

**NHS ENGLAND ON BEHALF OF SOUTH CENTRAL AND WEST COMMISSIONING SUPPORT
UNIT**

- and -

THE PHOENIX PARTNERSHIP (LEEDS) LTD

CONTRACT

**for the provision Clinical Digital Solutions (CDS) for the Integrated Health Economy
Framework**

Document Version Control	
Document Type	Call off Terms and Conditions
Document name	Clinical Digital Solutions (CDS) for the Integrated Health Economy Framework
Version	V5
Effective from	12/09/2021
Owner	NHS London Procurement Partnership
Superseded documents	V1.0

CONTENTS

Clause	Page No
1. KEY PROVISIONS	6
2. INTERPRETATIONS	6
3. THE SERVICES	7
4. DUE DILIGENCE	8
5. STANDARDS AND REGULATIONS	8
6. CHARGES	8
7. CONTRACT MANAGEMENT AND REPORTING	9
8. AMENDMENTS	9
9. COMMUNICATIONS	9
10. TERM AND TERMINATION	9
11. CONSEQUENCES OF TERMINATION AND EXPIRY	11
12. WARRANTIES	12
13. DEALING WITH CLAIMS	14
14. LIMITATION OF LIABILITY	15
15. CHARGES	16
16. CONTRACT MANAGEMENT AND COOPERATION	16
17. CONFIDENTIALITY	16
18. FREEDOM OF INFORMATION	18
19. PUBLICITY	19
20. DISPUTE RESOLUTION	19
21. INSURANCE	20
22. RECOVERY OF SUMS DUE	20
23. STATUTORY REQUIREMENTS	20
24. STATUTORY INVALIDITY	21
25. DISCRIMINATION AND EQUALITY	21
26. BRIBERY AND PROHIBITED ACTS	21
27. CORPORATE SOCIAL RESPONSIBILITY	22
28. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT	22
29. TRANSFER AND SUB-CONTRACTING	23
30. RIGHTS OF THIRD PARTIES	25
31. ACCESS TO CUSTOMER PREMISES	25
32. AUDIT	26

33. FORCE MAJEURE26

34. LEGISLATIVE CHANGE26

35. WAIVER AND CUMULATIVE REMEDIES.....27

36. LAW AND JURISDICTION27

37. ENTIRE AGREEMENT27

38. RELATIONSHIP OF THE PARTIES27

39. FURTHER CUSTOMER OBLIGATIONS28

40. GUARANTEE28

41. SERVICE TRANSFER PLAN (STP)28

42. GOODS28

43. INSTALLATION WORKS.....29

44. PROVISION OF CONSUMABLES30

45. ACCEPTANCE TESTS.....31

46. PACKAGING, IDENTIFICATION AND END OF USE.....31

47. SUSTAINABLE DEVELOPMENT32

48. ELECTRONIC SERVICES INFORMATION.....32

49. CUSTOMER DATA AND DATA PROTECTION33

50. SECURITY REQUIREMENTS AND SERVICE PROVIDER PERSONNEL
VETTING33

51. MAINTENANCE OF THE ICT ENVIRONMENT.....34

52. INTELLECTUAL PROPERTY RIGHTS, INDEMNITY AND [ESCROW]35

53. STAFFING AND TUPE38

54. MANAGED SERVICES42

55. ASSUMED CONTRACTS AND CUSTOMER FURNISHED ITEMS43

56. SERVICE PROVISION43

57. BENCHMARKING44

58. CONTINUOUS IMPROVEMENT.....45

ANNEX A TO THE CONTRACT CLAUSES

CONTRACT SCHEDULES

- 2-1. Interpretations
- 2-2. Service Specification
- 2-3. Performance Management
- 2-4. Charges and Invoicing
- 2-5. Implementation Plan
- 2-6. Acceptance Procedures
- 2-7. Contract, Service Management and Reporting
- 2-8. Contract Change Procedure
- 2-9. Sub-Contractors
- 2-10. Dispute Resolution Procedure
- 2-11. Commercially Sensitive Information
- 2-12. Exit and Service Transfer Arrangements
- 2-13. Standards and Regulations
- 2-14. Title and Risk
- 2-15. Liquidated Damages
- 2-16. BCDR Plan
- 2-17. Security Management Plan
- 2-18. Software and Software Licence Terms
- 2-19. Insurances
- 2-20. Staffing
- 2-21. Pensions
- 2-22. Processing, Personal Data and Data Subjects
- 2-23. Extra Call-off Terms and Conditions
- 2-24. Further Customer Obligations
- 2-25. Managed Services – Set-up Services
- 2-26. Managed Services -Benchmarking

THIS CONTRACT is made on the 1st day of December 2023

BETWEEN

- (1) **NHS South Central and West Commissioning Support Until of Omega House, 112 Southampton Road, Eastleigh, SO50 5PB, (the Customer); and**
- (2) **The Phoenix Partnership (Leeds) Ltd**, a company registered in England and Wales under company number 4077829 and whose registered office is at TPP House, 129 Low Lane, Leeds, LS18 5PX (the **Service Provider**).

WHEREAS

- a) Guy's and St Thomas' NHS Foundation Trust, acting on behalf of the Customer (the "**Authority**") selected the Service Provider to the framework as a potential provider of Electronic Health and Care Record Solutions.
- b) The Service Provider undertook to provide the Services on the terms set out in a framework agreement dated 1 April 2021 (the **Framework Agreement**).
- c) The Authority established the Framework Agreement in consultation with and for the benefit of the Customers (as defined in the Framework Agreement).
- d) The Authority made a direct award to the Service Provider to supply the Services in accordance with the terms of the Framework Agreement (the **Contract**).
- e) The Authority made a Direct Award for SystmOne.
- f) The Unique Reference Number (URN) for this Contract is CDS10197 and this must be used on all Purchase Orders and Invoices.

IT IS AGREED AS FOLLOWS:**1. Key Provisions****Standard Key Provisions****1.1 Application of the key provisions:**

- 1.1.1 The standard key provisions detailed at Clauses 2 to 38 shall apply to this Contract.
- 1.1.2 The optional provisions detailed at Clauses 39 to 53 shall only apply to this Contract where they have been checked and information completed or relevant Schedules incorporated as applicable.
- 1.1.3 Extra provisions shall only apply to this Contract where such provisions are set out in Schedule 2-23.

2. INTERPRETATIONS**2.1 As used in this Contract:**

- 2.1.1 the terms and expressions set out in Schedule 2-1(Interpretations) shall have the meanings ascribed therein;
 - 2.1.2 the masculine includes the feminine and the neuter;
 - 2.1.3 the singular includes the plural and vice versa;
 - 2.1.4 the recitals shall form part of and be incorporated into this Contract; and
 - 2.1.5 the words "include", "includes", "including" "for example", "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation".
- 2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 2.3 A reference to any document other than as specified in Clause 2.2 shall be construed as a reference to the document as at the Effective Date.
- 2.4 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 2.5 References to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made.
- 2.6 Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 (Interpretations) shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 2.7 Without prejudice to Clause 5.2, in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the

Schedules, the following order of precedence shall prevail:

- 2.7.1 the Clauses, including Annex A thereto;
- 2.7.2 Schedule 2-1 (Interpretations);
- 2.7.3 the remaining Schedules excluding Schedule [2-18] (Software and Software Licence Terms); and
- 2.7.4 Schedule 2-18 (Software and Software Licence Terms).

3. THE SERVICES

- 3.1 This Contract governs the overall relationship of the Service Provider and the Customer with respect to the provision of the Services.
- 3.2 Nothing in this Contract shall create an exclusive relationship between the Service Provider and the Customer for the provision of the Services.
- 3.3 The Customer appoints the Service Provider and the Service Provider agrees to provide the Services:
 - 3.3.1 promptly and in any event within any time limits as may be set out in this Contract;
 - 3.3.2 in accordance with all other provisions of this Contract;
 - 3.3.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in this Contract;
 - 3.3.4 in accordance with the Law and with Guidance;
 - 3.3.5 in accordance with Good Industry Practice;
 - 3.3.6 in accordance with the Policies; and
 - 3.3.7 in a professional and courteous manner.
- 3.4 In complying with its obligations under this Contract, the Service Provider shall, and shall procure that all Service Provider Personnel shall, act in accordance with the NHS values as set out in the NHS Constitution from time to time.
- 3.5 The Service Provider shall provide the Services in accordance with the provisions of this Contract including:
 - 3.5.1 any agreed timetable if incorporated; and
 - 3.5.2 the relevant Service Levels at all times throughout the Term of this Contract.
- 3.6 Not Used
- 3.7 Any failure to meet any Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of Schedule 2-3 (Performance Management).
- 3.8 The Service Provider acknowledges the critical nature of the Services to the Customer's primary functions and therefore, without prejudice to any rights of the Customer or obligations to the Service Provider, should the Service Provider become aware of any breach in its provision or performance of the Services, the Service Provider shall, where such breach is capable of remedy, use all reasonable endeavours to remedy the same as soon as is

reasonably practicable and shall not delay such remedy pending determination of where liability for such remedy lies.

Responsibility for Awards:

- 3.9 The Service Provider acknowledges that each Customer is independently responsible for the conduct of its award of Contracts under the Framework Agreement and for this Contract and any other Contracts it may enter into pursuant to the Framework Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - 3.9.1 the conduct of any Customers in relation to the Framework Agreement or any Contract; or
 - 3.9.2 the performance or non-performance of any Contracts between the Service Provider and any Customer entered into pursuant to the Framework Agreement.

