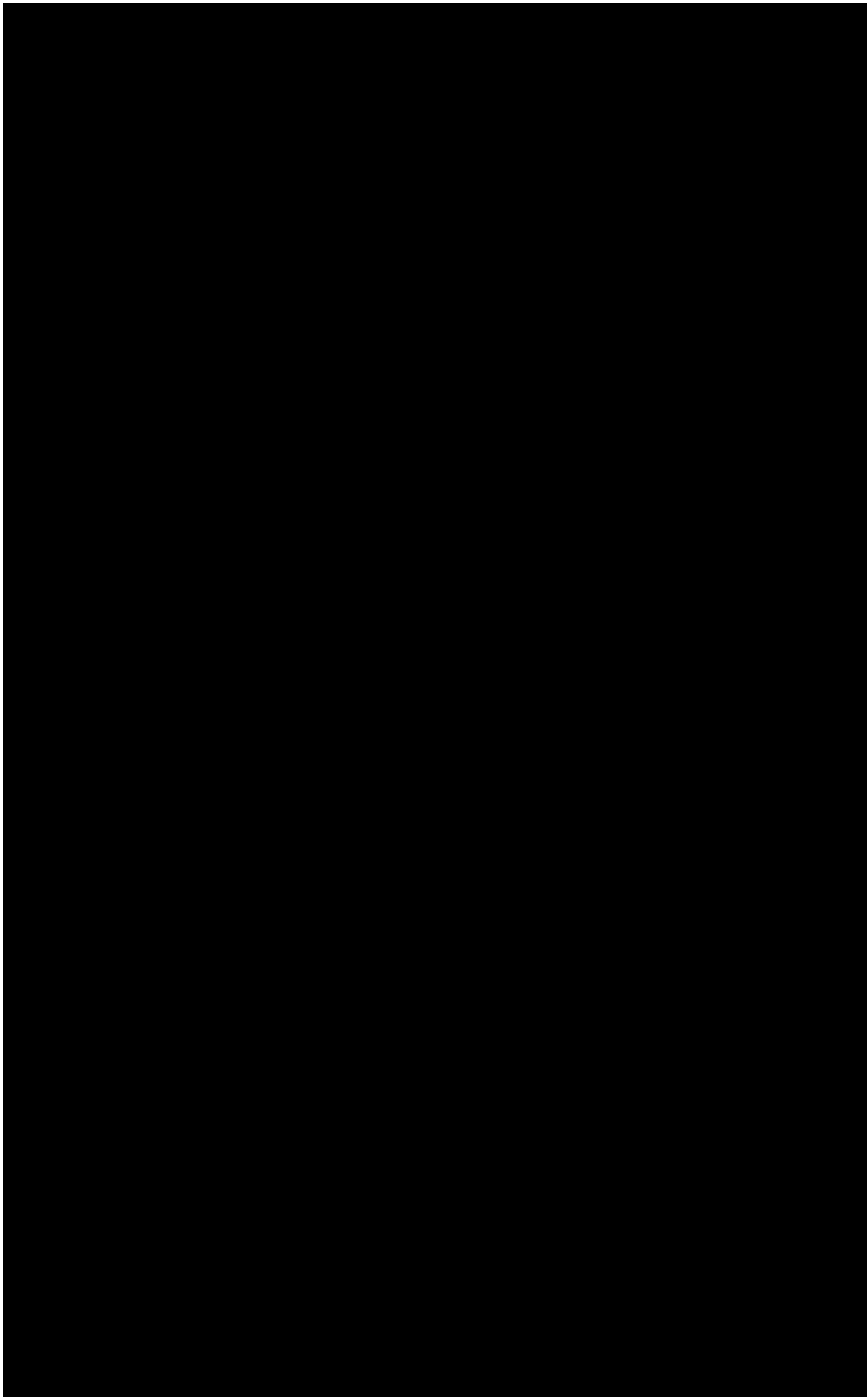


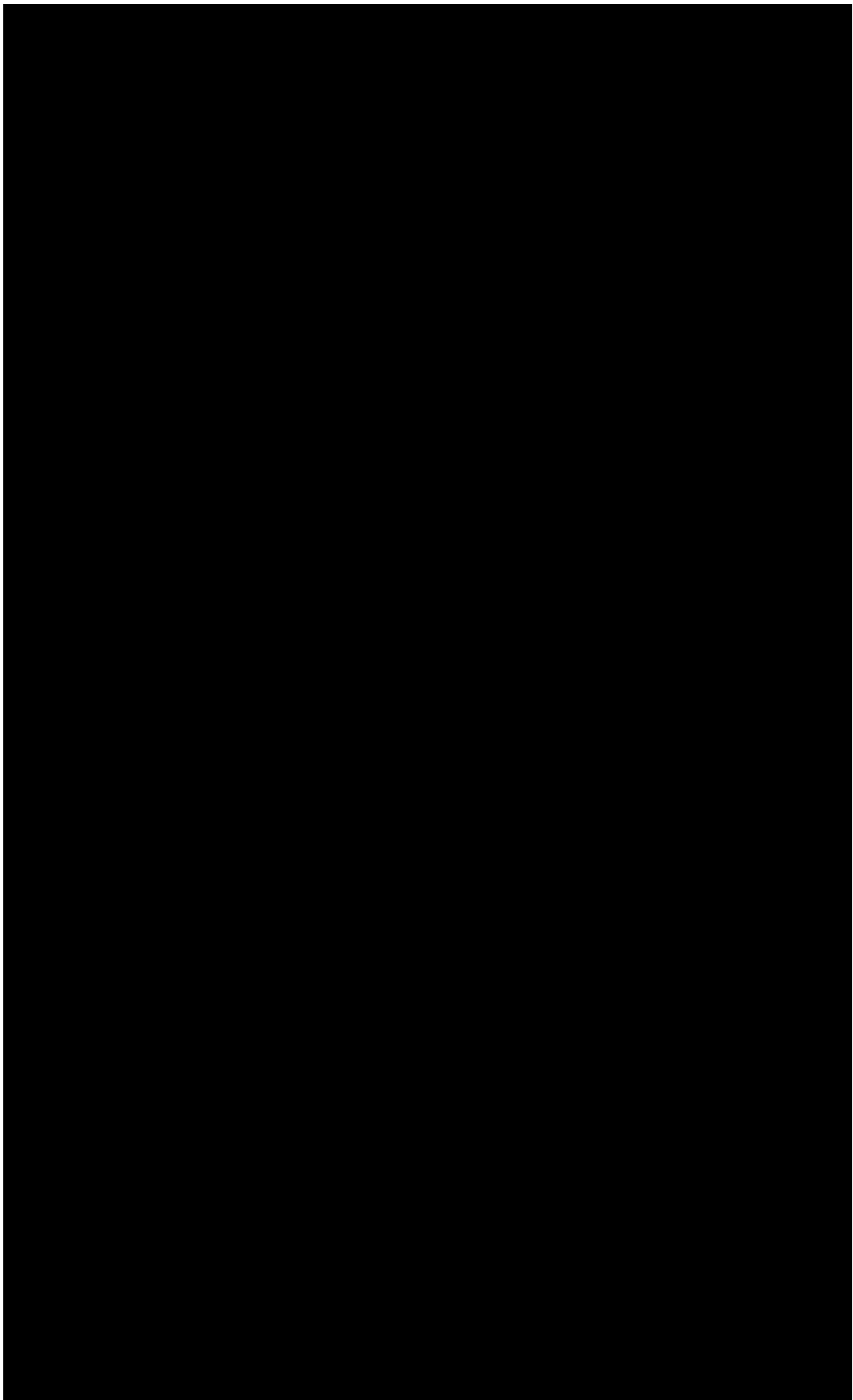


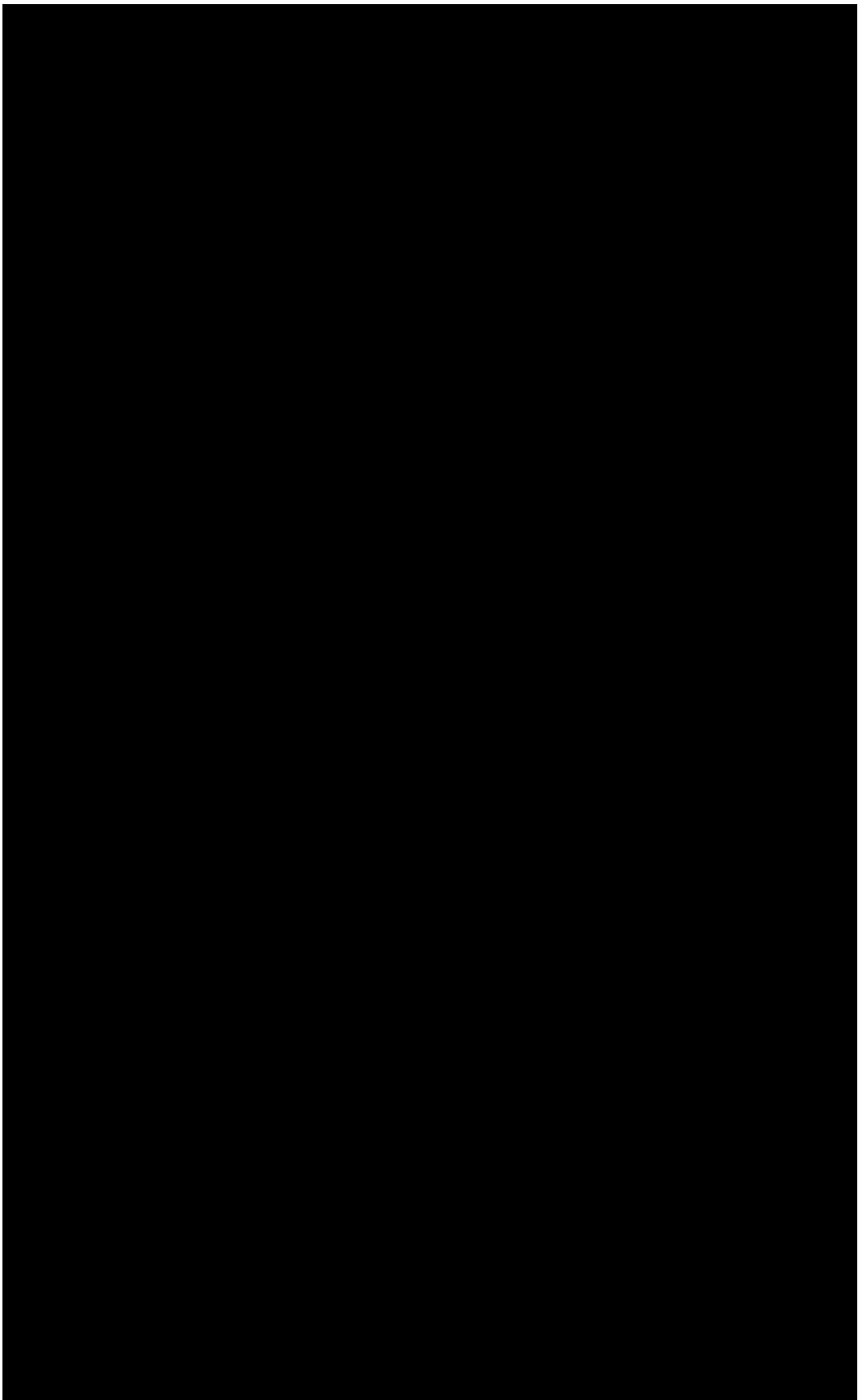


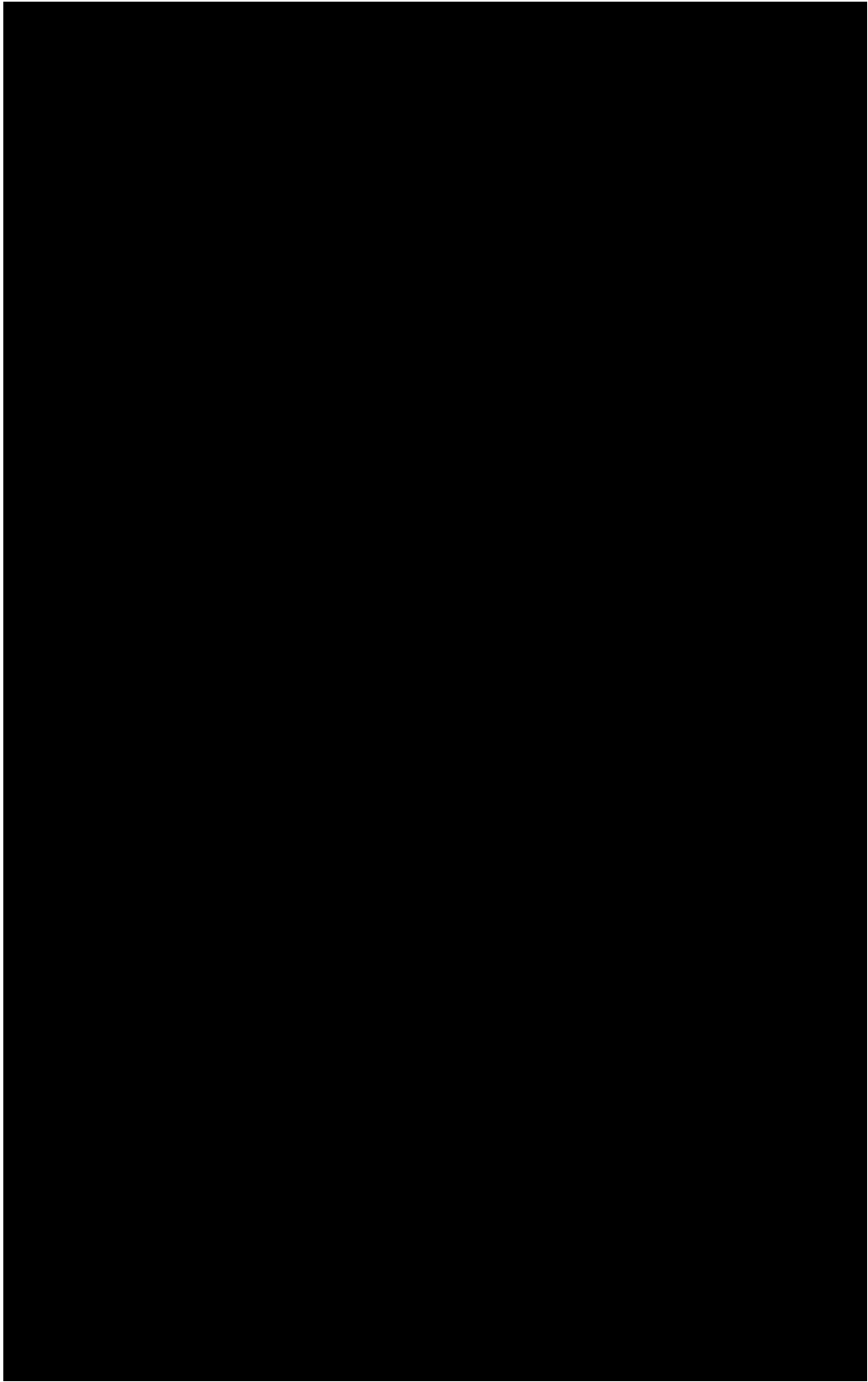


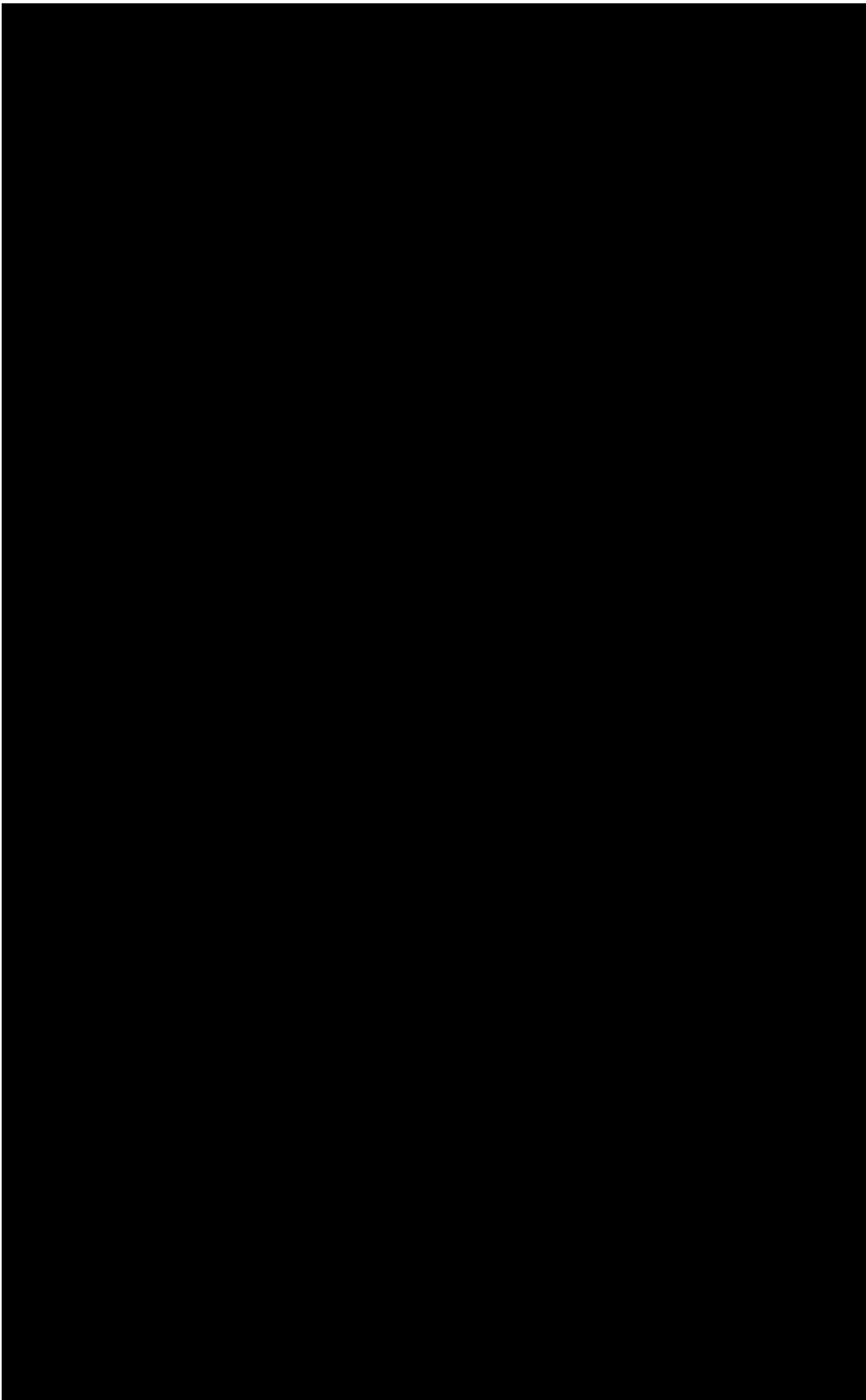




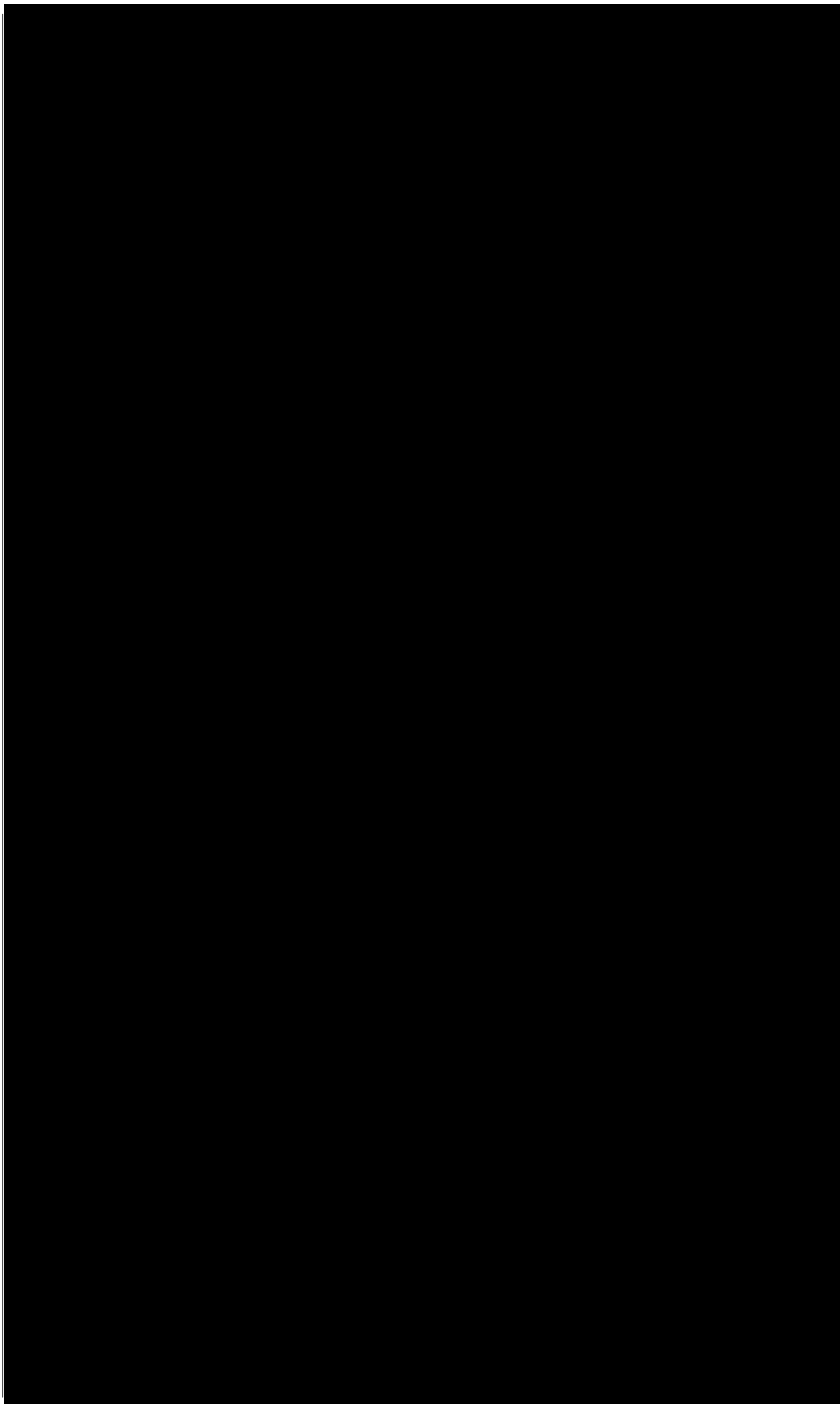


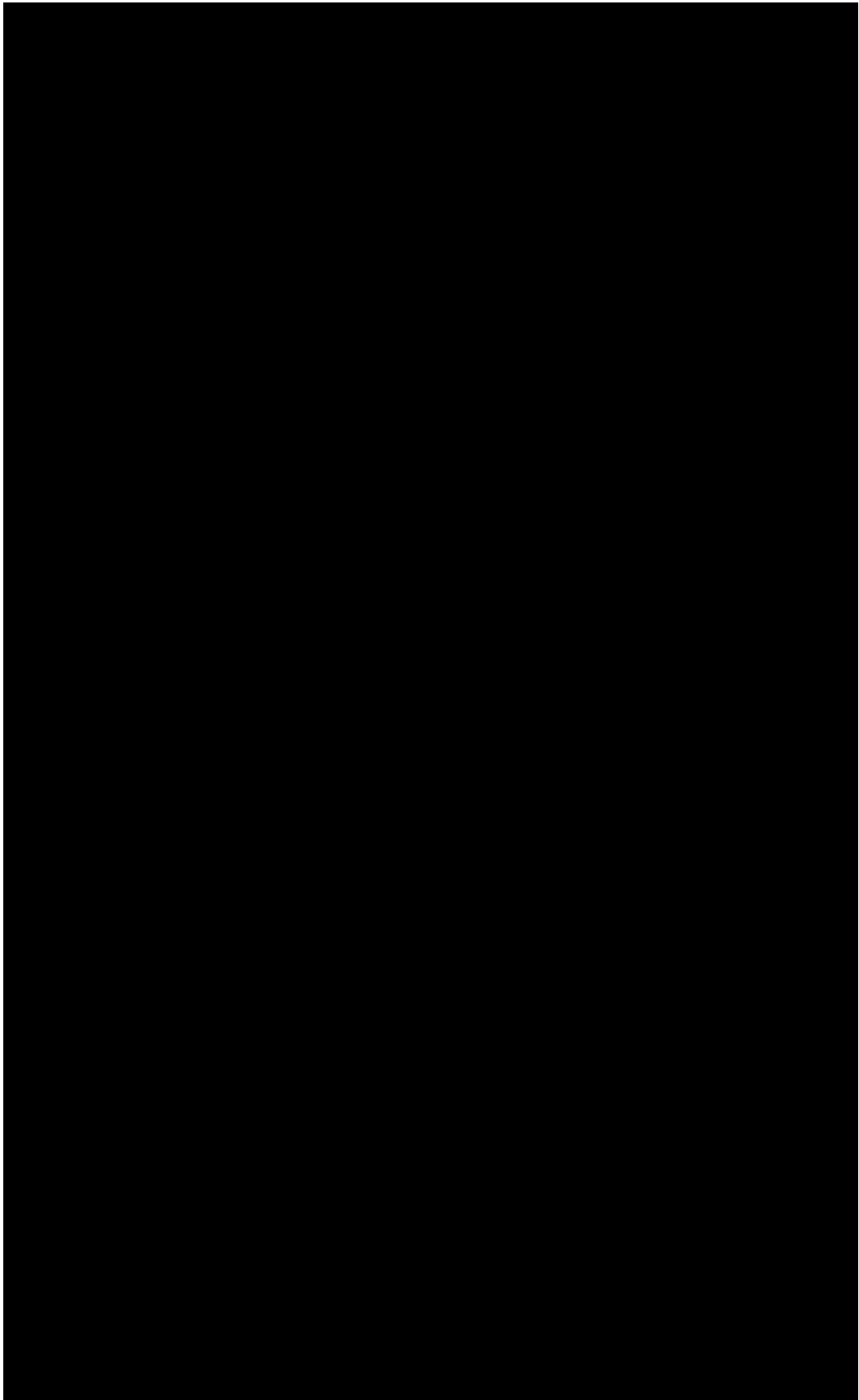


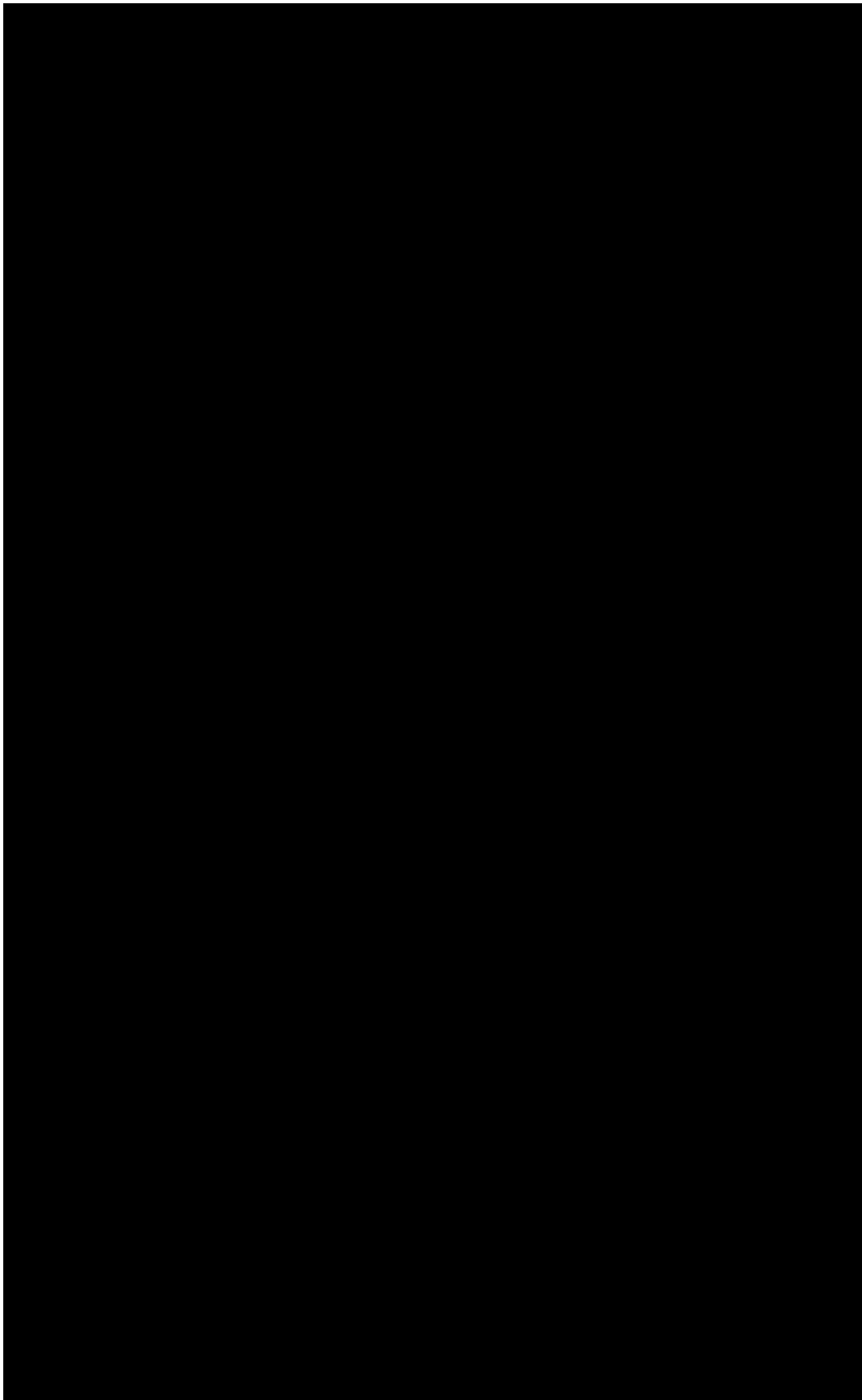


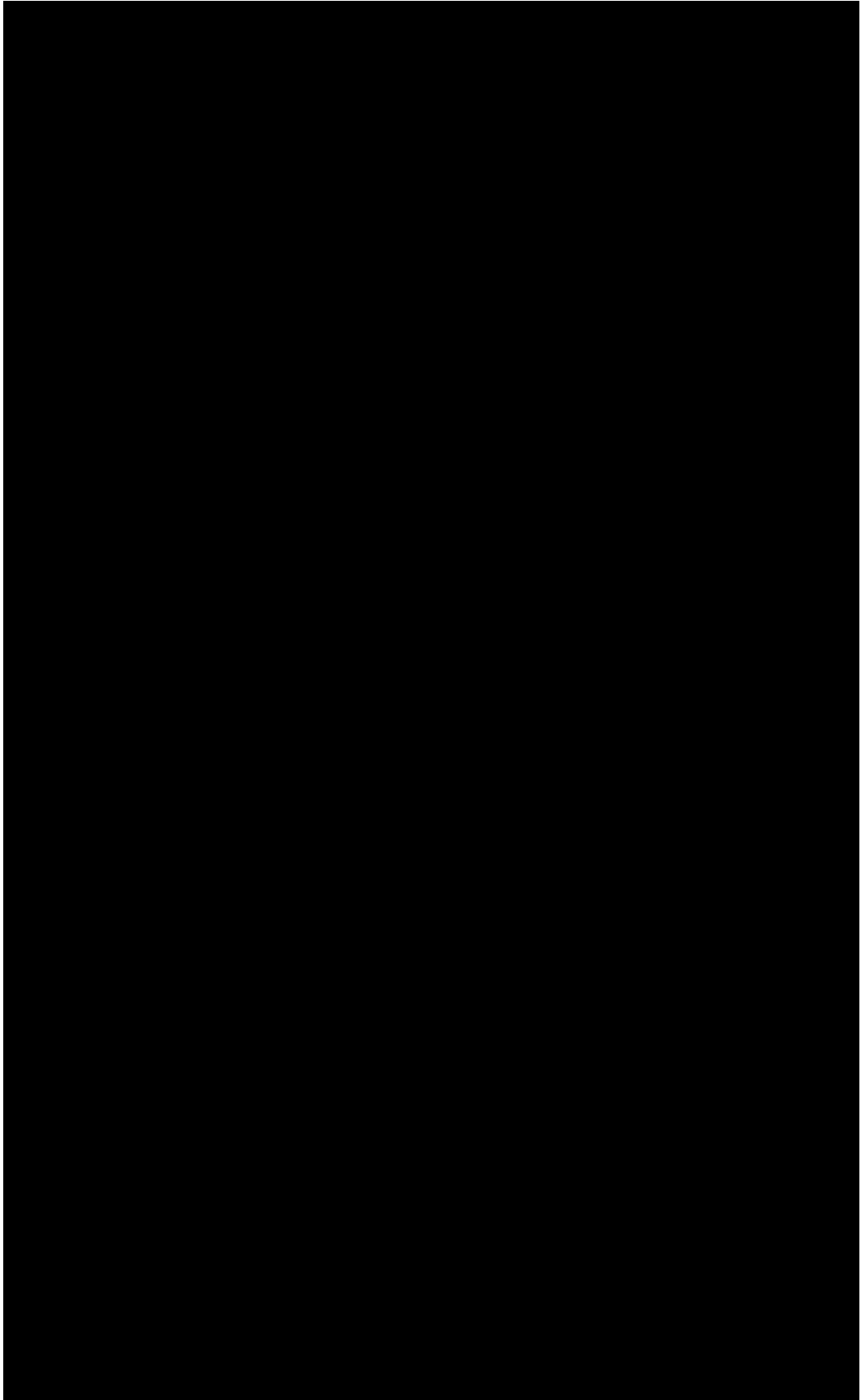


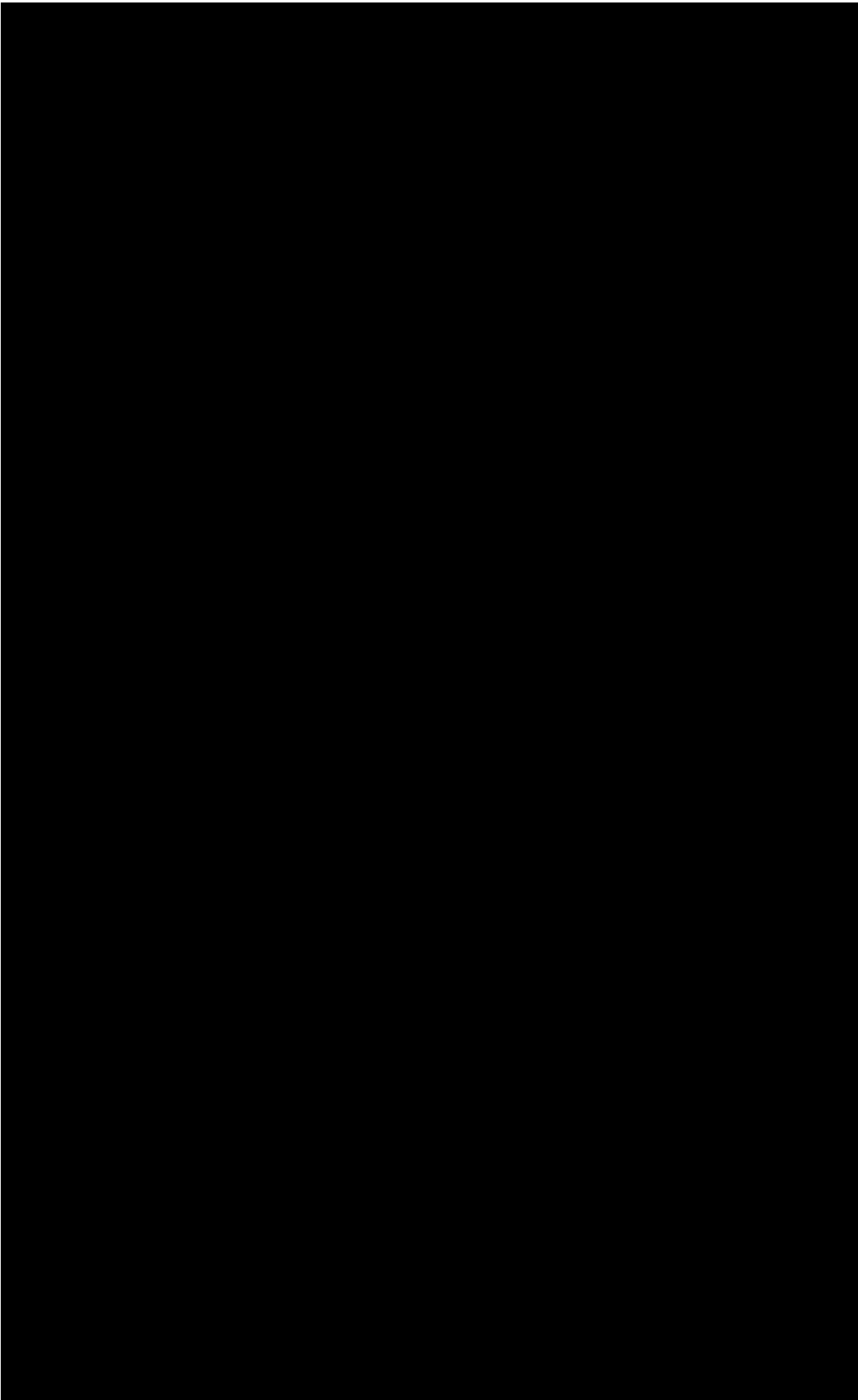


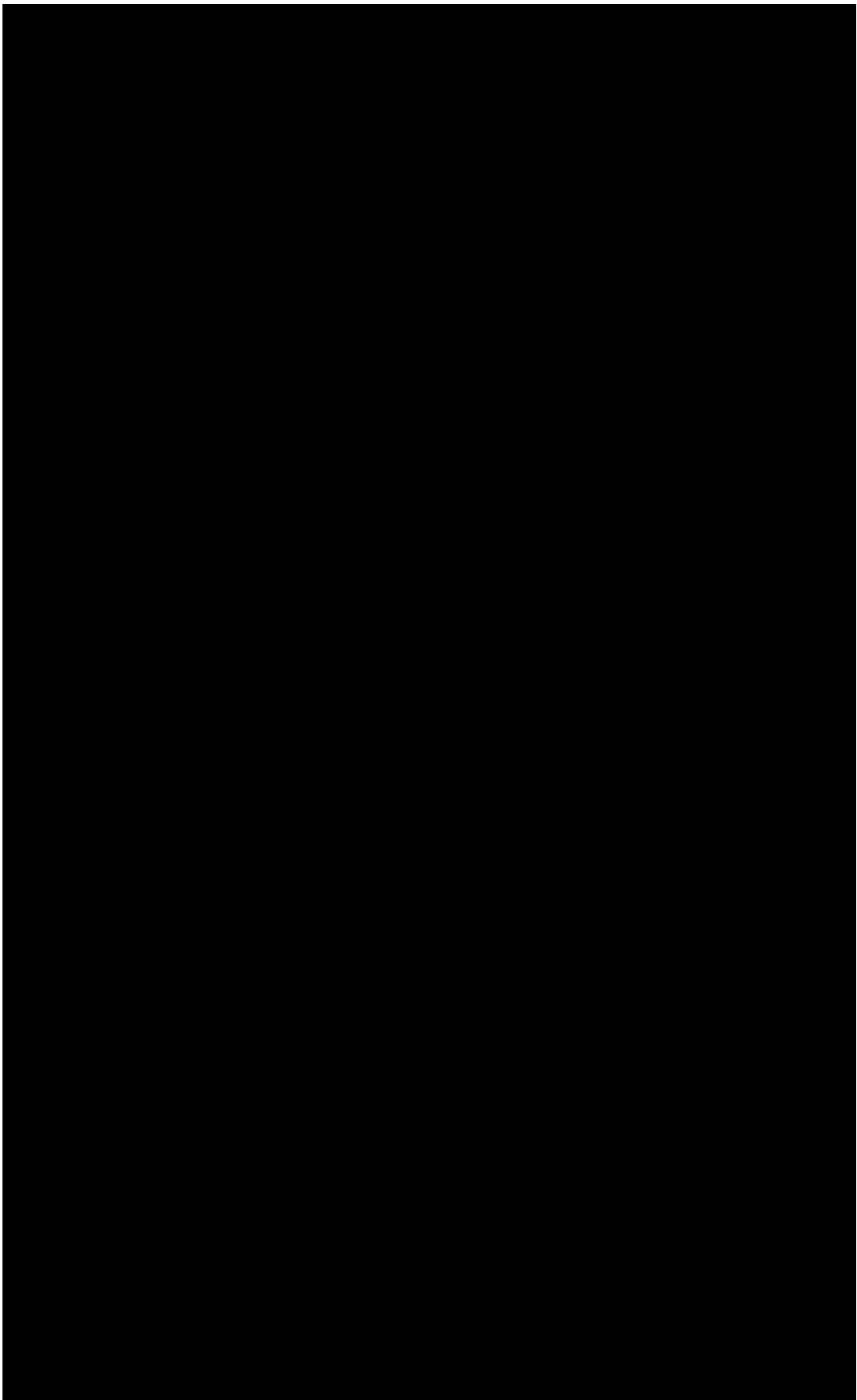


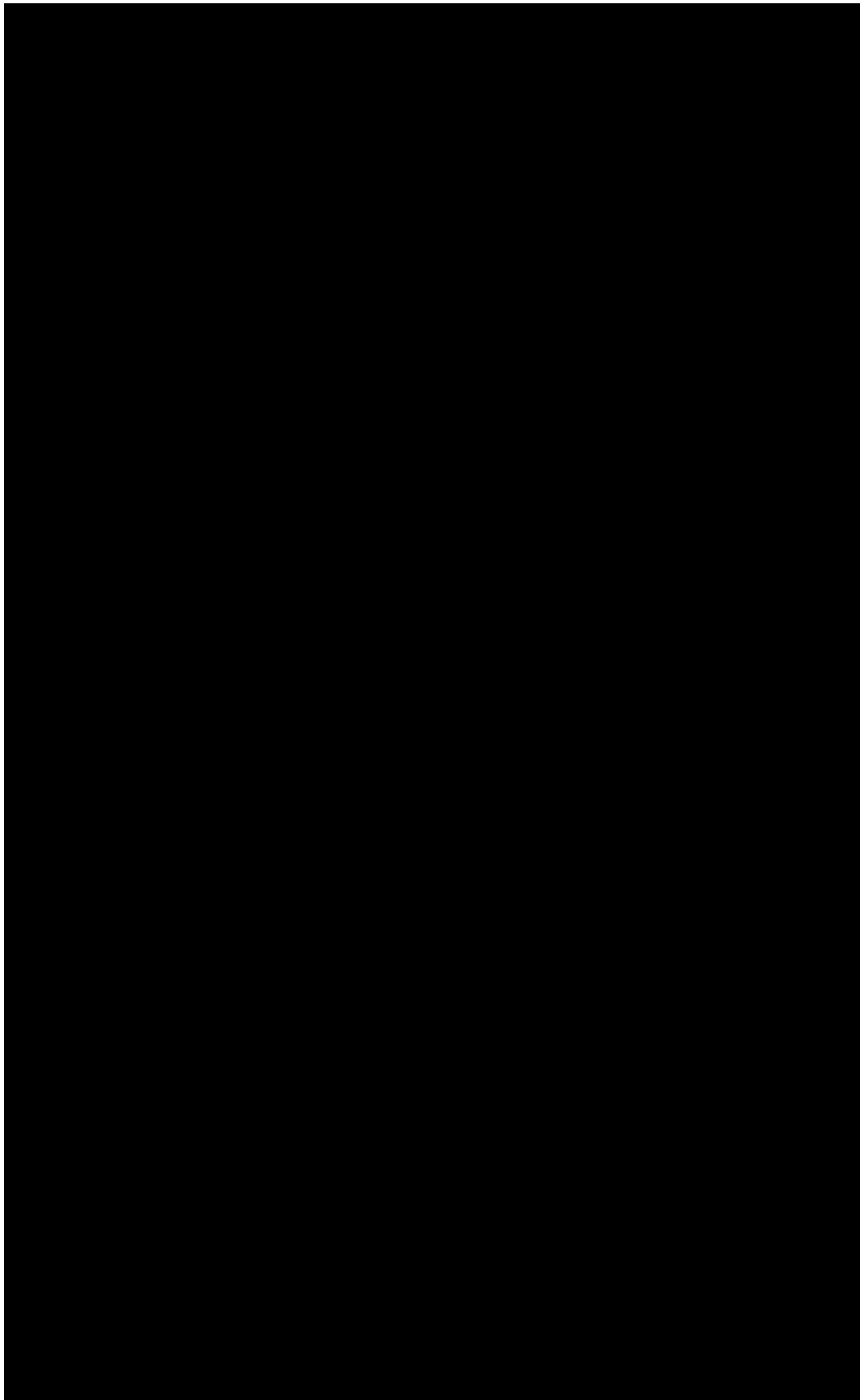


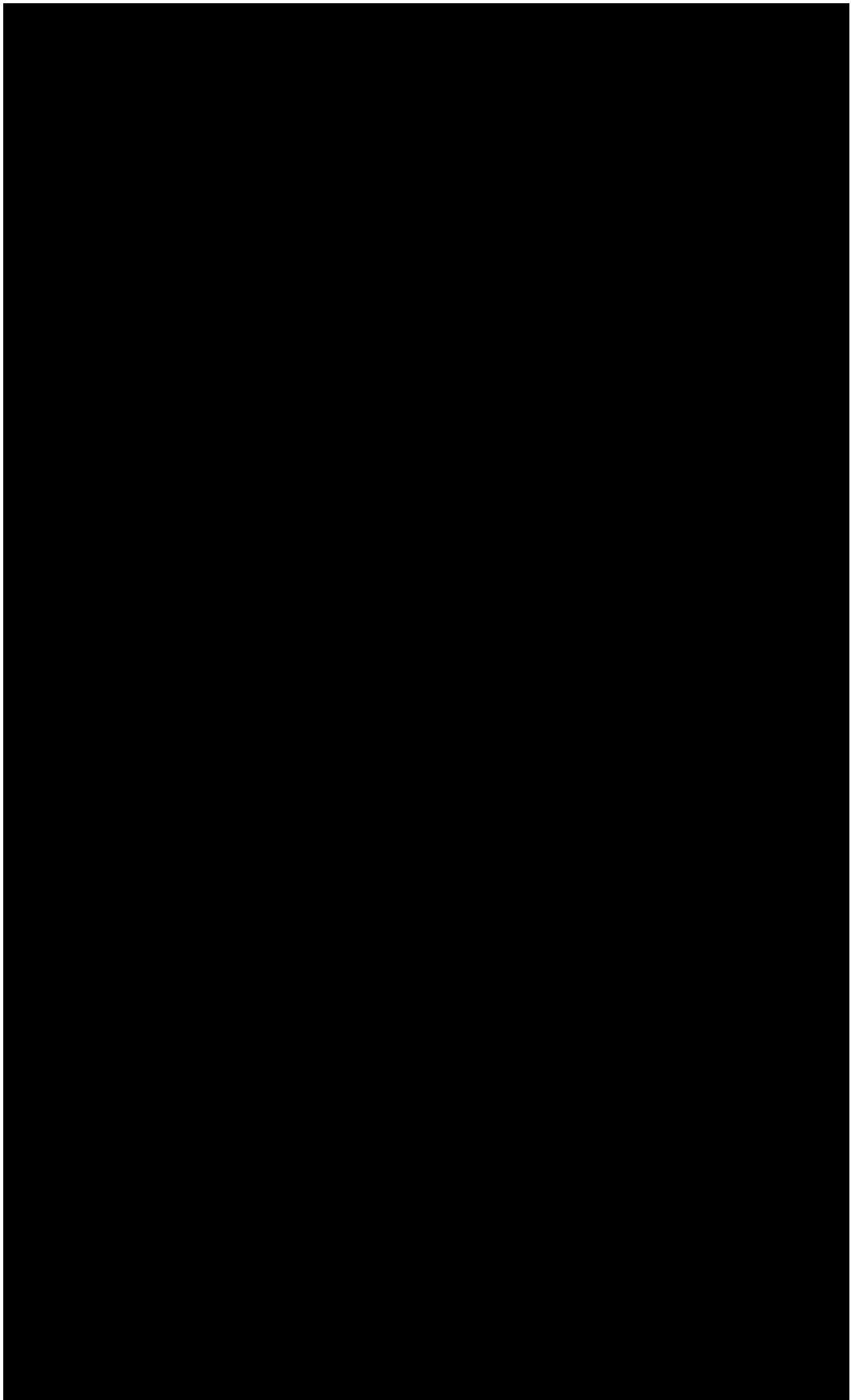




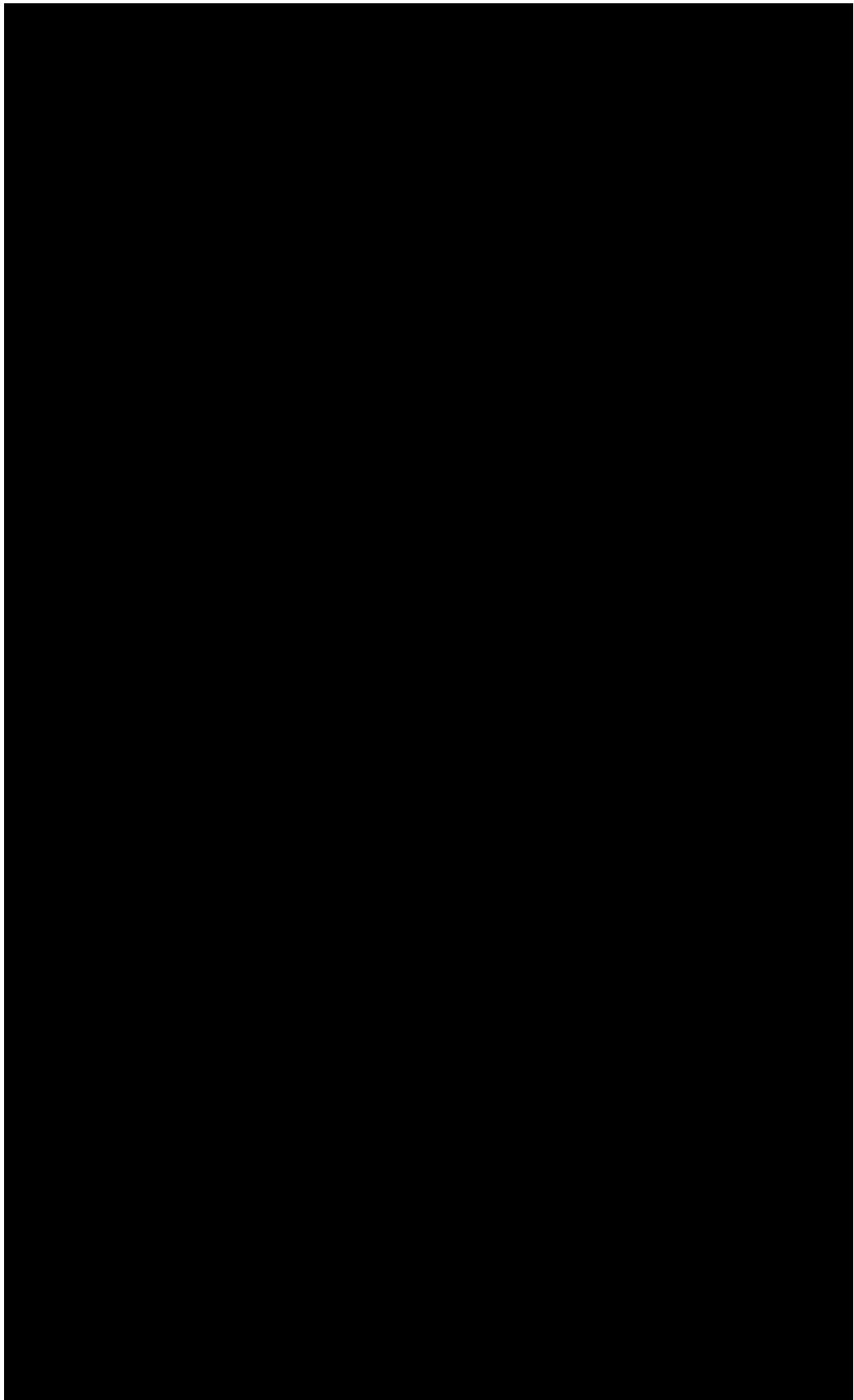


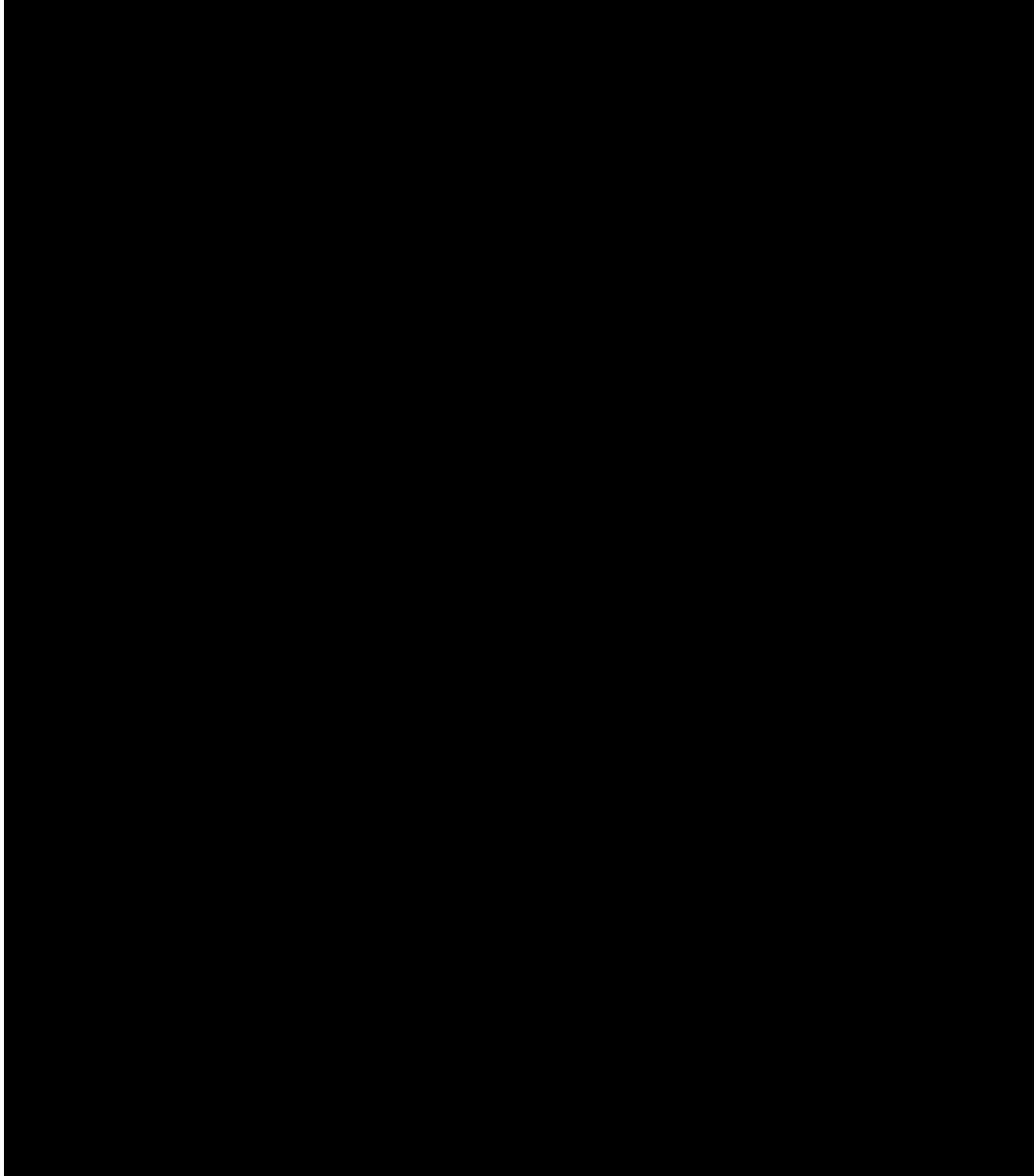












## **Schedule 11**

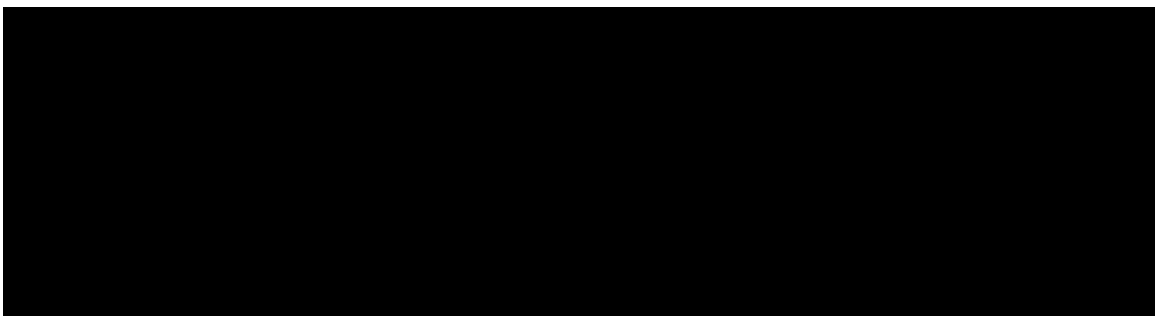
### **IPR**

#### **1 Software**

- 1.1 The Software below is licensed to the Authority in accordance with Section F of this Agreement.
- 1.2 The Parties agree that they shall update this Schedule regularly, and in any event no less than every six months from the Effective Date, to record any Supplier Software or Third Party IPR subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

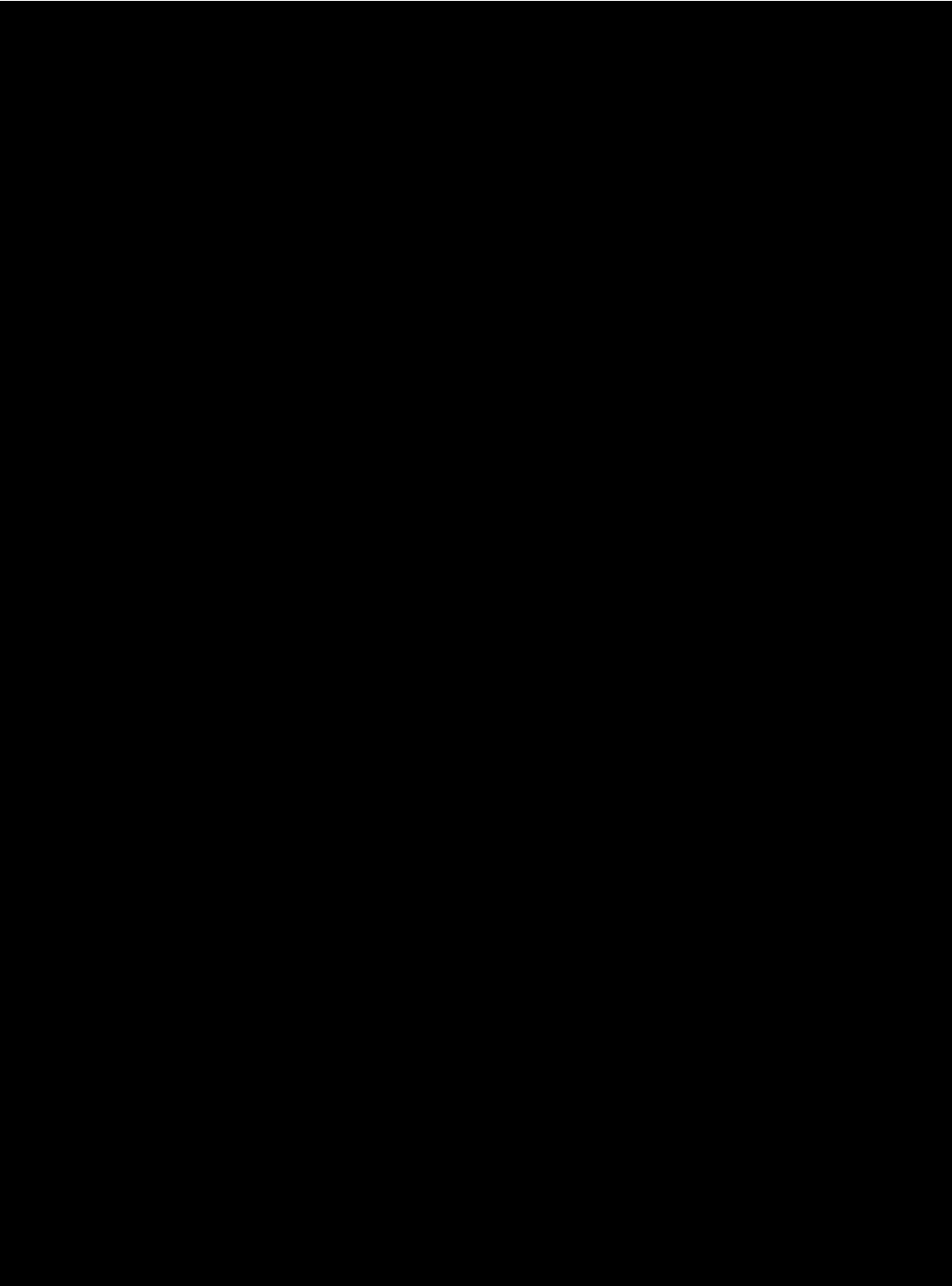
#### **2 Supplier Software**

- 2.1 The Supplier Software includes the following items:



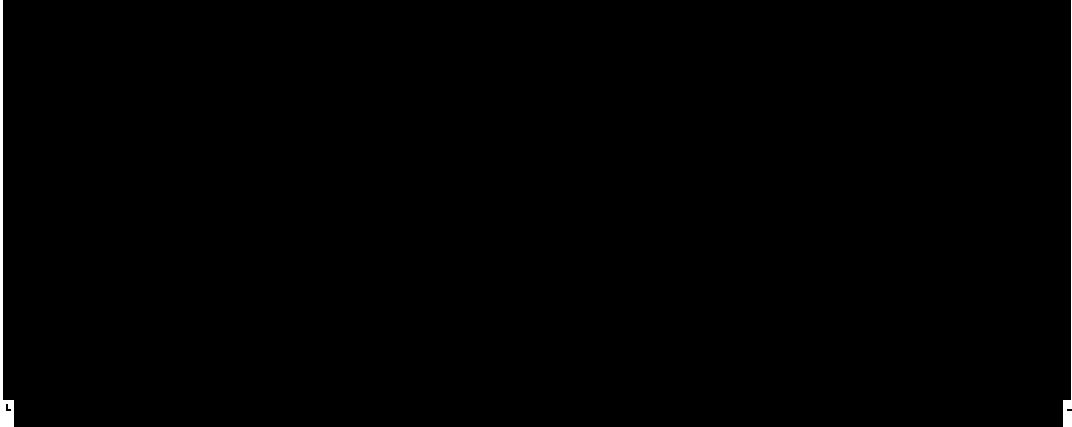
**3 Third Party IPR**

The Third Party IPR shall include the following items:



**4 Supplier Trade Marks**

4.1 The Supplier Trade marks shall include the following items



**5 Authority Trade Marks**

Logos for the following should appear on the Aircraft (subject to Crown Copyright) in the format set out in the Authority's branding guidelines:

"HM Coastguard"

"Maritime and Coastguard Agency"

## ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER SOFTWARE

[Supplier letterhead]

*[insert Authority  
name and address]*

[Date]

Dear Sirs

### LICENCES FOR SUPPLIER SOFTWARE

We refer to the agreement between us dated [insert date] in respect of [brief summary of subject of the Agreement] (the “**Agreement**”). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 22 (*IPR Indemnity*) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier Software identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier Software as referred to in Clause 22 (*IPR Indemnity*) of the Agreement.

Yours faithfully,

Signed:

**On behalf of [name of the Supplier]**

## ANNEX 2: FORM OF CONFIDENTIALITY AGREEMENT

**THIS AGREEMENT** is made on [*date*]

**BETWEEN:**

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

**WHEREAS:**

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

**IT IS AGREED** as follows:

**1 Interpretation**

In this Agreement, unless the context otherwise requires:

“**Confidential Information**” means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub licensee pursuant to or in connection with the Sub licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub licensed to the Sub licensee pursuant to the Sub licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub licence;

- (c) other Information provided by the Authority pursuant to this Agreement to the Sub licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub licensee's attention or into the Sub licensee's possession in connection with the Sub licence; and
- (d) Information derived from any of the above,  
but not including any Information that:
  - (e) was in the possession of the Sub licensee without obligation of confidentiality prior to its disclosure by the Authority;
  - (f) the Sub licensee obtained on a non-confidential basis from a third party who is not, to the Sub licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub licensee;
  - (g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
  - (h) was independently developed without access to the Confidential Information;

**“Information”** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

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

1.1 In this Agreement:

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

**2 Confidentiality Obligations**

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



- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted pursuant to the Sub licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub licence:
  - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub licensee) from any computer, word processor, voicemail system or any other device; and
  - (iii) make no further use of any Confidential Information.

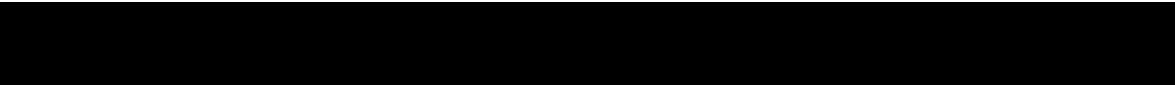
### **3 Permitted Disclosures**

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

- 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
- 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

#### **4 General**

- 4.1 The Sub licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - 4.2.1 to grant the Sub licensee any licence or rights other than as may be expressly stated in the Sub licence;
  - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub licensee of any of the provisions of this Agreement. Accordingly, the Sub licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
  - 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
  - 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this

Agreement, but all the counterparts shall together constitute but one and the same instrument.

**5 Notices**

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

5.2 Any Notice:

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

[Address]

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

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

[Name of Organisation]

[Address]

Attention: [ ]

**6 Governing Law**

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

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

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

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

Signature: \_\_\_\_\_ Date:

Name: Position:

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

Signature: \_\_\_\_\_ Date:

Name: Position:

## **Schedule 12**

### **Transition and Acceptance Plan**

#### **1 Introduction**

1.1 This Schedule:

1.1.1 defines the process for the implementation and monitoring of the Transition and Acceptance Plan;

1.1.2 identifies the Achievement Criteria to be Achieved in advance of the Planned Services Commencement Date for each Base.

#### **2 Transition and Acceptance Plan**

2.1 The Transition and Acceptance Plan is set out in Annex 1 to this Schedule.

#### **3 Amendments to the Transition and Acceptance Plan**

3.1 The Supplier's performance against the Transition and Acceptance Plan shall be monitored at meetings of the Contract Management Board and the Transition Working Group.

3.2 Any material amendments to the Transition and Acceptance Plan shall be subject to the Change Control Procedure provided that in no circumstances shall the Supplier be entitled to alter or request an alteration to any Planned Achievement Criterion Date except in accordance with Clause 34 (*Authority Cause*).

3.3 Any proposed amendments to the Transition and Acceptance Plan shall not come into force until they have been approved in writing by the Authority.

#### **4 Government Reviews**

4.1 The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

#### **5 Acceptance Procedures**

5.1 The Supplier shall not submit any Achievement Criterion for Acceptance Procedures:

5.1.1 unless the Supplier is reasonably confident that the Achievement Criterion will pass the Acceptance Procedures; and

5.1.2 until any prior, dependent Achievement Criteria have been Achieved and passed any Acceptance Procedures.

5.2 The Supplier shall submit each Achievement Criterion for its Acceptance Procedures by or before the date set out in the Transition and Acceptance Plan for the commencement of such Acceptance Procedures.

- 5.3 Any Disputes between the Authority and the Supplier regarding Acceptance Procedures shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.
- 5.4 The Parties shall carry out the Acceptance Procedures in accordance with the Transition and Acceptance Plan.

**6 Issue of Achievement Criterion Achievement Certificate**

- 6.1 The Authority shall issue an Achievement Criterion Achievement Certificate in respect of a given Achievement Criterion as soon as is reasonably practicable following:
  - 6.1.1 demonstration by the Supplier that the Achievement Criterion has been Achieved;
  - 6.1.2 the passing of the Acceptance Procedures for that Achievement Criterion; and
  - 6.1.3 performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Transition and Acceptance Plan as associated with that Achievement Criterion.
- 6.2 If an Achievement Criterion has not been Achieved and/or the Achievement Criterion has not passed the Acceptance Procedures, the Authority shall promptly notify the Supplier of the reasons.

**7 Risk**

- 7.1 The issue of an Achievement Criterion Achievement Certificate shall not:
  - 7.1.1 operate to transfer any risk that the relevant Achievement Criterion is complete or will meet and/or satisfy the Authority's requirements for that Achievement Criterion; or