4. DUE DILIGENCE

- 4.1 The Service Provider acknowledges that it has:
 - 4.1.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 4.1.2 raised all relevant due diligence questions with the Customer before the Effective Date; and
 - 4.1.3 entered into this Contract in reliance on its own due diligence alone.
- 4.2 Where there is an Operating Environment:
 - 4.2.1 the Customer acknowledges that it has responsibility for ensuring that the Operating Environment is suitable for the provision of the Service Provider System. The Service Provider shall provide the Warranted Environment Specification which sets out the necessary requirements to run the Service Provider Solution.
 - 4.2.2 Not Used
- 4.3 Any disputes relating to due diligence shall be resolved in accordance with Clause 20.

5. STANDARDS AND REGULATIONS

- 5.1 The Service Provider shall provide the Services and meet its responsibilities and obligations hereunder in material accordance with the Standards and Regulations.
- 5.2 The Service Provider shall discuss with the Customer any conflict that the Service Provider reasonably believes that there is or will be between any of the Standards and Regulations or between any of the Standards and Regulations and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.

6. CHARGES

- 6.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

7. CONTRACT MANAGEMENT AND REPORTING

- 7.1 The Service Provider and the Customer shall comply with their respective contract management obligations set out in Schedule 2-7 (Contract, Service Management and Reporting).

8. AMENDMENTS

- 8.1 No amendment to the provisions of this Contract, other than a variation of any Sub-Contractors in accordance with Clause 29.5, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-8 (Contract Change Procedure).

9. COMMUNICATIONS

- 9.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless it is signed and made in writing by or on behalf of the party sending such communication.
- 9.2 Except as otherwise expressly provided, any notice or other communication whatsoever which either the Customer or the Service Provider is required or authorised by this Contract to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause 9.3. If that letter is not returned as being undelivered, that notice or communication shall be deemed, for the purposes of this Contract, to have been given or made two (2) Working Days after dispatch by the sender.
- 9.3 For the purposes of Clause 9.2 the address of each party shall be:

For the Customer:

[REDACTED]

CHIS Associate Director

Omega House, 112 Southampton Road, Eastleigh, SO50 5PB

[REDACTED]

For the Service Provider:

TPP Commercial Team, TPP House, 129 Low Lane, Leeds, LS18 5PX.

[REDACTED]

10. TERM AND TERMINATION

- 10.1 This Contract shall take effect on the Effective Date and shall expire on sixth anniversary of the Service Commencement Date (1st December 2023) unless terminated earlier pursuant to Clause 10.2 or extended at the discretion of the Customer as enacted via the Change Control Procedure (Schedule 2-8). The Customer is entitled to extend the Contract by up to a further 3 years in total.
- 10.2 The Customer may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, in the following circumstances:
- 10.2.1 if the Service Provider is in breach of any material obligation under this Contract provided that if the breach is capable of remedy, the Customer may only terminate this Contract under this Clause 10.2.1 if the Service Provider has failed to remedy such breach within thirty (30) Days of receipt of a notice from the Customer to do so;

- 10.2.2 a Persistent Breach has occurred;
 - 10.2.3 if there is an Insolvency Event;
 - 10.2.4 if there is a change of control of the Service Provider within the meaning of Section 1124 of the Corporation Tax Act 2010;
 - 10.2.5 if the Service Provider purports to assign, Sub-contract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of the requirements of this Contract; or
 - 10.2.6 the Service Provider commits a material breach of its obligation to notify the Customer of any Occasion of Tax Non-Compliance or the Service Provider fails to provide details of proposed mitigating factors as required in the reasonable opinion of the Authority are acceptable.
- 10.3 If there has been a material deterioration in the financial circumstances of the Service Provider and/or any third party guaranteeing the obligations of the Service Provider under this Contract and/or any material Sub-Contractor of the Service Provider when compared to any information provided to and/or assessed by the Customer as part of any procurement process or other due diligence leading to the award of this Contract to the Service Provider or the entering into a Sub-contract by the Service Provider, the following process shall apply:
- 10.3.1 the Customer may (but shall not be obliged to) give notice to the Service Provider requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Customer may require within a reasonable time period as specified in such notice; and
 - 10.3.2 a failure or refusal by the Service Provider to provide the financial or other security and/or assurances requested in accordance with Clause 10.3 and in accordance with any reasonable timescales specified in any such notice issued by the Customer shall be deemed a breach of this Contract by the Service Provider and shall be referred to and resolved in accordance with the Dispute Resolution Procedure.
- 10.4 In order that the Customer may act reasonably in exercising its discretion in accordance with Clause 10.3, the Service Provider shall provide the Customer with such reasonable and proportionate up-to-date financial or other information relating to the Service Provider or any relevant third party entity upon request.
- 10.5 The Customer may terminate this Contract by issuing a Notice to terminate to the Service Provider where:
- 10.5.1 the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure;
 - 10.5.2 the Customer has become aware that the Service Provider should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
 - 10.5.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of obligations under European law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU; or
 - 10.5.4 there has been a failure by the Service Provider and/or one its Sub-Contractors to comply with legal obligations in the fields of environmental, social or labour Law. Where the failure to comply with legal obligations in the fields of environmental, social

or labour Law is a failure by one of the Service Provider's Sub-Contractors, the Customer may request the replacement of such Sub-Contractor and the Service Provider shall comply with such request as an alternative to the Customer terminating this Contract under this Clause 10.5.4.

- 10.6 If the Customer novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Customer to terminate this Contract in accordance with Clause 10.5.2 to Clause 10.5.4 shall be deemed mutual termination rights and the Service Provider may terminate this Contract by issuing a Termination Notice to the entity assuming the position of the Customer if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Customer.

Termination for convenience ☐ (only applicable to the Contract if this box is checked and the requirements listed)

NOT USED

11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the Service Provider shall continue to provide the Services until the date of expiry or termination (howsoever arising) of this Contract (or any part thereof) or such other date as required under this Clause 11 and the provisions of Schedule 2-12 (Exit and Service Transfer Arrangements).
- 11.2 The Customer shall require the Service Provider to destroy or return the following within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract:
- 11.2.1 any data (including (if any) Customer Data) and Customer Confidential Information in the Service Provider's possession, power or control, (and shall, at the request of the Customer, certify that it does not retain any such Customer Confidential Information) either in its then current format or in a format nominated by the Customer (in which event the Customer will reimburse the Service Provider's pre-agreed and reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that the Service Provider may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Contract or such period as is necessary for such compliance;
 - 11.2.2 all Goods owned by the Customer and all Customer Furnished Items in the Service Provider's or any third party's (including Sub-Contractors) possession and/or control; and
 - 11.2.3 any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising).
- 11.3 The Customer and the Service Provider shall comply with the Exit and Service Transfer Arrangements set out in Schedule 2-12 (Exit and Service Transfer Arrangements).
- 11.4 The Customer shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract (or until the date on which the Service Provider fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data or information arising from the Services from the Service Provider.
- 11.5 The provision of:
- 11.5.1 Schedules 2-1 (Interpretation), 2-10 (Dispute Resolution Procedure), 2-12 (Exit and

Service Transfer Arrangements) and schedule 2-22 (Processing, Personal Data and Data Subjects); and

- 11.5.2 any other Clause or Schedule of this Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry,

shall survive the termination (howsoever arising) or expiry of this Contract.

12. WARRANTIES

12.1 The Service Provider warrants that:

- 12.1.1 it has full capacity and authority to enter into and to perform each Contract;
- 12.1.2 this Contract is executed by its authorised representative;
- 12.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
- 12.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;
- 12.1.5 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under this Contract;
- 12.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
- 12.1.7 it is not impacted by an Insolvency Event;
- 12.1.8 all statements made and documents submitted as part of the procurement of the Services are and remain true and accurate;
- 12.1.9 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 12.1.10 it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 12.1.11 unless otherwise set out in the Specification and Tender and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 12.1.12 it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender and any notices or instructions given to the Service Provider by the Customer and/or any competent body, as relevant to the provision of the Services and the Service Provider's access to the Premises and Sites in accordance with this Contract;
- 12.1.13 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Customer of any health and safety hazard which has arisen, or

the Service Provider is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;

- 12.1.14 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification and shall remain the Service Provider's risk and responsibility at all times;
- 12.1.15 unless otherwise confirmed by the Customer in writing (to include, without limitation, as part of the Specification and Tender), it will ensure that any products purchased by the Service Provider partially or wholly for the purposes of providing the Services will comply with requirements five (5) to eight (8), as set out at Annex 1 of the Cabinet Office Procurement Policy Note - Implementing Article 6 of the Energy Efficiency Directive (Action Note 07/14 3rd June 2014), to the extent such requirements apply to the relevant products being purchased;
- 12.1.16 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Customer's information and communications technology systems;
- 12.1.17 it shall: (i) comply with all relevant Law and Guidance and shall use Good Industry Practice to ensure that there is no slavery or human trafficking in its supply chains; and (ii) notify the Customer immediately if it becomes aware of any actual or suspected incidents of slavery or human trafficking in its supply chains;
- 12.1.18 it shall at all times conduct its business in a manner that is consistent with its anti-slavery Policy and shall provide to the Authority any reports or other information that the Customer may request as evidence of the Service Provider's compliance with this Clause 12.1.18 and/or as may be requested or otherwise required by the Customer in accordance with its anti-slavery Policy;
- 12.1.19 it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this Contract, the provision of the Services, any complaints and any Disputes at the frequency, in the timeframes and in the format as requested by the Customer from time to time (acting reasonably);
- 12.1.20 all information included within the Service Provider's responses to any documents issued by the Customer as part of the procurement relating to the award of this Contract (to include, without limitation, as referred to in the Specification and Tender and/or Request for Drawdown Services) and all accompanying materials is accurate;
- 12.1.21 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 12.1.22 it has satisfied itself as to the nature and extent of the risks assumed by it under this Contract and has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it.
- 12.2 The warranties in Clause 12.1 are repeated each time the Service Provider provides deliverables under the Contract.
- 12.3 The Service Provider indemnifies the Customer against non-payment by the Service Provider of any tax or National Insurance.
- 12.4 All claims indemnified under this Contract must use Clause 13.