  - 7.1.2 affect the Authority's right subsequently to reject all or any element of the Achievement Criterion to which the Achievement Criterion Achievement Certificate relates.
- 7.2 Notwithstanding the issuing of any Achievement Criterion Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:
  - 7.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements; and
  - 7.2.2 the Services are implemented in accordance with this Agreement.
- 7.3 Without prejudice to Paragraphs 7.1 and 7.2 of this Schedule, in the event an Achievement Criterion Achievement Certificate is issued but it is later found that the relevant Achievement Criterion is not complete and will not meet and/or satisfy the Authority's requirements for that Achievement Criterion, the Authority reserves the right to revoke by written notice to the Supplier such Achievement Criterion Achievement Certificate.

- 7.4 If an Achievement Criterion Achievement Certificate is revoked in accordance with Paragraph 7.3 of this Schedule:
- 7.4.1 the Supplier shall repay to the Authority any sums which were paid to the Supplier in connection with such Achievement Criterion Achievement Certificate being issued; and
  - 7.4.2 all rights and obligations of the Parties pursuant to this Agreement shall be as if such Achievement Criterion Achievement Certificate had never been issued.

**Schedule 12**

Annex 1

Schedule 12, Annex 1 has been redacted





**Annex 2**

**Achievement Criterion Achievement Certificate**

To: **[NAME OF SUPPLIER]**

FROM: MARITIME & COASTGUARD AGENCY

**[Date]**

Dear Sirs,

**ACHIEVEMENT CRITERION ACHIEVEMENT CERTIFICATE**

Achievement Criterion: **[insert description of Achievement Criterion]**

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between Maritime & Coastguard Agency (the “**Authority**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 12 (*Transition and Acceptance Plan*) of the Agreement.

We confirm that the Achievement Criterion **[number]** has been Achieved and passed the relevant Acceptance Procedures for such Achievement Criterion.

\*delete as appropriate

Yours faithfully

**[Name]**

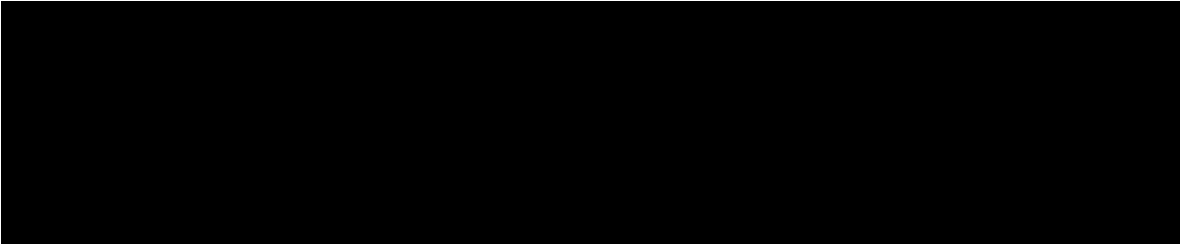
**[Position]**

acting on behalf of Maritime & Coastguard Agency

**Schedule 13**

**Innovation Plan**

Schedule 13 has been redacted.



## Schedule 14

### Charges and Invoicing

#### **1 Introduction**

- 1.1 This Schedule sets out the Charges payable by the Authority to the Supplier in respect of each Base throughout the relevant Base Services Period.
- 1.2 This Schedule includes Annex 1 - the Financial Model for each Base in relation to each Lot.
- 1.3 Any change to this Schedule shall be subject to the Change Control Procedure.

#### **2 Monthly Standing Charge**

- 2.1 The Authority shall pay the Supplier the Indexed Monthly Standing Charge each Service Period (and pro-rated for each part thereof), for each Base in respect of each Lot from the relevant Services Commencement Date for that Base throughout the relevant Base Services Period.
- 2.2 The Supplier has specified in the Financial Model whether each cost recovered via the Monthly Standing Charge is fixed (and therefore not subject to indexation) or subject to indexation by CPI (All Items).
- 2.3 The proportion of the Monthly Standing Charge in relation to each Base that is subject to indexation by CPI (All Items) is equal to the proportion of costs recovered via the Monthly Standing Charge for such Base to which the Supplier has specified that CPI (All Items) will apply in the Financial Model compared with the entire cost base for such Monthly Standing Charge.
- 2.4 The proportion of the Monthly Standing Charge which is subject to indexation at CPI (All Items) will be indexed in accordance with the calculation in Paragraph 2.7 of this Schedule on 1 April each year.
- 2.5 The Net Indexation Factor will be applied to the Monthly Standing Charge (as shown in the o.Sch 14 (MSC) tab of the Financial Model as at 1 April 2023 in real terms) to produce the Indexed Monthly Standing Charge applicable for each period from 1 April to 31 March (inclusive) throughout the relevant Base Services Period.
- 2.6 The Monthly Standing Charge Net Indexation Factor to apply will be based on the change in CPI (All Items) from March 2023 (CPI Base) to December of the calendar year preceding the calculation and the proportion of the Monthly Standing Charge subject to indexation, as published by the Office for National Statistics (ONS).
- 2.7 The “**Monthly Standing Charge Net Indexation Factor**” is the factor calculated on 1 April in each year throughout the Term using the following formula:

Monthly Standing Charge Net Indexation Factor =  $(1 - \text{Prop CPI(SC)}) + (\text{Prop CPI(SC)} \times (\text{CPIIn/CPIBase}))$

- 2.7.1 Prop CPI(SC) = proportion of the Monthly Standing Charge to be indexed at CPI (All Items) in the relevant period shown at row 249 for Lot 1, row

303 for Lot 2 and row 358 for Lot 3 of the o.Sch 14 (MSC) tab within the Financial Model;

2.7.2 CPI<sub>In</sub> = CPI (All Items) Index value published by ONS in December of the calendar year immediately preceding the date of calculation (available at: <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23>); and

2.7.3 CPI<sub>Base</sub> = CPI (All Items) Index value published by ONS in March 2023.

2.8 If the Indexed Monthly Standing Charge for a Base relates to a Service Period that:

2.8.1 commences on a day other than the first day of a month; and/or

2.8.2 ends on a day other than the last day of a month,

the Indexed Monthly Standing Charge for the relevant Service Period shall be pro-rated based on the number of days in the month for which the Services were provided in relation to the total number of days in that month.

2.9 The Parties acknowledge that the Indexed Monthly Standing Charge and Indexed Flying Charge set out in the Financial Model include the provision of 2% budgeted CPI (All Items) uplifts in respect of each of the two following periods:

2.9.1 April 2021 – March 2022; and

2.9.2 April 2022 – March 2023,

to account for the fact that actual CPI (All Items) Index uplifts in accordance with the terms of this Agreement commence from April 2023.

### **3 Flying Charge**

3.1 The Authority shall pay the Supplier the Flying Charge each Service Period, for each Base in respect of each Lot from the relevant Services Commencement Date for that Base throughout the relevant Base Services Period.

3.2 For each Base in respect of each Lot, the Flying Charge for each Service Period will be calculated by aggregating the total of the following calculations for all Aircraft stationed at such Base:

Flying Hours x the relevant Indexed Hourly Flying Rate.

3.3 The Hourly Flying Rate set out in the o.Sch 14 (HFR) tab of the Financial Model is subject to any agreed indexation as set out below.

3.4 The Hourly Flying Rate is currently set out in real terms in the o.Sch 14 (HFR) tab of the Financial Model assuming a base price date of 1 April 2023.

3.5 The Supplier has specified in the Financial Model whether each cost recovered via the Flying Charge is fixed (and therefore is not subject to indexation during the course of this Agreement) or is subject to indexation by CPI (All Items).

- 3.6 The proportion of the Hourly Flying Rate that is subject to indexation by CPI (All Items) is based on the proportion of costs to which the Supplier has specified that CPI (All Items) will apply compared to the entire cost base.
- 3.7 The Hourly Flying Rate which is subject to indexation at CPI (All Items) will be indexed in accordance with Paragraphs 3.8 to 3.10 of this Schedule on 1 April each year for the next twelve months.
- 3.8 The Flying Charge Net Indexation Factor to apply will be based on the change in CPI (All Items) from March 2023 to December of the calendar year preceding the calculation and the proportion of the Hourly Flying Rate subject to indexation, as published by the ONS.
- 3.9 The Flying Charge Net Indexation Factor will be applied to the Hourly Flying Rate (as shown in the o.Sch 14 (HFR) tab of the Financial Model as at 1 April 2023 in real terms) to produce the Indexed Hourly Flying Rate, applicable for each period from 1 April to 31 March (inclusive) during the Base Services Period.
- 3.10 The “**Flying Charge Net Indexation Factor**” is the factor calculated on 1 April in each year throughout the Term using the following formula:

Flying Charge Net Indexation Factor =  $(1 - \text{Prop CPI(FC)}) + (\text{Prop CPI(FC)} \times (\text{CPIIn}/\text{CPIBase}))$

- 3.10.1 Prop CPI(FC) = proportion of the relevant Hourly Flying Rate to be indexed at CPI (All Items), which can be found in column L for Lot 1, column O for Lot 2 and column R for Lot 3 of the o.Sch 14 (HFR) tab within the Financial Model;
- 3.10.2 CPIIn = CPI (All Items) value from December of the year immediately preceding the calculation (available at: <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23>); and
- 3.10.3 CPIBase = CPI (All Items) Index value published by ONS in March 2023.