- 12.5 If the Service Provider becomes aware of a warranty that becomes untrue or misleading, it must immediately notify the Customer.
- 12.6 Not Used
- 12.7 The Service Provider has reviewed any intended use of the service/solution specified in Schedule 2-2 (Service Specification). The Service Provider represents and warrants that:
- 12.7.1 the service/solution is fit for the purposes described in Schedule 2-2 (Service Specification) and will continue to be fit for such purposes following any updates to the service/solution;
 - 12.7.2 if the service/solution is a medical device, the Service Provider holds and shall continue to hold all approvals and certificates necessary to enable the service/solution to be placed on the market or put into service in the United Kingdom as a medical device;
 - 12.7.3 the service/solution will at all times comply with all Medical Devices Laws; and
 - 12.7.4 the service/solution incorporates encryption technology of commercially reasonable and appropriate standards, consistent with such intended use and any other use which is intended by the Service Provider.
- 12.8 For clarity, the Service Provider confirms that:
- 12.8.1 the service/solution will comply with Medical Devices Laws when used in accordance with any intended use of the service/solution specified in Schedule 2-2 (Service Specification); and
 - 12.8.2 the intended use of the service/solution described in Schedule 2-2 (Service Specification) is within the scope of the intended use for which the service/solution is authorised as a medical device.
- 12.9 The Service Provider will provide the Customer with evidence of its compliance with Clauses 12.7 and 12.8 as and when requested by the Customer.

13. **DEALING WITH CLAIMS**

- 13.1 The provisions of this Clause 13 shall be subject to any provisions of applicable Law or guidance or directions of any applicable Regulatory Body which are contrary to procedures identified below.
- 13.2 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 13.3 At the Indemnifier's cost the Beneficiary must both:
- 13.3.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
 - 13.3.2 give the Indemnifier reasonable assistance with the claim if requested.
- 13.4 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 13.5 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in away that doesn't damage the Beneficiary's reputation.

- 13.6 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 13.7 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.
- 13.8 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
- 13.8.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or
- 13.8.2 the amount the Indemnifier paid the Beneficiary for the Claim.

14. LIMITATION OF LIABILITY

- 14.1 Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than 125% of the Estimated Yearly Charges unless specified in the Request for Drawdown Services.
- 14.2 No Party is liable to the other for:
- 14.2.1 any indirect, special or consequential Losses; or
- 14.2.2 loss of profits, turnover, revenue, savings, business, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 14.3 Notwithstanding Clause 14.1 and Clause 14.2 neither Party limits or excludes any of the following:
- 14.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
- 14.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; or
- 14.3.3 any liability that cannot be excluded or limited by Law.
- 14.4 Notwithstanding Clauses 14.1 and 14.2.1, the Service Provider does not limit or exclude its liability for any indemnity given under Clauses 52 (Intellectual Property Rights) 53 (Staffing and TUPE), , 2-20 (Staffing), 2-21 (Pensions), of this Contract.
- 14.5 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 14.6 Not Used
- 14.7 Not Used
- 14.8 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Clause 14 be held to be invalid under any Law it shall to that extent be deemed omitted but if either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

15. CHARGES

- 15.1 The Service Provider and the Customer shall comply with their respective obligations set out in Schedule 2-4 (Charges and Invoicing).

16. CONTRACT MANAGEMENT AND COOPERATION

- 16.1 The Service Provider and the Customer shall comply with their respective contract management obligations set out in Schedule 2-7 (Contract, Service Management and Reporting).

17. CONFIDENTIALITY

- 17.1 Except to the extent set out in this Clause 17 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:
- 17.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - 17.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 17.2 Clause 17.1 shall not apply to the extent that:
- 17.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 18;
 - 17.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 17.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 17.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 17.2.5 it is independently developed without access to the other party's Confidential Information.
- 17.3 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- 17.4 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the Customer Confidential Information received otherwise than for the purposes of this Contract.
- 17.5 The Service Provider may only disclose the Customer Confidential Information to the Service Provider Personnel who need to know the information, and shall ensure that such Service Provider Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any Default, act or omission of any Service Provider Personnel causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases.
- 17.6 To the fullest extent permitted by its own obligations of confidentiality to any Service Provider

Personnel, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Service Provider is taking appropriate steps to comply with this Clause 17, including copies of any written communications to and/or from Service Provider Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Service Provider Personnel in connection with obligations as to confidentiality.

- 17.7 At the written request of the Customer, the Service Provider shall procure that those members of the Service Provider Personnel who have access to patient identifiable data sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 17.8 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider Confidential Information in relation to the use or provision of the Services:
- 17.8.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- 17.8.2 to any consultant, contractor or other person engaged by the Customer;
- 17.8.3 to any third party to the extent the Customer considers it reasonably necessary so as to enable or assist such persons in providing services to the Customer (or bid for the provision of such services) in relation to the Services (including any interoperability with the Services) (provided that Confidential Information shall not to be disclosed pursuant to this sub-clause to a contractor competitor without the prior written consent of the Service Provider such consent not to be unreasonably withheld or delayed);
- 17.8.4 for the purpose of the examination and certification of the Customer's accounts; or
- 17.8.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 17.9 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to Clause 17.8 is made aware of the Customer's obligations of confidentiality.
- 17.10 Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 17.11 Without prejudice to any Confidential Information, the Customer and the Service Provider acknowledge that any Confidential Information originating from:
- 17.11.1 the Customer, its employees, servants or agents is the property of the Customer; and
- 17.11.2 the Service Provider, its servants, agents or the Service Provider Personnel is the property of the Service Provider.
- 17.12 Not Used.

18. FREEDOM OF INFORMATION

- 18.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 18.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 18.2.1 transfer to the Customer all Requests for Information that it receives as soon as reasonably possible and in any event within two (2) Working Days of receiving a Request for Information;
 - 18.2.2 provide the Customer with a copy of all relevant Information in its possession or power in the form that the Customer requires within three (3) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA.
- 18.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA. The parties however agree that the Contract as a whole is not confidential in itself. The Service Provider in accordance with 18.3.2 therefore provisionally consents for the Customer to publish this Contract in its entirety, (but with any information which is exempt from disclosure such as Commercially Sensitive Information and in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 18.3.1 The Customer may consult with the Service Provider to inform its decisions regarding any redactions but the Customer shall have the final decision in its absolute discretion.
 - 18.3.2 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.
- 18.4 In no event shall the Service Provider respond directly to a Request for Information under this Contract unless expressly authorised to do so by the Customer.
- 18.5 The Service Provider acknowledges that (notwithstanding the provisions of this Clause 18) the Customer may be obliged under the FOIA to disclose information concerning the Service Provider or the Services:
- 18.5.1 in certain circumstances without consulting the Service Provider; or
 - 18.5.2 following consultation with the Service Provider and having taken their views into account,
- provided always that where Clause 18.5.1 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 18.6 The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.7 The Service Provider acknowledges that the Commercially Sensitive Information listed in

Schedule 2-11 (Commercially Sensitive Information) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 18.5.

19. PUBLICITY

19.1 The Service Provider shall not:

19.1.1 make any press announcements, discuss with any third parties or publicise this Contract or its contents in any way; or

19.1.2 use the Customer's name or brand in any promotion or marketing, without the Customer's prior written consent. The Service Provider shall ensure the observance of the provisions of this Clause 19 by all Service Provider Personnel.

19.2 If the Service Provider receives any requests from the media or otherwise regarding this Contract (or its contents) or any related issues, it will refer all such requests to the Customer.

19.3 The Customer shall be entitled to make any press announcements or publicise this Contract in accordance with any legal obligation upon the Customer, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

19.4 The Service Provider acknowledges to the Customer that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods and/or services of the Service Provider (including the Services) and the Service Provider agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

20. DISPUTE RESOLUTION

20.1 Subject to the provisions of Clause 20.2 and save for disputes arising:

20.1.1 under Clause 26 (which shall be dealt with in accordance with Clause 26; and

20.1.2 under Clause 26.2.3 (which shall be dealt with in accordance with Clause 26.2.3); any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 20, and neither the Customer nor the Service Provider shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the Courts in connection with any such dispute, until the procedures set out in this Clause 20 have been exhausted and unless agreed otherwise, the parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the dispute.

20.2 Clause 20.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the Customer or the Service Provider from applying for injunctive relief in the case of:

20.2.1 breach or threatened breach of confidentiality;

20.2.2 infringement or threatened infringement of its Intellectual Property Rights; or

20.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Customer or the Service Provider to liability.

20.3 All disputes between the Customer and the Service Provider arising out of or relating to this Contract shall first be referred by the CHIS Associate Director or the Service Provider's Account Manager to the other for resolution.

20.4 If any dispute cannot be resolved by the representatives nominated under Clause 20.3 within

a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.3, that dispute shall then be referred to the Customer's CHIS Director and Service Provider's Senior Account Manager for resolution.

20.5 If any dispute cannot be resolved by the representatives nominated under Clause 20.4 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 20.4, that dispute shall:

20.5.1 first be further referred to mediation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); and thereafter

20.5.2 if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure); or

20.5.3 if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure).