#### **4 Initial Payment**

- 4.1 The Authority shall pay the Supplier the Initial Payment for each Base in respect of each Lot on the Services Commencement Date of that Base provided, and to the extent, that the costs to which such payment relates have been incurred and evidenced by the Supplier.
- 4.2 Subject to Paragraph 4.1 of this Schedule, each Initial Payment is not subject to indexation and/or adjustment for whatever costs and expenses are incurred by the Supplier.

#### **5 Fuel Charge**

- 5.1 The Authority shall pay the Supplier the Fuel Charge each Service Period, for each Base in respect of each Lot from the relevant Services Commencement Date for that Base throughout the relevant Base Services Period.

5.2 In respect of each Base, the “**Fuel Charge**” for each Service Period shall be calculated by aggregating the total of the following calculation for all Aircraft stationed at such Base:

Flying Hours x relevant Fuel Burn Rate x the relevant Agreed Fuel Price

5.3 The Review Dates are held every six months as specified below:

5.3.1 The Review Dates for Lydd, Prestwick (Lot 1), Prestwick (Lot 3), Humberside, Caernarfon and Stornaway will be in January and July of each year.

5.3.2 The Review Dates for Inverness, Lee-On-Solent, Newquay (Lot 2), Newquay (Lot 3), Sumburgh, Carlisle and Fort William will be in April and October of each year.

5.4 Not less than one month prior to each Review Date, the Supplier shall provide the Authority with evidence of the then current market price of fuel at each Base (“**Market Fuel Price**”) and, on or before the Review Date, the Parties shall meet to review and agree the Market Fuel Price.

5.5 If the Parties are unable to agree the Market Fuel Price within five Working Days of any Review Date then either Party may refer the issue to Dispute Resolution in accordance with Clause 48 (*Disputes*) of this Agreement.

5.6 The most recent value of Market Fuel Price established in accordance with Paragraph 5.4 and Paragraph 5.5 of this Schedule shall replace the previous value of Market Fuel Price.

5.7 Notwithstanding the current Market Fuel Price, throughout the Term, the Supplier shall use its best endeavours to obtain the lowest price fuel for use at each Base taking into account the locality of the Base and local market conditions.

5.9 The “**Maximum Fuel Price**” is calculated in accordance with the following formula:

Maximum Fuel Price = Contract Fuel Price + Fuel Price Variation

5.10 The “**Minimum Fuel Price**” is calculated in accordance with the following formula:

Minimum Fuel Price = Contract Fuel Price - Fuel Price Variation

5.11 In relation to each Base, the “**Agreed Fuel Price**” means:

5.11.1 throughout the first Service Period of the relevant Base Services Period, the Contract Fuel Price;

5.11.2 from the day immediately following the expiry of the period specified in 5.11.1:

(i) if the Market Fuel Price is no greater than the Maximum Fuel Price and no less than the Minimum Fuel Price, the Contract Fuel Price;



- (ii) if the Market Fuel Price is greater than the Maximum Fuel Price, the Market Fuel Price less the amount derived from the following calculation: (the Maximum Fuel Price – the Contract Fuel Price); and
- (iii) if the Market Fuel Price is less than the Minimum Fuel Price, the Market Fuel Price plus the amount derived from the following calculation: (the Contract Fuel Price - the Minimum Fuel Price).

5.12 The worked example below, included for illustration purposes only, shows how the Agreed Fuel Price is derived:

5.12.1 If the Contract Fuel Price was £1.00 per litre and the Fuel Price Variation was £0.10, the Maximum Fuel Price would be £1.10 and the Minimum Fuel Price would be £0.90.

5.12.2 If on the Review Date, it is agreed by the Supplier and the Authority that the Market Fuel Price is £1.05. The Agreed Fuel Price will be the Contract Fuel Price at £1.00 per litre.

5.12.3 If at the Review Date, it is agreed by the Supplier and the Authority that the Market Fuel Price is £0.95. The Agreed Fuel Price will be the Contract Fuel Price at £1.00 per litre.

5.12.4 If at the Review Date, it is agreed by the Supplier and the Authority that the Market Fuel Price is £1.50. The Agreed Fuel Price will be £1.40 per litre (Market Fuel Price at £1.50 - (Maximum Fuel Price at £1.10 – Contract Fuel Price at £1.00)).

5.12.5 If at the Review Date, it is agreed by the Supplier and the Authority that the Market Fuel Price is £0.50. The Agreed Fuel Price will be £0.60 per litre (Market Fuel Price at £0.50 + (Contract Fuel Price at £1.00 – Minimum Fuel Price at £0.90)).

## **6 Ancillary Charge**

6.1 The Supplier may separately invoice the Authority for any Ancillary Charges incurred on a pass through basis each month and shall not apply any mark up to such Ancillary Charges, subject to the provision of evidence required to demonstrate that the Supplier has incurred such Ancillary Charges.

## **7 Supplier Invoices**

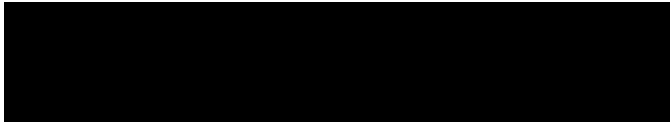
7.1 The Supplier shall invoice the Charges to the Authority for each Service Period in arrears in accordance with this Paragraph 7 of this Schedule.

7.2 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within seven Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 7.3 of this Schedule together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority, then the Supplier shall make such amendments as may be reasonably required by the Authority. If the Authority uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system.

- 7.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- 7.3.1 the date of the invoice;
  - 7.3.2 a unique invoice number;
  - 7.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
  - 7.3.4 the correct reference for this Agreement;
  - 7.3.5 the reference number of the purchase order to which it relates (if any);
  - 7.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
  - 7.3.7 a description of the Services;
  - 7.3.8 the Charges split, at a minimum into the following categories (as applicable):
    - (i) Monthly Standing Charge;
    - (ii) Flying Charge;
    - (iii) Initial Payment;
    - (iv) Fuel Charge; and
    - (v) Ancillary Charge;
  - 7.3.9 the total Charges gross and net of any applicable deductions and, separately, any VAT or other sales tax payable in respect of each of the same;
  - 7.3.10 details of any Deductions, Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
  - 7.3.11 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - 7.3.12 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - 7.3.13 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 7.4 The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five Working

Days of its receipt by the Authority, following which the Supplier may submit its invoice.

- 7.5 Each invoice shall at all times be accompanied by Supporting Documentation by Base and such other documentation as the Authority reasonably requires from time to time to substantiate an invoice.
- 7.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system, Shared Services, or if that is not possible to:



with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

- 7.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 7.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Schedule. Where any invoice does not conform to the Authority's requirements set out in this Schedule, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 7.9 An invoice for a Charge shall not be payable by the Authority unless all adjustments (including Deductions) relating to the Charges for the immediately preceding Service Period have been agreed.
- 7.10 If the Authority fails to consider and verify an invoice in accordance with Paragraph 7.8 of this Schedule, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 8.1 of this Schedule after a reasonable time has passed.

**8 Payment Terms**

- 8.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 8.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

**9 Compensation for Delays due to Authority Cause**

- 9.1 Subject to Clause 29 (*Limitations on Liability*), if the Supplier is entitled to compensation in accordance with Clause 34.1.2(iii)(C) (*Authority Cause*) then such compensation shall reimburse the Supplier for any additional costs incurred by the Supplier provided that the Supplier:
  - 9.1.1 can demonstrate to the Authority's reasonable satisfaction that such additional costs were incurred solely and directly as a result of the Authority Cause; and

- 9.1.2 is, has been, or will be unable to mitigate such additional costs having complied with its obligations pursuant to Clause 34.4 (*Authority Cause*).
- 9.2 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

**10 Deductions**

- 10.1 Deductions in respect of each Service Period or Quarter (as relevant) shall be calculated pursuant to the provisions of Schedule 3 (*Key Performance Indicators*).
- 10.2 The Supplier shall deduct the Deductions in respect of KPIs 2, 3 and 4 from the amount due from the Authority to the Supplier in the invoice for the Service Period(s) to which such Deductions relate.
- 10.3 The Supplier shall deduct the Deductions in respect of KPI 1 from the amount due from the Authority to the Supplier in the invoice for the Service Period(s) immediately following the Quarter to which such Deductions relate.

**Schedule 14**

**Annex 1**

Schedule 14, Annex 1 has been redacted



## Schedule 15

### Payments on Termination

#### **1 Breakage Costs Payment**

- 1.1 The Supplier shall ensure that the Breakage Costs Payment only includes (and the Supplier shall only be entitled to recover through the Breakage Costs Payment) those costs incurred by the Supplier as a direct result of the termination of this Agreement which:
- 1.1.1 would not have been incurred had this Agreement continued until expiry of the latest Base Expiry Date;
  - 1.1.2 are unavoidable, proven, reasonable and not capable of recovery;
  - 1.1.3 are incurred pursuant to arrangements or agreements that are directly associated with this Agreement;
  - 1.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
  - 1.1.5 relate directly to the termination of the Services.
- 1.2 The Breakage Costs Payment shall not exceed 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

#### Redundancy Costs

- 1.3 The Authority shall not be liable pursuant to this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 1.4 Where the Supplier can demonstrate that a member of Applicable Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier (or its Sub-contractor) arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

#### Contract Breakage Costs

- 1.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Key Sub-contracts and Third Party Contracts which:
- 1.5.1 are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 22 (*Exit Management*); and
  - 1.5.2 the Supplier can demonstrate:

- (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
  - (ii) have been entered into by it in the ordinary course of business.
- 1.6 The Supplier shall seek to negotiate termination of any Key Sub-contracts and/or Third Party Contracts with the relevant Sub-contractor using all reasonable endeavours to minimise the cancellation or termination charges.
- 1.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
  - 1.7.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
  - 1.7.2 Assets not yet installed at the Termination Date.

## **2 Mitigation of Contract Breakage Costs, Redundancy Costs and Unrecovered Costs**

- 2.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs in accordance with Clause 28.11 (*Mitigation*) including by:
  - 2.1.1 the appropriation of Assets, employees and resources for other purposes;
  - 2.1.2 at the Authority's request, assigning any Key Sub-contracts and/or Third Party Contracts to the Authority or a third party acting on behalf of the Authority; and
  - 2.1.3 in relation Key Sub-contracts and/or Third Party Contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 2.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable to the Supplier.
- 2.3 In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 20 (*Dispute Resolution Procedure*).

## **3 Maximum Compensation Payment**

- 3.1 Notwithstanding any other provision in this Agreement but subject to the limitations on liability in Clause 29.5.1 (*Limitations on Liability*), where the Authority exercises its option to terminate this Agreement for convenience in accordance with Clause 36.1.1 (*Termination by the Authority*), the Authority shall pay the lower of:



- 3.1.1 the aggregate of the Breakage Costs Payment and the Unrecovered Costs each as mitigated in accordance with Paragraph 2 of this Schedule; and
- 3.1.2 the Maximum Compensation Payment for the relevant Base in respect of the relevant Lot pursuant to Annex 1 to this Schedule.

#### **4 Full and Final Settlement**

- 4.1 Any Compensation Payment paid pursuant to this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 36.1 (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 36.3 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

#### **5 Invoicing for the Payments on Termination**

- 5.1 All sums due pursuant to this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 14 (*Charges and Invoicing*).

#### **6 Set Off**

- 6.1 The Authority may set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

#### **7 No Double Recovery**

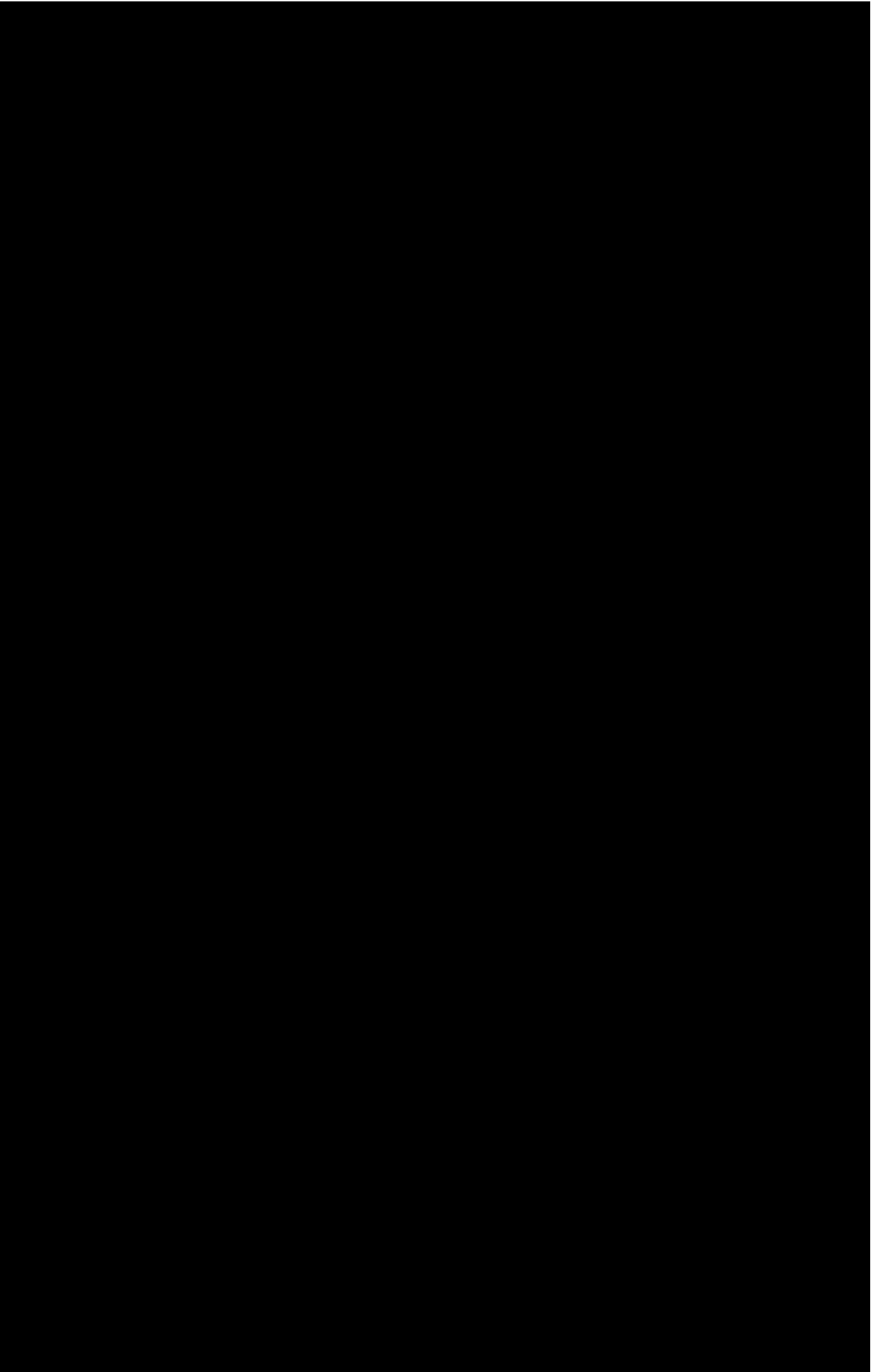
- 7.1 If any amount payable pursuant to this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 22 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 7.2 The Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given pursuant to this Agreement so that there is no double counting in calculating the relevant payment.
- 7.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

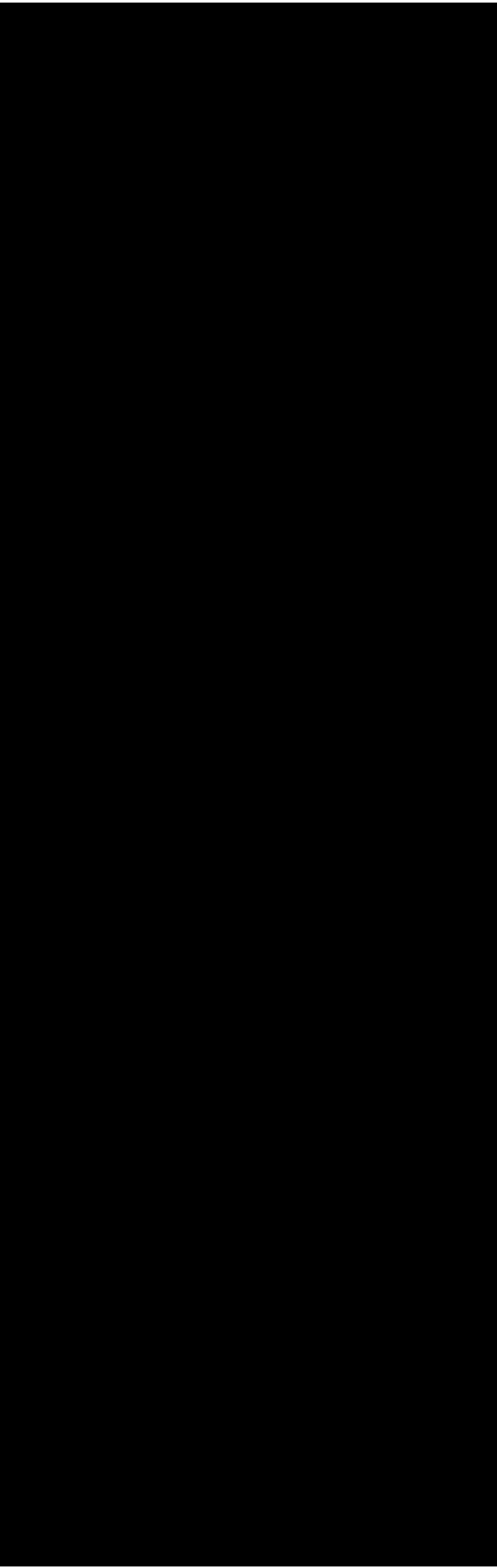
#### **8 Estimate of Compensation Payment**

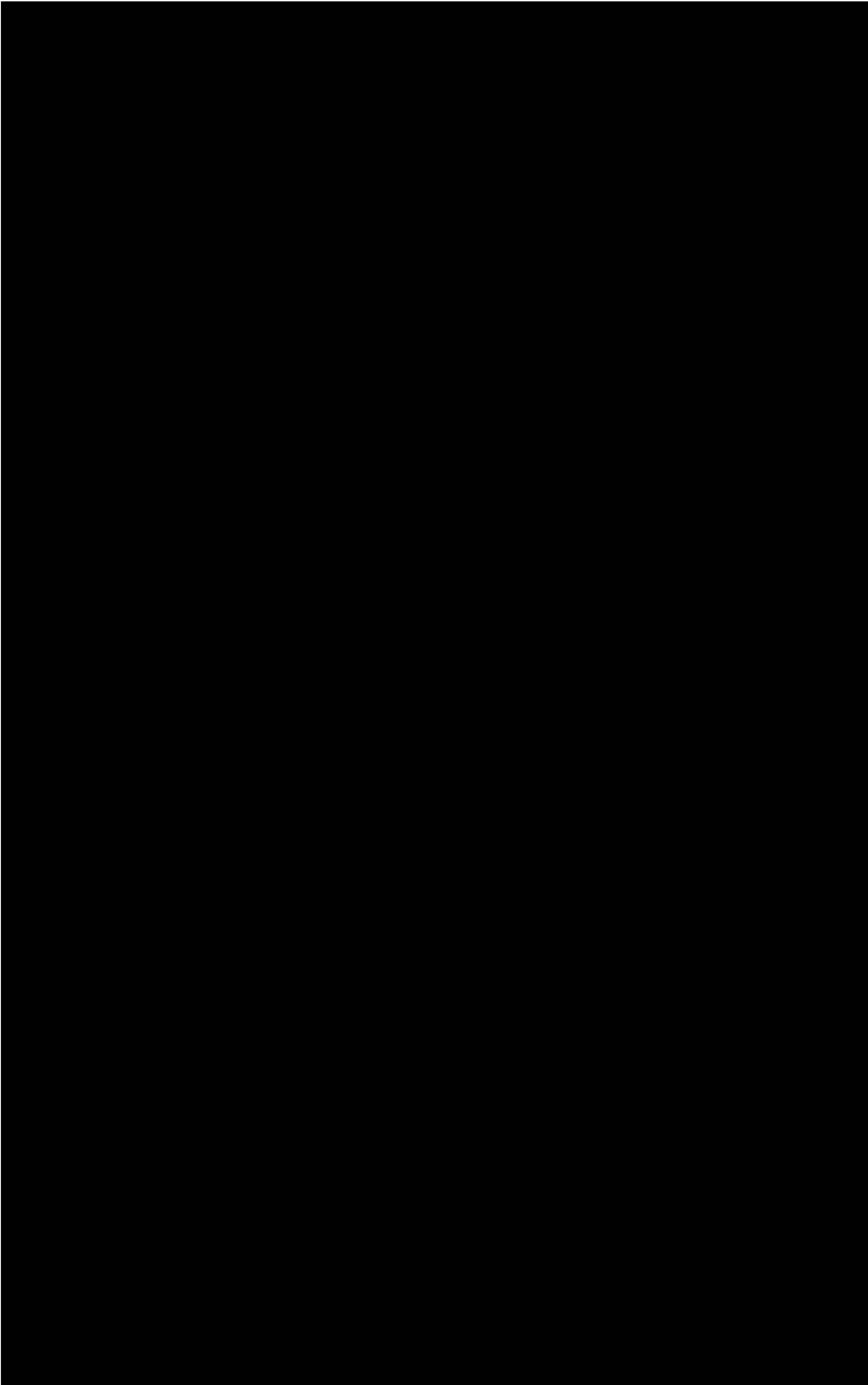
- 8.1 The Authority may issue a Request for Estimate to the Supplier at any time during the Term provided that no more than two Requests for Estimate may be issued in any six month period.
- 8.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**").

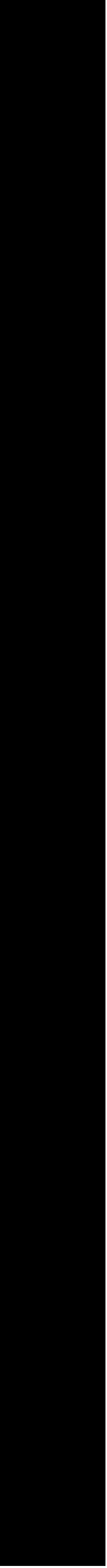
- 8.3 The Termination Estimate shall:
- 8.3.1 be based on the relevant amounts set out in the Financial Model;
  - 8.3.2 include:
    - (i) details of the mechanism by which the Compensation Payment is calculated;
    - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Key Sub-contract and/or Third Party Contract and appropriate supporting documentation; and
    - (iii) such information as the Authority may reasonably require; and
  - 8.3.3 state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 8.4 The Supplier acknowledges that the Authority issuing a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 8.5 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Compensation Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

















## **Schedule 16**

### **Financial Distress**

#### **1 Warranties and Duty to Notify**

- 1.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
  - 1.1.1 the long term credit ratings issued for an FDE Group entity, with an existing credit rating, by each of the Rating Agencies are as set out in Annex 2 to this Schedule; and
  - 1.1.2 the financial position or, as appropriate, the financial performance of a FDE Group entity, Key Sub-contractors and/or Monitored Entities satisfies the Financial Target Thresholds.
- 1.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within five Working Days of the occurrence of the downgrade).
- 1.3 The Supplier shall:
  - 1.3.1 regularly monitor the credit ratings of each FDE Group entity that has an existing credit rating, with the Rating Agencies;
  - 1.3.2 monitor and report to the Authority on the Financial Indicators for FDE Group entities, Key Sub-contractors and Monitored Entities against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 3.1 of this Schedule (where specified) and in any event, on a regular basis and no less than once a year within 120 days after the Accounting Reference Date;
  - 1.3.3 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within three Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
- 1.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 1.1.1 of this Schedule and for the purposes of determining relief pursuant to Paragraph 5.1 of this Schedule, the credit rating of an entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
  - 1.4.1 any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or

- 1.4.2 a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 to this Schedule ceases to hold a Credit Rating for that entity.
- 1.5 Each report submitted by the Supplier pursuant to Paragraph 1.3.2 of this Schedule shall:
  - 1.5.1 be a single report with separate sections for each of the FDE Group entities;
  - 1.5.2 contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
  - 1.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
  - 1.5.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
  - 1.5.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

## **2 Consequences of a Financial Distress Event**

- 2.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 2.3 to 2.6 of this Schedule.
- 2.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph (e) within the definition of Financial Distress Event, the Authority shall not exercise any of its rights or remedies pursuant to Paragraph 2.3 of this Schedule without first giving the Supplier ten Working Days to:
  - 2.2.1 rectify such late or non-payment; or
  - 2.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 2.3 The Supplier shall (and shall procure that the Guarantor(s), any relevant Key Sub-contractor and/or Monitored Entities shall):
  - 2.3.1 at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

- 2.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made pursuant to Paragraph 2.3.1 of this Schedule that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
- (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within ten Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
  - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 2.8 of this Schedule, provide such information relating to the Supplier, the Guarantor(s), Key Sub-contractors, and/or Monitored Entities as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
- 2.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within five Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure pursuant to Paragraph 2.5 of this Schedule.
- 2.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with this Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.
- 2.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
- 2.6.1 on a regular basis (which shall not be less than fortnightly):
- (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
  - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by

the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

- 2.6.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 2.6.1 of this Schedule, submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 2.4 and 2.5 of this Schedule shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
  - 2.6.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 2.7 Where the Supplier reasonably believes that the relevant Financial Distress Event pursuant to Paragraph 2.1 of this Schedule (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations pursuant to Paragraph 2.6 of this Schedule.
- 2.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 2.3.2(ii) of this Schedule is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- 2.8.1 obtaining in advance written authority from Key Sub-contractors, the Guarantor(s) and/or Monitored Entities authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
  - 2.8.2 agreeing in advance with the Authority, Key Sub-contractors, the Guarantor(s) and/or Monitored Entities a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
  - 2.8.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
  - 2.8.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

### **3 Financial Indicators**

- 3.1 Subject to the calculation methodology set out at Annex 3 to this Schedule, the Financial Indicators in respect of the Supplier, the Guarantor(s) and Key Sub-contractors and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

<b>Financial Indicator</b>	<b>Calculation</b>	<b>Financial Target Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
1. Positive EBITDA	<i>Positive EBITDA across the previous two financial years.</i>	<i>Positive EBITDA throughout the past two financial years</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
2. Acid Test Ratio	<i>Acid Test Ratio = (Current Assets – Inventories) / Current Liabilities</i>	<i>≥0.5 times</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
3. Capital Gearing Ratio	<i>Capital Gearing Ratio = Long Term Borrowings / Total Equity</i>	<i>≤1.2</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
4. Free Cash Flow	<i>Free Cash Flow</i>	<i>Positive Free Cash Flow throughout the past two financial years</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
5. Net Debt to EBITDA Ratio	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>	<i>≤1.5 times</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
6. Net Asset Value	<i>Net Assets</i>	<i>&gt; 0</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>
7. Interest Coverage Ratio	<i>Interest Coverage Ratio = Earnings Before Interest and Tax / Interest Expense</i>	<i>≥4 times</i>	<i>As per Paragraph 1.3.2 of this Schedule</i>

Key:<sup>1</sup> – See Annex 3 to this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

#### Monitored Entities

3.2 Not used.

#### **4 Step-In and Termination Rights**

4.1 The Authority may issue a Step-In Notice pursuant to Clause 33.1 (*Step-In Rights*) or terminate this Agreement pursuant to Clause 36.1 (*Termination by the Authority*) if:

4.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 1.3.3 of this Schedule;

4.1.2 the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 2.3 to 2.5 of this Schedule; and/or

4.1.3 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 2.6.3 of this Schedule.

## **5 Primacy of Credit Ratings**

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies pursuant to Paragraph 1 of this Schedule, if, following the occurrence of a Financial Distress Event in accordance with any of limbs (b) to (g) of the definition of Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings of the Supplier and Guarantor(s) which hold existing credit ratings, do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 to this Schedule, then:

5.1.1 the Supplier shall be relieved automatically of its obligations pursuant to Paragraphs 2.3 to 2.6 of this Schedule; and

5.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 2.3.2(ii) of this Schedule.

## **6 Board Confirmation**

6.1 Subject to Paragraph 6.4 of this Schedule, the Supplier shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 4 to this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

6.1.1 that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or

6.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

6.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

6.3 In respect of the first Board Confirmation to be provided pursuant to this Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 6.1 of this Schedule.

6.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 6.1 to 6.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board to the Authority (and

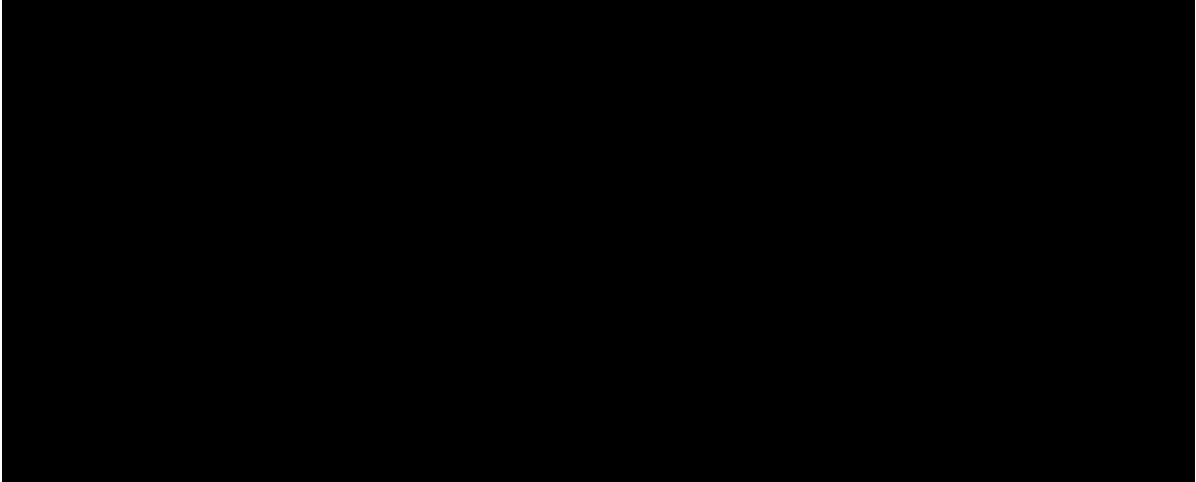
where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.



## ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

<b>Rating Level</b>	<b>Standard &amp; Poor's</b>	<b>Moody's</b>
Rating Level 21	AAA	Aaa
Rating Level 20	AA+	Aa1
Rating Level 19	AA	Aa2
Rating Level 18	AA-	Aa3
Rating Level 17	A+	A1
Rating Level 16	A	A2
Rating Level 15	A-	A3
Rating Level 14	BBB+	Baa1
Rating Level 13	BBB	Baa2
Rating Level 12	BBB-	Baa3
Rating Level 11	BB+	Ba1
Rating Level 10	BB	Ba2
Rating Level 9	BB-	Ba3
Rating Level 8	B+	B1
Rating Level 7	B	B2
Rating Level 6	B-	B3
Rating Level 5	CCC+	Caa1
Rating Level 4	CCC	Caa2
Rating Level 3	CCC-	Caa3
Rating Level 2	C	Ca
Rating Level 1	D	C

<b>Rating Level</b>	<b>D&amp;B (Overall Business Risk Indicator)</b>
Rating Level 5	Low
Rating Level 4	Low - Moderate
Rating Level 3	Moderate
Rating Level 2	Moderate - High
Rating Level 1	High



### ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

#### General Methodology

- 1 **Terminology:** The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 2 **Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 3 **Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 4 **Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

#### Specified Methodology

Financial Indicator	Specific Methodology
<b>1. Positive EBITDA</b>	EBITDA is earnings before interest, taxation, depreciation and amortization and should be calculated as accounting profit before taxation for the relevant financial year adding back net interest and depreciation of tangible assets and amortisation of intangible assets charged in the financial year and excluding the profit or loss relating to joint ventures, dividends received from joint ventures and associates and gains or losses in relation to disposal of fixed assets, investments and / or businesses in the relevant financial year.
<b>2. Acid Test Ratio</b>	<p>The acid test ratio is the ratio of current assets less inventory to current liabilities.</p> <p>Current assets include items such as cash and cash equivalents, inventory, amounts receivable (or debtors) and other items classified as current assets in the relevant entity's audited financial statements.</p> <p>Current liabilities include items such as short term debt, amounts payable (creditors), other short term liabilities and any other items classified as current liabilities in the relevant entity's audited financial statements.</p>
<b>3. Capital Gearing Ratio</b>	The capital gearing ratio is the ratio of long term borrowings to total equity. Long term borrowings include debentures, preference shares, finance leases, loans from parent companies, group companies, shareholders and other long-term loans. Total equity includes equity share capital, all reserves and retained

	earnings.
<b>4. Free Cash Flow</b>	<p>Free Cash Flow refers to Net Cash Flow from Operating Activities less Capital Expenditure.</p> <p>Net Cash Flow from Operating Activities is comprised of Operating Cash Flow stated after deduction of interest and tax paid.</p> <p>Capital Expenditure means the purchase of Property, Plant &amp; Equipment and the Purchase of Intangible Assets.</p>
<b>4. Net Debt to EBITDA Ratio</b>	<p>EBITDA is earnings before interest, taxation, depreciation and amortization and should be calculated as Accounting profit before taxation for the relevant financial year adding back net interest and depreciation of tangible assets and amortisation of intangible assets charged in the financial year and excluding the profit or loss relating to joint ventures, dividends received from joint ventures and associates and gains or losses in relation to disposal of fixed assets, investments and / or businesses in the relevant financial year.</p> <p>Net debt = Short-term borrowings + Long-term borrowings – Cash and cash equivalents.</p> <p>Net Debt is taken to mean all interest bearing liabilities (other than retirement benefit obligations) which should be included as borrowings, as should (where disclosed), any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net Debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p>Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).</p>
<b>6. Net Asset Value</b>	<p>Net Assets as shown on the face of the Balance Sheet in a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).</p>
<b>7. Interest Coverage</b>	<b>Earnings Before Interest and Tax</b> = Operating Profit.

<b>Ratio</b>	<p>Operating Profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates.</p> <p>Interest Expense should be shown on the face of the income statement.</p> <p>Where Operating Profit is negative, the relevant Financial Target Threshold should be treated as not having been met.</p>
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**ANNEX 4: BOARD CONFIRMATION**

**Supplier Name:**

**Contract Reference Number:**

The Board acknowledges the requirements set out at Paragraph 6 of Schedule 16 (*Financial Distress*) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board:

Chair .....

Signed .....

Date .....

Director .....

Signed .....

Date .....

## Schedule 17

### Financial Reports, Audit Rights and Open Book Data

#### **PART 1 - FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

##### **1 Financial Transparency Objectives**

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

###### **1.1.1 Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier;
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

###### **1.1.2 Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Contract Change on the level of resources required for the provision of the Services as amended by the Contract Change and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

###### **1.1.3 Continuous improvement**

- (i) to provide the Authority visibility on the actual costs incurred in comparison to forecast costs, which will enable the Parties to challenge each other with ideas for efficiency and improvements which may lead to a Change Request;
- (ii) to enable the Authority to demonstrate that it is achieving value for money for the taxpayer relative to current market prices; and

###### **1.1.4 Understanding the Supplier's and Guarantor's Financial Liquidity**

- (i) for the Authority to understand the Supplier's and Guarantor's financial liquidity position with reference to the Financial Indicators and the relevant Financial Target Thresholds

(together the "**Financial Transparency Objectives**").

1.2 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.



**2 Open Book Data**

- 2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's requirement for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Term, and for a period of seven years following the end of the Term, the Supplier shall:
  - 2.2.1 maintain and retain the Open Book Data; and
  - 2.2.2 disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

## **PART 2 - ANNUAL REPORTING MODEL**

### **1 Provision of the Annual Reporting Model**

- 1.1 The Supplier acknowledges that the purpose of the Annual Reporting Model and Final Annual Reporting Model is:
  - 1.1.1 to facilitate the achievement of the Financial Transparency Objectives;
  - 1.1.2 for the Authority to understand the Supplier's performance against the forecast costs;
- 1.2 The Annual Reporting Model shall be the Financial Model, updated to reflect actual costs incurred, subject to Paragraphs 1.3 and 1.4 of Part 2 of this Schedule.
- 1.3 Within ten Working Days of a Change Authorisation Note being signed by the Authority in accordance with Schedule 19 (*Change Control Procedure*), and where this has resulted in an Updated Financial Model, the Supplier shall provide the Authority with an Updated Annual Reporting Model, if requested by the Authority, for the Authority's approval reflecting any approved Updated Financial Model and reflecting the impact of the Contract Change on the level of resources required for the provision of the Services and any variation in the Charges resulting from the Contract Change.
- 1.4 Following approval by the Authority the Updated Annual Reporting Model shall replace the previous Annual Reporting Model.
- 1.5 No later than three months after the end of each Contract Year, the Supplier shall provide the Authority with a completed Annual Reporting Model detailing the actual costs incurred by the Supplier in performing the Services in such Contract Year and the Charges received by the Supplier.
- 1.6 The Supplier shall ensure that each completed Annual Reporting Model shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Annual Reporting Model) acting with express authority as:
  - 1.6.1 being accurate and not misleading;
  - 1.6.2 having been prepared in conformity with International Financial Reporting Standards (IFRS); and
  - 1.6.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts.

### **2 Provision of the Final Annual Reporting Model**

- 2.1 No later than six months after the expiry of the Term, the Supplier shall provide the Authority with a Final Annual Reporting Model detailing the actual costs incurred by the Supplier in performing the Services during the Term and the Charges received by the Supplier.

- 2.2 The Supplier shall ensure that the structure and level of breakdown of the actual costs in the Final Annual Reporting Model follows the same structure and level of breakdown as in the Financial Model.

**3 Discussion of the Annual Reporting Model and Final Annual Reporting Model**

- 3.1 Following the delivery by the Supplier of each Annual Reporting Model or the Final Annual Reporting Model, the Parties shall (if requested by the Authority) meet to discuss the contents of the applicable Annual Reporting Model or Final Annual Reporting Model within 20 Working Days of receipt (or such other period as the Parties may agree). The Financial Representative shall attend the meeting.
- 3.2 During the Term and for a period of 18 months following the expiry of the Term, the Supplier shall make the Financial Representative available to the Authority at reasonable times and on reasonable notice to answer any queries that the Authority may have on any Annual Reporting Model and/or the Final Annual Reporting Model and/or the Open Book Data.