21. INSURANCE

21.1 During the Term and for a period of six (6) years following expiry or termination (howsoever arising) of this Contract, the Service Provider shall take out and maintain or procure the maintenance of the minimum insurances set out in Schedule 2-19 (Insurances).

21.2 The Service Provider shall produce to the Customer's CHIS Associate Director, within five (5) Working Days of request, brokers letters for all insurance policies referred to in Clause 21.1 or such other evidence as agreed between the Customer and the Service Provider that will confirm the extent of the cover given by those policies.

21.3 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Contract. It shall be the responsibility of the Service Provider to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in Clause 14.

22. RECOVERY OF SUMS DUE

22.1 The Customer shall be permitted to deduct and withhold from any sum due to the Service Provider under this Contract any sum of money due from the Service Provider under:

22.1.1 this Contract;

22.1.2 any other agreement between the Service Provider and the Customer; or

22.1.3 any other agreement between the Service Provider and the Customer;

provided that the terms of such other agreement provide for sums of money due from the Service Provider under that agreement to be recovered by way of a deduction from sums of money due to the Service Provider under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

23. STATUTORY REQUIREMENTS

23.1 The Service Provider shall notify the Customer of all statutory provisions and approved safety standards applicable to the Services and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.

23.2 The Service Provider shall, and shall ensure that its Sub-Contractors and the Service Provider Personnel, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws relating to health and safety, which may

apply to those involved in the performance of this Contract.

- 23.3 Where the Service Provider is required by Medical Devices Laws to undertake a regulatory action, such as a recall, field safety notice or field safety corrective action, ("Regulatory Requirement") in respect of the service/solution, the Service Provider shall:

23.3.1 promptly (taking into consideration the potential impact of the continued use of the service/solution on patients and the Customer) notify the Customer in writing of the Regulatory Requirement together with the circumstances giving rise to the Regulatory Requirement;

23.3.2 where practicable consult with the Customer as to the most efficient method of executing the Regulatory Requirement in respect of the service/solution and use its best endeavours to minimise the impact on the Customer and patients of the Regulatory Requirement; and

23.3.3 indemnify and keep the Customer indemnified against, any direct loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Customer as a result of such Regulatory Requirement.

24. STATUTORY INVALIDITY

- 24.1 The Customer and the Service Provider expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular Law, it shall to that extent be deemed to be omitted and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated.

- 24.2 If either the Customer or the Service Provider becomes liable for loss or damage as a result of the omission in Clause 24.1 (which would have otherwise been excluded) such liability shall be subject to the other limitations and provisions set out herein.

25. DISCRIMINATION AND EQUALITY

- 25.1 The Service Provider shall not, and shall procure that the Service Provider Personnel and Sub-Contractors do not, unlawfully discriminate within the meaning and scope of all applicable equality Law and must follow all applicable equality Law when they perform their obligations under the Contract, including:

25.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

25.1.2 any other requirements and instructions which the Customer reasonably imposes related to equality Law.

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

26. BRIBERY AND PROHIBITED ACTS

- 26.1 The Service Provider warrants and represents that:

26.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following (**Prohibited Acts**):

- 26.1.1.1 offered, given or agreed to give any officer or employee of the Customer any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Customer or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Customer; or
 - 26.1.1.2 in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Customer; and
 - 26.1.1.3 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 26.2 If the Service Provider or the Service Provider Personnel (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Service Provider in relation to this or any other agreement with the Customer:
 - 26.2.1 the Customer shall be entitled:
 - 26.2.1.1 to terminate this Contract and recover from the Service Provider the amount of any loss resulting from the termination;
 - 26.2.1.2 to recover from the Service Provider the amount or value of any gift, consideration or commission concerned; and
 - 26.2.1.3 to recover from the Service Provider any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
 - 26.2.2 any termination under Clause 26.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Customer; and
 - 26.2.3 notwithstanding Clause 35 any Dispute relating to:
 - 26.2.3.1 the interpretation of this Clause 26; or
 - 26.2.3.2 the amount or value of any gift, consideration or commission,shall be determined by the Customer, acting reasonably, and the decision shall be final and conclusive.

27. CORPORATE SOCIAL RESPONSIBILITY

- 27.1 The Service Provider acknowledges that the Customer may have additional requirements in relation to corporate social responsibility. The Customer expects that the Service Provider and its Sub-Contractors will comply with such corporate social responsibility requirements as the Customer may notify to the Service Provider from time to time.

28. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

Modern Slavery Helpline means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

28.1 The Service Provider:

- 28.1.1 shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
- 28.1.2 shall not require any Service Provider Personnel to lodge deposits or identify papers with the employer and shall be free to leave their employer after reasonable notice;
- 28.1.3 warrants and represents that it has not been convicted of any slavery or human tracking offenses anywhere around the world.
- 28.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human tracking offenses anywhere around the world.
- 28.1.5 shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human tracking offenses anywhere around the world.
- 28.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- 28.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 28.1.8 shall, on request, provide information published by the Service Provider on the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 28.1.9 shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
- 28.1.10 shall not use or allow child or slave labour to be used by its Sub-Contractors;
- 28.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to Customer and Modern Slavery Helpline.

29. TRANSFER AND SUB-CONTRACTING

- 29.1 This Contract is personal to the Service Provider. Subject to the provisions of Clause 29.2, the Service Provider shall not assign, novate, sub-contract or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the Customer (such approval not to be unreasonably delayed or withheld). The approval referenced in clause 29.2 of the Terms shall be deemed to have been granted by the Customer for any existing Sub-Suppliers on the Effective Date.
- 29.2 Notwithstanding the provisions of Clause 29.1, to the extent permitted by Schedule 2-9 (Sub-Contractors) the Service Provider shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-9 (Sub-Contractors), however this shall not affect the Service Provider's obligations to the Customer and any liabilities under this Contract.
- 29.3 In selecting, appointing and managing Sub-Contractors, the Service Provider shall comply with the procedures specified in Schedule 2-9 (Sub-Contractors).
- 29.4 In the event that the Service Provider, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the Service Provider shall ensure that a

term is included in the Sub-Contract which requires the Service Provider to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.

- 29.5 In the event that the Service Provider wishes to add any new sub-contractors or remove any Sub-Contractor, the Service Provider shall notify the Customer's Contract Manager in writing, which for the purposes of this notification may be via email, of such proposed additions to or removals. In the case of additions to the list of Sub-Contractors, such notification will contain confirmation that the selection and appointment of the Sub-Contractor is in accordance with the provisions of paragraph 3 of Schedule 2-9 (Sub-Contractors). In the case of removals from the list of Sub-Contractors, such notification will contain information on how the Service Provider proposes to ensure continuity in the provision of the Services. The Service Provider may not use any new sub-contractor or remove any Sub-Contractor until the Customer has confirmed in writing its agreement to such addition or removal. The Contract Change Procedure shall not apply to the addition of any new sub-contractors or removal of any Sub-Contractors unless stated otherwise by the Customer.
- 29.6 The Customer reserves the right to veto or withdraw the approval of the use of any Sub-Contractor or partner in the provision of the Services. Such right shall not be exercised unreasonably, frivolously or vexatiously.
- 29.7 In the event that the Customer exercises its right pursuant to Clause 29.6 the Service Provider shall use all reasonable endeavours to maintain the provision of the Services and the Customer and the Service Provider shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract.
- 29.8 The use of Sub-Contractors and any subsequent approval of other sub-contractors by the Customer under this Clause 29 shall not in any way constitute any form of recommendation by the Customer of the Sub-Contractor, whether implied or otherwise.
- 29.9 Subject to the provisions of Clause 29.11, the Customer shall be entitled to:
- 29.9.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
- 29.9.2 novate this Contract and any associated third party licences to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Customer. If this transfer increases the burden of the Service Provider's obligations under this Contract the Service Provider shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Contract Change Procedure.
- 29.10 Subject to the provisions of Clause 29.11, any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.
- 29.11 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 29.9.2, or if a successor body which is not a Contracting Authority becomes the Customer pursuant to Clause 29.10 (in the remainder of this Clause 27 both such bodies are referred to as the Transferee):
- 29.11.1 the rights of termination of the Customer in Clause 10 shall be available, mutatis mutandis, to the Service Provider in the event of the bankruptcy, insolvency, Default or Persistent Breach of the Transferee;
- 29.11.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights

and obligations under this Contract or any part thereof with the previous consent in writing of the Service Provider; and

29.11.3 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the Customer and the Service Provider in accordance with Clause 8:

Clause 17.8.1 references to "Crown Body" shall be deleted and in Schedule 2-1, delete the definition of "Crown Body".

29.12 Unless otherwise stated to the contrary, any reference to the Service Provider in this Contract shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

29.13 The Customer shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the Service Provider.

30. RIGHTS OF THIRD PARTIES

30.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. The consent of any person other than the Customer (or the Service Provider, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause 30.1.

30.2 Except as provided in Clause 30.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 30.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

30.3 This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.

31. ACCESS TO CUSTOMER PREMISES

31.1 Any Customer Premises (including temporary buildings) made available to the Service Provider, its Sub-Contractors and the Service Provider Personnel by the Customer in connection with this Contract shall be made available free of charge solely for the purpose of performing this Contract. The Service Provider shall have the use of the Customer Premises as licensee and shall vacate the same upon the expiry or termination (howsoever arising) of this Contract.