## PART 3 - COMPANY ACCOUNTS

### 1 Company Accounts

- 1.1 In respect of each Accounting Year, the Supplier shall prepare financial statements, in accordance with International Financial Reporting Standards (IFRS) which shall:
- 1.1.1 be completed by the Supplier using reasonable skill and care;
  - 1.1.2 quote all monetary values in pounds sterling and exclusive of VAT; and
  - 1.1.3 present fairly, in all material respects, the financial liquidity position, the financial performance and cash flows of the Supplier as at the end of the relevant Accounting Year,
- (the "**Annual Financial Statements**").
- 1.2 The Supplier shall, subject to Paragraph 1.5 of Part 3 of this Schedule, agree the full scope and methodology of the Agreed Upon Procedures and format of the Agreed-Upon Procedures Report with the Authority (or where not agreed by the parties, as determined by the Authority) prior to the first annual audit of the Supplier during the Term at its own cost, procure an independent statutory audit of the Annual Financial Statements and shall procure that the appointed auditor conducts procedures to:
- 1.2.1 reconcile the costs incurred in providing the Services as shown in the Annual Reporting Model with the costs reported in the Annual Financial Statements demonstrating that the Supplier has prepared the Annual Reporting Model in accordance with IFRS and that the Annual Reporting Model is a true and fair reflection of the information included within the Annual Financial Statements;
  - 1.2.2 reconcile the Net Book Value of Assets reported in the Asset Register and the corresponding value of assets reported in the Annual Financial Statements demonstrating how the calculation of the Net Book Value of Assets is consistent with the fixed asset and depreciation policy used in the preparation of the Annual Financial Statements; and
  - 1.2.3 confirm the Supplier's performance against the Financial Indicators.
- (the "**Agreed-Upon Procedures**").
- 1.3 The Supplier shall procure that the Supplier's auditor shall present the outcome of the Agreed-Upon Procedures in a report (the "**Agreed-Upon Procedures Report**") and the Supplier shall provide such report to the Authority in accordance with Paragraph 1.6 of Part 3 of this Schedule.
- 1.4 If the Parties fail to agree the full scope and methodology of the Agreed Upon Procedures and/or format of the Agreed-Upon Procedures Report in accordance with this Paragraph 1.4 of Part 3 of this Schedule at least five Working Days prior to the commencement of the first annual audit of the Supplier during the Term, the full scope and methodology of the Agreed Upon Procedures and format of the Agreed-Upon Procedures Report shall be as determined by the Authority in its sole discretion.

- 1.5 The Authority may in its sole discretion require amendments to the scope and methodology of the Agreed-Upon Procedures and format of the Agreed-Upon Procedures Report at any time during the Term.
- 1.6 The Supplier shall provide the Annual Financial Statements, the auditor's report and the Agreed-Upon Procedures Report to the Authority on the date which is the earlier of:
  - 1.6.1 ten Working Days after the audit report and Agreed-Upon Procedures Report are signed by the Supplier's auditors; or
  - 1.6.2 nine months after the end of the Accounting Year.
- 1.7 If requested, the Parties shall meet to discuss the Annual Financial Statements, the auditor's report and/or the Agreed-Upon Procedures Report within ten Working Days of receipt of such document by the Authority (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 1.8 The Supplier shall make the Authority aware of and shall, at the Authority's request, within ten Working Days of such request, provide copies of:
  - 1.8.1 any management accounts kept by the Supplier in connection with this Agreement;
  - 1.8.2 any interim financial statements reported by the Supplier;
  - 1.8.3 any reports, filings and releases required pursuant to the Supplier's regulatory and legal obligations; and
  - 1.8.4 any trading updates and presentations provided to investors by the Supplier.
- 1.9 The Supplier shall, at the Authority's request, within ten Working Days of such request, provide the Authority with the annual financial statements for any Guarantor and explain how the performance of the Guarantor against the relevant Financial Indicators reconciles with the Guarantor's annual accounts.

## **PART 4 - KEY SUB-CONTRACTORS**

### **1 Key Sub-contractors**

- 1.1 The Supplier shall, if requested by the Authority, within ten Working Days of such request, provide (or procure the provision of) a report or reports including the level of information set out in each Financial Report in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 1.2 Without prejudice to Paragraph 1.1 of Part 5 of this Schedule, the Supplier shall:
  - 1.2.1 be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred in carrying out such audit; and
  - 1.2.2 on written request by the Authority, provide the Authority (or procure that the Authority is provided) with:
    - (i) full copies of audit reports for the Key Sub-contractors which the Authority may rely on; and
    - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## **PART 5 - AUDIT RIGHTS**

### **1 Audit Rights**

- 1.1 The Authority (acting by itself or through its Audit Agents) may, at any time during the Term and for a period of 18 months after expiry of the Term, assess compliance by the Supplier and/or its Key Sub-contractors with their obligations pursuant to this Agreement, including for the following purposes:
- 1.1.1 to verify the integrity and content of any Financial Report;
  - 1.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority pursuant to this Agreement (and proposed or actual variations to such Charges and payments);
  - 1.1.3 to verify the costs (including the amounts paid for fuel and amounts paid to all Sub-contractors and any third party suppliers);
  - 1.1.4 to verify the Open Book Data;
  - 1.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - 1.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - 1.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
  - 1.1.8 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - 1.1.9 to review any books of accounts and the internal contract management accounts kept by the Supplier in connection with this Agreement;
  - 1.1.10 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
  - 1.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 1.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

- 1.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - 1.1.14 to inspect the service delivery environment (or any part of it);
  - 1.1.15 to review the accuracy and completeness of the Registers;
  - 1.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 1.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
  - 1.1.18 to review the Supplier's compliance with the Standards;
  - 1.1.19 to inspect the Authority Assets, including the Authority's IPR, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
  - 1.1.20 to review the integrity, confidentiality and security of the Authority Data and/or Coordinating Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations pursuant to this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 Conduct of Audits**

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Key Sub-Contractors) in relation to each audit, including:
- 2.2.1 all information requested by the Authority within the permitted scope of the audit;
  - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - 2.2.3 access to the Supplier System; and



- 2.2.4 access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Requirements at a level of detail sufficient to verify compliance with the Service Requirements.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations pursuant to this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 Use of Supplier's Internal Audit Team**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 of Part 5 of this Schedule to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1 of Part 5 of this Schedule.
- 3.2 Following the receipt of a request from the Authority pursuant to Paragraph 3.1 of Part 5 of this Schedule, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
  - 3.2.1 the resultant audit reports; and
  - 3.2.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

### **4 Response to Audits**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 of Part 5 of this Schedule identifies that:
  - 4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - 4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998,

accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and

- (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may elect to deduct such amount from the Charges if it prefers; and

- 4.1.4 the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

## **Schedule 18**

### **Governance**

#### **1 Introduction**

- 1.1 This Schedule describes the procedures that will be used to manage the relationship between the Authority and the Supplier pursuant to this Agreement.

#### **2 Costs**

- 2.1 The activities outlined in this Schedule shall be conducted by the Supplier at no extra cost to the Authority.

#### **3 Management of the Services**

- 3.1 The Supplier and the Authority shall each appoint a Contract Manager for the purposes of this Agreement and notify the other Party of such appointment within five Working Days of the Effective Date. Each Party shall notify the other Party of any replacement appointee.
- 3.2 The Contract Managers shall manage the Services on a day-to-day basis.
- 3.3 Both Parties shall ensure that appropriate resource is made available such that the aims, objectives and specific provisions of this Agreement can be fully realised.

#### **4 Governance Bodies**

- 4.1 The Governance Bodies shall be established by the Authority within five Working Days of the Effective Date for the purposes of this Agreement.
- 4.2 In relation to each Governance Body, the:
- 4.2.1 Authority Governance Body Members;
  - 4.2.2 Supplier Governance Body Members; and
  - 4.2.3 frequency that the Governance Body shall meet (unless otherwise agreed between the Parties),
- shall be as set out in Annex 1 to this Schedule.
- 4.3 The Authority shall be entitled to replace any of its appointed Governance Body Members from time to time.
- 4.4 Subject to receiving the written consent of the Authority, the Supplier shall be entitled to replace any of its appointed Governance Body Members with replacement Governance Body Members of equivalent seniority or experience.
- 4.5 The Governance Bodies shall meet as required by the Authority and in any event at not less than the frequency set out in Annex 1 to this Schedule.
- 4.6 The Governance Bodies shall meet at MCA HQ at Spring Place, Southampton or such other location as notified by the Authority to the Supplier from time to time.

- 4.7 Each Party shall ensure that its Governance Body Members shall make all reasonable efforts to attend Governance Body meetings at which that Governance Body Member's attendance is required by the Authority. If any Governance Body Member is not able to attend a Governance Body meeting, the relevant Party shall use all reasonable endeavours to ensure that:
- 4.7.1 a delegate attends in such Governance Body Member's place who is properly briefed and prepared, and has the requisite authority to act on behalf of such Governance Body Member; and
  - 4.7.2 such Governance Body Member is debriefed by such delegate after the Governance Body meeting.
- 4.8 A chairperson shall be appointed by the Authority for each Governance Body as identified in Annex 1 to this Schedule or otherwise notified to the Supplier by the Authority from time to time. The chairperson for each Governance Body shall be responsible for:
- 4.8.1 scheduling relevant Governance Body meetings;
  - 4.8.2 setting the agenda for relevant Governance Body meetings and circulating the agenda to all attendees in advance of such meeting;
  - 4.8.3 chairing relevant Governance Body meetings;
  - 4.8.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following relevant Governance Body meetings;
  - 4.8.5 ensuring that minutes for relevant Governance Body meetings are recorded and disseminated electronically to the appropriate persons and to all participating Governance Body Members within seven Working Days of relevant Governance Body meetings; and
  - 4.8.6 facilitating the process or procedure by which any decision agreed at any Governance Body meeting is given effect in the appropriate manner.
- 4.9 Governance Body meetings shall be quorate as long as at least two representatives from each Party are present.
- 4.10 The Parties shall ensure, as far as reasonably practicable, that all Governance Bodies shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Governance Body Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

## **5 Role of the Transition Working Group**

- 5.1 The Transition Working Group shall:
- 5.1.1 manage and review implementation of the Transition and Acceptance Plan;
  - 5.1.2 review risks in relation to the implementation of the Transition and Acceptance Plan;

- 5.1.3 monitor and contribute to the development of effective organisational structures to aid the management of both transition and operational delivery;
- 5.1.4 provide assurance to the Authority's Aviation Assistant Director regarding progress;
- 5.1.5 report to the Contract Management Board with regard to progress against the Transition and Acceptance Plan and with regard to any issues, risks or delays against the implementation of the Transition and Acceptance Plan; and
- 5.1.6 report to the Contract Management Board on significant issues requiring decision and resolution by the Contract Management Board.

## **6 Role of the Capability Integration Development Working Group**

- 6.1 The Capability Integration Development Working Group shall:
  - 6.1.1 oversee the technology used in the Supplier Solution;
  - 6.1.2 ensure that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority;
  - 6.1.3 ensure compliance with Clause 5 (*Services*);
  - 6.1.4 ensure compliance with the Innovation Plan;
  - 6.1.5 monitor developments in new technology and reporting on their potential benefit to the Services;
  - 6.1.6 provide advice, guidance and information on technical issues;
  - 6.1.7 report to the Contract Management Board with regard to progress against the Innovation Plan and with regard to any issues, risks or delays against the implementation of the innovation Plan; and
  - 6.1.8 report to the Contract Management Board on significant issues requiring decision and resolution by the Contract Management Board.

## **7 Role of the Contract Management Board**

- 7.1 The Contract Management Board shall:
  - 7.1.1 be responsible for managing the implementation of the Transition and Acceptance Plan;
  - 7.1.2 monitor the Supplier's progress against the Transition and Acceptance Plan;
  - 7.1.3 review all integration issues including operational and data issues;
  - 7.1.4 be responsible for the executive management of the Services:

- 7.1.5 comprehensively oversee the Services and the operational relationship between the Parties;
- 7.1.6 review all risks and issues arising;
- 7.1.7 review health and safety issues;
- 7.1.8 review financial issues;
- 7.1.9 review performance issues including performance against the Key Performance Indicators;
- 7.1.10 review performance against the Service Continuity Plan;
- 7.1.11 review progress against the Innovation Plan as reported by the Capability Integration Development Working Group;
- 7.1.12 review performance against the Exit Plan;
- 7.1.13 review all Changes to this Agreement;
- 7.1.14 review compliance by the Parties with this Agreement;
- 7.1.15 receive and review reports from the Contract Managers, the Transition Working Group and the Capability Integration Development Working Group; and
- 7.1.16 report to the Strategic Management Board on significant issues requiring decision and resolution by the Strategic Management Board.

## **8 Role of the Strategic Management Board**

- 8.1 The Strategic Management Board shall:
  - 8.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
  - 8.1.2 be the point of escalation from the Contract Management Board;
  - 8.1.3 ensure that this Agreement is implemented throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority;
  - 8.1.4 receive and review reports from the Contract Management Board; and
  - 8.1.5 determine business strategy and provide guidance on policy matters which may impact the performance of the Services.

## **9 Not Used**

## **10 Operational Interfaces**

### **10.1 UK Search and Rescue Operators Group**

- 10.1.1 The Supplier will provide one chief pilot supported by one rear crew or ground crew member to attend meetings of the UK Search and Rescue Operators Group as required by the Authority throughout the Term and to share positive and negative experiences in relation to the following aspects of search and rescue services;
- 10.1.2 inter-operability;
- 10.1.3 co-operation; and
- 10.1.4 standardisation of process and procedures.

## **10.2 UK Search and Rescue Strategic Board**

- 10.2.1 Where required by the Authority throughout the Term, the Supplier will provide a senior manager to attend the UK Search and Rescue Strategic Board supported as necessary by subject matter experts on matters relating to the agenda.

## **10.3 MCA Coastguard Operations Management Team**

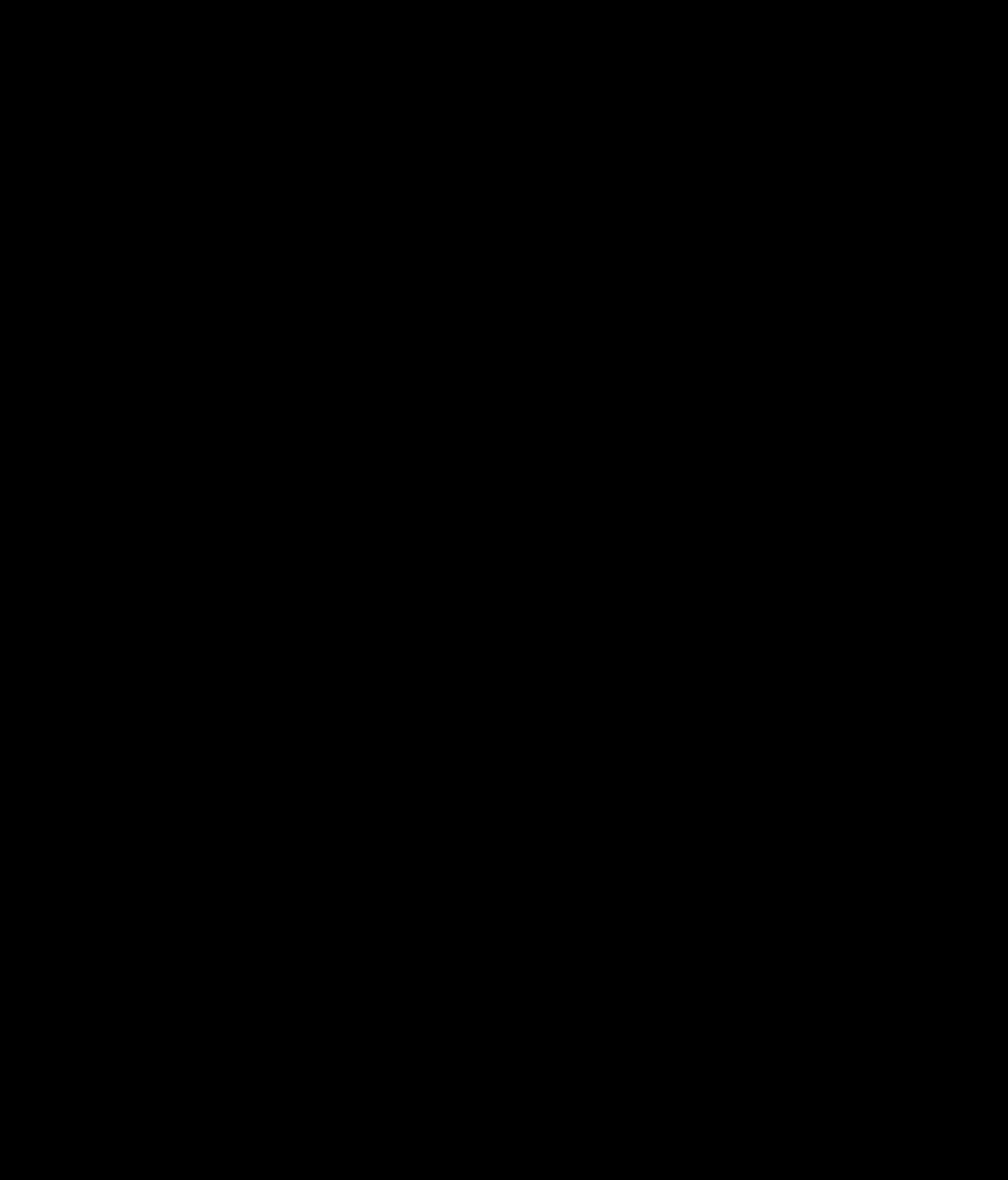
- 10.3.1 The Supplier shall liaise at a local level with the Coastguard Operations Management Teams throughout the Term, to:
  - (i) identify and support training of the Coastguard Rescue Service in helicopter operations;
  - (ii) share and embed best practice and lessons learnt on incidents; and
  - (iii) ensure alignment in standard operating procedures.

## **10.4 Other liaison groups**

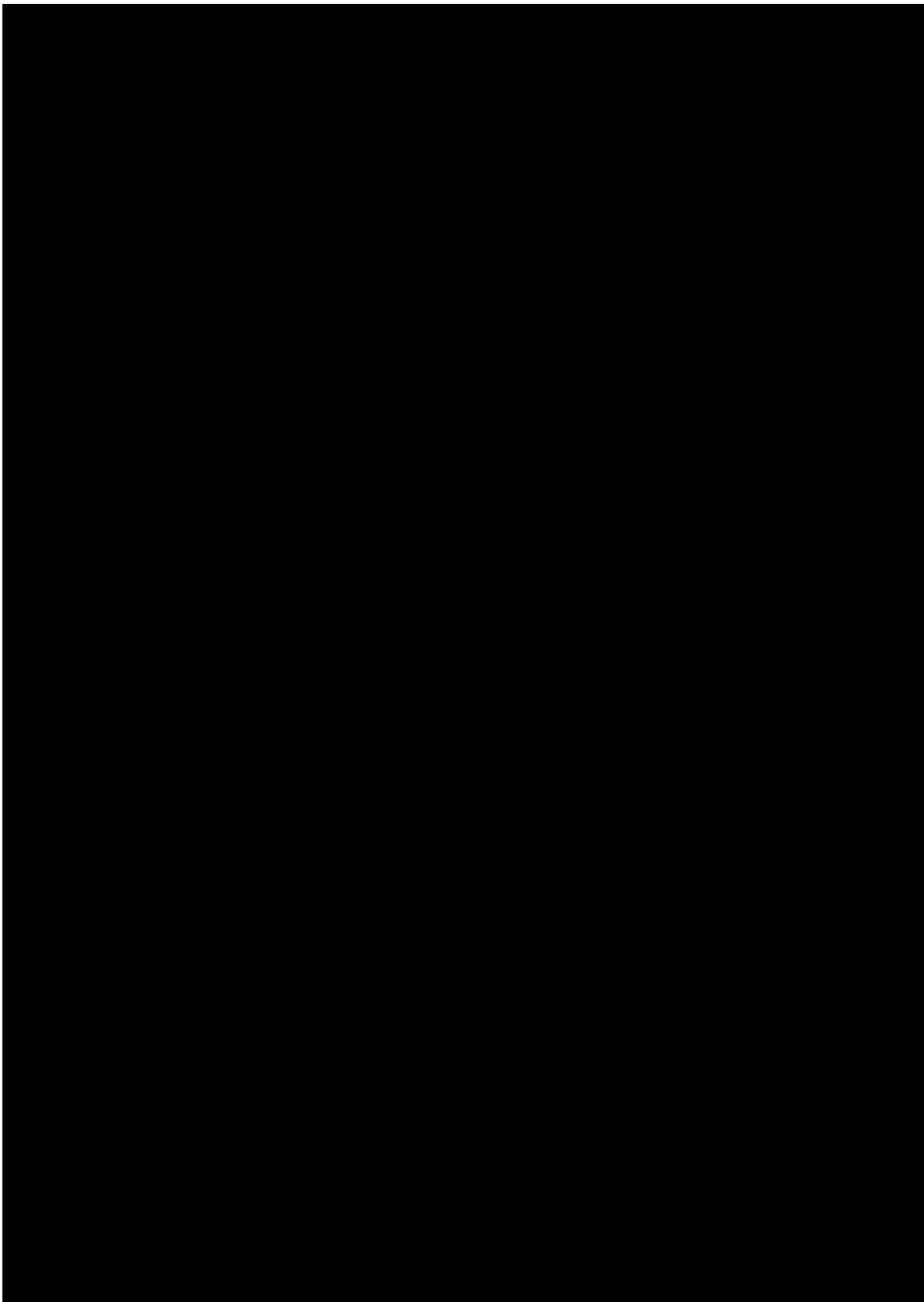
- 10.4.1 The Supplier shall send a representative to such operational Search and Rescue liaison groups as required by the Authority from time to time.

Annex 1

Members of the Governance Bodies and frequency of meetings







## **Schedule 19**

### **Change Control Procedure**

- 1 General Principles of Change Control Procedure**
- 1.1 This Schedule sets out the procedure for dealing with Changes.
- 1.2 The Parties shall deal with Contract Change as follows:
  - 1.2.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 3 of this Schedule;
  - 1.2.2 unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 4 of this Schedule before the Contract Change can be either approved or implemented;
  - 1.2.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6 of this Schedule;
  - 1.2.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 8 of this Schedule;
  - 1.2.5 save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 7.2 of this Schedule; and
  - 1.2.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 9 of this Schedule.
- 1.3 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 7.2 of this Schedule, then:
  - 1.3.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
  - 1.3.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights pursuant to this Agreement.
- 1.4 The Supplier shall:
  - 1.4.1 within ten Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this

Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed and the Updated Financial Model (if applicable); and

1.4.2 thereafter provide to the Authority such further copies of the updated Agreement and Updated Financial Model (if applicable) as the Authority may from time to time request.

## **2 Costs**

2.1 Subject to Paragraph 2.3 of this Schedule:

2.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

2.1.2 the reasonable and proper costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:



(ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services;

(iii) such costs exceed those in the accepted Change Estimate; or

(iv) the Change Request was issued by the Authority pursuant to Clause 8.3.

2.2 The Supplier may increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

2.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

## **3 Change Request**

3.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 to this Schedule and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

3.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment and Updated Financial Model (if applicable) to the Authority as soon as is reasonably practicable but in any event within ten Working Days of the date of issuing the Change Request.

3.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten Working Days of the date of receiving the Change Request an estimate (“**Change Estimate**”) of the cost of and timetable for preparing an Impact Assessment and Updated Financial Model (if applicable). The timetable shall provide for the completed Impact Assessment and Updated Financial Model (if applicable) to be received by the Authority within ten Working Days of acceptance of the Change Estimate or within any longer time period agreed by the Authority.

3.4 If the Authority accepts a Change Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment and Updated Financial Model (if applicable) to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Change Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment and/or Updated Financial Model (if applicable), then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

3.4.1 the nature of the request for clarification; and

3.4.2 the reasonable justification for the request;

the time period to complete the Impact Assessment and Updated Financial Model (if applicable) shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

#### **4 Impact Assessment**

4.1 Each Impact Assessment shall be completed in good faith and shall include:

4.1.1 details of the proposed Contract Change including the reason for the Contract Change;

4.1.2 details of the impact of the proposed Contract Change on the Services and the Supplier's ability to meet its other obligations pursuant to this Agreement;

4.1.3 any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:

(i) the Services Description, the Supplier's Solution, the Key Performance Indicators and/or the Target Performance Levels;

(ii) the format of Authority Data and/or Coordinating Authority Data, as set out in the Services Description;

(iii) the Transition and Acceptance Plan and any other timetable previously agreed by the Parties; and

(iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

- 4.1.4 details of the cost of implementing the proposed Contract Change;
  - 4.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - 4.1.6 a timetable for implementation, together with any proposals for the achievement criteria, acceptance procedures and planned achievement criteria dates of the Contract Change;
  - 4.1.7 details of any new Sub-contracts necessary to accomplish the Change;
  - 4.1.8 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
  - 4.1.9 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 4.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 26 (*Protection of Personal Data*).

## **5 Updated Financial Model**

- 5.1 Where the Contract Change is reasonably likely to cause an increase or decrease in the level of resources required to provide the Services and/or there is a cost of implementing the Contract Change, the Supplier shall provide the Authority with an Updated Financial Model in accordance with Paragraph 3.4 of this Schedule showing the increase or decrease in the Charges as a result of such Contract Change prepared in accordance with Paragraph 5.2 of this Schedule.
- 5.2 In preparing the Updated Financial Model for the purpose of Paragraph 5.1 of this Schedule, the Supplier shall:
- 5.2.1 use reasonable skill and care;
  - 5.2.2 use the latest version of the Financial Model as a starting point and update the cost inputs and assumptions in the Financial Model to the extent necessary to show the impact of the Contract Change on the resources required to provide the Services and the resulting variations in the Charges calculated in the Financial Model;
  - 5.2.3 include full disclosure of any assumptions underlying the Updated Financial Model;
  - 5.2.4 include estimated volumes of each type of resource to be employed;
  - 5.2.5 ensure that the Updated Financial Model is a true and fair reflection of the impact of the Contract Change;
  - 5.2.6 not have any other internal financial model in relation to the Services which is inconsistent with the Updated Financial Model;

- 5.2.7 facilitate the Financial Transparency Objectives;
  - 5.2.8 include evidence of the cost of any assets required for the Change;
  - 5.2.9 include evidence to justify the impact of the Contract Change on the resources required to provide the Services and any resulting variations in the Charges to the Authority's satisfaction; and
  - 5.2.10 where a Contract Change arises from a Change Request issued by the Authority pursuant to Clause 8.3 (*Services Improvement*) and such Contract Change results in a net saving (being the reduction in costs as a result of the Contract Change, net of any costs of implementing the Contract Change), the Supplier shall adjust the Financial Model so that through any resulting variations to the Charges the Authority obtains 70% of the total net saving and the Supplier obtains 30% of the total net saving.
- 5.3 Once the relevant Change Authorisation Note has been signed in accordance with Paragraph 7.2 of this Schedule, the Updated Financial Model produced in accordance with Paragraph 5.1 and Paragraph 5.2 of this Schedule shall replace any previous version of the Financial Model.
- 5.4 If there is a dispute regarding versions of the Financial Model, the Authority's copy of the Financial Model shall be authoritative.

## **6 Further information**

- 6.1 If the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request (if applicable), the Impact Assessment and the Updated Financial Model (if applicable), then within five Working Days of receiving the Impact Assessment, it shall be entitled to notify the Supplier of this fact and detail the further information that it requires and/or to require the Supplier to attend a meeting to discuss the contents of the Updated Financial Model. The Supplier shall then re-issue the Impact Assessment and Updated Financial Model (if applicable) to the Authority within ten Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 6.1 of this Schedule until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request (if applicable), the Impact Assessment and the Updated Financial Model (if applicable).

## **7 Authority's Right of Approval**

- 7.1 Within 15 Working Days of receiving the Change Request (if applicable), the Impact Assessment and the Updated Financial Model (if applicable) from the Supplier or within ten Working Days of receiving the further information that the Authority may request pursuant to Paragraph 6.1 of this Schedule the Authority shall evaluate the Change Request, the Impact Assessment and the Updated Financial Model (if applicable) and shall do one of the following:
- 7.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 7.2 of this Schedule;
  - 7.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any

proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

7.1.3 in the event that it reasonably believes that a Change Request (if applicable) and/or Impact Assessment and/or Updated Financial Model (if applicable) contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five Working Days of such request. Subject to Paragraph 6.1 of this Schedule, on receiving the modified Change Request (if applicable) and/or Impact Assessment and/or Updated Financial Model (if applicable), the Authority shall approve or reject the proposed Contract Change within ten Working Days.

7.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 7.1 of this Schedule and it has not been rejected by the Supplier in accordance with Paragraph 8 of this Schedule, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

7.3 If the Authority does not sign the Change Authorisation Note within ten Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **8 Supplier's Right of Approval**

8.1 Following an Impact Assessment, if:

8.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (i) materially and adversely affect the risks to the health and safety of any person; and/or
- (ii) require the Services to be performed in a way that infringes any Law; and/or

8.1.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change requested by the Authority is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 3.3 of this Schedule.

**9 Fast-Track Changes**

9.1 If the Authority considers that it is desirable to expedite the processes set out above then the Parties shall use the process set out in Paragraphs 3 to 8 of this Schedule but with reduced timescales, such that any period of 15 Working Days is reduced to five Working Days, any period of ten Working Days is reduced to two Working Days, any period of five Working Days is reduced to one Working Day.

9.2 The Parties may agree in writing to revise the parameters set out in Paragraph 9.1 of this Schedule from time to time.

**10 Communications**

10.1 For any Change Communication to be valid pursuant to this Schedule, it must be sent to either the Authority's Contract Manager or the Supplier's Contract Manager, as applicable. The provisions of Clause 47 (*Notices*) shall apply to a Change Communication as if it were a notice.



**ANNEX 1: CHANGE REQUEST FORM**

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT [AND UPDATED FINANCIAL MODEL] BY:		
ASSIGNED FOR IMPACT ASSESSMENT [AND UPDATED FINANCIAL MODEL] TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**ANNEX 2: CHANGE AUTHORISATION NOTE**

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT [AND UPDATED FINANCIAL MODEL] IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:.....		Signature:.....
Name:.....		Name:.....
Position:.....		Position:.....
Date:.....		Date:.....

## Schedule 20

### Dispute Resolution Procedure

#### **1 Dispute Notices**

- 1.1 If a Dispute arises then:
- 1.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
  - 1.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.
- 1.2 A Dispute Notice:
- 1.2.1 shall set out:
    - (i) the material particulars of the Dispute;
    - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
    - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with pursuant to the Expedited Dispute Timetable, the reason why; and
  - 1.2.2 may specify in accordance with the requirements of Paragraphs 8.2 and 8.3 of this Schedule that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 1.3 of this Schedule shall apply.
- 1.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 1.2.2 of this Schedule, then:
- 1.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
  - 1.3.2 if it is served by the Supplier it shall be treated as a Supplier Request,
- and in each case the provisions of Paragraph 8 of this Schedule shall apply.
- 1.4 Subject to Paragraphs 1.5 and 2.2 of this Schedule and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- 1.4.1 first by commercial negotiation (as prescribed in Paragraph 3 of this Schedule);
  - 1.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 4 of this Schedule); and

- 1.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 6 of this Schedule) or litigation (in accordance with Clause 49 (*Governing Law and Jurisdiction*)).
- 1.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5 of this Schedule) where specified pursuant to the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 5.1 of this Schedule.
- 1.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations pursuant to this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings pursuant to Paragraph 7 (*Urgent Relief*) of this Schedule.

## **2 Expedited Dispute Timetable**

- 2.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 2.1 of this Schedule or is otherwise specified pursuant to the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
  - 2.2.1 in Paragraph 3.2.3 of this Schedule, ten Working Days;
  - 2.2.2 in Paragraph 4.2 of this Schedule, ten Working Days;
  - 2.2.3 in Paragraph 5.2 of this Schedule, five Working Days; and
  - 2.2.4 in Paragraph 6.2 of this Schedule, ten Working Days.
- 2.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five Working Days before the end of the period of time specified in the applicable Paragraphs (or two Working Days in the case of Paragraph 5.2 of this Schedule). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

## **3 Commercial Negotiation**

- 3.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute

as soon as possible by commercial negotiation between the Authority's Contract Manager and the Supplier's Director SAR UK.

3.2 If:

3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;

3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 3 of this Schedule; or

3.2.3 the Parties have not settled the Dispute in accordance with Paragraph 3.1 of this Schedule within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 4 of this Schedule (a "**Mediation Notice**").

**4 Mediation**

4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

4.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

**5 Expert Determination**

5.1 If a Dispute relates to a technical matter of an aviation, engineering, IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 3 of this Schedule or, if applicable, mediation in accordance with Paragraph 4 of this Schedule, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

5.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten Working Days of the relevant request made

pursuant to Paragraph 5.1 of this Schedule, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

5.2.1 if the Dispute relates to a matter of a technical accounting or financial nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

5.2.2 if the Dispute relates to a matter of a technical nature not falling within Paragraph 5.2.1 of this Schedule, on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 5.1 of this Schedule, such body as may be specified by the President of the Law Society on application by either Party.

5.3 The Expert shall act on the following basis:

5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;

5.3.5 the process shall be conducted in private and shall be confidential; and

5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## **6 Arbitration**

6.1 Subject to compliance with its obligations pursuant to Paragraph 3.1 of this Schedule and to the provisions of Paragraph 5 of this Schedule, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 6.5 of this Schedule.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 6.5 of this Schedule or be subject to the exclusive jurisdiction of the courts

of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

- 6.3 If the Authority serves a Counter Notice, then:
- 6.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 6.5 of this Schedule shall apply; or
  - 6.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 6.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with Paragraph 6.5 of this Schedule or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 6.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 6.1 to 6.4 of this Schedule:
- 6.5.1 the Dispute shall be referred to and finally resolved by arbitration pursuant to the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 6.5.5, 6.5.6 and 6.5.7 of this Schedule);
  - 6.5.2 the arbitration shall be administered by the LCIA;
  - 6.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 6.5.4 if the Parties fail to agree the appointment of the arbitrator within ten Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 6.5.5 the chair of the arbitral tribunal shall be British;
  - 6.5.6 the arbitration proceedings shall take place in London and in the English language; and
  - 6.5.7 the seat of the arbitration shall be London.

## **7 Urgent Relief**

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 7.1.1 for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party’s Intellectual Property Rights; and/or

7.1.2 where compliance with Paragraph 1.1 of this Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## **8 Multi-Party Disputes**

- 8.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 of this Schedule (the “**Multi-Party Dispute Resolution Procedure**”).
- 8.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.
- 8.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 6 of this Schedule, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 8.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five Working Days whether the Dispute is:
- 8.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - 8.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 2 to 7 of this Schedule.
- 8.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 8.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 8.6.1 the Authority;
  - 8.6.2 the Supplier;
  - 8.6.3 each Related Third Party involved in the Multi-Party Dispute; and
  - 8.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,



(together “**Multi-Party Dispute Representatives**”).

8.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

8.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

8.7.2 the Multi-Party Dispute Resolution Board shall first meet within ten Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

8.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

8.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

8.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 4 of this Schedule shall apply;

8.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 5 of this Schedule shall apply; and/or

8.8.3 subject to Paragraph 8.9 of this Schedule, Paragraph 6 of this Schedule shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

8.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 6 of this Schedule or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-contractor, by the Supplier.

## Schedule 21

### Reports and Records Provisions

#### **1 Transparency Reports**

- 1.1 Within three months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 of this Schedule (once approved, the “**Transparency Reports**”).
- 1.2 If the Authority rejects any draft report provided in accordance with Paragraph 1.1 of this Schedule, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than pursuant to Paragraph 1.2 of this Schedule in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

#### **2 Other Reports**

- 2.1 Upon request by the Authority the Supplier shall provide any or all of the following reports:
  - 2.1.1 Transition Progress Reports as outlined in Schedule 12 (*Transition and Acceptance Plan*);
  - 2.1.2 reports related to service performance and operations including, but not limited to, those listed pursuant to Schedule 2 (*Services Description*), Schedule 3 (*Key Performance Indicators*) and Schedule 7 (*Supplier’s Solution*);
  - 2.1.3 Financial Reports as outlined in Schedule 16 (*Financial Distress*) and Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);
  - 2.1.4 reports relating to security testing and tests carried out pursuant to Schedule 4 (*Security Management*);
  - 2.1.5 reports related to Service Continuity Plan activations, reviews and tests carried out pursuant to Schedule 23 (*Service Continuity Plan*);
  - 2.1.6 reports which the Supplier is required to supply as part of the Management Information; and

2.1.7 reports relating to Force Majeure Events.

### **3 Records**

3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Paragraph 2 of this Schedule and Annex 1 to this Schedule (together "**Records**"):

3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;

3.1.2 in chronological order;

3.1.3 in a form that is capable of audit; and

3.1.4 at its own expense.

3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

3.4 The Supplier shall, during the Term and for a period of at least seven years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven years after the expiry or termination of this Agreement.

3.6 The Supplier shall provide the Authority:

3.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first six months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six month period;

3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders; and

3.6.3 upon request by the Authority, a register of all claims made under the Required Insurances.

#### **4 Virtual Library**

4.1 Within four weeks of the Effective Date the Supplier shall, without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in accordance with the requirements outlined in this Schedule.

4.2 The Supplier shall ensure that the Virtual Library is:

4.2.1 capable of holding and allowing access to the information described in Annex 3 to this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;

4.2.2 structured so that each document uploaded has a unique identifier which is automatically assigned;

4.2.3 readily accessible by the Authority at all times in full via a user friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time;

4.2.4 structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has access permission) in bulk and store and view the content offline (on a regular and automated basis);

4.2.5 structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 4 (*Security Management*); and

4.2.6 backed up on a secure off-site system.

4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitutes Supplier Software which shall be assigned to the Authority pursuant to Clause 20 (*Licences Granted by the Supplier*).

4.4 The Supplier shall upload complete and accurate information specified in Annex 3 to this Schedule by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1 of this Schedule) onto Virtual Library in the format specified.

4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted access permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at: aviationcontracts@mcga.gov.uk.

4.6 Except to the extent that the requirements set out in Annex 3 to this Schedule provide for earlier and more regular Authority access to up-to-date information, Annex 3 to this Schedule shall not take precedence over any other obligation to

provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.

- 4.7 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 3 to this Schedule) access to view and download the specified information in the Virtual Library in Annex 3 to this Schedule subject to the occurrence of the event specified in the column marked access permission and access event (where applicable) in column 6 of the table in Annex 3 to this Schedule.
- 4.8 Where access permission is not listed (in column 6 of the table at Annex 3 to this Schedule) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3 to this Schedule) from the Initial Upload Date.
- 4.9 The Authority may update column 6 of the table in Annex 3 to this Schedule at any time and the Supplier shall be required to update the access permissions accordingly and in any case within five Working Days.
- 4.10 Where access permission is specified as being granted to a Third Party Auditor (prior to the Authority being granted access) it shall:
  - 4.10.1 be entitled to access, view and download information specified in Annex 3 to this Schedule subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required pursuant to Paragraph 4.10.2 of this Schedule); and
  - 4.10.2 report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3 to this Schedule. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within 14 days of becoming aware of such issue unless already due to be updated beforehand due to an Update Requirement specified in Annex 3 to this Schedule.
- 4.14 In the event of a conflict between any requirement in this Agreement (excluding Annex 3 to this Schedule) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 to this Schedule, the requirement elsewhere in this Agreement shall prevail.

- 4.15 Within four weeks of the Effective Date and thereafter on request by the Authority the Supplier shall (at the Supplier's expense) provide sufficient instruction, training and user manuals to the Authority's nominated users (which the Authority may change from time to time) so as to be able to make use of the Virtual Library.
- 4.16 The cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

**ANNEX 1: TRANSPARENCY REPORTS**

<b>TITLE</b>	<b>CONTENT</b>	<b>FORMAT</b>	<b>FREQUENCY</b>
Flying Activity Returns	A breakdown of and detail on all flying activity undertaken in the relevant month.	Web based application, API and PDF	Monthly
Social Value Plan Reporting	<p>Metrics showing progress made against each of the 15 Objectives of the Social Value Plan, including:</p> <ul style="list-style-type: none"> <li>i. for Objectives 1-3: <ul style="list-style-type: none"> <li>1. Number of full-time equivalent (FTE) employment opportunities created under this Agreement, by UK region;</li> <li>2. Number of apprenticeship opportunities (Level 2, 3, and 4+) created or retained under this Agreement, by UK region;</li> <li>3. Number of training opportunities (Level 2, 3, and 4+) created or retained under this Agreement, other than apprentices, by UK region;</li> <li>4. Number of people-hours of learning interventions delivered under this Agreement, by UK region;</li> </ul> </li> <li>ii. for Objective 4 for each of the following categories: <ul style="list-style-type: none"> <li>1. start-ups</li> <li>2. SMEs</li> <li>3. VCSEs; and</li> <li>4. mutuals: <ul style="list-style-type: none"> <li>• the number of contract opportunities awarded under this Agreement;</li> <li>• the value of contract opportunities awarded under this Agreement in £; and</li> <li>• total spend under this Agreement, as a percentage of the overall contract spend.</li> </ul> </li> </ul> </li> <li>iii. For Objective 6:</li> </ul>	PDF	Annually

			<ol style="list-style-type: none"> <li>1. Percentage of all companies in the supply chain under this Agreement with a current Cyber Essentials certification;</li> <li>2. Number of companies in the supply chain under this Agreement with a current Cyber Essentials certification;</li> <li>3. Percentage of all companies in the supply chain under this Agreement with a current Cyber Essentials Plus certification;</li> <li>4. Number of companies in the supply chain under this Agreement with a current Cyber Essentials Plus certification;</li> <li>5. Percentage of all companies in the supply chain under this Agreement to have adopted the National Cyber Security Centre's 10 steps; and</li> <li>6. Number of companies in the supply chain under this Agreement to have adopted the National Cyber Security Centre's 10 steps.</li> </ol> <p>iv. For Objectives 7 and 8:</p> <ol style="list-style-type: none"> <li>1. Total percentage of full-time equivalent (FTE) disabled people employed under this Agreement, as a proportion of the total FTE contract workforce, by UK region;</li> <li>2. Number of full-time equivalent (FTE) disabled people employed under this Agreement, by UK region;</li> <li>3. Total percentage of disabled people on apprenticeship schemes (Level 2, 3, and 4+) under this Agreement, as a proportion of the all people on apprenticeship schemes (Level 2, 3, and 4+) within the contract workforce, by UK region;</li> <li>4. Number of disabled people on apprenticeship schemes (Level 2, 3, and 4+) under this Agreement, by UK region;</li> <li>5. Total percentage of disabled people on other training schemes (Level 2, 3, and 4+) under this Agreement, as a proportion of the all people on other training schemes (Level 2, 3, and 4+) within the contract workforce, by UK region; and</li> <li>6. Number of disabled people on other training schemes (Level 2, 3, and 4+) under this Agreement, by UK region.</li> </ol>
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	<p>v. For Objectives 9 and 10:</p> <ol style="list-style-type: none"> <li>1. Total percentage of full-time equivalent (FTE) people from groups under-represented in the workforce employed under this Agreement; as a proportion of the total FTE contract workforce, by UK region;</li> <li>2. Number of full-time equivalent (FTE) people from groups under-represented in the workforce employed under this Agreement, by UK region;</li> <li>3. Total percentage of people from groups under-represented in the workforce on apprenticeship schemes (Level 2, 3, and 4+) under this Agreement, as a proportion of the all people on apprenticeship schemes (Level 2, 3, and 4+) within the contract workforce, by UK region;</li> <li>4. Number of people from groups under-represented in the workforce on apprenticeship schemes (Level 2, 3, and 4+) under this Agreement, by UK region;</li> <li>5. Total percentage of people from groups under-represented in the workforce on other training schemes (Level 2, 3, and 4+) under this Agreement, as a proportion of the all people on other training schemes (Level 2, 3, and 4+) within the contract workforce, by UK region;</li> <li>6. Number of people from groups under-represented in the workforce on other training schemes (Level 2, 3, and 4+) under this Agreement, by UK region;</li> <li>7. Percentage of all companies in the supply chain under this Agreement to have committed to the five foundational principles of good work; and</li> <li>8. Number of companies in the supply chain under this Agreement to have committed to the five foundational principles of good work.</li> </ol> <p>vi. For Objective 11:</p> <ol style="list-style-type: none"> <li>1. Percentage of the supply chain for which supply chain mapping</li> </ol>	
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Fighting Climate Change and Effective	<p>has been completed to the appropriate tier or to source in order to reduce the risks of modern slavery; and</p> <p>2. Number of people-hours devoted to supporting victims of modern slavery under this Agreement.</p> <p>vii. For Objectives 12 and 13:</p> <ol style="list-style-type: none"> <li>1. Percentage of all companies in the supply chain under this Agreement to have implemented measures to improve the physical and mental health and wellbeing of employees;</li> <li>2. Percentage of all companies in the supply chain under this Agreement to have implemented the 6 standards in the Mental Health at Work commitment (<a href="http://www.mentalhealthatwork.org.uk/commitment">www.mentalhealthatwork.org.uk/commitment</a>) ;</li> <li>3. Number of companies in the supply chain under this Agreement to have implemented the 6 standards in the Mental Health at Work commitment (<a href="http://www.mentalhealthatwork.org.uk/commitment">www.mentalhealthatwork.org.uk/commitment</a>) ;</li> <li>4. Percentage of all companies in the supply chain under this Agreement to have implemented the mental health enhanced standards, for companies with more than 500 employees, in Thriving at Work (<a href="http://www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers">www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers</a>) ; and</li> <li>5. Number of companies in the supply chain under this Agreement to have implemented the mental health enhanced standards, for companies with more than 500 employees, in Thriving at Work (<a href="http://www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers">www.gov.uk/government/publications/thriving-at-work-a-review-of-mental-health-and-employers</a>) .</li> </ol> <p>viii. For Objectives 14 and 15 the number of people-hours spent supporting local community integration, such as volunteering and other community-led initiatives, under this Agreement.</p>	PDF	Annually
	Metrics showing progress made against each of the two Objectives of the Fighting Climate Change and Effective Stewardship of the Environment Response, including:		

Stewardship of the Environment Response Requirements	<ul style="list-style-type: none"> <li>i. number of people-hours spent protecting and improving the environment under this Agreement, by UK region;</li> <li>ii. number of green spaces created under this Agreement, by UK region;</li> <li>iii. annual reduction in emissions of greenhouse gases arising from the performance of this Agreement, measured in metric tonnes carbon dioxide equivalents (MTCDE);</li> <li>iv. annual reduction in water use arising from the performance of this Agreement, measured in litres; and</li> <li>v. annual reduction in waste to landfill arising from the performance of this Agreement, measured in metric tonnes.</li> </ul>		
COVID-19 Recovery Plan Response Requirements	<ul style="list-style-type: none"> <li>i. For Objective 1, the number of full-time equivalent (FTE) employment opportunities created under this Agreement, by UK region, for those who were made redundant due to COVID-19.</li> <li>ii. For Objectives 2 to 5: <ul style="list-style-type: none"> <li>1. the number of people-hours spent supporting local community integration, such as volunteering and other community-led initiatives related to COVID-19, under this Agreement;</li> <li>2. Percentage of all companies in the supply chain under this Agreement to have implemented the six standards in the Mental Health at Work commitment (<a href="https://www.mentalhealthatwork.org.uk/commitment">www.mentalhealthatwork.org.uk/commitment</a>); and</li> <li>3. Number of companies in the supply chain under this Agreement to have implemented the 6 standards in the Mental Health at Work commitment (<a href="https://www.mentalhealthatwork.org.uk/commitment">https://www.mentalhealthatwork.org.uk/commitment</a>).</li> </ul> </li> </ul>	PDF	Annually
Charges	Records of all payments made under this Agreement.	MS Excel and PDF	Within five Working Days of an Authority request
Key Sub-Contractors	Notified Key Sub-Contractors as per the table in Schedule 9.	PDF	To be updated and resubmitted upon any change of Key

			Sub-Contractor
KPI Reports	Details of the Supplier's performance against the Key Performance Indicators.	Web Based Application, API and PDF	Monthly

## **ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER**

The records to be kept by the Supplier are:

- 1 this Agreement including its Schedules and all amendments to this Agreement;
- 2 all other documents which this Agreement expressly requires to be prepared;
- 3 records relating to the appointment and succession of the Supplier;
- 4 details of the Supplier Representative and each member of the Key Personnel;
- 5 notices, reports and other documentation submitted by any Expert;
- 6 all operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services, the underlying IT Environment, Supplier Equipment, Bases and Assets;
- 7 documents prepared by the Supplier or received by the Supplier from a Third Party relating to a Force Majeure Event;
- 8 all formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services;
- 9 all certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services;
- 10 documents prepared by the Supplier in support of claims for the Charges;
- 11 documents submitted by the Supplier pursuant to the Change Control Procedure;
- 12 documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure;
- 13 documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control including documents detailing the identity of the persons changing such ownership or interest;
- 14 invoices and records related to VAT sought to be recovered by the Supplier;
- 15 financial records, including audited and un-audited accounts of the Guarantor and the Supplier and the Financial Reports described in Schedule 16 (*Financial Distress*) and Schedule 17 (*Financial Reports, Audit Rights and Open Book Data*);
- 16 records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents;
- 17 all documents relating to the insurances to be maintained pursuant to this Agreement and any claims made in respect of them;
- 18 all journals and audit trail data referred to in Schedule 4 (*Security Management*); and

- 19 all other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

**ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY**

<b>Applicable Clause/Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access permission and access event (where applicable)</b>
Clause 6 ( <i>Transition and Acceptance</i> ) and Schedule 12 ( <i>Transition and Acceptance Plan</i> )	Transition and Acceptance Plan	PDF	Within four weeks of the Effective Date	N/A	
Schedule 2 ( <i>Services Description</i> ) UR 9.1	Training and achievement records	Web based application, API and PDF	From the first Services Commencement Date	Quarterly	
Schedule 2 ( <i>Services Description</i> ) UR 9.2	Mandatory Occurrence Reports	Web based application, API and PDF	From the first Services Commencement Date	Monthly	
Schedule 2 ( <i>Services Description</i> ) UR 9.3	Assessments on hazards and/or safety issues	Web based application, API and PDF	From the first Services Commencement Date	Quarterly	
Schedule 2 ( <i>Services Description</i> ) UR 9.4	Reports on quality issues	Web based application, API and PDF	From the first Services Commencement Date	Quarterly	
Schedule 2 ( <i>Services Description</i> ) UR 9.5	Flying Activity Returns	Web based application, API and PDF	From the first Services Commencement Date	Monthly	
Schedule 2 ( <i>Services Description</i> ) UR 9.6	Reports on local stakeholder training	Web based application, API and PDF	From the first Services Commencement Date	Quarterly	
Schedule 3 ( <i>Key Performance Indicators</i> )	Reports set out in Schedule 3 ( <i>Key</i>	Web based application, API	From the first Services Commencement Date	Monthly and Quarterly in accordance with in	

	<i>Performance Indicators)</i>	and PDF		Schedule 3	
Schedule 4 ( <i>Security Management</i> )	The Supplier's Security Management Plan	PDF	Within four weeks of the Effective Date	Annually or as required by Paragraph 4 of Schedule 4: ( <i>Security Management</i> )	
Schedule 4 ( <i>Security Management</i> )	Copies of Cyber Essentials certificates for relevant Sub-contractors	PDF	At least six months prior to the first Services Commencement Date	In date certificates required from relevant Services Commencement Date	
Paragraphs 5.1 and 5.2 of Schedule 4 ( <i>Security Management</i> )	Copies of Security Certificates for the Supplier and relevant Sub-contractors: ISO/IEC 27001:2013 or ISO/IEC 27001:2013 and Cyber Essentials PLUS, in accordance with Paragraphs 5.1 and 5.2 of Schedule 4 ( <i>Security Management</i> )	PDF	At least six months prior to the first Services Commencement Date	In date certificates required from relevant Services Commencement Date	
Paragraph 6 of Schedule 4 ( <i>Security Management</i> )	IT Health Check report in accordance with Paragraph 6 of Schedule 4 ( <i>Security Management</i> )	PDF	Prior to the first Services Commencement Date	Annually	
Schedule 5 ( <i>Insurance Requirements</i> )	Evidence of Insurances	PDF	Within four weeks of the Effective Date	Prior to the Effective Date	
Schedule 8 ( <i>Commercially</i> )	List of Commercial	PDF	Within five Working Days	On each occasion	



<i>Sensitive Information)</i>	y Sensitive Information		of either party being made aware of such sensitive information	either party becomes aware of new Commercially Sensitive Information	
Schedule 9 ( <i>Notified Key Sub-Contractors</i> )	Table of Notified Key Sub-contractors as set out in Schedule 9 ( <i>Notified Key Sub-Contractors</i> )	PDF	Within four weeks of the Effective Date	On each occasion that a Key Sub-contractor is appointed	
Schedule 10 ( <i>Third Party Contracts</i> )	Table of Third Party Contracts as set out in Schedule 10 ( <i>Third Party Contracts</i> )	PDF	Within four weeks of the Effective Date	On each occasion that a Third Party Contract is entered into	
Schedule 14 ( <i>Charges and Invoicing</i> )	Records relating to the Charges and associated flying hours and market fuel rates in accordance with Schedule 14 ( <i>Charges and Invoicing</i> )	MS Excel and PDF	Within one month of the first Services Commencement Date	Monthly	
Paragraph 1.3 of Schedule 16 ( <i>Financial Distress</i> )	Report to the Authority on the Financial Indicators for FDE Group entities, Key Sub-contractors and Monitored Entities in accordance with Paragraph	PDF	Within 120 days after the Accounting Reference Date	Annually, within 120 days after the Accounting Reference Date	

	1.3 of Schedule 16 ( <i>Financial Distress</i> )				
Part 1 ( <i>Financial Transparency Objectives and Open Book Data</i> ) of Schedule 17 ( <i>Financial Reports, Audit Rights and Open Book Data</i> ),	The Open Book Data	MS Excel and PDF	Within four weeks of the Effective Date	To be kept up to date continuously	
Part 2 ( <i>Annual Reporting Model</i> ) of Schedule 17 ( <i>Financial Reports, Audit Rights and Open Book Data</i> )	The Annual Reporting Model	MS Excel and PDF	Within one year of the first Services Commencement Date	Annually or within ten Working Days of a Change Authorisation Note being signed by the Authority in accordance with Schedule 19 ( <i>Change Control Procedure</i> ), and where this has resulted in an Updated Financial Model	
Part 3 (Company Accounts) of Schedule 17 ( <i>Financial Reports, Audit Rights and Open Book Data</i> )	The Annual Financial Statements	MS Excel and PDF	Within one year of the first Services Commencement Date	Annually	
Part 4 ( <i>Key Sub-Contractors</i> ) of Schedule 17 ( <i>Financial Reports, Audit Rights and Open Book Data</i> )	Key Sub-contractor Financial Reports	MS Excel and PDF	Within ten Working Days of any request by the Authority	Within ten Working Days of any request by the Authority	
Schedule 19 ( <i>Change Control Procedure</i> )	Change Request Forms	MS Word	On each occasion a Change Request for is submitted	On each occasion a Change Request for is submitted	
Schedule 19 ( <i>Change Control Procedure</i> )	Change Authorisation Notes	PDF and MS Word	On each occasion a Change	On each occasion a Change	

			Authorisation Note is agreed and implemented	Authorisation Note is agreed and implemented	
Paragraph 1.1.1 and 1.1.2 of Schedule 22 ( <i>Exit Management</i> )	Asset Register and database in respect of each Base in accordance with Paragraph 1.1.1 and 1.1.2 of Schedule 22 ( <i>Exit Management</i> )	MS Excel	Not later than three months prior to the first Services Commencement Date	Annually	
Annex 1 ( <i>Ordinary Exit Plan</i> ) to Schedule 22 ( <i>Exit Management</i> )	Ordinary Exit Plan	PDF	Within four weeks of the Effective Date	Annually	
Annex 2 ( <i>Emergency Exit Plan</i> ) to Schedule 22 ( <i>Exit Management</i> )	Emergency Exit Plan	PDF	Within four weeks of the Effective Date	Annually	
Annex 3 ( <i>Draft Ethical Wall Agreement</i> ) to Schedule 22 ( <i>Exit Management</i> )	Ethical Wall Agreements	PDF and MS Word	Within four weeks of the Effective Date	N/A	
Schedule 23 ( <i>Service Continuity Plan</i> )	Service Continuity Plan	PDF	Within four weeks of the Effective Date	Annually	
Paragraph 3.4 of Schedule 23 ( <i>Service Continuity Plan</i> )	Detailed Service Continuity Plan Review Report, in accordance with Paragraph 3.4 of Schedule 23 ( <i>Service Continuity</i> )	PDF	In accordance with Paragraph 3 of Schedule 23 ( <i>Service Continuity Plan</i> )	In accordance with Paragraph 3 of Schedule 23 ( <i>Service Continuity Plan</i> )	

	<i>Plan)</i>				
Paragraph 4.5 of Schedule 23 ( <i>Service Continuity Plan</i> )	Test report in accordance with Paragraph 4.5 of Schedule 23 ( <i>Service Continuity Plan</i> )	PDF	Not later than three months prior to the first Services Commencement Date	Annually	
Schedule 25 ( <i>Key Personnel</i> )	List of Key Personnel	PDF	Within four weeks of the Effective Date	To be kept up to date continuously	

## Schedule 22

### Exit Management

#### **1 Obligations during the Term to Facilitate Exit**

1.1 During the Term, the Supplier shall:

1.1.1 create and maintain and provide to the Authority on reasonable notice a register in respect of each Base for each Lot of all:

(i) Assets, detailing where applicable:

(A) Asset type;

(B) make, model and asset number;

(C) ownership (including whether Assets are leased) and status as either Exclusive Assets or Non-Exclusive Assets;

(D) whether the Asset forms part of the pre-operating costs in for such Base as set out in the Financial Model;

(E) Net Book Value;

(F) age, condition and physical location; and

(G) use (including technical specifications); and

(ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

1.1.2 create and maintain a database in respect of each Base for each Lot detailing the infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

1.1.3 provide the Registers in such format as the Authority reasonably requires; and

1.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

1.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services pursuant to this Agreement.

- 1.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations pursuant to this Schedule and provide written notification of such appointment to the other Party within three months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

## **2 Obligations to Assist on Re-Tendering of Services**

- 2.1 On reasonable notice and at any point during the Term, the Supplier shall provide to the Authority such assistance, material and information as the Authority and/or any potential Replacement Supplier reasonably requires in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence and/or to facilitate or assist the transition of the Services from the Supplier to the Authority and/or to any Replacement Supplier (as applicable), including provision of:
- 2.1.1 details of the Services including the provision of an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
  - 2.1.2 evidence of how the Net Book Value of each Asset has been calculated;
  - 2.1.3 an inventory of Authority Data in the Supplier's possession or control;
  - 2.1.4 copies of the Registers;
  - 2.1.5 information regarding the current ownership status of each Aircraft, including copies of any leases or loan agreements which are in place;
  - 2.1.6 for the Aircraft, up to date copies of the full maintenance service schedules and maintenance records;
  - 2.1.7 for the Aircraft, a list of historical and future major maintenance events, repairs and modifications;
  - 2.1.8 for the Aircraft, copies of original purchase records and agreements for owned Aircraft;
  - 2.1.9 schematic drawings of Bases and maintenance records in relation to plant and machinery;
  - 2.1.10 forward-looking maintenance schedules in relation to the Bases and/or plant and machinery;
  - 2.1.11 copies of the Base leases (including any variations);
  - 2.1.12 copies of leases and loan agreements relevant to the Assets;

- 2.1.13 access to survey and inspect the Assets, the Premises and/or the Bases during business hours and upon reasonable prior written notice;
  - 2.1.14 answers to all reasonable questions from the Authority and/or any potential Replacement Supplier regarding the Services, the Aircraft, the Assets and/or the Bases;
  - 2.1.15 details of the work volumes and staffing requirements which the Supplier has experienced during the Term;
  - 2.1.16 copies of Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
  - 2.1.17 any data regarding the Services including flying hours returns and results;
  - 2.1.18 the up to date Exit Plans (which may be redacted to remove any commercially sensitive information);
  - 2.1.19 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 2.1.20 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2.1.21 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier pursuant to this Agreement; and
  - 2.1.22 such other material and information as the Authority shall reasonably require,
- (together, the **"Exit Information"**).
- 2.2 The Authority may share the Exit Information with potential Replacement Suppliers subject to the potential Replacement Suppliers entering into written confidentiality undertakings (in such form as the Supplier may require acting reasonably).
  - 2.3 The Supplier shall:
    - 2.3.1 notify the Authority within five Working Days of any material change to the Exit Information and shall consult with the Authority regarding such material change; and
    - 2.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten Working Days of a request in writing from the Authority.
  - 2.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
    - 2.4.1 prepare an informed offer for those Services; and

2.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

**3 Obligation to Enter into an Ethical Wall Agreement on Re-Tendering of Services**

3.1 The Authority shall be entitled to require the Supplier to enter into the Ethical Wall Agreement from time to time at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

3.2 Any time it is required to enter into the Ethical Wall Agreement, the Supplier shall return a signed copy of the Ethical Wall Agreement within ten Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement shall be borne solely by the Supplier.

**4 Exit Plans**

4.1 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.

4.2 The Supplier shall review and (if appropriate) update the Exit Plans:

4.2.1 in the first month of each Contract Year (commencing with the second Contract Year); and

4.2.2 if requested by the Authority following the occurrence of a Supplier Termination Event and/or a Force Majeure Event, within 14 days of such request,

to the extent necessary to reflect any changes in the Services that have occurred since the Exit Plans were last agreed. Following each such update the Supplier shall submit the revised Exit Plans to the Authority for review. Within 20 Working Days following submission of the revised Exit Plans, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plans. If the Parties are unable to agree the contents of the revised Exit Plans within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

**Finalisation of the Exit Plans**

4.3 Within 20 Working Days after service of a Termination Notice by either Party or six months prior to each Base Expiry Date, the Supplier shall submit for the Authority's approval the relevant Exit Plan in respect of each Base for each Lot relevant to the terminated Services in a final form that could be implemented immediately. When preparing the final form of the relevant Exit Plan the Supplier shall only make such updates to the relevant Exit Plan as are necessary to reflect any changes in the Services that have occurred since the relevant Exit Plan was last agreed.

4.4 The Parties shall meet and use their respective reasonable endeavours to agree the contents of the final form of the relevant Exit Plan. If the Parties are unable to agree the contents of the relevant Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.



4.5 Until the agreement of the final form of the relevant Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the relevant Exit Plan (insofar as relevant).

**5 Termination Services**

Notification of requirements for Termination Services

5.1 The Authority may require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination Assistance Notice**”):

5.1.1 at least four months prior to each Base Expiry Date; and/or

5.1.2 as soon as reasonably practicable (but in any event, not later than one month prior to the relevant Termination Date) following the service by either Party of a Termination Notice.

5.2 The Termination Assistance Notice shall specify:

5.2.1 the date from which Termination Services are required;

5.2.2 the nature of the Termination Services required; and

5.2.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the relevant terminated Services.

5.3 The Authority shall have:

5.3.1 an option to extend the period of provision of the Termination Services beyond the period specified in the Termination Assistance Notice provided that:

(i) such extension shall not result in the Termination Services being provided longer than 24 months after the date that the Supplier ceases to provide the relevant terminated Services; and

(ii) it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

5.3.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

5.4 Throughout each Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- 5.4.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1 of this Schedule, provide the Termination Services;
- 5.4.2 provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination or termination of this Agreement or the Base Expiry Date (as applicable);
- 5.4.3 facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- 5.4.4 reallocate resources to provide such assistance as is referred to in Paragraph 5.4.2 of this Schedule without additional costs to the Authority;
- 5.4.5 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise; and
- 5.4.6 at the Authority's request from time to time and on reasonable notice, deliver up-to-date Exit Information to the Authority.

Termination obligations

- 5.5 The Supplier shall comply with all of its obligations contained in the Ordinary Exit Plan in respect of any Partial Termination, termination or Base Expiry Date that constitutes an Ordinary Exit.
- 5.6 The Supplier shall comply with all of its obligations contained in the Emergency Exit Plan in respect of any Partial Termination or termination that constitutes an Emergency Exit.
- 5.7 Save to the extent, and for as long as, required in order to carry out the Termination Services, upon termination, Partial Termination or Base Expiry Date (as the case may be), in respect of the Services that have been terminated or have expired, the Supplier shall (except to the extent that alternative directions are received in writing from the Authority):
  - 5.7.1 cease to use the Authority Data;
  - 5.7.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - 5.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - 5.7.4 return to the Authority such of the following as is in the Supplier's possession or control:

- (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier pursuant to this Agreement;
- (ii) all materials created by the Supplier pursuant to this Agreement in which the intellectual property rights are owned by the Authority;
- (iii) all equipment which belongs to the Authority; and
- (iv) all items that have been on-charged to the Authority, including consumables;
- (v) vacate any Authority Premises unless access is required to continue to deliver the Services; and
- (vi) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve months after the Partial Termination, expiry or termination of this Agreement to:
  - (A) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (B) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access pursuant to this Paragraph 5.7.4(vi)(B) of this Schedule.

5.8 Upon Partial Termination, termination or Base Expiry Date (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

5.10 The Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **6 Assets, Sub-contracts and Software**

6.1 Following notice of termination or Partial Termination of this Agreement, upon notification of re-tendering of the Services and during the Termination Assistance Period, the Supplier shall not, in respect of the relevant Services, without the Authority's prior written consent:

6.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not and will not affect the provision of Services or the Charges;

6.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

6.1.3 terminate, enter into or vary any licence for software in connection with the Services.

6.2 Prior to each relevant Base Expiry Date or the termination of this Agreement, the Authority shall provide written notice to the Supplier setting out:

6.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");

6.2.2 which, if any, of:

(i) the Exclusive Assets that are not Transferable Assets; and

(ii) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

6.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the relevant Services from the relevant Base Expiry Date, Partial Termination or the termination of this Agreement.

6.3 Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

6.4 With effect from the relevant Base Expiry Date and/or the date of termination of this Agreement the Supplier shall transfer the Transferring Assets (which shall be transferred free from all liens, charges, options, encumbrances and third party rights, title to and all rights and interests) to the Authority and/or its nominated Replacement Supplier for a consideration (which may be paid by the Authority or by a Replacement Contractor) equal to their Fair Market Value, except where:

- 6.4.1 a Compensation Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Compensation Payment; or
  - 6.4.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Fair Market Value of the Transferring Asset less the amount already paid through the Charges.
- 6.5 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier on delivery of such Transferring Assets.
- 6.6 Title in the Transferring Assets shall, subject to Paragraph 6.6.2 of this Schedule, pass to:
- 6.6.1 the Authority when the Authority notifies the Supplier pursuant to Paragraph 6.2.1 of this Schedule; and/or
  - 6.6.2 the Replacement Supplier when the Authority notifies the Supplier pursuant to Paragraph 6.2.1 of this Schedule and provides a written commitment from the Replacement Supplier to purchase the Transferring Assets for Fair Market Value.
- 6.7 Where the Supplier is notified in accordance with Paragraph 6.2.3 of this Schedule that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 6.7.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - 6.7.2 procure a suitable alternative to such assets,
- and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.8 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.9 The Authority shall:
- 6.9.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 6.9.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising pursuant to that Transferring Contract and exercise its rights arising pursuant to that

Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 6.10 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.11 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, 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 Authority (and/or Replacement Supplier) pursuant to Paragraph 6.8 of this Schedule both:
  - 6.11.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
  - 6.11.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 17 (*Intellectual Property Rights*) and/or Clause 20 (*Licences Granted by the Supplier*).

## **7 Fair Market Value**

- 7.1 For the purposes of Paragraph 6.4 of this Schedule, Fair Market Value shall be calculated as follows:
  - 7.1.1 between seven months and six months prior to the relevant Base Expiry Date and as soon as reasonably practicable following the service of a termination notice (as applicable), the Supplier shall instruct 3 reputable valuers who are independent and impartial to the interests of the Supplier and who are approved by the Authority, acting reasonably, to carry out a survey of the relevant Transferable Assets (each a "**Valuer**");
  - 7.1.2 within one month of the instruction pursuant to Paragraph 7.1.1 of this Schedule, the Supplier shall provide the Authority with:
    - (i) written valuations prepared in accordance with the International Valuation Council's International Valuation Standards from each Valuer of the estimated amount for which the relevant Transferable Assets should exchange on the valuation date between a willing buyer and willing seller in an arm's length transaction, after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion (each, a "**Valuation**") which each take into account all matters that may reasonably impact on the Fair Market Value of the relevant Transferable Assets including:
      - (A) the age of the Transferable Assets;
      - (B) where the Transferable Asset is an Aircraft, the number of flying hours incurred for the Aircraft; and
      - (C) the condition of the Transferable Assets; and
    - (ii) the Supplier's calculation of the median average of the Valuations.

- 7.1.3 within 20 Working Days of receipt of the Valuations, the Authority shall, acting reasonably, notify the Supplier in writing whether or not it agrees with the Valuations and/or the median average of the Valuations; and
- 7.1.4 where the Authority has notified the Supplier that it:
- (i) agrees with the median average of the Valuations, the Fair Market Value of the relevant Transferable Assets shall be the median average of the relevant Valuation;
  - (ii) does not agree with the median average of the Valuations, the Fair Market Value of the relevant Transferable Assets shall be determined in accordance with Schedule 20 (*Dispute Resolution Procedure*).
- 7.2 The Supplier shall provide each Valuer with such information and assistance as the relevant Valuer reasonably requires to produce its Valuation, including:
- 7.2.1 copies of the full maintenance service schedules;
  - 7.2.2 maintenance records;
  - 7.2.3 information regarding any major repairs or modifications; and
  - 7.2.4 original purchase records and agreements.

and, upon request, the Supplier shall provide the Authority with copies of any information which the Supplier provided to a Valuer for the purpose of a Valuation.

## **8 Supplier Personnel**

- 8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 24 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of twelve months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement

Supplier, except that this Paragraph 8.5 shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

**9 Apportionments**

9.1 All outgoing and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

9.1.1 the amounts shall be divided by the period (in days) covered by those amounts to reach a daily rate;

9.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier 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

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

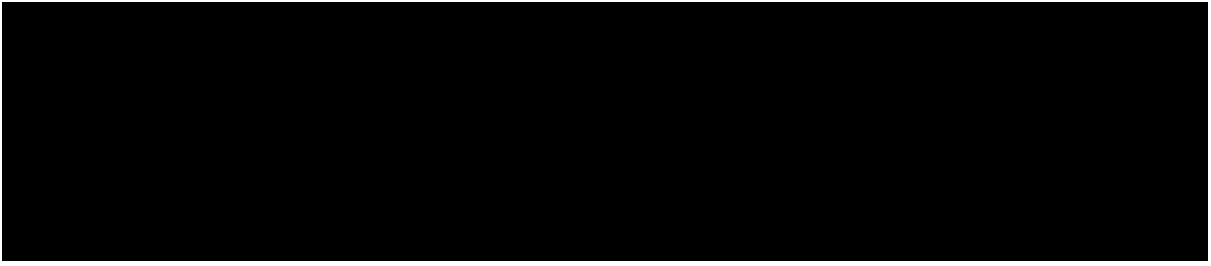
9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due pursuant to Paragraph 9.1 of this Schedule as soon as reasonably practicable.



**Schedule 22**

Annex 1

Schedule 22, Annex 1 has been redacted



**Schedule 22**

Annex 2

Schedule 22, Annex 2 has been redacted



**Annex 3**

**Draft Ethical Wall Agreement**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

**ETHICAL WALL AGREEMENT**

This **AGREEMENT** is made on

20[ ] **BETWEEN:**

- (1) **[INSERT NAME OF AUTHORITY]** (the "**Authority**") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

## **BACKGROUND**

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least "*any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure*" (Regulation 24(2)). "*Staff members*" refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "*Procurement service provider*" refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority pursuant to existing contractual arrangements or as a sub-contractor pursuant to those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

## **IT IS AGREED:**

### **1 Definitions and Interpretation**

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

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

“**Agreement**” means this ethical walls agreement duly executed by the Parties;

“**Bid Team**” means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

“**Central Government Body**” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

“**Conflicted Personnel**” means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty’s relationship with the Authority pursuant to any Contract have or have had access to information which creates or may create a conflict of interest;

“**Contract**” means the [contract for [ ] ] dated [ ] between the Authority and the Counterparty and/or an Affiliate;

“**Control**” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and “**Controls**” and “**Controlled**” shall be interpreted accordingly;

“**Effective Date**” means the date of this Agreement as set out above;

“**Invitation to Tender**” or “**ITT**” means an invitation to submit tenders issued by the Authority as part of an ITT Process;

“**ITT Process**” means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“**ITT Response**” means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

“**Other Affiliate**” means any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

**“Other Bidder”** means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

**“Parties”** means the Authority and the Counterparty;

**“Professional Advisor”** means a supplier, sub-contractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

**“Purpose”** has the meaning given to it in recital (B) to this Agreement;

**“Representative”** means a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

**“Third Party”** means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## **2 Ethical Walls**

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:



- 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority pursuant to this Agreement or pursuant to an open and transparent ITT Process;
- 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority pursuant to any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- 2.1.3 where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with clause 2.2.

2.2 The Counterparty shall:

- 2.2.1 not assign any of the Conflicted Personnel to the Bid Team at any time;
- 2.2.2 provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- 2.2.3 ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
  - (i) about this Agreement, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- 2.2.4 ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.2.5 ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

- 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
  - 2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
  - 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
  - 2.2.10 comply with any other action as the Authority, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in clause 2.1.1 and 2.1.3, the Counterparty shall:
- 2.3.1 notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
  - 2.3.2 submit in writing to the Authority full details of the nature of the conflict including full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
  - 2.3.3 seek the Authority's approval thereto,
- which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of clause 2.1, clause 2.2 or clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of clause 2.1, clause 2.2 or clause 2.3.
  - 2.5 The Counterparty shall provide, on demand, any and all information in relation to its adherence with its obligations set out pursuant to clauses 2.1 and 2.2 as reasonably requested by the Authority.
  - 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty pursuant to clauses 2.1.3 and 2.2.
  - 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability pursuant to this Agreement.
  - 2.8 The actions of the Authority pursuant to clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

2.9 In no event shall the Authority be liable for any bid costs incurred by:

2.9.1 the Counterparty or any Affiliate or Representative; or

2.9.2 any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and

2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3 Sole Responsibility**

It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

### **4 Waiver and Invalidity**

4.1 No failure or delay by any Party in exercising any right, power or privilege pursuant to this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

### **5 Assignment and Novation**

5.1 Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities pursuant to this Agreement without the prior written consent of the Authority.

5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities pursuant to this Agreement and/or any associated licences to:

5.2.1 any Central Government Body; or

- 5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - 5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

**6 Contracts (Rights Of Third Parties) Act 1999**

A person who is not a Party to this Agreement has no right pursuant to the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**7 Transparency**

The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

**8 Notices**

- 8.1 Any notices sent pursuant to this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served pursuant to this Agreement and the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service	At the time recorded by the delivery service, provided that delivery is between 9.00am and	Properly addressed prepaid and delivered as evidenced by signature of

providing proof of delivery.	5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	a delivery receipt.
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8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices pursuant to this Agreement:

	Counterparty	Authority
Contact		
Address		
Email		

8.4 This clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

**9 Waiver and Cumulative Remedies**

9.1 The rights and remedies pursuant to this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided pursuant to this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Agreement, rights and remedies pursuant to this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

**10 Term**

10.1 Each party's obligations pursuant to this Agreement shall continue in full force and effect for period of [ ] years from the Effective Date.

**11 Governing Law and Jurisdiction**

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

## **Schedule 23**

### **Service Continuity Plan**

#### **PART 1 - SERVICE CONTINUITY PLAN PROTOCOL**

##### **1 Outline Service Continuity Plan**

- 1.1 Prior to the approval of the Detailed Service Continuity Plan in accordance with Paragraph 2 of this Part 1 of this Schedule, the Outline Service Continuity Plan shall apply and shall be invoked by the Supplier where required.
- 1.2 All changes to the Outline Service Continuity Plan shall be subject to the Change Control Procedure.

##### **2 Approval of the Detailed Service Continuity Plan**

- 2.1 The Supplier shall submit a draft of the Detailed Service Continuity Plan to the Authority for approval within six months of the Effective Date.
- 2.2 The Supplier shall ensure that the draft Detailed Service Continuity Plan:
  - 2.2.1 incorporates all elements of the Outline Service Continuity Plan;
  - 2.2.2 details how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
  - 2.2.3 sets out the services to be provided by the Supplier and the steps to be taken to remedy the different levels of failures of and disruption to the Services; and
  - 2.2.4 contains sufficient detail to enable an appointed insolvency practitioner to invoke the required elements of the plan in the event of an Insolvency Event of the Supplier.
- 2.3 Prior to the submission of the draft Detailed Service Continuity Plan to the Authority in accordance with Paragraph 2.1 of this Part 1 of this Schedule, the Authority shall have the right:
  - 2.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Service Continuity Plan, including:
    - (i) details of the Supplier's intended approach to the Detailed Service Continuity Plan and its development;
    - (ii) copies of any drafts of the Detailed Service Continuity Plan produced by the Supplier;

- (iii) any other work in progress in relation to the Detailed Service Continuity Plan; and
  - 2.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Service Continuity Plan.
- 2.4 Following receipt of the draft Detailed Service Continuity Plan from the Supplier in accordance with Paragraph 2.1 of this Part 1 of this Schedule, the Authority shall:
  - 2.4.1 review and comment on the draft Detailed Service Continuity Plan as soon as reasonably practicable; and
  - 2.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Service Continuity Plan no later than 20 Working Days after the date on which the draft Detailed Service Continuity Plan is first delivered to the Authority.
- 2.5 If the Authority rejects the draft Detailed Service Continuity Plan:
  - 2.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 2.5.2 the Supplier shall then revise the draft Detailed Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 of this Part 1 of this Schedule to this Paragraph 2.5 of this Part 1 of this Schedule shall apply again to any resubmitted draft Detailed Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 If the Authority approves the draft Detailed Service Continuity Plan, it shall replace the Outline Service Continuity Plan from the date of the Authority's notice of approval.