31.2 The Customer shall be responsible for maintaining the internal and external structure of the Customer Premises and the security of the Customer Premises in accordance with its security procedures. The Service Provider shall comply with all health and safety and reasonable security requirements of the Customer while on the Customer Premises and shall procure that all of its Sub-Contractors and the Service Provider Personnel shall likewise comply with such requirements. The Customer shall provide the Service Provider with copies of its security procedures upon request and shall afford the Service Provider an opportunity to inspect its physical security arrangements.

31.3 The Service Provider shall notify the Customer as soon as practicable of any health and safety hazards at the Customer Premises of which it becomes aware. The Service Provider will draw these hazards to the attention of the Service Provider Personnel and will instruct those persons in connection with any necessary associated safety measures.

- 31.4 The Customer may refuse admission to any Customer Premises and/or direct the Service Provider to end the involvement in the provision of the Services of any of the Service Provider Personnel whom the Customer believes represents a security risk or does not have the required levels of training and expertise or where the Customer has other grounds for doing so. The decision of the Customer shall be final.

32. AUDIT

- 32.1 The Service Provider shall keep and maintain until seven years (7) after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

32.1.1 all expenditure reimbursed by the Customer; and

32.1.2 all payments made by the Customer.

- 32.2 The Service Provider shall on request afford the Customer or the Customer's representatives such access to those records as may be required in connection with the Contract.

- 32.3 The Customer, acting by itself or through an agent, shall have the right during the Term and for a period of twelve (12) months thereafter, to assess compliance by the Service Provider and/or its Sub-Contractors for the following purposes:

32.3.1 to verify the accuracy of the Charges and any other amounts payable by the Customer under this Contract

32.3.2 to verify the Service Provider and Sub-Contractor's compliance with this Contract and applicable Law; and

32.3.3 for any other lawful or required purpose.

- 32.4 Except where an audit is imposed on the Customer by a regulatory body, the Law or where the Customer has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Contract, the Customer may not conduct an audit of the Service Provider or of the same Sub-Contractor more than once per Year.

33. FORCE MAJEURE

- 33.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate this Contract by giving 10 Days' written notice to the Affected Party.

34. LEGISLATIVE CHANGE

- 34.1 The Service Provider shall bear the cost of ensuring that the Services comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by a reasonably diligent service provider similar to the Service Provider as at the Effective Date.
- 34.2 Where such reasonably unforeseeable amendments are necessary, the Customer and the Service Provider shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the Service Provider for such additional costs as are both reasonably and necessarily incurred by the Service Provider in accommodating such amendments.

35. WAIVER AND CUMULATIVE REMEDIES

- 35.1 The failure of the Service Provider or the Customer to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.
- 35.2 A waiver of any Default shall not constitute a waiver of any other Default. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 35.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 9.
- 35.4 The rights and remedies provided by this Contract are cumulative and, unless a right or remedy of the Customer is expressed to be an exclusive right or remedy, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies provided at law or in equity or otherwise under this Contract.

36. LAW AND JURISDICTION

- 36.1 Subject to the provisions of Clause 20, the Customer and the Service Provider accept the exclusive jurisdiction of the English Courts and agree that this Contract is to be governed by and construed according to English law.
- 36.2 Not Used
- 36.3 This Contract shall be binding upon the Customer and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

37. ENTIRE AGREEMENT

- 37.1 This Contract, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the Customer and the Service Provider relating to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 37.2 The parties acknowledge that the Solution may have corresponding terms of use which may, amongst other things, set out the purposes for which the Solution may be used (which may be presented to End Users on downloading or otherwise accessing the App) (the "Solution TOU"). To the extent of any conflict or inconsistency between this Contract and the Solution TOU, the terms of this Contract shall prevail. The Solution TOU shall in no event create additional liabilities, restrictions or obligations on the Customer or End Users. This Clause 37.2 shall apply regardless of any statement to the contrary in the Solution TOU.
- 37.3 Each of the parties acknowledge and agree that in entering into this Contract and the documents referred to in it and attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 37.4 Nothing in this Clause 37 shall operate to exclude any liability for fraud or fraudulent misrepresentation.

38. RELATIONSHIP OF THE PARTIES

- 38.1 Nothing in this Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

39. FURTHER CUSTOMER OBLIGATIONS

☐ (only applicable to the Contract if this box is checked and requirements listed)

Not Used

- 39.1 The Customer's Obligations are set out in Schedule 2-23.

40. GUARANTEE

☐ (only applicable to the Contract if this box is checked)

Not Used

- 40.1 Promptly following the execution of this Contract, the Service Provider shall, if it has not already delivered an executed deed of guarantee to the Customer, deliver the executed deed of guarantee to the Customer as required by the procurement process followed by the Customer. Failure to comply with this Clause shall be an irremediable breach of this Contract.

41. SERVICE TRANSFER PLAN (STP)

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

- 41.1 The Service Provider shall prepare and keep updated during the Term a STP for review by the Customer no later than three (3) months prior to the Effective Date and at regular intervals thereafter as specified in Schedule 2-12 (Exit and Service Transfer Arrangements).

42. GOODS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 42.1 The Service Provider shall not replace any parts or components of the Goods used for the provision of the Service with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by a Customer or a replacement service provider, prior to the expiry or termination (howsoever arising) of this Contract.
- 42.2 Where there is fault in any Goods which cannot be repaired, the Service Provider shall ensure and procure that any data (including Customer Data) residing in any Goods is removed prior to such Goods being returned to any manufacturer or other third party for disposal.
- 42.3 The Service Provider hereby grants the Customer, its agents and employees an irrevocable licence at any time (on reasonable notice, escorted by Service Provider Personnel and in normal working hours) to enter any Service Provider premises where any Goods owned by the Customer and/or Customer Furnished Items are kept to inspect or remove them.
- 42.4 The Service Provider shall store such Goods and Customer Furnished Items separately from all other goods of the Service Provider or any third party and in such a way that they remain readily identifiable as the Customer's property.

- 42.5 The Service Provider shall ensure and procure that it obtains equivalent rights of inspection and removal where any Goods owned by the Customer and/or Customer Furnished Items are kept at third party (including any Sub-Contractor) premises and that such Goods and Customer Furnished Items are kept separately from all other goods of that third party (including any Sub-Contractor) and in such a way that they remain readily identifiable as the Customer's property.
- 42.6 If the Customer determines in its sole discretion that any of the termination events specified in Clause 10 have occurred or are likely to occur, the Customer may, following reasonable notice, either itself or via its agent, during working hours and escorted by Service Provider Personnel enter any premises of the Service Provider or any third party (including any Sub-Contractor) where Goods owned by the Customer and/or Customer Furnished Items are kept to remove such Goods and/or Customer Furnished Items.
- 42.7 Delivery of Goods
- 42.7.1 The Service Provider shall deliver the Goods and provide the Goods at the location(s) at the time(s) and date(s) and to the Customer's delivery requirements as specified to the Service Provider.
- 42.7.2 The point of delivery of the Goods shall be when an authorised agent of the Customer gives written acknowledgement that the Goods have been removed from the transporting vehicle and deposited at the Customer's delivery address.
- 42.7.3 Delivery shall include the unloading, stacking and/or installation of the Goods by the Service Provider Personnel, Sub-Contractors, suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct, and they shall at all times comply with the reasonable requirements of the Customer's security procedures.
- 42.7.4 Access to the Customer Premises and any labour and equipment that may be provided by the Customer in connection with delivery of the Goods shall be provided without acceptance by the Customer of any liability whatsoever and the Service Provider shall indemnify the Customer against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Service Provider Personnel, Sub-Contractors, suppliers or carriers.
- 42.7.5 The Customer shall be under no obligation to accept or pay for any Goods delivered until the date of delivery.
- 42.8 Acceptance
- 42.8.1 The Acceptance Procedures for the Goods are set out in Schedule 2-6 (Acceptance Procedures).
- 42.9 Title and Risk
- 42.9.1 The ownership and passing of title and risk from one party to another is specified in Schedule 2-14 (Title and Risk).

43. INSTALLATION WORKS

☐ (only applicable to the Contract if this box is checked and the requirements are listed) Not Used

- 43.1 Where the Customer has specified Installation Works in the Request for Drawdown Services (or elsewhere in this Contract) and the Service Provider reasonably believes it has completed the Installation Works it shall notify the Customer in writing. Following receipt of such notice, the Customer shall inspect the Installation Works in accordance with the Acceptance Test Criteria and the provisions of Schedule 2-6.
- 43.2 Throughout the Term, the Service Provider shall have at all times all licences, approvals and consents necessary to enable the Service Provider and the Service Provider Personnel to carry out the Installation Works.

44. PROVISION OF CONSUMABLES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 44.1 The Service Provider shall supply all Consumables required for the operation of the Equipment during the Term in accordance with the relevant provisions of the Specification.
- 44.2 The Service Provider shall deliver the Consumables in accordance with any delivery timescales, delivery dates, and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Specification or as otherwise agreed with the Customer in writing. Except where installation of the Consumables forms part of the Services, delivery shall be completed when the Consumables have been unloaded at the relevant Premises and such delivery has been received by a duly authorised agent, employee or location representative of the Customer. The Customer shall procure that such duly authorised agent, employee or location representative of the Customer is at the delivery Premises at the agreed delivery date and times in order to accept such delivery. Where the installation of the Consumables forms part of the Services, delivery shall be completed when such Consumables have been installed at the Premises in accordance with any requirements set out in the Specification.
- 44.3 Part deliveries of Consumables and/or deliveries of Consumables outside of the agreed delivery times/dates may be rejected unless the Customer has previously agreed in writing to accept such deliveries.
- 44.4 Unless otherwise set out in the Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for all carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Consumables to the delivery Premises and unloading of the Consumables at the Premises. Without limitation to the foregoing provision of this Clause 44.4, unless otherwise stated in the Specification or otherwise agreed with the Customer in writing, the Service Provider shall be responsible for obtaining all export and import licences for the Consumables and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Consumables supplied from outside the United Kingdom, the Service Provider shall ensure that accurate information is provided to the Customer as to the country of origin of the Consumables and shall be liable to the Customer for any additional duties or taxes for which the Customer may be accountable should the country of origin prove to be different from that advised by the Customer.
- 44.5 All third party carriers engaged to deliver the Consumables shall at no time be an agent of the Customer and accordingly the Service Provider shall be liable to the Customer for the acts and omissions of all third party carriers engaged to deliver the Consumables to the Customer.
- 44.6 Unless otherwise set out in the Specification, risk in the Consumables shall pass to the Customer when the Consumables are delivered as specified in this Contract.