### **3 Review and Amendment of the Detailed Service Continuity Plan**

- 3.1 Following the approval of the Detailed Service Continuity Plan, the Supplier shall review and update the Detailed Service Continuity Plan (and the risk analysis on which it is based):
  - 3.1.1 in accordance with the procedure and timetable set out in the Detailed Service Continuity Plan;
  - 3.1.2 on a regular basis and, as a minimum, once every six months;
  - 3.1.3 within three months of the Detailed Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 5 of this Part 1 of this Schedule;
  - 3.1.4 within 14 days of a Financial Distress Event;
  - 3.1.5 within 30 days of a Corporate Change Event; and



- 3.1.6 where the Authority requests any additional reviews (over and above those provided for in Paragraphs 3.1.1 to 3.1.5 of this Part 1 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements provide that, prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. Where such approval is provided by the Authority, the Authority shall meet the costs of both Parties in carrying out such additional review(s) except that the Supplier shall not be entitled to charge the Authority for any costs that are incurred above the written approved estimate without the Authority's prior written approval.
- 3.2 As part of each review of the Detailed Service Continuity Plan pursuant to Paragraph 3.1 of this Part 1 of this Schedule, the Supplier shall:
- 3.2.1 review of the procedures and methodologies set out in the Detailed Service Continuity Plan; and
- 3.2.2 assess the suitability of the Detailed Service Continuity Plan having regard to any change to:
- (i) the Services; or
  - (ii) any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Detailed Service Continuity Plan or the last review of the Detailed Service Continuity Plan; and
  - (iii) the occurrence of any Service Interruption Event since the last review of the Detailed Service Continuity Plan (or the likelihood of any such event taking place in the foreseeable future) which has or may increase the likelihood of the Detailed Service Continuity Plan being invoked.
- 3.3 The review shall be completed by the Supplier within the period required by the Detailed Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require.
- 3.4 The Supplier shall, within 20 Working Days of the conclusion of each such review of the Detailed Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
- 3.4.1 the findings of the review;
- 3.4.2 any changes in the risk profile associated with the Services; and
- 3.4.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Detailed Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

- 3.5 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- 3.5.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 3.5.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 3.6 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- 3.6.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 3.6.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.5 and this Paragraph 3.6 of this Part 1 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.7 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change to the Detailed Service Continuity Plan and/or its practices or procedures which are necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless the Supplier has demonstrated (to the Authority's reasonable satisfaction) that the changes are required because of a material change to the risk profile of the Services due to a Change by the Authority.

#### **4 Testing of the Detailed Service Continuity Plan**

- 4.1 Following approval of the Detailed Service Continuity Plan, the Supplier shall test such plan:
- 4.1.1 on a regular basis (and in any event not less than once in every Contract Year);
  - 4.1.2 as soon as reasonably practicable after any Change to the Services; and
  - 4.1.3 subject to Paragraph 4.2 of this Part 1 of this Schedule, upon prior written notice from the Authority at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Detailed Service Continuity Plan.

- 4.2 If the Authority requires an additional test of the Detailed Service Continuity Plan, then:
- 4.2.1 the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Detailed Service Continuity Plan; and
  - 4.2.2 the Authority shall reimburse the Supplier's reasonable and evidenced costs in carrying out any additional test unless the Detailed Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 4.3 The Supplier shall undertake and manage testing of the Detailed Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 4.4 The Supplier shall and shall ensure that any Sub-contractor shall, obtain the Authority's prior written approval where "live" data will be used in such testing and shall ensure that any copies of the live test data used in any such testing are (at the Authority's absolute discretion) destroyed or returned to the Authority on completion of the test.
- 4.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 4.5.1 the outcome of the test;
  - 4.5.2 any failures in the Detailed Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - 4.5.3 the Supplier's proposals for remedying any such failures.
- 4.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Detailed Service Continuity Plan) to remedy any failures in the Detailed Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 4.7 The carrying out of a test of the Detailed Service Continuity Plan (including a test of the Detailed Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations pursuant to this Agreement.

## **5 Invocation of the Service Continuity Plan**

- 5.1 In the event of a Service Interruption Event or an Insolvency Event (whether in respect of the Supplier, a Key Sub-contractor and/or a member of the Supplier Group), the Supplier shall immediately invoke the relevant parts of the Detailed Service Continuity Plan and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the Detailed Service Continuity Plan with the prior written consent of the Authority.

## **PART 2 - CORPORATE RESOLUTION PLANNING**

### **1 Service Status and Supplier Status**

- 1.1 This Agreement is a Critical Service Contract.
- 1.2 The Supplier shall notify the Authority in writing within five Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

### **2 Provision of Corporate Resolution Planning Information**

- 2.1 Paragraphs 2 to 4 of this Part 2 of this Schedule shall apply if this Agreement has been specified as a Critical Service Contract pursuant to Paragraph 1.1 of this Part 2 of this Schedule or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part 2 of this Schedule:
  - 2.2.1 where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
  - 2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part 2 of this Schedule, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part 2 of this Schedule:
  - 2.3.1 is full, comprehensive, accurate and up to date;
  - 2.3.2 is split into two parts:
    - (i) Group Structure Information and Resolution Commentary;
    - (ii) UK Public Service / CNI Contract Informationand is structured and presented in accordance with the requirements and explanatory notes set out at Annex I to the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
  - 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;

- 2.3.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
  - 2.3.5 complies with the requirements set out at Annex 2 (Group Structure Information and Resolution Commentary) and Annex 3 (UK Public Sector / CNI Contract Information) to this Schedule respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part 2 of this Schedule, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that the Relevant Authority or Relevant Authorities approve the CRP Information or that the Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
- 2.5.1 the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
  - 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part 2 of this Schedule shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains valid (in accordance with Paragraph 2.7 of this Part 2 of this Schedule) on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information pursuant to Paragraph 2.2 of this Part 2 of this Schedule if it provides a copy of the valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed valid for the purposes of Paragraph 2.6 of this Part 2 of this Schedule if:
- 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve months has elapsed since it was issued and no more than 18 months has elapsed since the

- Accounting Reference Date on which the CRP Information was based);  
and
- 2.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date of issue of the Assurance.
- 2.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part 2 of this Schedule its initial CRP Information) to the Relevant Authority or Relevant Authorities:
- 2.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure pursuant to Paragraph 2.11 of this Part 2 of this Schedule) unless the Supplier is relieved of the consequences of the Financial Distress Event pursuant to Paragraph 6.1 of Schedule 16 (*Financial Distress*);
- 2.8.2 within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 2.10 of this Part 2 of this Schedule;
- 2.8.3 within 30 days of the date that:
- (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10 of this Part 2 of this Schedule; or
  - (ii) none of the credit rating agencies specified at Paragraph 2.10 of this Part 2 of this Schedule hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- 2.8.4 in any event, within six months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
- (i) updated CRP Information has been provided pursuant to any of Paragraphs 2.8.1, 2.8.2 or 2.8.3 of this Part 2 of this Schedule since the most recent Accounting Reference Date (being no more than twelve months previously) within the timescales that would ordinarily be required for the provision of that information pursuant to this Paragraph 2.8.4 of this Part 2 of this Schedule; or
  - (ii) unless not required pursuant to Paragraph 2.10 of this Part 2 of this Schedule.
- 2.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part 2 of this Schedule, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 of this Part 2 of this Schedule (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

2.10.1 BBB+ or better from Moody's;

2.10.2 Baa1 or better from Standard and Poors;

2.10.3 BBB+ or better from Fitch;

the Supplier shall not be required to provide any CRP Information unless or until either:

2.10.4 a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event pursuant to Paragraph 6.1 of Schedule 16 (*Financial Distress*)); or

2.10.5 the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10 of this Part 2 of this Schedule, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8 of this Part 2 of this Schedule.

2.11 Subject to Paragraph 4 of this Part 2 of this Schedule, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required pursuant to Paragraph 2.8 of this Part 2 of this Schedule.

### **3 Termination Rights**

3.1 The Authority shall be entitled to terminate this Agreement pursuant to Clause 36.1.2 (*Termination by the Authority*) if the Supplier is required to provide CRP Information pursuant to Paragraph 2 of this Part 2 of this Schedule and either:

3.1.1 the Supplier fails to provide the CRP Information within four months of the Effective Date if this is a Critical Service Contract or otherwise within four months of the Relevant Authority's or Relevant Authorities' request; or

3.1.2 the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within four months of the date that it was first required to provide the CRP Information pursuant to this Agreement.

### **4 Confidentiality and Usage of CRP Information**

4.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority pursuant to Paragraph 4.1 of this Part 2 of this Schedule and Clause 24 (*Confidentiality*).
- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part 2 of this Schedule subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part 2 of this Schedule, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality; and
  - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
    - (i) summarising the information;
    - (ii) grouping the information;
    - (iii) anonymising the information; and
    - (iv) presenting the information in general terms.
- 4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.



**Schedule 23**

Annex 1

Schedule 23, Annex 1 has been redacted



## **Annex 2**

### **Group Structure Information and Resolution Commentary**

The Supplier shall:

- 1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 3 to this Schedule if the Supplier or another member of the Supplier Group is subject to an Insolvency Event;
- 2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
- 3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 3 to this Schedule and the dependencies between each.

### **Annex 3**

#### **UK Public Sector/CNI Contract Information**

The Supplier shall:

- 1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
  - 1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
  - 1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1 of this Annex 3 and where the member of the Supplier Group is acting as a key sub-contractor pursuant to the agreement with the end recipient; or
  - 1.3 involve or could reasonably be considered to involve CNI; and
  - 1.4 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

## **Schedule 24**

### **Staff Transfer**

#### **1 Interpretation**

- 1.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

### **PART 1 - TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1 Relevant Transfers**

- 1.1 The Authority and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations pursuant to the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant 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 which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **2 Notification to Former Supplier Employees**

- 2.1 On such date as the Authority and the Supplier shall agree but in any event no later than 14 days before the Relevant Transfer Date:
- 2.1.1 the Authority shall deliver to each of the Transferring Former Supplier Employees and to each appropriate representative (as defined in TUPE) a letter in such form agreed by the Authority; and

- 2.1.2 the Supplier shall deliver to each of the Transferring Former Supplier Employees and to each appropriate representative (as defined in TUPE) a letter in such form agreed by the Authority.
- 2.2 The letters to be delivered pursuant to Paragraph 2.1 of this Part 1 of this Schedule shall be handed personally to those Employees or representatives who are present for work on the date of such delivery and shall be despatched by first-class post to those Employees or representatives who are not so present.

### **3 Former Supplier Indemnities**

- 3.1 Subject to Paragraph 3.2 of this Part 1 of this Schedule, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
- (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 3.1.3 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:
- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee 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 Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 3.1.4 a failure of the Former Supplier 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 Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

- 3.1.5 any contract of employment with any employee of the Former Supplier or any other individual who is not a Transferring Former Supplier Employee and which contract is transferred to the Supplier or Notified Sub-contractor; and
  - 3.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations pursuant to regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 of this Part 1 of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 3.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 3.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations pursuant to the Employment Regulations.
- 3.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
- 3.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
  - 3.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 3.4 If an offer referred to in Paragraph 3.3.2 of this Part 1 of this Schedule is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 3.5 If by the end of the 15 Working Day period specified in Paragraph 3.3.2 of this Part 1 of this Schedule:

- 3.5.1 no such offer of employment has been made;
- 3.5.2 such offer has been made but not accepted; or
- 3.5.3 the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

3.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 3.3 to 3.5 of this Part 1 of this Schedule and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 3.5 of this Part 1 of this Schedule provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

3.7 The indemnity in Paragraph 3.6 of this Part 1 of this Schedule:

3.7.1 shall not apply to

(i) any claim for:

(A) 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

(B) 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 Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

3.7.2 shall apply only where the notification referred to in Paragraph 3.3.1 of this Part 1 of this Schedule is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six months of the Effective Date.

3.8 If any such person as is described in Paragraph 3.3 of this Part 1 of this Schedule is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 3.5 of this Part 1 of this Schedule, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it pursuant to the Law.



#### **4 Supplier Indemnities and Obligations**

- 4.1 Subject to Paragraph 4.2 of this Part 1 of this Schedule, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
- 4.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
  - 4.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of any collective agreement applicable to the Transferring Former Supplier Employee;
  - 4.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 4.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated pursuant to regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 4.1.5 any claim or allegation by a Transferring Former Supplier Employee on the grounds that the Supplier or Notified Sub-contractor has failed or will fail to continue a benefit provided by the Former Supplier as a term of such employee's contract at the Relevant Transfer Date;
  - 4.1.6 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
  - 4.1.7 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:
    - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Former Supplier Employee, 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 Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 4.1.8 a failure of the Supplier or any Sub-contractor 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 Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 4.1.9 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations pursuant to regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations pursuant to regulation 13 of the Employment Regulations; and
- 4.1.10 a failure by the Supplier or any Sub-Contractor to comply with its obligations pursuant to Paragraph 3.8 of this Part 1 of this Schedule.
- 4.2 The indemnities in Paragraph 4.1 of this Part 1 of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations pursuant to the Employment Regulations.
- 4.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations pursuant to the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant 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 which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.
- 4.4 The following provisions shall apply in the event of any claim being made or threatened against the Supplier or Notified Sub-contractor which involves or gives rise to or is likely to involve or give rise to an obligation or liability which the Former Supplier is required to discharge or in respect of which (or any part of which) the Former Supplier is required to reimburse or otherwise make any payment to or indemnify the Supplier or Notified Sub-contractor pursuant to this Paragraph 4.4 of this Part of this Schedule:

- 4.4.1 the Supplier or Notified Sub-contractor (as applicable) shall notify the Authority and the Former Supplier in writing immediately upon the Supplier becoming aware of the claim or threatened claim;
- 4.4.2 the Supplier or Notified Sub-contractor (as applicable) shall allow the Authority and Former Supplier and their professional advisers to investigate the matter or circumstances alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim and for such purpose the Supplier or Notified Sub-contractor (as applicable) shall give all such information and assistance including access to premises and personnel and the right to examine and copy or photograph any assets, accounts, documents and records as the Authority, Former Supplier and/or their professional advisers may reasonably request. The Authority and the Former Supplier agree to keep all such information confidential and only to use it for the purposes of this clause;
- 4.4.3 no admission of liability shall be made by or on behalf of the Supplier or Notified Sub-contractor (as applicable) and the claim shall not be compromised, disposed of or settled without the prior written consent of the Former Supplier; and
- 4.4.4 the Former Supplier shall have the right to control, conduct or settle any such claim at its own cost but shall consult fully with the Supplier or Notified Sub-contractor (as applicable) as to the question of resisting, appealing, compromising or contesting it. If the parties cannot after consultation agree a course of action with regard to any such claim, such dispute shall be referred to a barrister of not less than ten years standing agreed on by the parties (or in default of agreement appointed at the application of either party by the President of the Law Society for the time being):
  - (i) who will act as an expert and not as an arbitrator;
  - (ii) whose decision will be final and binding on the Former Supplier, and the Supplier or Notified Sub-contractor (as applicable); and
  - (iii) whose expenses shall be borne equally by the Former Supplier, and the Supplier or Notified Sub-contractor (as applicable) unless such barrister directs otherwise.

## **5 Information**

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties pursuant to regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties pursuant to regulation 13 of the Employment Regulations.

## **6 Principles of Good Employment Practice**

- 6.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 6.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013.
- 6.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 6.1 or 6.2 of this Part 1 of this Schedule shall be agreed in accordance with the Change Control Procedure.

## **7 Procurement Obligations**

- 7.1 Notwithstanding any other provisions of this Part 1 of this Schedule, where in this Part 1 of this Schedule the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **8 Pensions**

- 8.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

## **PART 2 - EMPLOYMENT EXIT PROVISIONS**

### **1 Pre-service Transfer Obligations**

- 1.1 The Supplier agrees that within 20 Working Days of:
- 1.1.1 not used;
  - 1.1.2 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - 1.1.3 receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - 1.1.4 the date which is twelve months before the end of the Term; and/or
  - 1.1.5 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 3 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List and updated Staffing Information at such intervals as are reasonably requested by the Authority.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority may, acting reasonably, make changes to the format or information requested in Annex 2 (*Staffing Information*) to this Schedule from time to time.
- 1.4 The Authority shall be permitted to use and disclose information provided by the Supplier pursuant to Paragraphs 1.1 and 1.2 of this Part 2 of this Schedule for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.5 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 of this Part 2 of this Schedule shall be true and accurate in all material respects at the time of providing the information.

1.6 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.3 and 1.1.4 of this Part 2 of this Schedule, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

1.6.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier 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;

1.6.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

1.6.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

1.6.4 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 Supplier's Provisional Supplier Personnel List;

1.6.5 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); or

1.6.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

1.7 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

1.7.1 the numbers of employees engaged in providing the Services;

1.7.2 the percentage of time spent by each employee engaged in providing the Services; and

1.7.3 a description of the nature of the work undertaken by each employee by location.

- 1.8 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer 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 Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.8.1 the most recent month's copy payslip data;
  - 1.8.2 details of cumulative pay for tax and pension purposes;
  - 1.8.3 details of cumulative tax paid;
  - 1.8.4 tax code;
  - 1.8.5 details of any voluntary deductions from pay; and
  - 1.8.6 bank/building society account details for payroll purposes.

## **2 Employment Regulations Exit Provisions**

- 2.1 The Authority and the Supplier 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 this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier 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 Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising pursuant to 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 Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) 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 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 periodic payments shall be made between:

2.2.1 the Supplier and/or the Sub-contractor (as appropriate); and

2.2.2 the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4 of this Part 2 of this Schedule the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

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

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees;

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(iii) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date; and/or

(iv) 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 Supplier 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 Supplier's Final Supplier 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 Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, 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;



- 2.3.3 a failure of the Supplier or any Sub-contractor 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 Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
  - 2.3.4 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations; and
  - 2.3.5 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations pursuant to regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 of this Part 2 of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor 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 Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations pursuant to the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If, after the 15 Working Day period specified in Paragraph 2.5.2 of this Part 2 of this Schedule has elapsed:
- 2.7.1 no such offer of employment 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 Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 of this Part 2 of this Schedule, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 of this Part 2 of this Schedule provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8 of this Part 2 of this Schedule:
- 2.9.1 shall not apply to:
- (i) any claim for:
- (A) 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
- (B) 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 Replacement Supplier and/or Replacement Sub-contractor; or
- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 of this Part 2 of this Schedule is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six months of the Service Transfer Date.

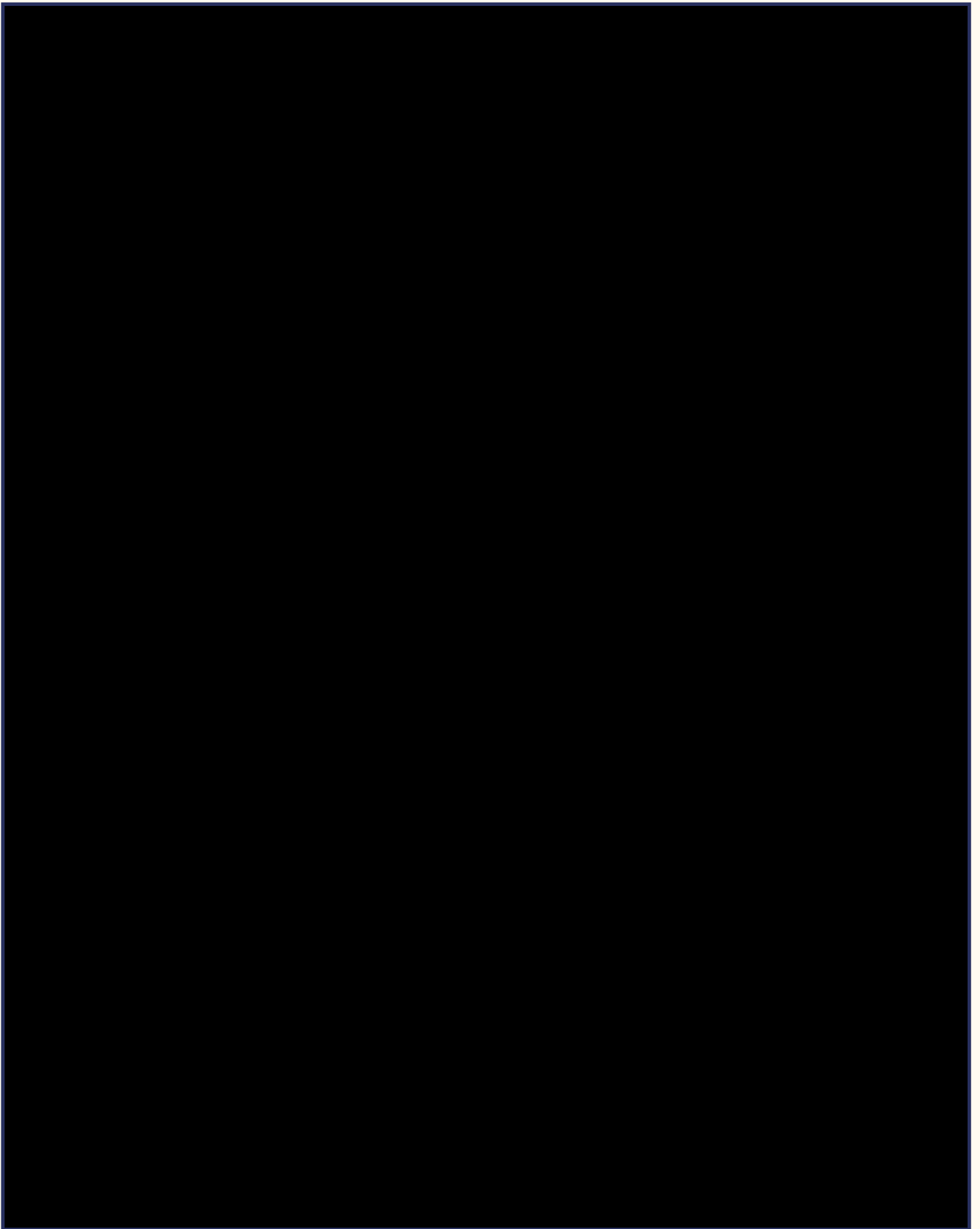
- 2.10 If any such person as is described in Paragraph 2.5 of this Part 2 of this Schedule is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7 of this Part 2 of this Schedule, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations pursuant to the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier 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 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:
- 2.11.1 the Supplier and/or any Sub-contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties pursuant to regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties pursuant to regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14 of this Part 2 of this Schedule, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
- (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
- (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor 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 Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (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 Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated pursuant to 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 Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 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:
- (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier 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
  - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier 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 Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor 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 Supplier or Replacement Sub-contractor 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 Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

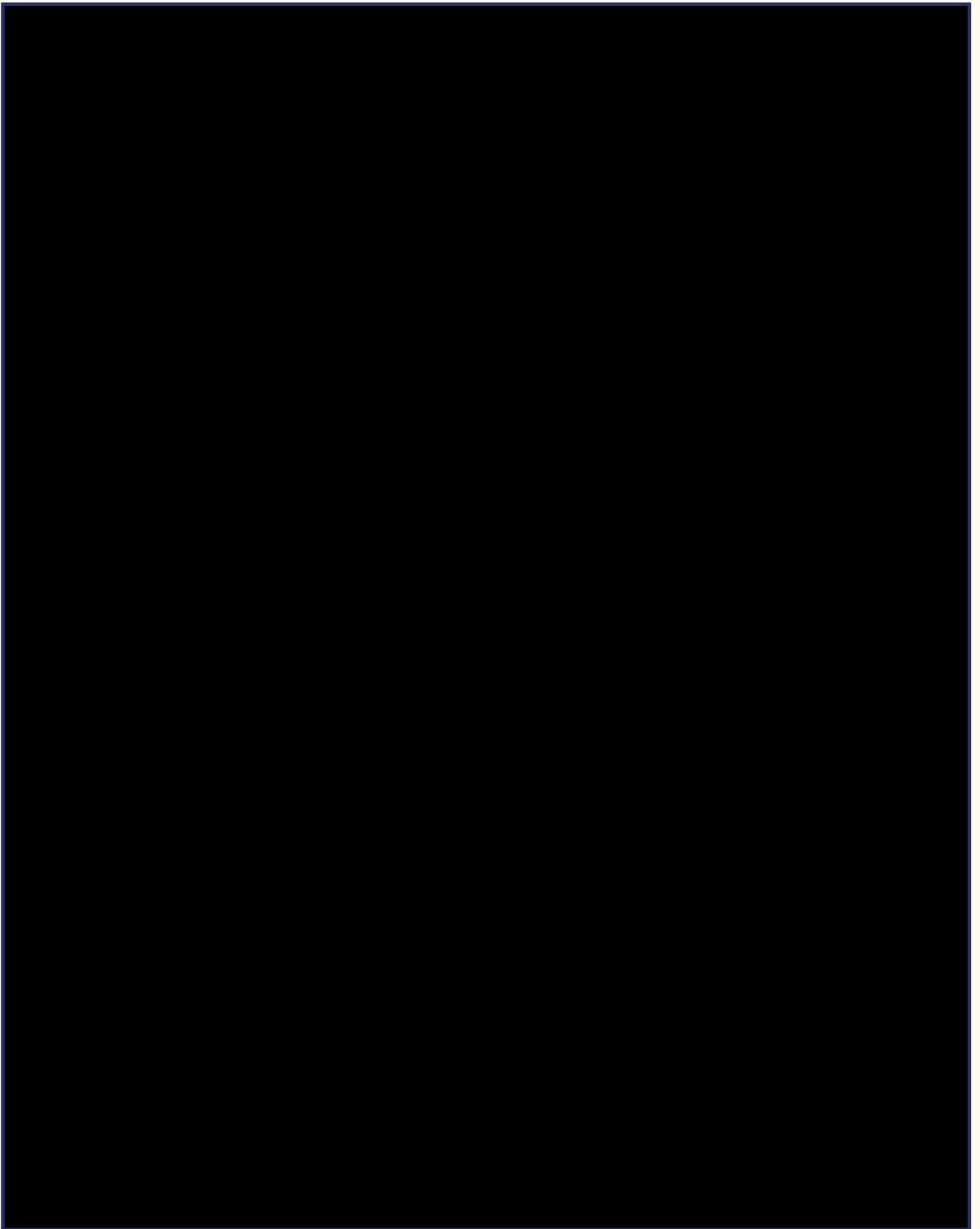
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations pursuant to regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 of this Part 2 of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (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 Supplier and/or any Sub-contractor (as applicable) to comply with its obligations pursuant to the Employment Regulations.