- 44.7 Unless otherwise set out in the Specification, ownership of the Consumables shall pass to the Customer on delivery, payment or part payment, whichever is the first to occur.
- 44.8 Consumables found to be damaged or otherwise not in accordance with the requirements of this Contract may be rejected by the Customer by written notice to the Service Provider within a reasonable period of time of the Customer becoming aware (or should have become aware of the same had it acted reasonably) that the Consumables were damaged or otherwise not in accordance with this Contract ("Rejected Consumables"). Unless otherwise set out in the Specification, the Service Provider shall collect the Rejected Consumables at the Service Provider's risk and expense within five (5) Working Days of issue of written notice from the Customer rejecting the Consumables and, without additional charge, promptly (and in any event within five (5) Working Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Consumables to the Customer. Unless otherwise set out in the Specification, risk and title in respect of any Rejected Consumables shall pass to the Service Provider on the earlier of (i) their collection by the Service Provider in accordance with this Clause 44.8 of this or (ii) the latest date such Rejected Consumables should have been collected by the Service Provider in accordance with this Clause 44.8. The whole of any delivery may be rejected if a reasonable sample of the Consumables taken indiscriminately from that delivery is found not to conform in any material respects to the requirements of the Contract.

45. ACCEPTANCE TESTS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 45.1 The Service Provider shall comply with the Acceptance Procedures for the Service as set out in Schedule 2-6 (Acceptance Procedure).

46. PACKAGING, IDENTIFICATION AND END OF USE

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 46.1 The Service Provider shall comply with all obligations imposed on it by Law relevant to the Equipment and Consumables in relation to packaging, identification, and obligations following end of use by the Customer.
- 46.2 Unless otherwise specified in the Specification or otherwise agreed with the Customer in writing, the Consumables shall be securely packed in trade packages of a type normally used by the Service Provider for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 46.3 Unless otherwise (a) specified in the Specification and ; (b) agreed with the Customer in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package of Consumables:
- 46.3.1 a description of the Consumables which shall include, without limitation, the weight of the Consumables where available and any order number allocated to the Consumables by the Customer and/or the Service Provider;
- 46.3.2 the quantity in the package where available;
- 46.3.3 any special directions for storage;

- 46.3.4 the expiry date of the contents where applicable;
- 46.3.5 the batch number; and
- 46.3.6 the name and address of the manufacturer of the Consumables and the Service Provider.
- 46.4 All service/solution, that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Service Provider shall label all Equipment and Consumables provided to the Customer, and the packaging of such Equipment and Consumables, to highlight environmental and safety information as required by applicable Law.
- 46.5 Unless otherwise set out in the Specification or agreed with the Customer in writing, the Service Provider shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the Customer at the Service Provider's expense or otherwise disposed of at the Customer's discretion. The Service Provider shall credit the Customer in full for any containers for which the Customer has been charged upon their collection or return.

47. SUSTAINABLE DEVELOPMENT

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

- 47.1 The Service Provider shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Service Provider shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification. Without prejudice to the generality of the foregoing, the Service Provider shall:
- 47.1.1 comply with all Policies and/or procedures and requirements set out in the Specification in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Service Provider's supply chain;
- 47.1.2 maintain relevant policy statements documenting the Service Provider's significant social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Service Provider's business operations; and
- 47.1.3 maintain plans and procedures that support the commitments made as part of the Service Provider's significant social and environmental policies. The Service Provider shall meet reasonable requests by the Customer for information evidencing the Service Provider's compliance with the provisions of this Clause 47.

48. ELECTRONIC SERVICES INFORMATION

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 48.1 Where requested by the Customer, the Service Provider shall provide the Customer the Services Information in such manner and upon such media as agreed between the Service Provider and the Customer from time to time for the sole use by the Customer.

- 48.2 The Service Provider warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Customer and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Customer following publication of the same in accordance with this Clause 48.
- 48.3 If the Services Information ceases to be complete and accurate, the Service Provider shall promptly notify the Customer in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 48.4 The Service Provider grants the Customer a perpetual, non-exclusive, royalty free licence to use the Services Information for the purpose of illustrating the range of goods and services (including, the Services) available pursuant to the Customer's contracts from time to time. Subject to Clause 48.5, no obligation to illustrate or advertise the Services Information is imposed on the Customer, as a consequence of the licence conferred by this Clause 48.4.
- 48.5 The Customer may reproduce for its sole use the Services Information provided by the Service Provider in the Customer's services catalogue from time to time which may be made available on any NHS communications networks in electronic format and/or made available on the Customer's external website and/or made available on other digital media from time to time.
- 48.6 Before any publication of the Services Information (electronic or otherwise) is made by the Customer, the Customer will submit a copy of the relevant sections of the Customer's services catalogue to the Service Provider for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Service Provider shall have no right to compel the Customer to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 48.6 or otherwise under the terms of this Contract.
- 48.7 If requested in writing by the Customer, and to the extent not already agreed as part of the Specification, the Service Provider and the Customer shall discuss and seek to agree in good faith arrangements to use any electronic trading system.

49. CUSTOMER DATA AND DATA PROTECTION

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

- 49.1 The provisions of Schedule 2.22 shall apply in respect of Customer Data and Data Protection.

50. SECURITY REQUIREMENTS AND SERVICE PROVIDER PERSONNEL VETTING

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

- 50.1 The Service Provider shall comply, and shall procure the compliance of the Service Provider Personnel, with the Security Policy and the Security Management Plan and the Service Provider shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Policy.
- 50.2 The Customer shall notify the Service Provider of any changes or proposed changes to the Security Policy.
- 50.3 If the Service Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Contract Change Note. In doing so, the Service Provider 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 Contract

Change Procedure.

- 50.4 Until and/or unless a change to the Charges is agreed by the Customer pursuant to Clause 50.3 the Service Provider shall continue to provide the Services in accordance with its existing obligations.
- 50.5 The Service Provider shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 50.6 Notwithstanding Clause 50.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to its desired operating efficiency.
- 50.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 50.6 shall be borne by the parties as follows:
- 50.7.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software supplied by the Service Provider (except where the Customer has waived the obligation set out in Clause 50.5) or the Customer Data (whilst the Customer Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and
- 50.7.2 by the Customer if the Malicious Software originates from the Customer Software (in respect of which the Customer has waived its obligation set out in Clause 50.5) or the Customer Data (whilst the Customer Data was under the control of the Customer).
- 50.8 The Service Provider shall comply with the Staff Vetting Procedures in respect of all Service Provider Personnel employed or engaged in the provision of the Services.
- 50.9 The Service Provider confirms that all Service Provider Personnel employed or engaged by the Service Provider at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 50.10 The Service Provider shall provide training on a continuing basis for all Service Provider Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Management Plan.

51. MAINTENANCE OF THE ICT ENVIRONMENT

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 51.1 If specified by the Customer in the Request for Drawdown Services (or elsewhere in this Contract), the Service Provider shall create and maintain a rolling schedule of planned maintenance to the ICT Environment (Maintenance Schedule).
- 51.2 The Service Provider shall create and maintain a rolling maintenance schedule with regard to the Service. The Service Provider shall provide to the Customer the Maintenance Schedule annually. The maintenance schedule shall be discussed and updated by the Contracting Body Project Board
- 51.3 When the Service Provider wishes to undertake such planned maintenance to the Services

(which shall be known as Permitted Maintenance) it shall ensure that it is in accordance with the Maintenance Schedule. or is as otherwise agreed in consultation with the Customer

- 51.4 The Service Provider shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- 51.5 The Service Provider shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Services.

52. INTELLECTUAL PROPERTY RIGHTS, INDEMNITY AND [ESCROW]

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

Intellectual Property Rights

- 52.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in or to the other's Pre-Existing Intellectual Property Rights. The Service Provider acknowledges that the Customer Data is the property of the Customer and the Customer hereby reserves all Intellectual Property Rights which may subsist in the Customer Data.
- 52.2 The Service Provider shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any software which is proprietary to the Customer or which is developed by or on behalf of the Service Provider under this Contract.
- 52.3 The Customer acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-18 (Software and Software Licence Terms) and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties. The Service Provider shall not do or allow to be done any act or omission which would cause the licence terms relating to the Open Source Ordered Software to be breached.
- 52.4 The Service Provider will convey to the Customer the Open Source Ordered Software and associated documentation (including technical specifications, user manuals, operating manuals, process definitions and procedures) on the applicable open source licence terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms).
- 52.5 Subject to Clause 52.6 and 52.7, all Contract Generated Intellectual Property Rights shall be proprietary to and owned by the Service Provider.
- 52.6 The Service Provider hereby grants, or shall procure the direct grant, to the Customer a perpetual, royalty free, irrevocable, non-exclusive and global licence to use, the Contract Generated Intellectual Property Rights solely to the extent and for the purposes of receiving and using the Services under this Contract.
- 52.7 Where the applicable open sourcing licensing terms set out in Annex B of Schedule 2-18 (Software and Software Licence Terms) require that relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms the Service Provider or the Customer (as applicable) shall take all steps necessary to comply with the licensing terms, including making available the source code of the Contract Generated Intellectual Property Rights where required by the applicable open source licensing terms.