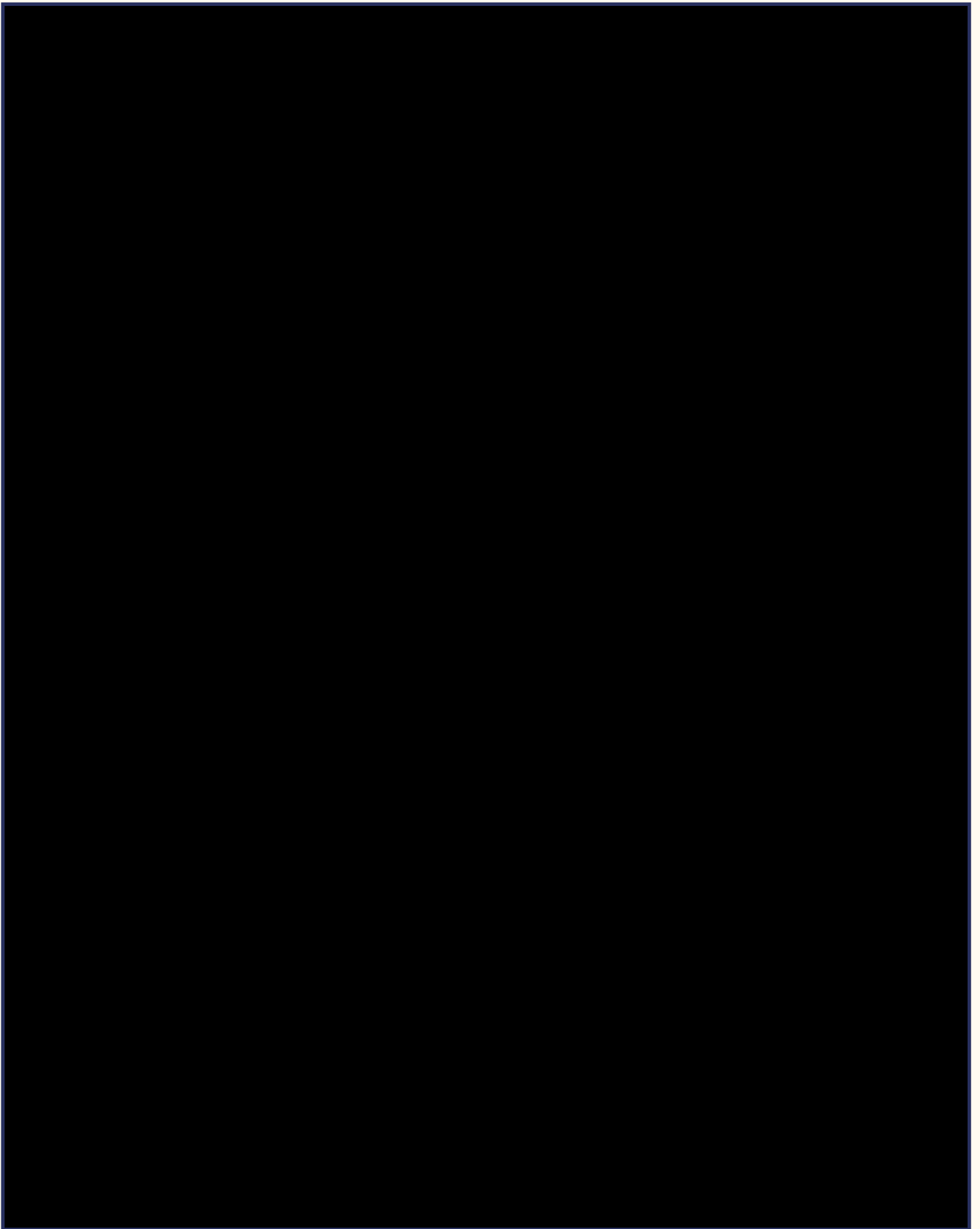








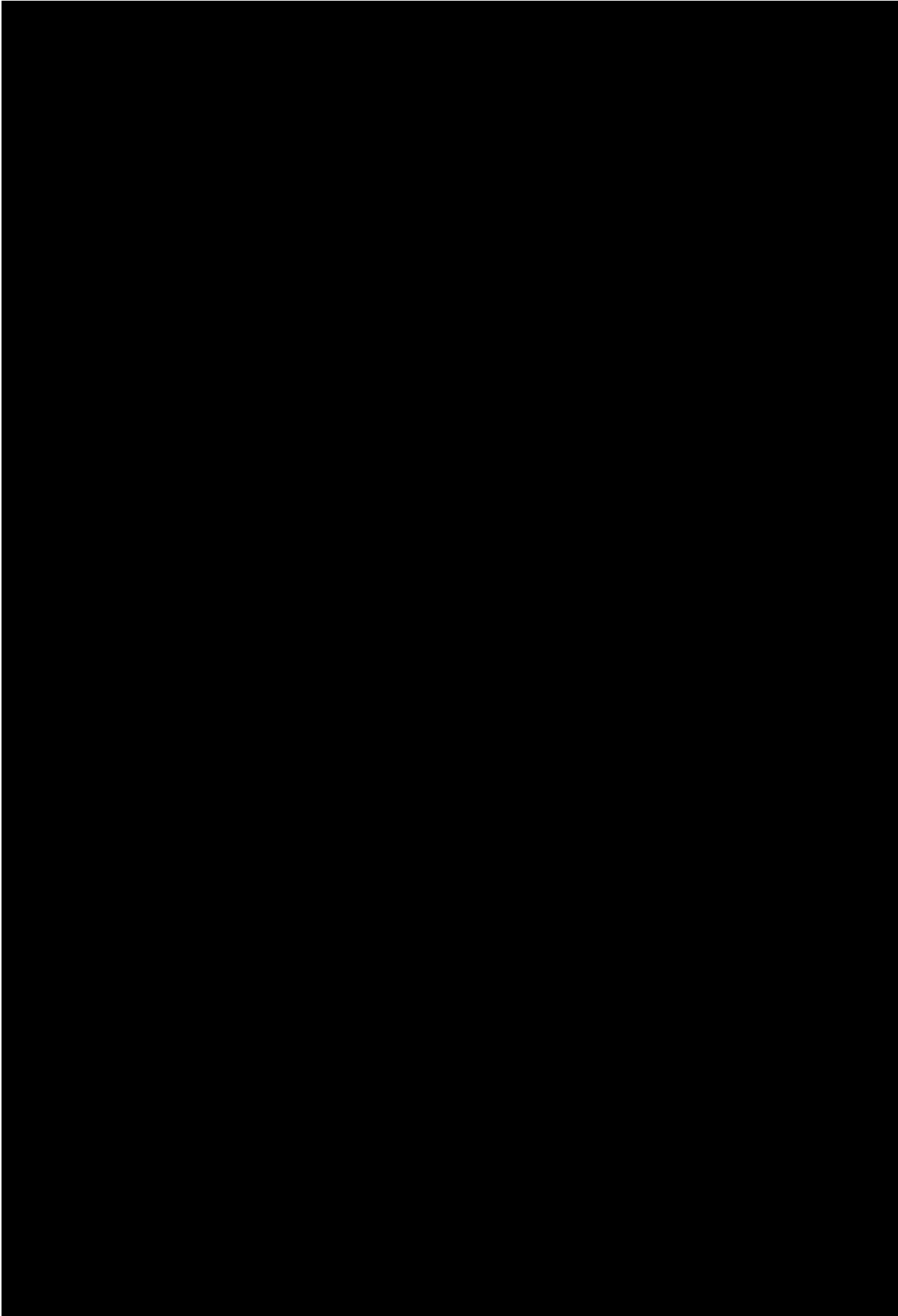


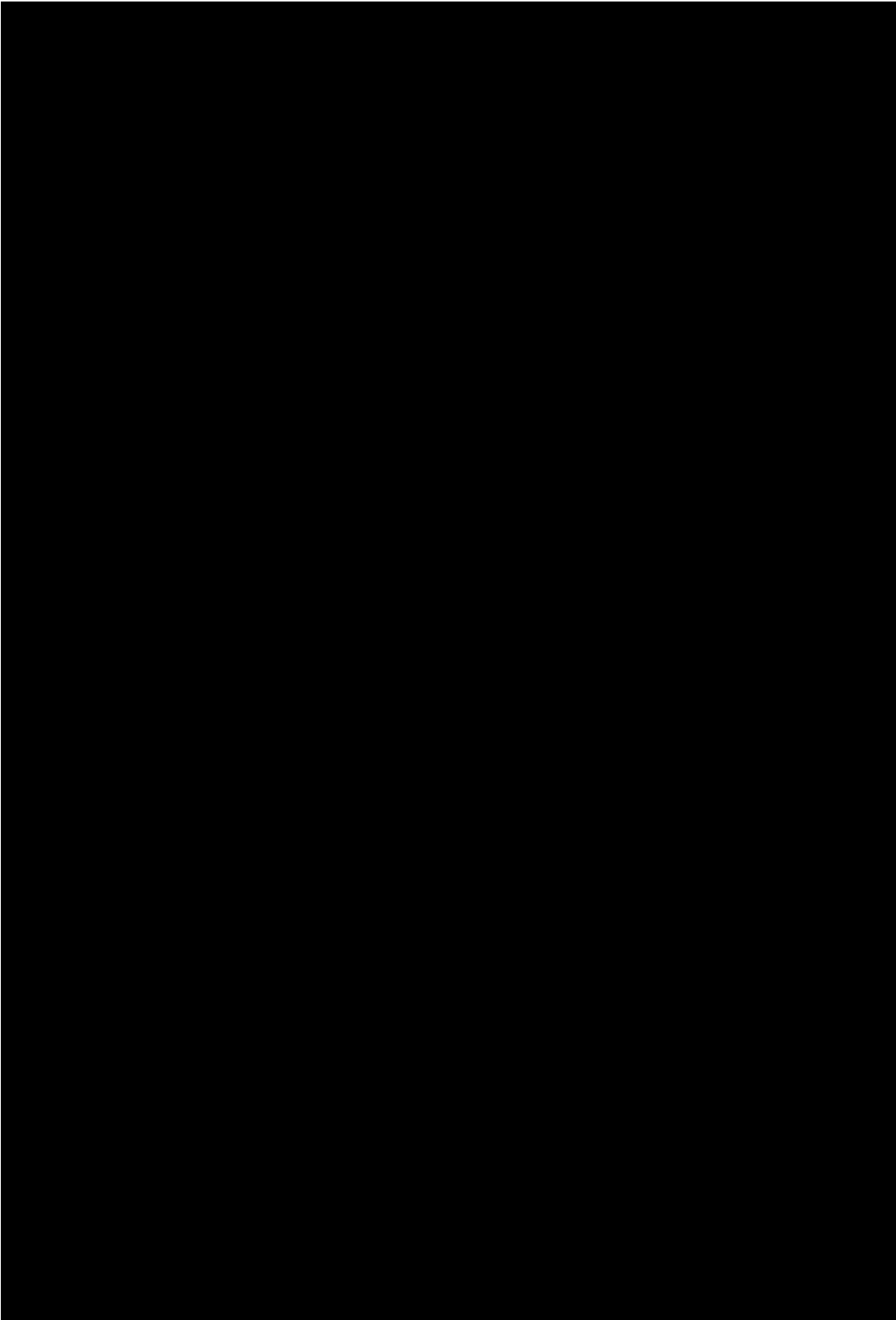


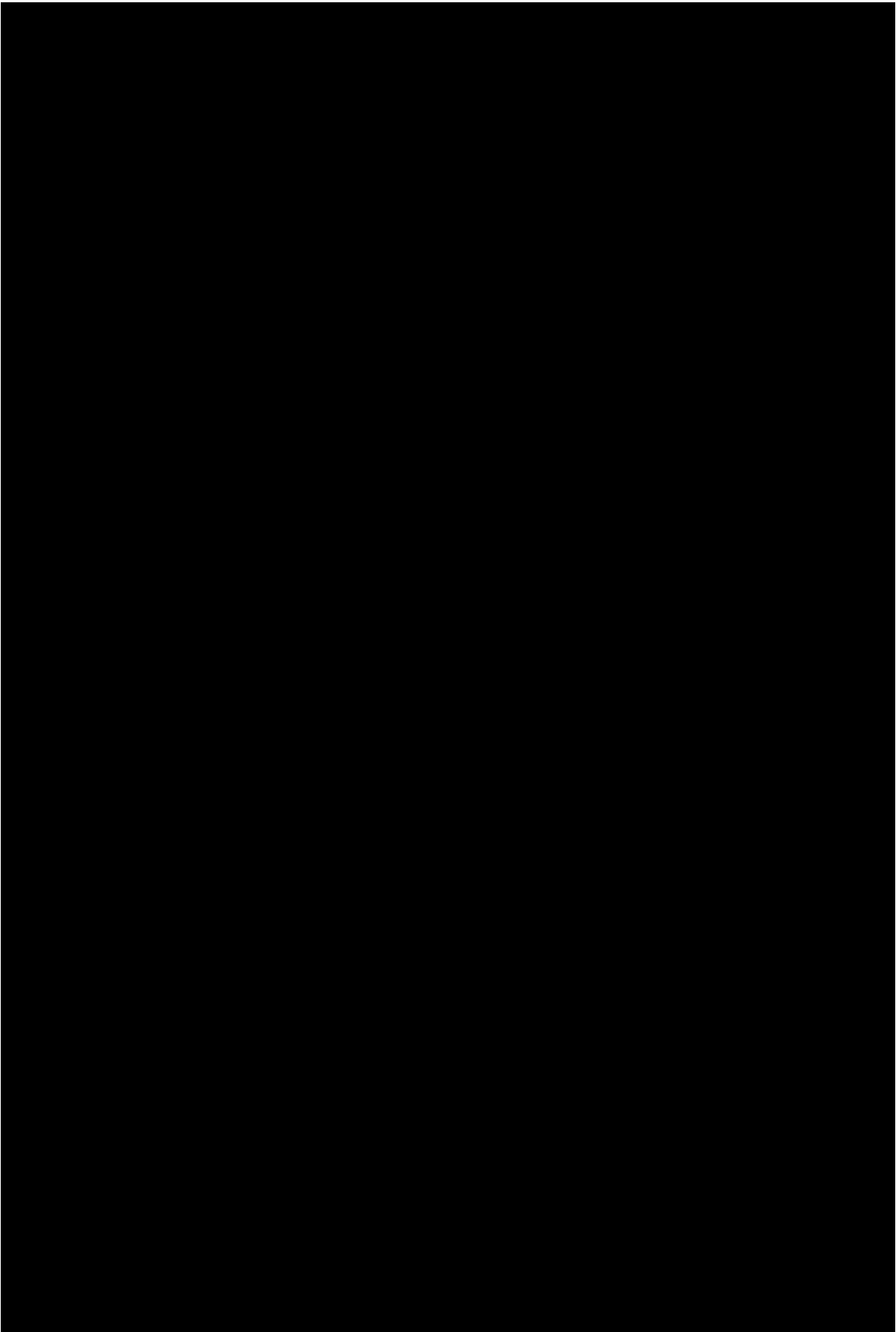




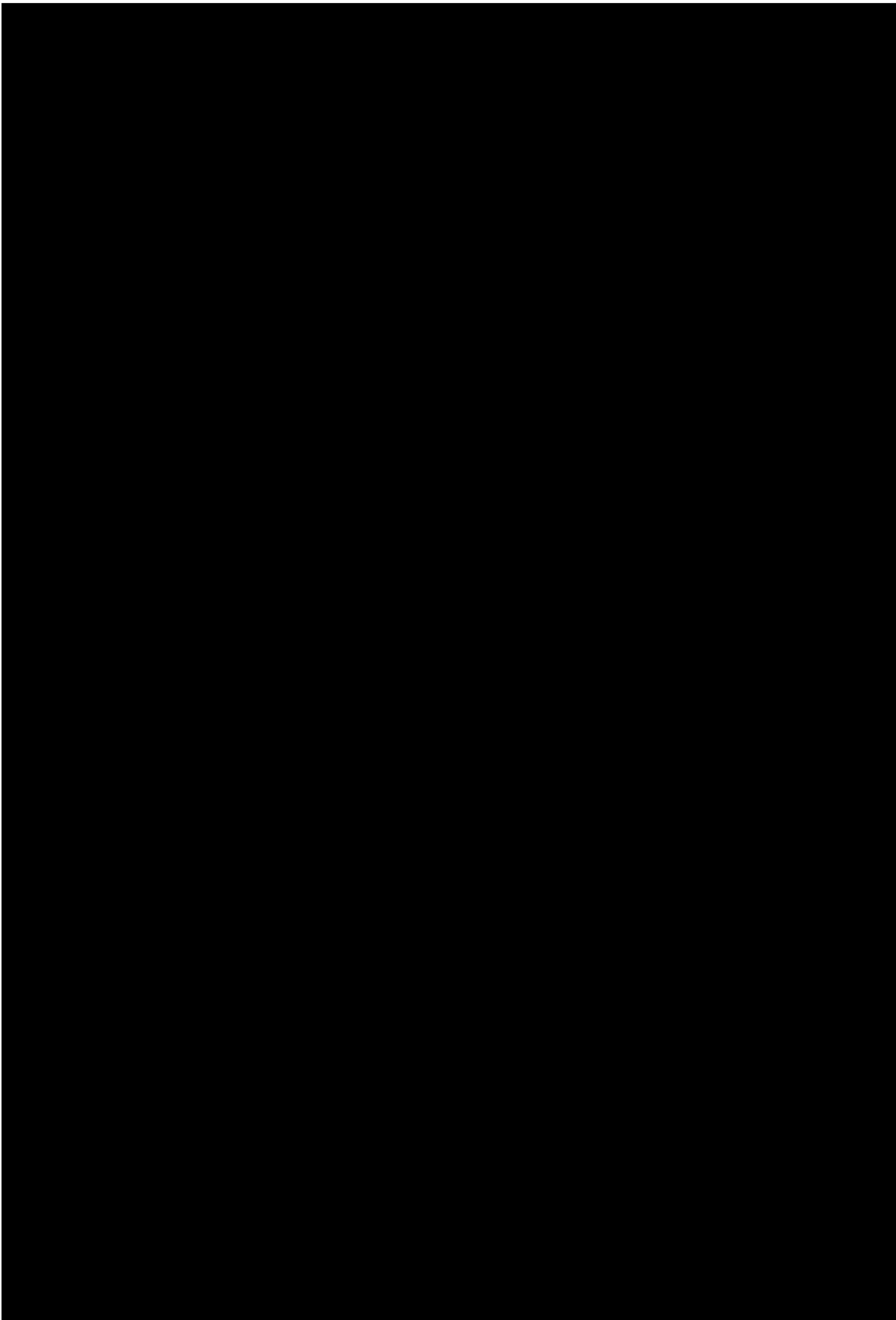


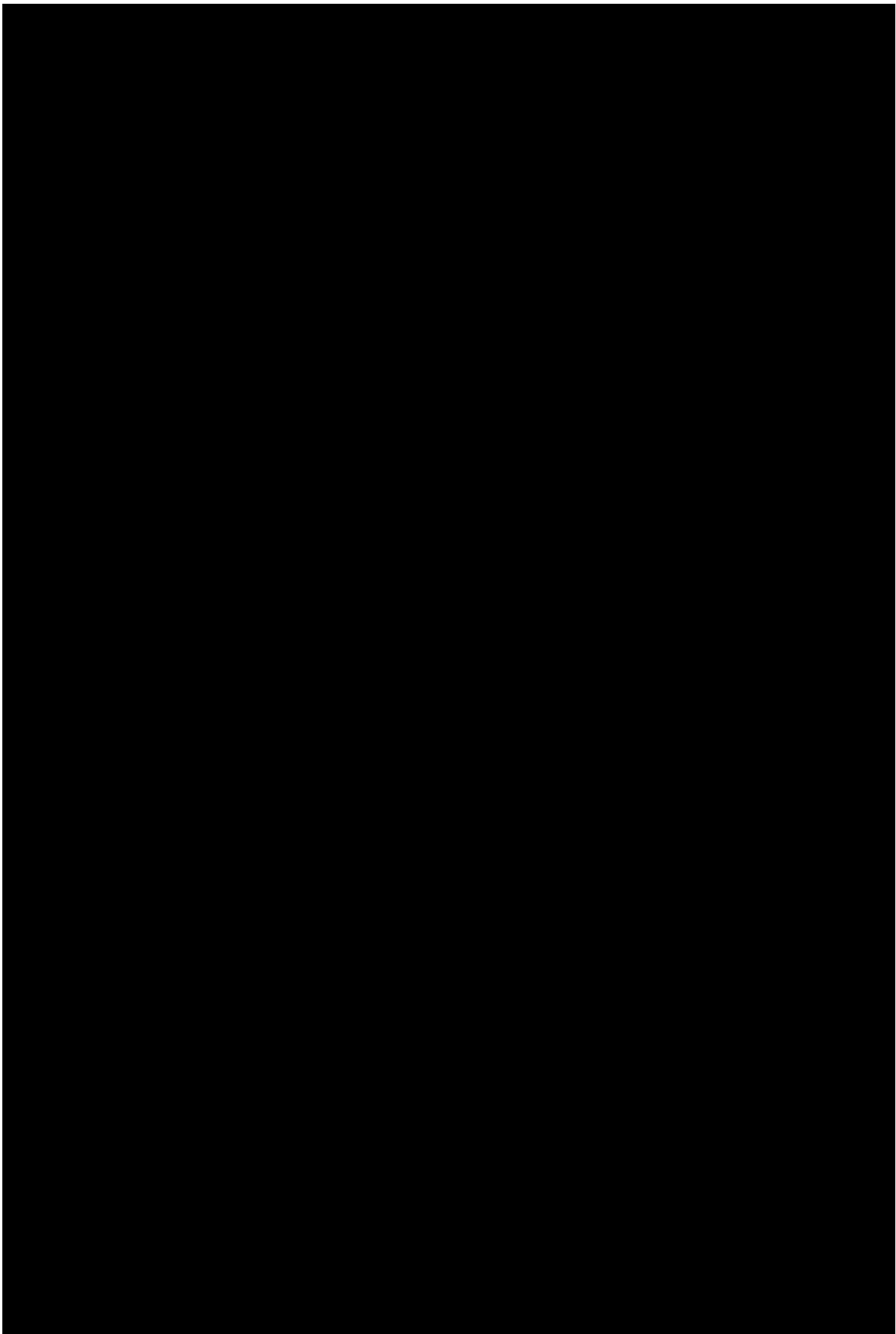


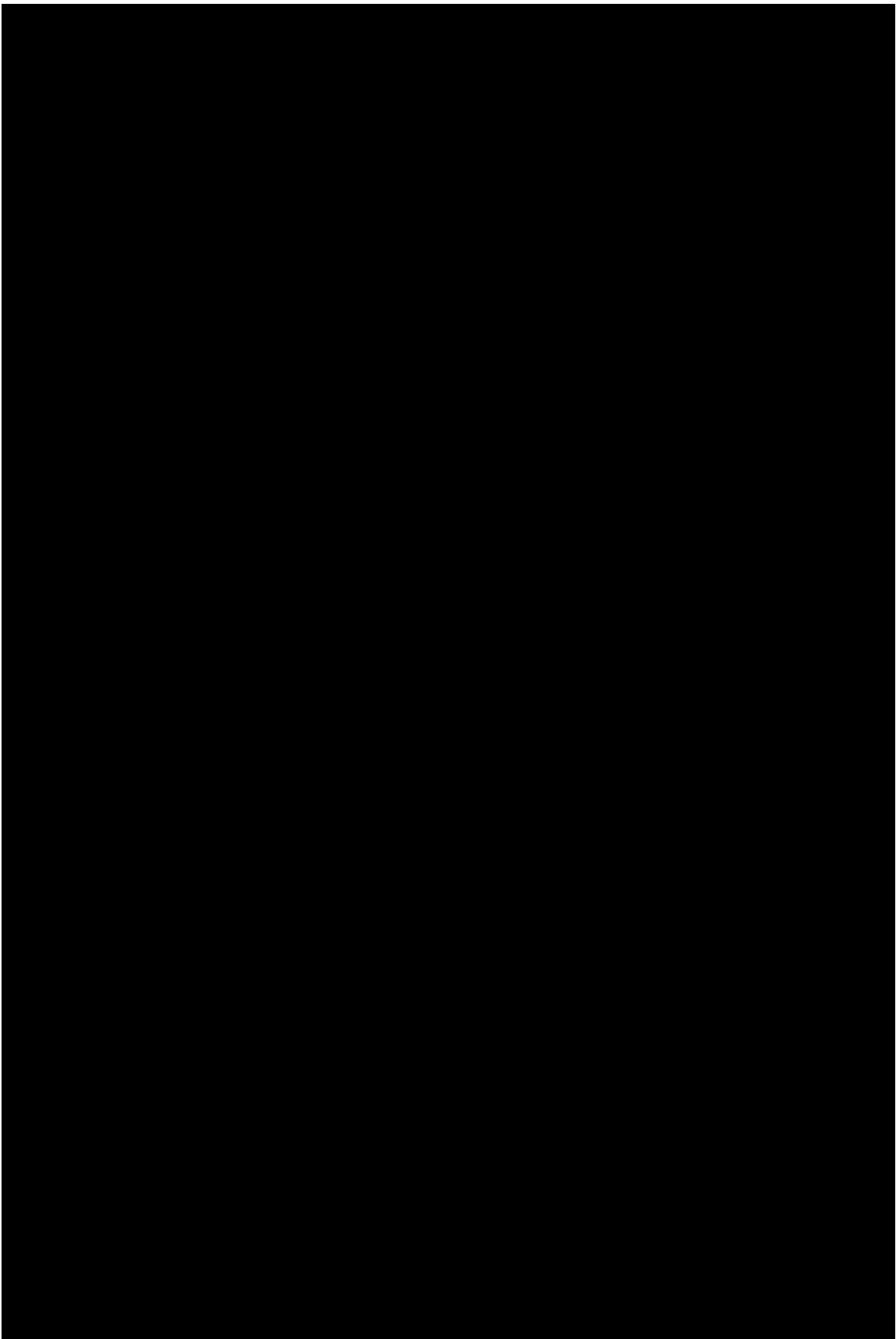


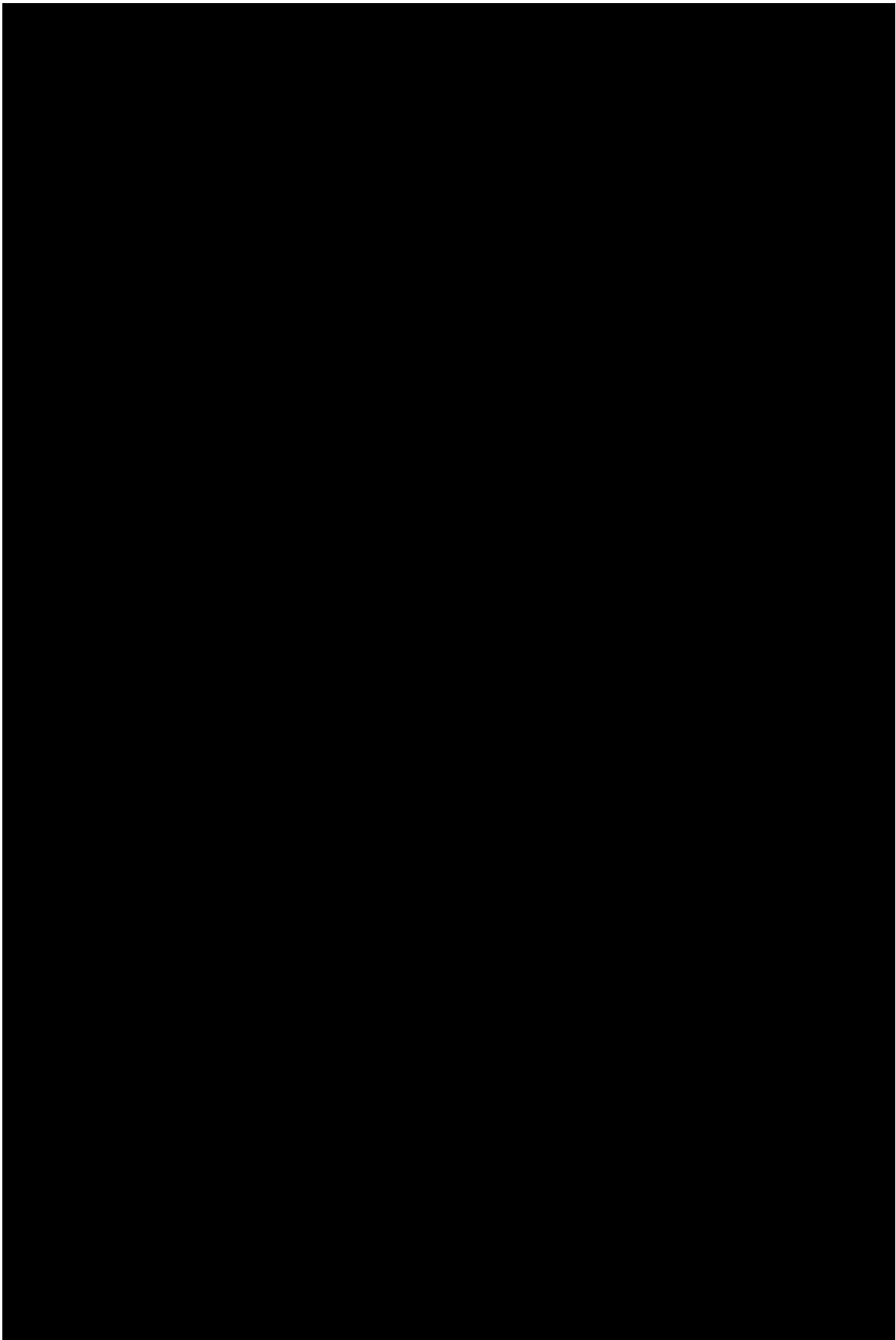


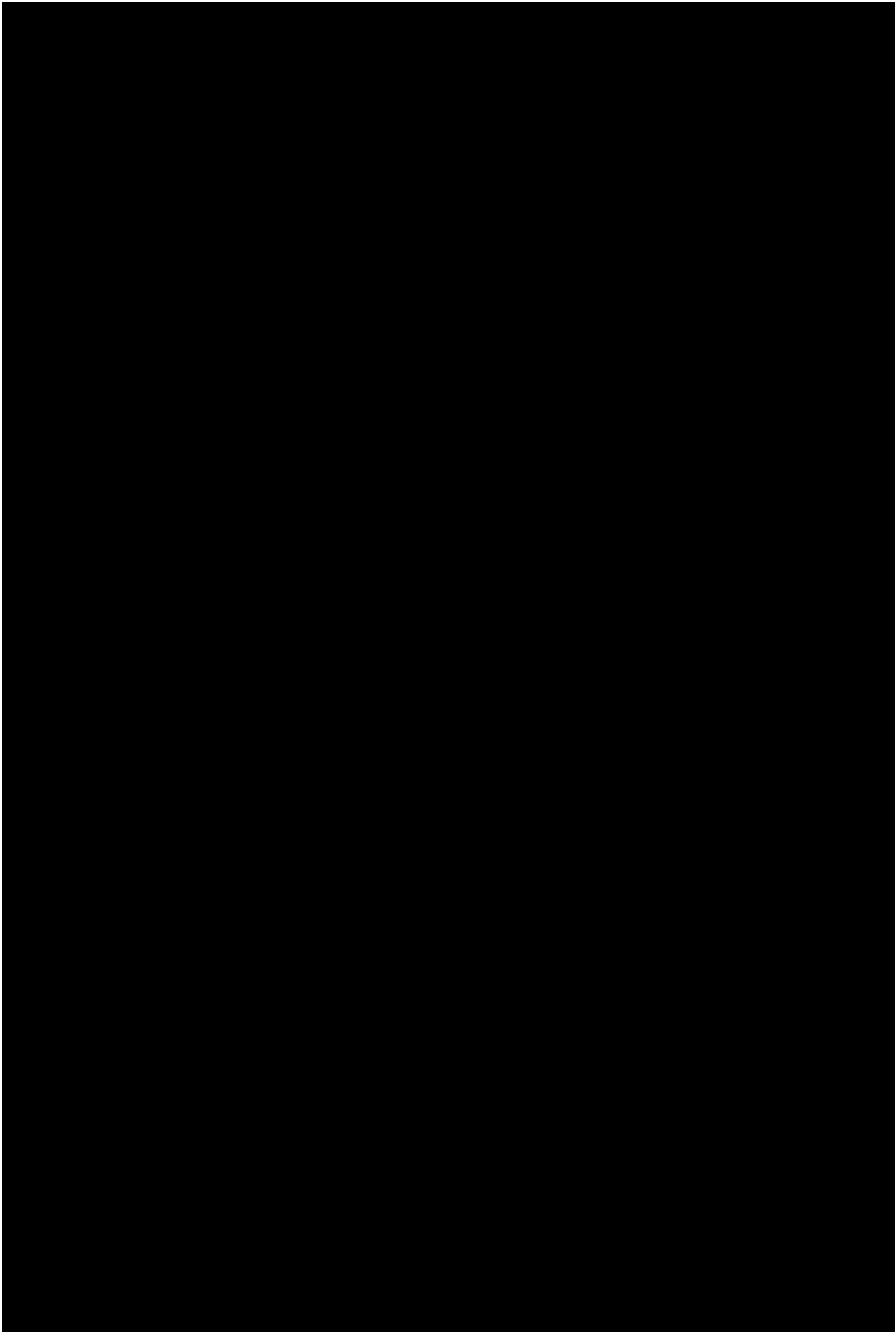


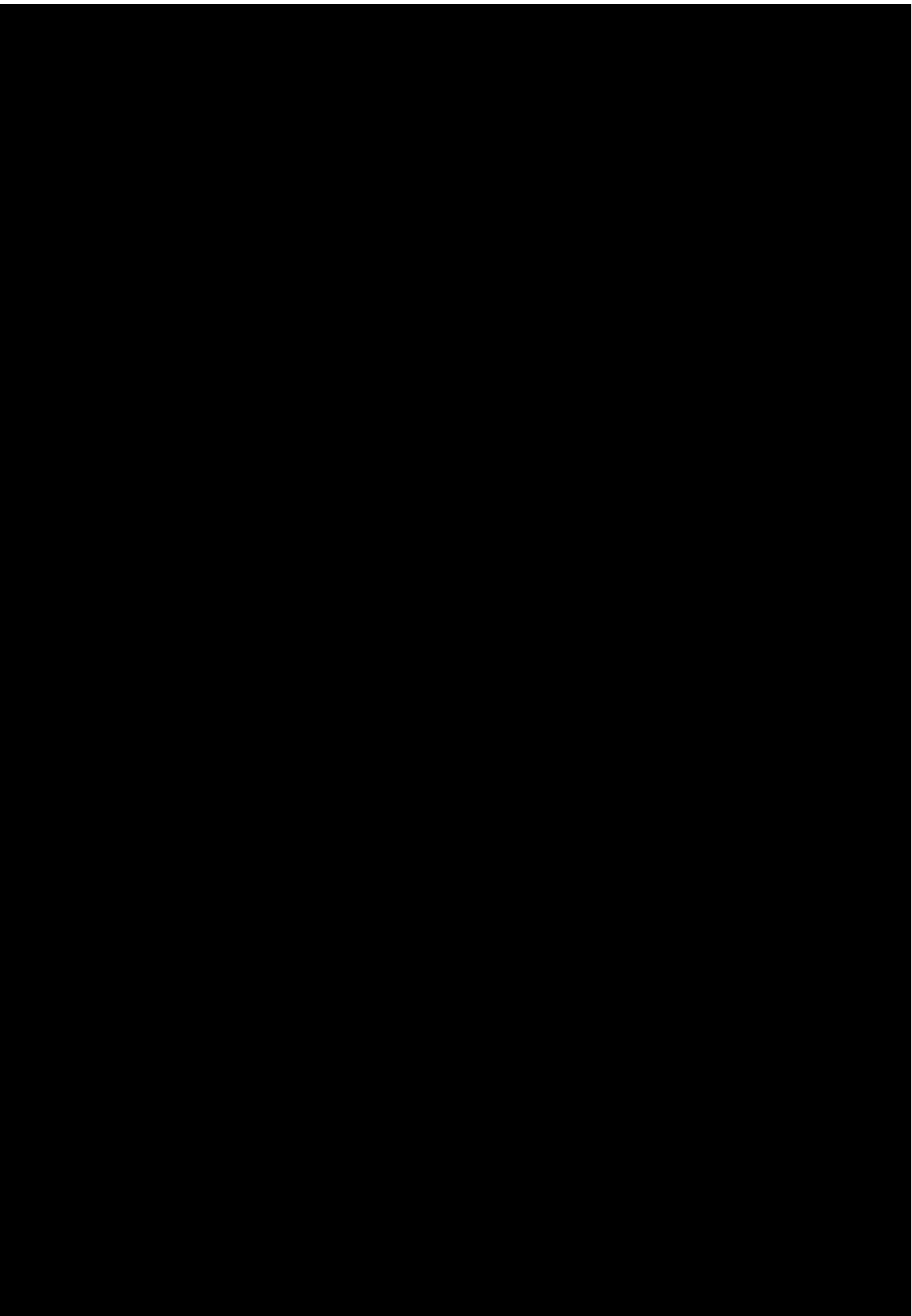


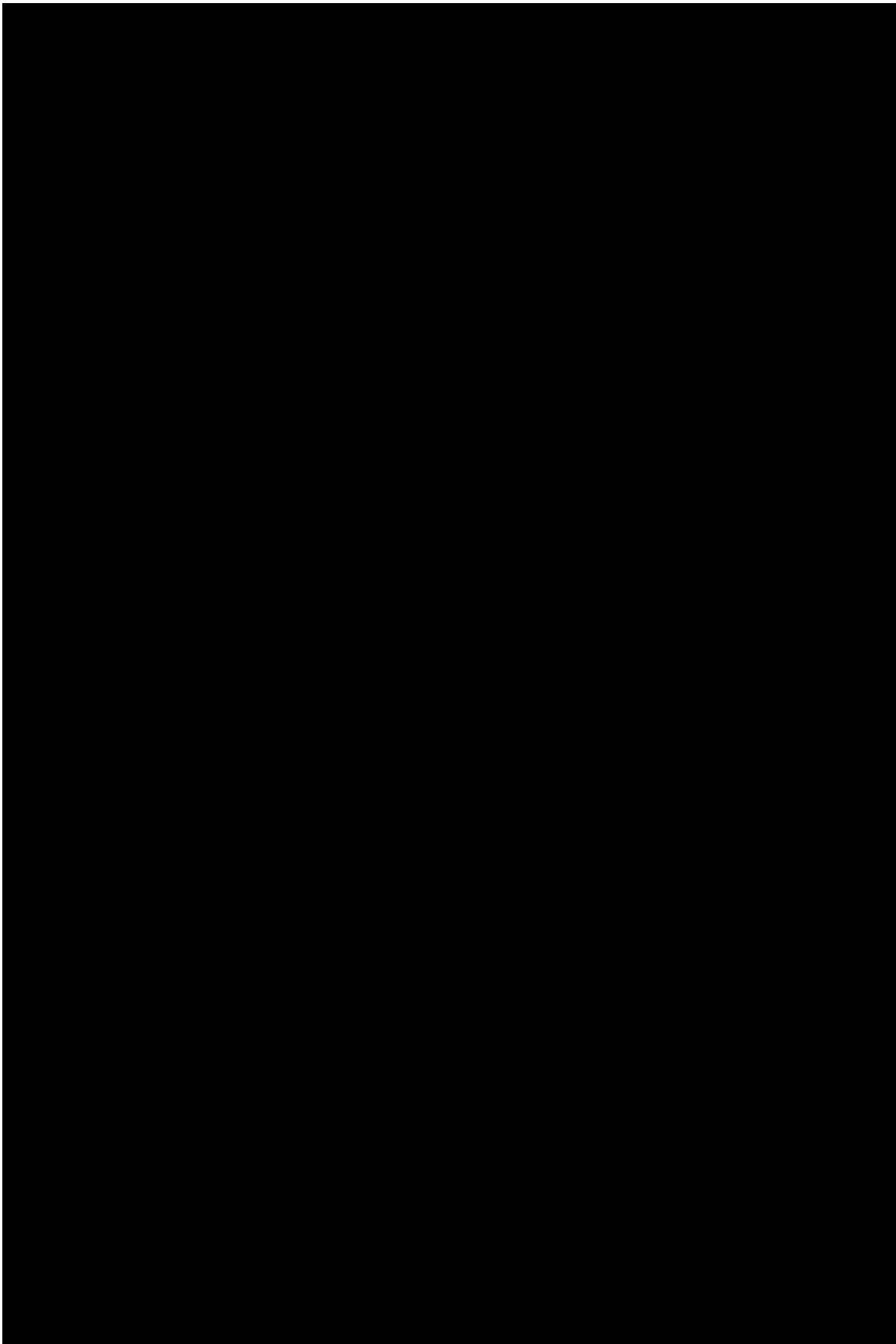


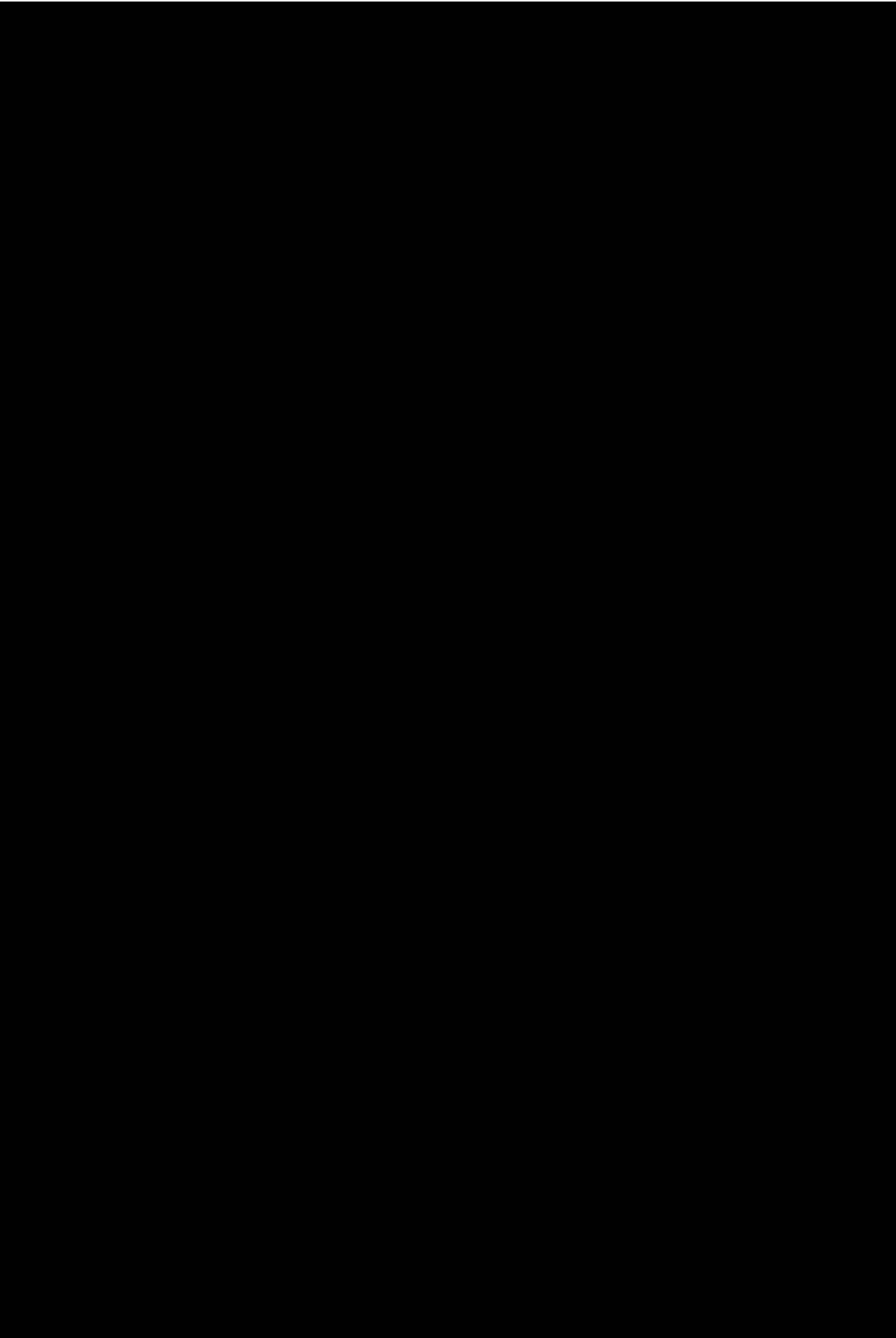




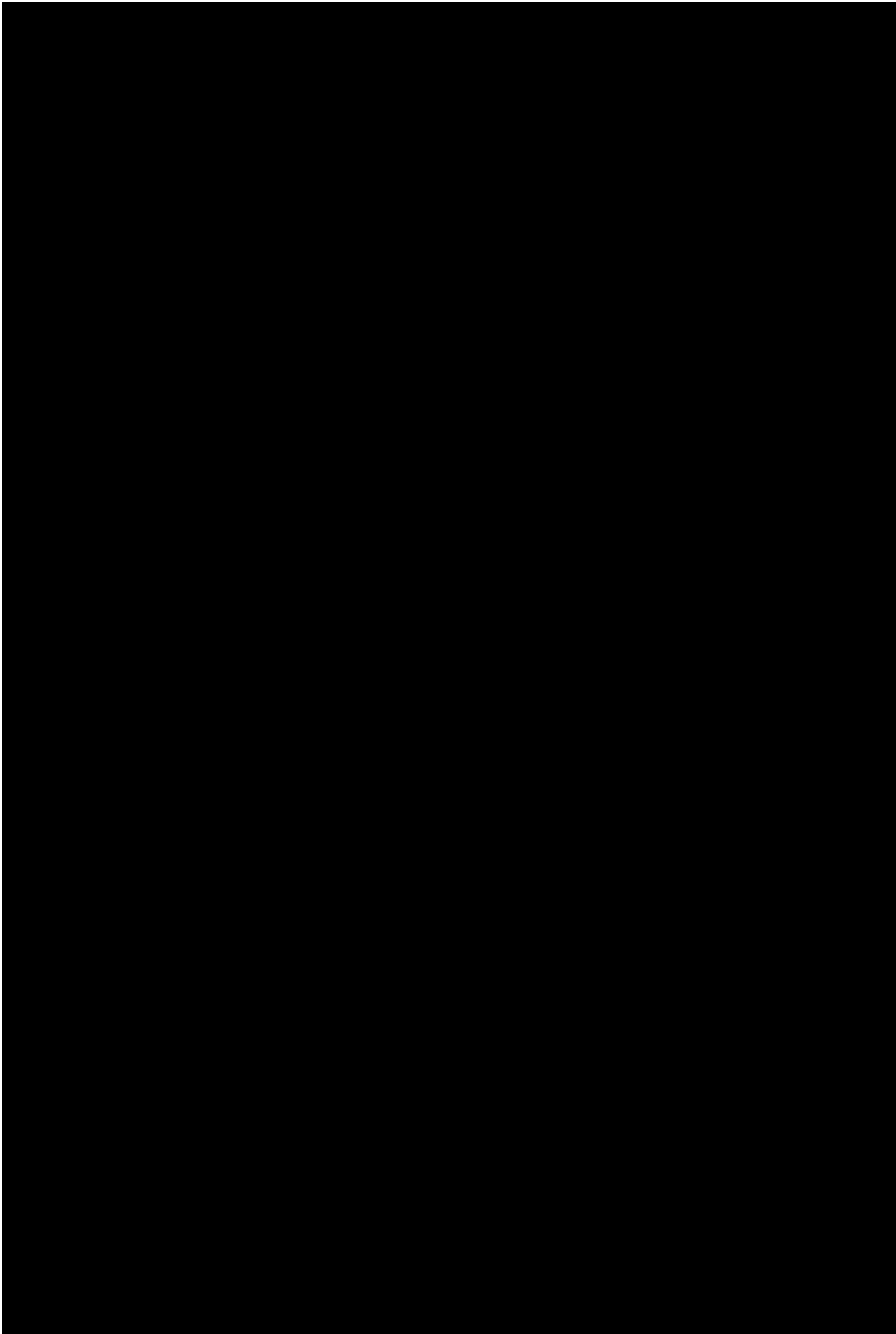


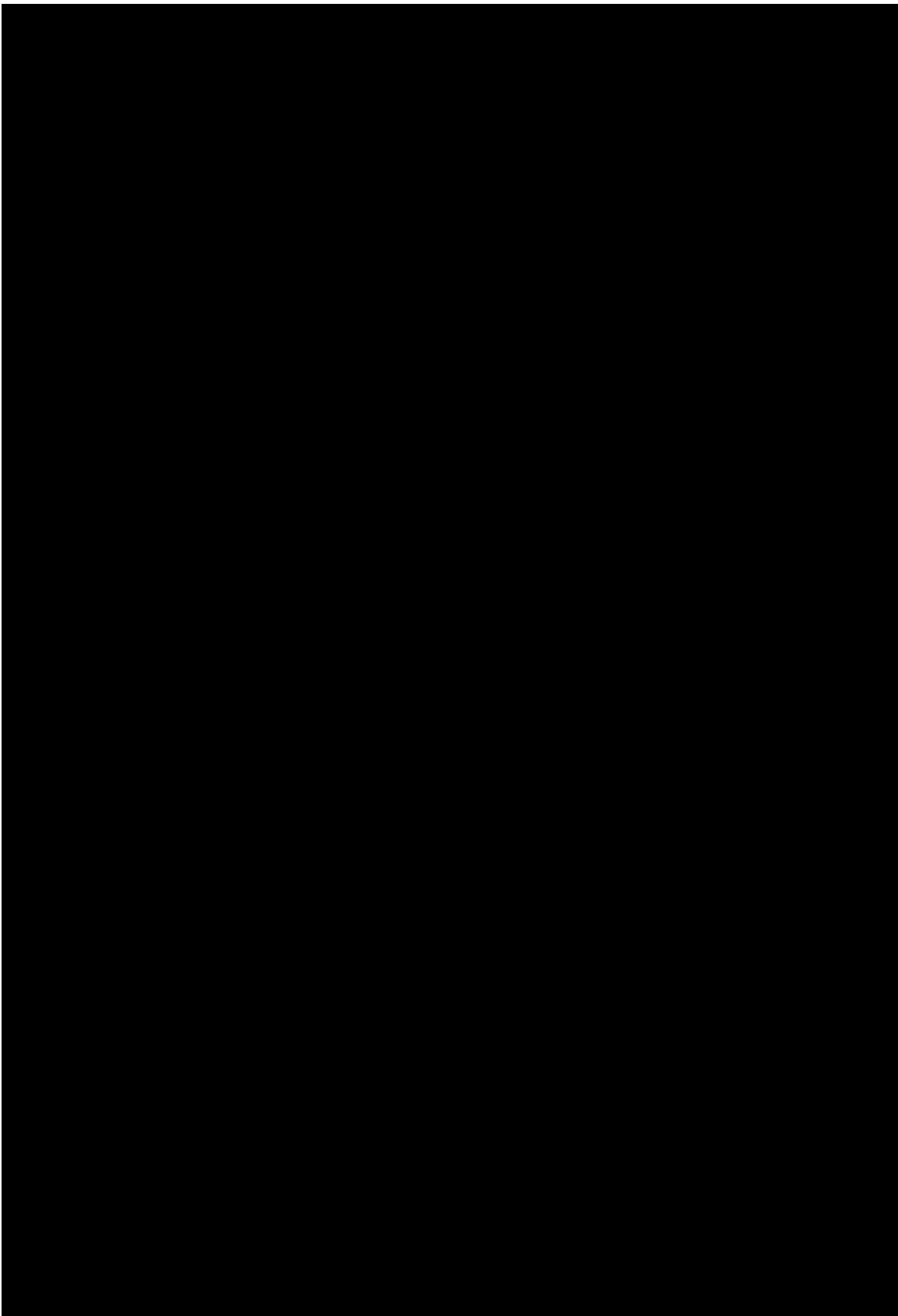


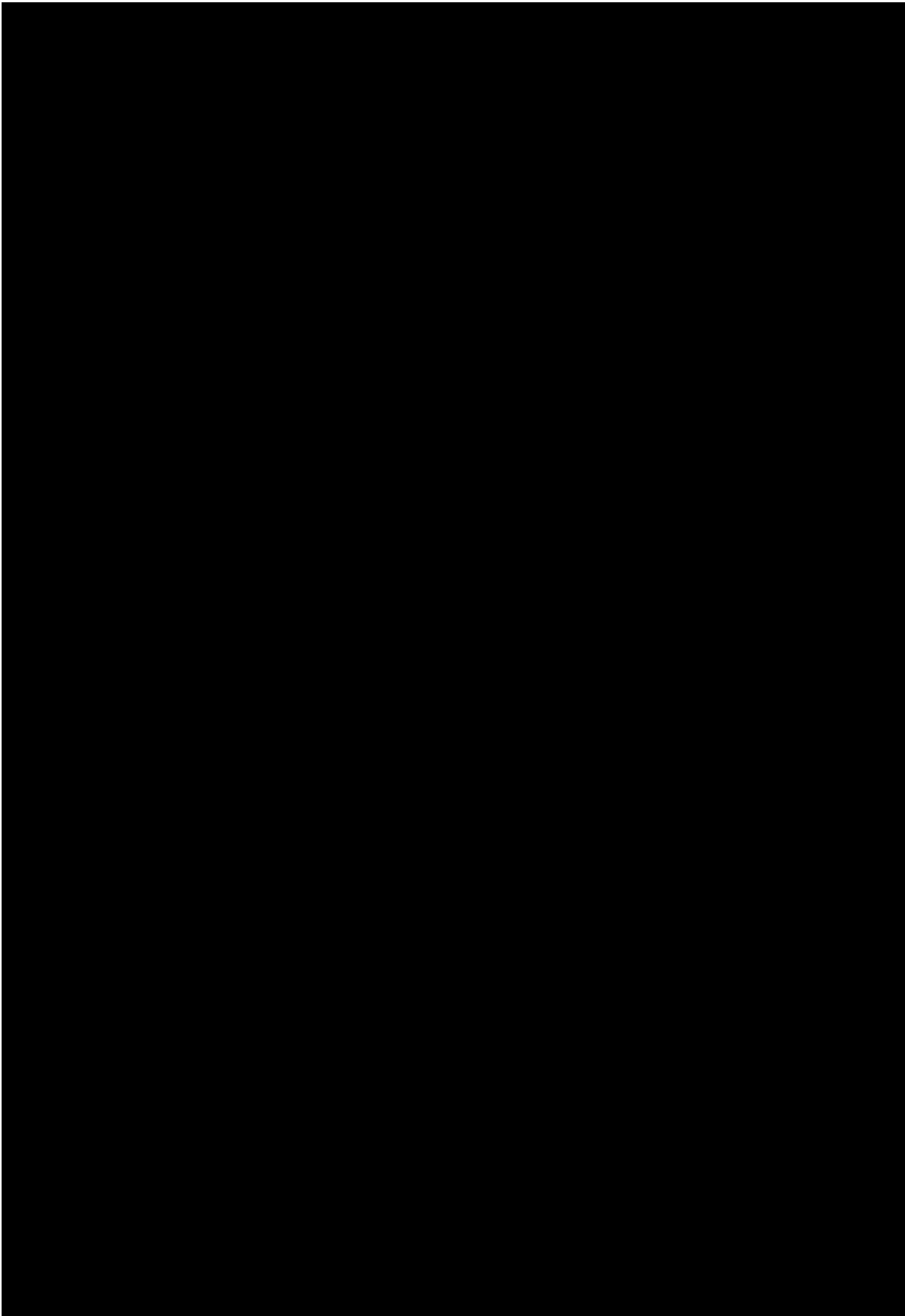


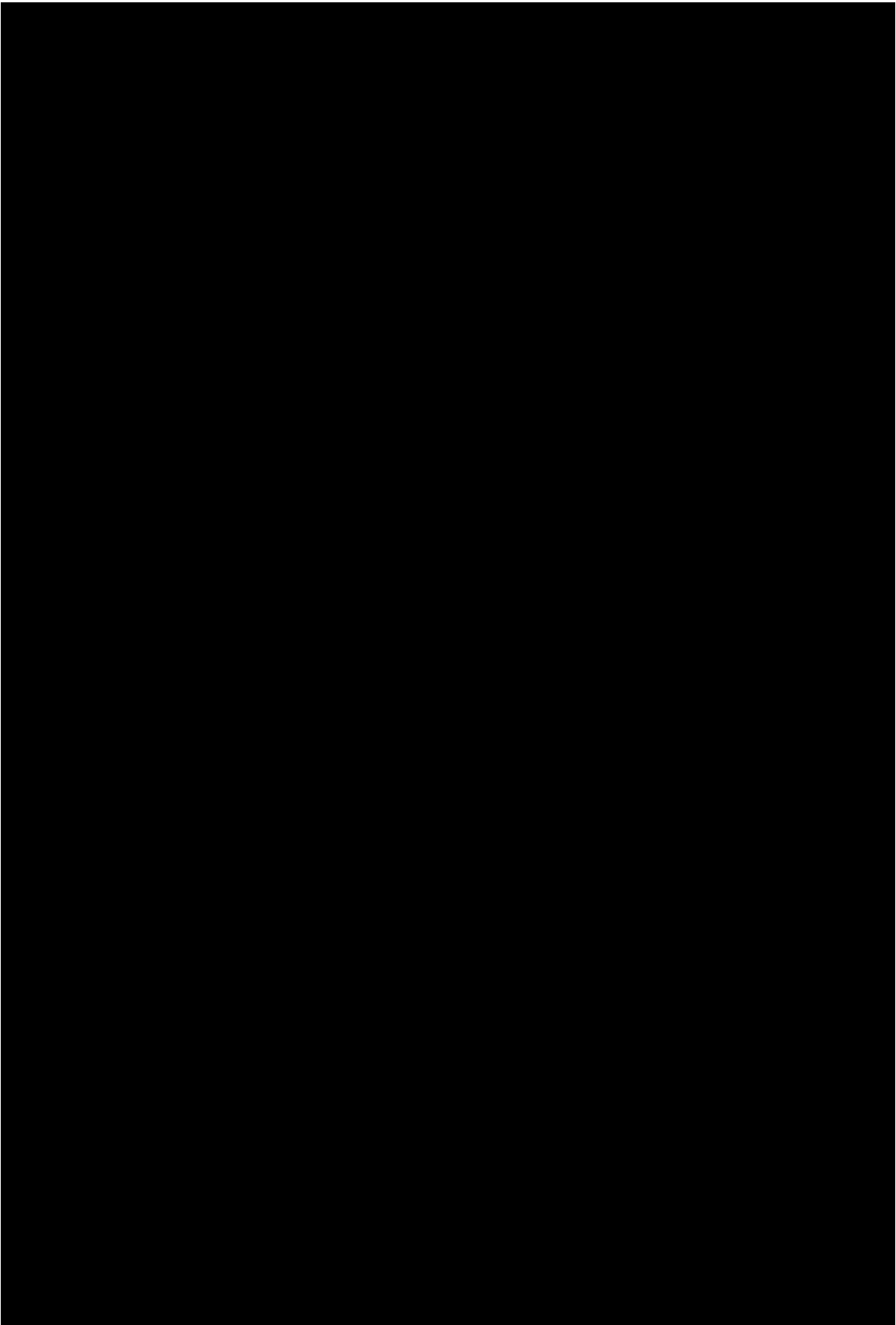


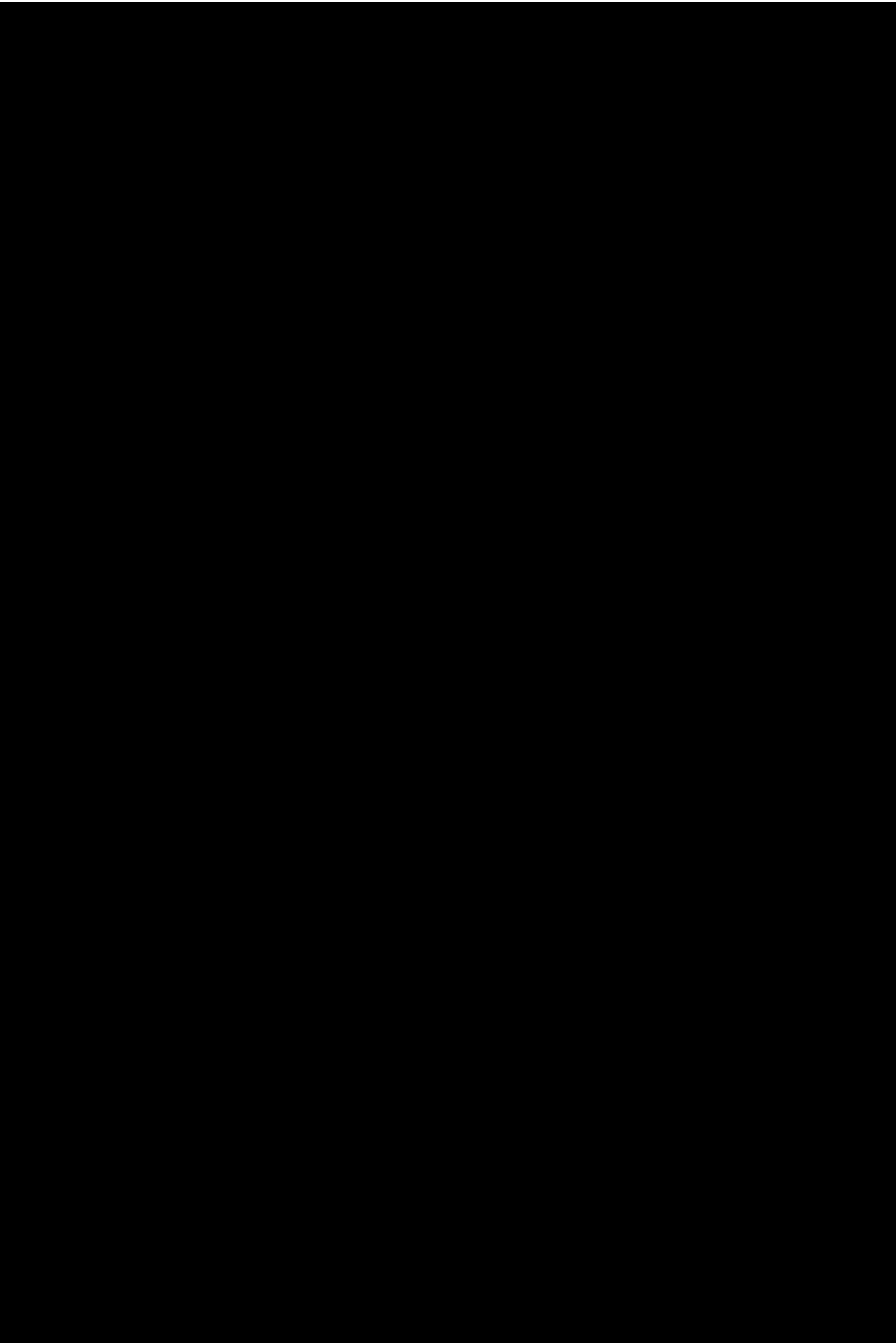


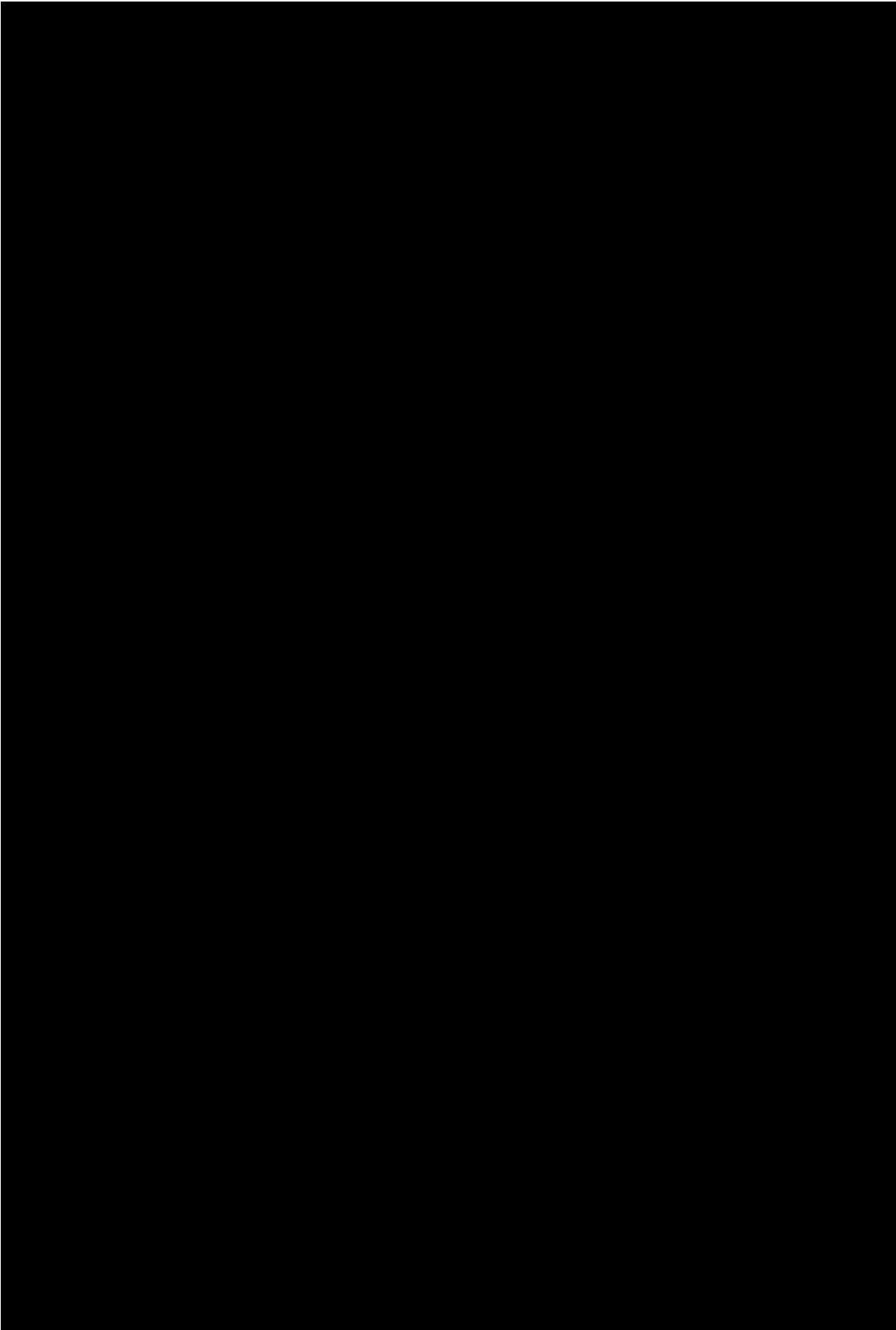














**Schedule 26**

**Guarantee**

**DATED**

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**BRISTOW GROUP INC (1)**

**AND**

**MARITIME & COASTGUARD AGENCY (2)  
ACTING ON BEHALF OF THE  
SECRETARY OF STATE FOR  
TRANSPORT**

**DEED**

**DEED OF GUARANTEE**



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**THIS DEED** is made on

2022 **BETWEEN:**

- (1) **BRISTOW GROUP INC.** a company incorporated in a public corporation whose registered office is situated at Corporation Trust Center, 1209 Orange Street, Delaware, 19801, United States of America and whose principal place of business is situated at 3151 Briarpark Drive, Suite 700, Houston, Texas 77042, United States of America (the “**Guarantor**”); and
- (2) **MARITIME & COASTGUARD AGENCY**, acting on behalf of the Secretary Of State for Transport of 105 Commercial Road Southampton SO15 1EG (the “**Authority**”).

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

## **BACKGROUND**

- (A) The Authority has awarded a contract dated 21 July 2022 to **BRISTOW HELICOPTERS LIMITED** (the “**Supplier**”) for the provision of an aviation search and rescue and an aerial surveillance capability (the “**Guaranteed Agreement**”).
- (B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
- (C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

**IT IS AGREED** as follows:

### **1 Definitions and Interpretation**

1.1 The **following** definitions apply in this Deed:

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“**Control**” means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or
- (b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;

“**Guaranteed Agreement**” has the meaning given to it in Recital (A);

“**Guaranteed Obligations**” has the meaning given to it in Clause 2.1.1;

“**Supplier**” has the meaning given to it in Recital (A); and

“**VAT**” means value added tax or any equivalent tax chargeable in the UK or elsewhere.

## 1.2 Interpretation

Unless otherwise stated, any reference in this Deed to:

- 1.2.1 the “Guarantor”, the “Authority”, the “Supplier” or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
- 1.2.2 “assets” includes present and future properties, revenues and rights of every description;
- 1.2.3 this “Deed”, or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.4 “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5 a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- 1.2.6 the words “including”, “includes”, “in particular”, “for example” or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- 1.2.7 a time of day is a reference to London time.

## 2 Guarantee and Indemnity

### 2.1 The Guarantor:

- 2.1.1 guarantees to the Authority the due and punctual performance of all of the Supplier’s present and future obligations pursuant to and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the “**Guaranteed Obligations**”);
- 2.1.2 shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority pursuant to or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
- 2.1.3 shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor’s own expense.

### 2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities pursuant to Clause 2.1, shall indemnify

and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:

- 2.2.1 any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
- 2.2.2 any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

provided that the Guarantor's liability pursuant to this Clause 2.2 shall be no greater than the Supplier's liability pursuant to the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

### **3 Authority Protections**

#### **3.1 Continuing guarantee**

This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

#### **3.2 Preservation of the Guarantor's liability**

The Guarantor's liability pursuant to this Deed shall not be reduced, discharged or otherwise adversely affected by:

- 3.2.1 any arrangement made between the Supplier and the Authority;
- 3.2.2 any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
- 3.2.3 any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
- 3.2.4 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- 3.2.5 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
- 3.2.6 any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations pursuant to the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity; and/or
- 3.2.7 any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

3.3 **Immediate demand**

The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor pursuant to this Guarantee.

3.4 **Deferral of rights**

Until all amounts which may be or become payable pursuant to the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance pursuant to this Deed:

- 3.4.1 be subrogated to any right or security of the Authority;
- 3.4.2 claim or prove in competition with the Authority against the Supplier or any other person;
- 3.4.3 demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
- 3.4.4 take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
- 3.4.5 claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

- 3.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority pursuant to this Deed.

**4 Variation of the Guaranteed Agreement**

The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

**5 Payment and Costs**

- 5.1 All sums payable by the Guarantor pursuant to this Deed shall be paid in full to the Authority in pounds sterling:
- 5.1.1 without any set-off, condition or counterclaim whatsoever; and
  - 5.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
- 5.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

- 5.2.1 the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
- 5.2.2 the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor pursuant to any of the terms in this Deed.
- 5.4 The Guarantor shall pay interest on any amount due pursuant to this Deed at the applicable rate pursuant to the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 5.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:
  - 5.5.1 the preservation, or exercise and enforcement, of any rights pursuant to or in connection with this Deed or any attempt to do so; and
  - 5.5.2 any discharge or release of this Deed.

## **6 Conditional Discharge**

- 6.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 6.2 If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

## **7 Representations and Warranties**

- 7.1 The Guarantor represents and warrants to the Authority that:
  - 7.1.1 it is duly incorporated with limited liability and is a validly existing company pursuant to the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
  - 7.1.2 it has full power pursuant to its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;

- 7.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
- 7.1.4 it has been duly authorised to enter into this Deed;
- 7.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- 7.1.6 this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 7.1.7 all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
- 7.1.8 that its entry into and performance of its obligations pursuant to this Deed will not constitute any breach of or default pursuant to any contractual, government or public obligation binding on it; and
- 7.1.9 that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations pursuant to this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

## **8 Assignment**

- 8.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability pursuant to this Deed.
- 8.2 The Guarantor may not assign or transfer any of its rights and/or obligations pursuant to this Deed without the prior written consent of the Authority.

## **9 Variation**

No variation of this Deed shall be effective unless it is in writing and signed by the parties.

## **10 Demands and Notices**

- 10.1 Any demand or notice served by the Authority on the Guarantor pursuant to this Deed shall be in writing, addressed to:
  - 10.1.1 For the Attention of General Counsel, Bristow Group Inc., 3151 Briarpark Drive, Suite 700, Houston, Texas 77042, United States of America
- 10.2 or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
- 10.3 Any notice or demand served on the Guarantor or the Authority pursuant to this Deed shall be deemed to have been served:
  - 10.3.1 if delivered by hand, at the time of delivery; or

- 10.3.2 if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
- 10.4 In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 10.5 Any notice purported to be served on the Authority pursuant to this Deed shall only be valid when received in writing by the Authority.

## **11 Entire Agreement**

- 11.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

## **12 Waiver**

- 12.1 No failure or delay by the Authority to exercise any right or remedy provided pursuant to this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

## **13 Severance**

If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.

## **14 Third Party Rights**

A person who is not a Party to this Deed shall have no right pursuant to the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

## **15 Governing Law and Jurisdiction**

- 15.1 This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.



- 15.2 The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
  
- 15.3 Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
  
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause 15 on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
  
- 15.5 The Guarantor irrevocably appoints United Helicopters Limited of Redhill Aerodome, Kings Mill Lane, Redhill, Surrey, RH1 5JZ as its agent to receive on its behalf in England or Wales service of any proceedings pursuant to this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.

Executed as a deed by **BRISTOW GROUP INC** acting by Chris Bradshaw a director, in the presence of a witness:

<p>.....</p> <p>Signature of Witness</p>   <p>Name of Witness:</p> <p>Address of Witness:</p> <p>Occupation of Witness:</p>	<p>.....</p> <p>Signature of Director</p> <p>Name of Director:</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## Schedule 27

### Direct Agreement

**THIS DEED** is made on

20[ ]

**BETWEEN:**

- (1) **MARITIME & COASTGUARD AGENCY** of 105 Commercial Road, Southampton SO15 1EG acting on behalf of the Secretary of State for Transport (the "**MCA**");
- (2) **BRISTOW HELICOPTERS LIMITED** a company registered in England and Wales under company number **00551102** whose registered office is at Redhill Aerodrome, Kings Mill Lane, Redhill, Surrey, RH1 5JZ (the "**Supplier**")
- (3) [**CONTRACTOR**], a company incorporated in [Scotland/England and Wales/Northern Ireland] under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] (the "**Contractor**").

**WHEREAS:**

- (A) MCA and the Supplier have entered into an agreement for [*INSERT DESCRIPTION OF SERVICES*] ("**Main Contract**") as part of the delivery of MCA's aviation search and rescue capability, and aerial surveillance capability ("**UKSAR2G**").
- (B) The Supplier and the Contractor have entered into a contract (the "**Sub-contract**") whereby the Contractor shall provide [*INSERT DESCRIPTION OF [SERVICES/ASSETS]*] (the "**[[Services/Assets]]**") in connection with the delivery of UKSAR2G.
- (C) It is a condition of the Main Contract that MCA may require the Contractor to enter this Deed with MCA and the Supplier as a condition to MCA's consent to the Supplier and Contractor entering the Sub-contract.

**Now it is agreed** as follows:

**1 Warranty and undertaking**

- 1.1 The consideration for this Deed is the payment of one pound (£1.00) by each party to every other party if demanded and the mutual undertakings contained in it. In light of such consideration (receipt of which is duly acknowledged by the Contractor), the Contractor warrants and undertakes to MCA that it has complied and shall continue to comply with all the terms and obligations pursuant to or arising out of the Sub-contract on the Contractor's part to be performed and observed and shall complete the [Services/Assets] in accordance with the Sub-contract.

**2 Step-in Rights: Contractor may not terminate**

- 2.1 The Contractor shall not without first giving MCA not less than 28 days written notice (a copy of which notice the Contractor shall at the same time send to the Supplier) exercise or seek to exercise any rights it may have to:

- 2.1.1 terminate the Sub-contract;

- 2.1.2 treat the Sub-contract as having been terminated by the Supplier;
- 2.1.3 take possession of any Assets;
- 2.1.4 prevent the Supplier and/or MCA from using any Assets in connection with the delivery of UKSAR2G;
- 2.1.5 discontinue performance of any of the Services; and/or
- 2.1.6 discontinue performance of any other obligations pursuant to the Sub-contract.

### **3 Step-in Rights: MCA may step-in**

- 3.1 Without prejudice to Clause 2, if MCA serves a notice on the Contractor, copied to the Supplier, that:
  - 3.1.1 confirms that MCA or its appointee or nominee wishes to step-in to the Sub-contract; and
  - 3.1.2 complies with the requirements for MCA's notice pursuant to Clause 4.1,
  - 3.1.3 then, from the date of service of the notice, the Sub-contract shall continue in full force and effect, as if it had been entered into between the Contractor and MCA (or its appointee or nominee), to the exclusion of the Supplier.
- 3.2 The Contractor shall assume that, MCA (or its appointee or nominee) is entitled to give a notice pursuant to Clause 3.1. The Contractor shall not enquire whether MCA (or its appointee or nominee) is entitled to give that notice.
- 3.3 In complying with this Clause 3 the Contractor does not waive any breach of the Sub-contract or default pursuant to the Sub-contract by the Supplier.

### **4 Step-in Rights**

- 4.1 The Contractor acknowledges that any of the rights set out in Clause 2.1.1 to Clause 2.1.6, which it may have, shall cease if within the period of 28 days referred to in Clause 2:
  - 4.1.1 MCA gives the Contractor written notice requiring the Contractor to fulfil the terms of the Sub-contract as if MCA (or its appointee or nominee) and not the Supplier were its counterparty pursuant to the Sub-contract;
  - 4.1.2 MCA (or, to the extent applicable, its appointee or nominee) accepts liability for payment of the sums payable to the Contractor pursuant to the Sub-contract including payment of any sums outstanding at the date of a notice given pursuant to Clause 4.1.1; and
  - 4.1.3 MCA (or, to the extent applicable, its appointee or nominee) acknowledges in such notice that it is assuming all of the obligations of the Supplier pursuant to the Sub-contract, including payment of any amounts outstanding at the date of the notice or which may subsequently become due pursuant to the Sub-contract.

- 4.2 Neither MCA nor any appointee or nominee shall have any liability to the Contractor in respect of the fees and expenses of the Contractor other than where it accepts liability pursuant to Clause 4.1.
- 4.3 In the event of notice being given by MCA pursuant to Clause 4.1.1, the Sub-contract will continue in full force and effect as if no right to terminate the Sub-contract or treat it as terminated had arisen. The Contractor shall, where MCA has given notice pursuant to Clause 4.1.1, assume liability to MCA (or, to the extent applicable, its appointee or nominee) in terms of the Sub-contract in lieu of the liability to the Supplier and the Contractor undertakes to send, upon the Contractor's receipt thereof, a copy of such notice to the Supplier.