- 52.8 Where the applicable open source licensing terms set out in Schedule 2-18 (Software and Software Licence Terms) do not require that any relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms, the Customer shall be entitled at its discretion either:
- 52.8.1 to take all steps necessary to place the Contract Generated Intellectual Property Rights into open source, including complying with the applicable licensing terms and making available the source code of the Contract Generated Intellectual Property Rights; or
 - 52.8.2 otherwise (in which case the Customer will licence the Service Provider to use and modify the Contract Generated Intellectual Property Rights to the extent necessary to perform its obligations under this Contract).
- 52.9 The Service Provider:
- 52.9.1 hereby grants to the Customer a licence to use the Service Provider Software on its standard licence terms (set out in Annex A to Schedule 2-18 (Software and Software Licence Terms));
 - 52.9.2 shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a licence to the Customer on the Third Party Software owner's standard licence terms (as set out in Annex B of Schedule 2-18 (Software and Software Licence Terms)); and
 - 52.9.3 hereby grants to the Customer a non-exclusive licence to copy the descriptions of the Services, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the Customer under this Clause 52.9.
- 52.10 To the extent that the Service Provider creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials, relating to the provision of the Services ("Materials") it shall provide copies of all Materials to the Customer promptly and the Service Provider hereby grants to the Customer a royalty free, irrevocable, non-exclusive licence for such term as the Customer shall require to use all and any Intellectual Property Rights in the Materials as it shall reasonably require with the ability to sub-licence the same.

IPR Indemnity

- 52.11 The Service Provider shall ensure and procure that the availability, provision and supply of the Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 52.12 The Service Provider shall at all times, during and after the Term, indemnify the Customer and keep the Customer indemnified against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 52.12.1 availability, provision or use of the Services (or any parts thereof); and
 - 52.12.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 52.13 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Services (or

any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.

- 52.14 The Customer shall promptly notify the Service Provider if any claim or demand is made or action brought against the Customer to which Clause 52.12 may apply. The Service Provider shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute and the Customer hereby agrees to grant to the Service Provider exclusive control of any such litigation and such negotiations but is required to keep the Customer fully informed with respect of any such Intellectual Property Rights claim.
- 52.15 The Customer shall at the request of the Service Provider afford to the Service Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer to which Clause 52.12 may apply or any claim or demand made or action brought against the Service Provider to which Clause 52.13 may apply. The Service Provider shall reimburse the Customer for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 52.16 Except where required by Law, the Customer shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 52.12 may apply or any claim or demand made or action brought against the Service Provider to which Clause 52.13 may apply.
- 52.17 If a claim or demand is made or action brought to which Clause 52.12, 52.13 and/or 52.14 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
- 52.17.1 modify any or all of the affected Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Services, so as to avoid the infringement or the alleged infringement, provided that:
- 52.17.1.1 the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services;
- 52.17.1.2 such substitution shall not increase the burden or costs on the Customer; and
- 52.17.1.3 such modified or substituted goods and/or services items shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
- 52.17.2 procure a licence to use the Services on terms that are reasonably acceptable to the Customer; and
- 52.17.3 in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 52.18 The provisions of Clauses 52.12 and 52.17 shall not apply insofar as any such claim or demand or action is in respect of any:
- 52.18.1 use by the Customer of the Services in combination with any item, good or service not supplied or approved by the Service Provider (or its Sub-Contractors) where such use of the Services directly gives rise to the claim, demand or action; or

52.18.2 modification carried out by or on behalf of the Customer to the Services provided under this Contract if such modification is not authorised by the Service Provider (or its Sub-Contractors) in writing; or

52.18.3 use by the Customer of the Services in a manner not reasonably to be inferred from the specification or requirements of the Customer.

52.19 If the Service Provider elects to modify the Services or to supply substitute goods and/or services pursuant to Clause 52.17.1 or to procure a licence under Clause 52.17.2 and this has not avoided any claim, demand or action for infringement or alleged infringement, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity in Clause 52.12, the Service Provider shall be liable for the value of the additional costs incurred in implementing and maintaining replacement goods and/or services and shall have no further liability in respect of the said claim, demand or action.

52.20 Clauses 52.12 and 52.17 set out the entire financial liability of the Service Provider with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder. This shall not affect the Service Provider's financial liability for other Defaults or causes of action that may arise hereunder.

52.21 The Customer warrants that the Service Provider's use of any third party item supplied directly by the Customer in accordance with any instructions given by the Customer in connection with the use of such item shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

Escrow

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

52.22 The Service Provider:

52.22.1 shall place the source code of SystmOne software in escrow with the [REDACTED] within one (1) month from the Effective Day on the basis of the standard agreement or on such other terms as the Customer, the Service Provider and the escrow agent shall agree;

52.22.2 shall ensure that the software placed in escrow shall include material modifications, developments, updates, patches, enhancements or other modifications to the software from time to time;

52.22.3 hereby grants the Customer a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the source code and object code versions of the software placed in escrow. However, the foregoing licence shall only become effective if the Customer becomes entitled to obtain access to the source code version of that software pursuant to the escrow arrangement referred to in Clause 52.22.1 and the licence shall be subject to any restrictions contained therein in respect of the object code version of the software provided that such restrictions shall not detract from the rights granted under this Clause 52.22; and

52.22.4 the Customer hereby agree that both parties shall each pay their respective fees set out in any escrow agreement entered into pursuant to Clause 52.22.1.

53. STAFFING AND TUPE

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

Application of TUPE at the commencement of the provision of Services

- 53.1 The Parties agree that at the commencement of the provision of Services by the Service Provider TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Customer or a Third Party to the Service Provider.
- 53.2 If any person who is an employee of the Customer or a Third Party claims or it is determined that their contract of employment has been transferred from the Customer or third party to the Service Provider or a Sub-Contractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
- 53.2.1 the Service Provider will, within seven (7) days of becoming aware of that fact, give notice in writing to the Customer;
- 53.2.2 the Customer or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Service Provider;
- 53.2.2.1 if such offer of employment is accepted, the Service Provider or a Sub-Contractor shall immediately release the person from their employment;
- 53.2.2.2 if after that period specified in Clause 53.2.1 has elapsed, no offer of employment has been made by the Customer or Third Party, or such offer has been made by the Customer or Third Party but not accepted within a reasonable time, the Service Provider or Sub-Contractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person and shall (where relevant) be bound to apply Fair Deal for Staff Pensions in respect of any such person in accordance with the requirements of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (January 2018).

Staff information and the application of TUPE at the end of the Contract

- 53.3 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Service Provider is aware of the proposed termination of the Contract, the Service Provider shall, within twenty eight (28) days of receiving a written request from the Customer and to the extent permitted by Law, supply to the Customer and keep updated all information required by the Customer as to the terms and conditions of employment and employment history of any Service Provider Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Service Provider shall warrant such information is full, complete and accurate.
- 53.4 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Service Provider shall or shall procure that any Sub-Contractor shall provide a final list to the Successor and/or the Customer, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Service Provider or Sub-Contractor expects will transfer to the Successor or the Customer and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 53.5 If the Service Provider shall, in the reasonable opinion of the Customer, deliberately not comply with its obligations under Clauses 53.3 and 53.4, the Customer may withhold payment under Clause 6 of this Contract.

- 53.6 The Service Provider shall be liable to the Customer for, and shall indemnify and keep the Customer indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Service Provider is required to provide under Clauses 53.3 and 53.4 of this Contract.
- 53.7 Subject to Clauses 53.8 and 53.9 of this Contract, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Service Provider shall not, and shall procure that any Sub-Contractor shall not, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:
- 53.7.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Service Provider Personnel;
 - 53.7.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Service Provider Personnel;
 - 53.7.3 replace any of the Service Provider Personnel or increase the total number of employees providing the Services;
 - 53.7.4 deploy any person other than the Service Provider Personnel to perform the Services;
 - 53.7.5 terminate or give notice to terminate the employment or arrangements of any of the Service Provider Personnel;
 - 53.7.6 increase the proportion of working time spent on the Services by any of the Service Provider Personnel; or
 - 53.7.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Service Provider Personnel.
- 53.8 Clause 53.7 shall not prevent the Service Provider or any Sub-Contractor from taking any of the steps prohibited in that Clause in circumstances where the Service Provider or Sub-Contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 53.9 Where the obligations on the Service Provider under Clause 53 are subject to the Data Protection Legislation, the Service Provider will, and shall procure that any Sub-Contractor will, use its best endeavours to seek the consent of the Service Provider Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 53.10 Having as appropriate gained permission from any Sub-Contractor, the Service Provider hereby permits the Customer to disclose information about the Service Provider Personnel to any Interested Party provided that the Customer informs the Interested Party in writing of the confidential nature of the information.
- 53.11 The Parties agree that where a Successor or the Customer provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Service Provider or Sub-Contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE, the Cabinet Office Statement and Fair Deal for Staff Pensions apply then Clause 53.13 to Clause 53.16 and

(where relevant) the requirements of Clause 1.15 of Part D of Schedule 7 of the NHS Terms and Conditions for the Provision of Services (Contract Version) (December 2016) shall apply.

- 53.12 If on the termination or at the end of the Contract TUPE does not apply, then all Employee Liabilities and any other liabilities in relation to the Service Provider Personnel shall remain with the Service Provider or Sub-Contractor as appropriate. The Service Provider will, and shall procure that any Sub-Contractor shall, indemnify and keep indemnified the Customer in relation to any Employee Liabilities arising out of or in connection with any allegation or claim raised by any Service Provider Personnel.
- 53.13 In accordance with TUPE, and any other policy or arrangement applicable, the Service Provider shall, and will procure that any Sub-Contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 53.14 The Service Provider will and shall procure that any Sub-Contractor will on or before any Subsequent Transfer Date:
- 53.14.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- 53.14.2 account to the proper Customer for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- 53.14.3 pay any Successor or the Customer, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
- 53.14.4 pay any Successor or the Customer, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
- 53.14.5 subject to any legal requirement, provide to the Successor or the Customer, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Service Provider shall for itself and any Sub-Contractor warrant that such records are accurate and up to date.
- 53.15 The Service Provider will and shall procure that any Sub-Contractor will indemnify and keep indemnified the Customer and/or a Successor in relation to any Employee Liabilities arising out of or in connection with any claim arising from:
- 53.15.1 the Service Provider's or Sub-Contractor's failure to perform and discharge its obligations under Clause 53.14;
- 53.15.2 any act or omission by the Service Provider or Sub-Contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
- 53.15.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Customer, as appropriate;

- 53.15.4 any emoluments payable to a person employed or engaged by the Service Provider or Sub-Contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
- 53.15.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Customer, as appropriate, has failed to continue a benefit provided by the Service Provider or Sub-Contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Customer, as appropriate, to provide an identical benefit but where the Successor or Customer, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
- 53.15.6 any act or omission of the Service Provider or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Customer's failure to comply with regulation 13(4) of TUPE.
- 53.16 The Service Provider will, or shall procure that any Sub-Contractor will, on request by the Customer provide a written and legally binding indemnity in the same terms as set out in Clause 53.15 to any Successor in relation to any Employee Liabilities arising up to and including the Subsequent Transfer Date.
- 53.17 The Service Provider will indemnify and keep indemnified the Customer and/or any Successor in respect of any Employee Liabilities arising from any act or omission of the Service Provider or Sub-Contractor in relation to any other Service Provider Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 53.18 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Customer or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 53.18.1 the Customer will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Service Provider;
- 53.18.2 the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within twenty eight (28) days of the notification by the Customer or Successor;
- 53.18.3 if such offer of employment is accepted, the Customer will, or shall procure that the Successor will, immediately release the person from their employment; and
- 53.18.4 if after the period in Clause 53.18.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Customer will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

54. MANAGED SERVICES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

- 54.1 The Service Provider shall perform the Set-up Services in accordance with the timetable set out in Schedule 2-24.
- 54.2 When the Service Provider considers that the Managed Services are ready for activation it shall so notify the Customer. Within five Working Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Managed Services Specification. If the Managed Services fail in any material respect to conform with the Managed Services Specification, the Customer shall give the Service Provider a detailed description of any such non-conformance (**Error**) in writing, within the five Working Day review period.
- 54.3 The Service Provider shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Managed Services to the Customer. The provisions of Clause 54.4 and this Clause 54.3 shall then apply again, up to three additional times. If the Service Provider is unable to correct the Error after three attempts, either party may terminate this Contract with immediate effect by giving written notice to the other party, without further liability to the other in respect of the Error or failure to provide the Managed Services in accordance with this Contract.
- 54.4 If the Managed Services are found to conform with the Managed Services Specification or if the Customer does not provide any written comments within the five Working Day review period described in Clause 54.1, the Managed Services shall be deemed accepted as from the date of the notification or expiry of the five Working Day review period (in each case the Managed Services Acceptance Date).
- 54.5 The Customer shall, as from the Managed Services Acceptance Date, transfer the Assets in accordance with Schedule 2-25.

55. ASSUMED CONTRACTS AND CUSTOMER FURNISHED ITEMS – NOT USED

- 55.1 With effect from the Managed Services Acceptance Date the Customer shall:
- 55.1.1 transfer the Customer Furnished Items to the Service Provider in accordance with Schedule 2-24; and
 - 55.1.2 subject to Clause 55.2, transfer the benefit of the Assumed Contracts to the Service Provider provided, in each such case, that the Service Provider hereby accepts and undertakes the related burden.
- 55.2 The Customer shall use reasonable endeavours to assign, novate or transfer each of the Assumed Contracts to the Service Provider with effect from the Managed Service Acceptance Date. If any consent of any third party is required for the assignment, novation or transfer of an Assumed Contract and has not been obtained at, or before, the Acceptance Date, the Customer and the Service Provider shall each use all reasonable endeavours to obtain that consent as soon as possible after the Managed Service Acceptance Date. Unless or until any Assumed Contract is assigned, novated or transferred, or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution which may include the Service Provider finding an alternative source of supply and/or the Customer holding the benefit of the relevant Assumed Contract as agent for the Service Provider.

56. SERVICE PROVISION

- 56.1 The Service Provider shall provide the Services from the Services Acceptance Date until expiry or termination of this Contract for any reason.
- 56.2 The Service Levels shall apply with effect from the start of the first complete month

commencing after the Services Acceptance Date.

56.3 The Customer shall not store, distribute or transmit through the Services any material that:

56.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

56.3.2 facilitates illegal activity;

56.3.3 depicts sexually explicit images; and/or

56.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.

56.4 The Customer shall remain responsible for the use of the Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

56.5 [The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Service Provider in writing. This includes informing the Service Provider promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Service Provider shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).]

56.6 Not Used .

56.7 The Service Provider reserves the right to:

56.7.1 modify the Service Provider's System, its network, system configurations or routing configuration; or

56.7.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,

provided that this has no adverse effect on the Service Provider's obligations under this Contract and its provision of the Services or the Service Levels. If such changes will have an adverse effect, the Service Provider shall notify the Customer and the parties shall follow the Contract Change Procedure.

57. BENCHMARKING – NOT USED

57.1 The Customer may, by written notice, require a Benchmark Review of the Managed Services in accordance with the provisions of Schedule 2-25. The first Benchmark Review may not take place until at least [18] months after the Managed Service Acceptance Date and each subsequent Benchmark Review must be at least [12] months after the previous one.

57.2 Subject to Clause 57.4, if any Benchmark Review determines that the Fees do not represent Good Value (as defined in Schedule 2-25), the Service Provider shall, within [three months] of completion of the Benchmark Review, make a proposal for a new solution, with Charges representing Good Value in accordance with the recommendations of the Benchmarking under paragraph 5.10 of Schedule 2-25, and any related modifications to the Specification for Managed Services and the Service Levels.

57.3 On receipt of the proposal from the Service Provider under Clause 57.1 the Customer shall have the option to:

57.3.1 accept the new proposal in which case the parties shall record the change; or

- 57.3.2 reject the proposal and elect to continue to receive the Managed Services on the existing basis; or
- 57.3.3 [reject the proposal and terminate this Contract on [three months'] notice in writing to the Service Provider without cost other than the Fees up to the date of such termination.]
- 57.4 If the Service Provider reasonably believes the Benchmarker has not complied with the provisions of Schedule 2-25 in any material respect, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Service Provider may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

58. CONTINUOUS IMPROVEMENT

- 58.1 The Service Provider shall, at its own cost and expense, submit a report to the Customer within 20 Working Days following a request from the Customer's First Point of Contact identifying the emergence of new and evolving relevant technologies or process changes in the IT, telecommunications or data centre field relevant to the Managed Services. The request should not occur more than once annually following the anniversary of the Managed Services Acceptance Date. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or process.
- 58.2 If the Customer wishes to incorporate any improvement identified by the Service Provider under Clause 58.1, relating to the Services the Customer shall send the Service Provider a change request and the parties shall:

58.2.1 Develop a plan for the implementation and testing of the improvement for the approval of the Customer; and

58.2.2 Implement the improvement in accordance with the provisions of the plan approved by the Customer, and

58.2.3 Where appropriate agree an applicable percentage share of any such cost saving to be shared with the Service Provider.

<div>For and on behalf of the Customer*</div> <div></div> <div>Full Name: <div></div></div> <div>Job Title/Role: Director of Financial Control</div> <div>Name:</div> <div>Date Signed: 19 March 2024</div> <div>Title:</div>	<div>For and on behalf of the Service Provider*</div> <div></div> <div>Full Name: <div></div></div> <div>Job Title/Role: Commercial Manager</div> <div>Name:</div> <div>Date Signed: 14/03/2024</div> <div>Title:</div>
---	---

Date:

Date:

SCHEDULE 2-1**INTERPRETATIONS**

Acceptance Date	has the meaning ascribed to it in paragraph 2.6 of Schedule 2-6 (Acceptance Procedure).
Acceptance Procedures	means the procedure of that name as specified in Schedule 2-6 (Acceptance Procedures).
Acceptance Test	means a test to be conducted in accordance with the provisions of Schedule 2-6 (Acceptance Procedure) and Acceptance Tests shall be construed accordingly.
Acceptance Test Criteria	means the test criteria specified in Schedule 2-6 (Acceptance Procedures).
Acceptance Test Period	means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-6 (Acceptance Procedures).
Acquired Rights Directive	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended.
Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event.
Affiliate	means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly are controlled by, or are under common control with the Service Provider or its Parent Company.
Assumed Contracts	means contracts that the Service Provider identifies as part of the Set-up Services and that will be subject to the obligations of Clause 55 .
Authority	has the meaning ascribed to it in recital a) of this