- 4.4 The Contractor shall, if so required by MCA following termination of the Sub-contract, contract direct with MCA or its appointees or nominees by novation or otherwise on the same terms, mutatis mutandis, as are contained in the Sub-contract provided that: MCA gives the Contractor written notice requiring the Contractor to do so within a period of 28 days from the date of termination of the Sub-contract.
- 4.5 The Supplier acknowledges that the Contractor in acting in accordance with Clauses 2, 3 and 4 shall not by doing so incur any liability to the Supplier.

## **5 Assignment**

- 5.1 This Deed may be assigned in whole or in part by MCA without the consent of the Contractor being required and such assignment shall be effective upon written notice thereof being given to the Contractor. No assignment of this Deed by any other party shall be permitted.
- 5.2 The Contractor agrees that it shall not at any time assert that any permitted assignee in terms of this Deed is precluded from recovering any loss resulting from any breach of this Deed by reason that such assignee is not an original party to this Deed or that no less or a different loss has been suffered by such assignee.

## **6 No waiver or variation**

- 6.1 No failure, approval, act or forbearance on the part of MCA in respect of any right of MCA pursuant to this Deed shall constitute any waiver of any right of MCA pursuant to or arising out of this Deed nor relieve the Contractor of any of its duties or obligations pursuant to or arising out of this Deed.
- 6.2 The Contractor shall not seek to modify or vary any of the obligations for which it is responsible pursuant to the Sub-contract in any respect if that modification or variation will be detrimental to MCA or affects MCA's rights or obligations pursuant to the Main Contract or this Deed.

## **7 Equivalent rights**

The liability of the Contractor pursuant to this Deed shall be no greater in extent or quantity than if MCA had been named as a party instead of the Supplier pursuant to the Sub-contract. The Contractor shall be entitled in any action or proceedings by MCA (or, to the extent applicable, its appointee or nominee) to rely on any limitation in the Sub-contract and to raise the equivalent rights in defence of liability as it would have against the Contractor pursuant to the Sub-contract (other than counterclaim,

set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).

## **8 Notices**

- 8.1 Any notice, consent or demand to be given or made by any party pursuant to this Deed (hereinafter called a "**Notice**") shall only be validly served if in writing and delivered personally or sent by pre-paid first class recorded delivery post to the following address and marked for the attention of the following person in the case of each party:

<b>Party</b>	<b>Address</b>	<b>Person</b>
MCA	[•]	[•]
The Supplier	[•]	[•]
The Contractor	[•]	[•]

Any party may by Notice to the other party/parties change its address or the title of the person for whose attention Notices are to be given or made pursuant to this Clause 8. Any such Notice shall be deemed to have been received:

- 8.1.1 if delivered personally, at the time of delivery; and
- 8.1.2 in the case of pre-paid first class recorded delivery post, on the first Business Day after the date of posting.
- 8.2 If any Notice is delivered after 5 p.m. on a Business Day, or at any time during a day which is not a Business Day, that Notice shall be deemed to have been received at 9 a.m. on the next Business Day.
- 8.3 For the purposes of this Clause 8, "**Business Day**" means any day which is not a Saturday, a Sunday or a public holiday in England. In proving service it shall be sufficient to prove that the envelope containing such Notice was properly addressed to the relevant party and either delivered personally to that address or delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter. Notices shall not be validly served if sent by e-mail.
- 8.4 The definitions of words and phrases used in this Deed shall be those set out in the Sub-contract except where expressly defined in this Deed.
- 8.5 A reference in this Deed to any Clause is, except where it is expressly stated to the contrary, a reference to a Clause of this Deed.
- 8.6 This Deed shall be governed by and construed in accordance with English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts.

8.7 Save to the extent expressly provided in this Deed no provision of this Deed is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party. No term of this Deed is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**[Executed and Delivered as a Deed** )  
for and on behalf of **MARITIME &** )  
**COASTGUARD AGENCY** acting on behalf ) .....  
of the Secretary of State for Transport

Signature

.....  
Name]

**Executed and Delivered as a Deed by** )  
**[SUPPLIER]** acting by: )  
..... )  
Director [or specify other office held]

.....  
Director /Secretary

**Executed and Delivered as a Deed by** )  
**[CONTRACTOR]** acting by: )  
..... )  
Director [or specify other office held]

.....  
Director /Secretary

**Schedule 28**

**Processing Personal Data**

1 This Schedule shall be completed by the Authority prior to the first Services Commencement Date and shall be updated as required during the Term by the Authority. In completing and updating this Schedule, the Authority may take account of the view of the Supplier, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

2 [REDACTED] Authority's Data Protection Officer are

3 [REDACTED] of the DFT's Data Protection Officer are:

4 The contact details of the Supplier's Data Protection Officer are:

4.1 [REDACTED]

5 The Processor shall comply with the requirements in the table below and any further written instructions with respect to processing by the Controller.

Description	Details
Identity of Controller for each Category of Personal Data	<b>The Authority or the Coordinating Authority is the Controller and the Supplier is the Processor of the categories of Personal Data specified in this table</b>  The Parties acknowledge that in accordance with Clauses 26.1 to 26.15 ( <i>Protection of Personal Data</i> ) and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the Personal Data specified in this table.
Duration of the processing	For the Supplier, for the duration of this Agreement.
Nature and purposes of the processing	This Agreement shall entail processing of Personal Data by the Supplier in the delivery of the Service. Personal Data shall be gathered and processed for emergency response in order to facilitate and coordinate rescues, to preserve life and, where needed, to provide effective clinical care. Such Personal Data shall be gathered at the point the Authority receives a request for assistance using one of its Aircraft from the first informant, whether a



	<p>member of the public, industry, another emergency service or the NHS. Personal Data collected shall be both on the first informant themselves, where possible on the casualty and on staff from other emergency services and the NHS. Personal Data may also be gathered by the crew and the Authority in the course of completing a mission, either from other emergency services, third parties, the casualty themselves or via the use of aircraft sensors collecting full motion video and still imagery, which may include facial images and audio recordings as well as vessel details and AIS location. Crew intercom and communications shall also be recorded throughout a mission and shall be retained. Mobile phone signals will also be used to locate missing individuals, both identified individuals known to have gone missing or large numbers of unidentified individuals following suspected to be missing and in distress.</p> <p>Personal Data shall also be gathered in support of the Authority's regulatory enforcement activities and in support of the regulatory and law enforcement activities of its other government stakeholders. The data will be gathered in the course of planned reconnaissance patrols conducted for the purpose of "general observation" where aircraft will survey all activity within a given area. Patrols shall include:</p> <ul style="list-style-type: none"> <li>i. Pollution detection;</li> <li>ii. Compliance with safety regulations;</li> <li>iii. Fisheries protection; and</li> <li>iv. Maritime law enforcement.</li> </ul> <p>Personal Data collected and processed will include vessel details, including port letter number and location data, and.</p>
<p>Type of Personal Data</p>	<p>Information on those requesting Coastguard Assistance such as name and contact details. This could be members of the public, industry, other emergency services or other government departments. For example, request forms for medical transfers shall typically be completed by the requesting doctor and shall include their contact details.</p> <p>Information on casualties requiring rescue shall typically include their age and any medical conditions or injuries. Occupation might also be inadvertently captured depending on the casualty's circumstances e.g., a merchant sailor requiring removal from a vessel.</p> <p>Information on hospital patients requiring transfer, typically including age, date of birth, medical condition, weight, sex, reason for transfer, patient number and sometimes name and contact details depending on the requesting authority.</p>

	<p>Video and stills image captured may include facial imagery.</p> <p>Vessel location data (AIS) will link a vessel's name to a specific location and can be combined with ownership details.</p> <p>The location of missing individuals using their mobile phone signal. This can either be a specific identified individual known to be missing and whose phone number is known in advance, or many unidentified people suspected to be missing and in distress in a particular geographic area when their phone number is not known in advance. Communication with individuals by messaging or voice in that area will be possible, whether their phone number is known in advance or not.</p> <p>Radar to identify objects in the water (not personal data in and of itself but can be combined with other data such as vessel names obtained later visually).</p> <p>Location of casualties, casualty vessels and aircraft using</p> <ul style="list-style-type: none"> <li>• AIS;</li> <li>• PLB;</li> <li>• SARTs;</li> <li>• EPIRB;</li> <li>• ELT; and</li> <li>• VMS.</li> </ul>
<p>Categories of Data Subject</p>	<p>Categories of Data Subject may include:</p> <ul style="list-style-type: none"> <li>• people who call for Coastguard Assistance;</li> <li>• people who need the Coastguard Assistance;</li> <li>• individuals working in the commercial fishing and merchant shipping industries, including crew and vessel owners;</li> <li>• staff of other government partners, including other emergency services, the NHS and other government departments;</li> <li>• Authority personnel (recordings and transcripts of mission communications);</li> </ul> <p>Supplier personnel (recordings and transcripts of in mission communications)</p>
<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</p>	<p>The categories of Personal Data specified in this table shall be retained and stored by the Supplier in accordance with Clause 23 (<i>Authority Data, Coordinating Authority Data and Security Requirements</i>) and Schedule 4 (<i>Security Management</i>) until, unless otherwise agreed in writing, the expiry or termination of this Agreement at</p>

<p>preserve that type of data</p>	<p>which time the Supplier shall cease to use such Personal Data, shall return it to the Authority and shall securely destroy it.</p> <p>In accordance with Schedule 4 (<i>Security Management</i>), the Supplier and any Sub-contractors handling the categories of Personal Data specified in this table shall securely erase it and destroy all media that has held it at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Authority. The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of the categories of Personal Data specified in this table:</p> <p>(a) securely destroys the categories of Personal Data specified in this table only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and</p> <p>(b) are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority.</p>
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## **Schedule 29**

### **Environmental Requirements**

#### **1 Environmental Requirements**

- 1.1 The Supplier shall comply with all applicable environmental laws and regulations in force in relation to this Agreement.
- 1.2 The Supplier warrants that it has obtained ISO 14001 certification or any equivalent standard which is generally recognised as having replaced it from an accredited body and shall comply with and maintain certification requirements throughout the Term.
- 1.3 The Supplier shall to the reasonable satisfaction of the Authority:
- 1.3.1 prioritise waste management in accordance with the following order of preference:
    - (i) Prevention – by using less material in design and manufacture. Keeping products for longer;
    - (ii) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
    - (iii) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
    - (iv) Other recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and
    - (v) Disposal - Landfill and incineration without energy recovery;
  - 1.3.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Agreement is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law;
  - 1.3.3 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Agreement do so in accordance with the Law and the Supplier shall undertake reasonable checks on a regular basis to ensure this; and
  - 1.3.4 inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated pursuant to this Agreement is revoked and in circumstances where a permit or exemption to carry or send waste generated pursuant to this Agreement is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency.
- 1.4 The Supplier shall use all reasonable endeavours to avoid the use of paper and card in carrying out its obligations pursuant to this Agreement. Where despite using all

reasonable endeavours such use is unavoidable, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of 100% recycled content and wherever it is feasible to do so, is used on both sides.

- 1.5 The Supplier shall not:
  - 1.5.1 provide to the Authority any Goods which comprise wholly or partly any of the items set out in Annex 1 of this Schedule; and/or
  - 1.5.2 use anything which comprises wholly or partly any of the items set out in Annex 1 of this Schedule to provide the Services pursuant to this Agreement unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of the Services.
- 1.6 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance with the provisions of this Schedule within 14 days of such request.

## Annex 1

### List of Items

<b>The following consumer single use plastics:</b>	<b>Catering</b> <ul style="list-style-type: none"><li>a. Single use sachets e.g. coffee pods, sauce sachets, milk sachets</li><li>b. Take away cutlery</li><li>c. Take away boxes and plates</li><li>d. Cups made wholly or partially of plastic</li><li>e. Straws</li><li>f. Stirrers</li><li>g. Water bottles</li></ul>
	<b>Facilities</b> <ul style="list-style-type: none"><li>a. Single use containers e.g. hand soap, cleaning products</li><li>b. Wipes containing plastic</li></ul>
	<b>Office Supplies</b> <ul style="list-style-type: none"><li>a. Plastic envelopes</li><li>b. Plastic wrapping for brochures</li><li>c. Paper or card which is bleached with chlorine</li></ul>
	<b>Packaging</b> <ul style="list-style-type: none"><li>a. Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products.</li><li>b. Single use carrier bags</li></ul>

**Schedule 30**

Social Value Plan

Schedule 30 has been redacted

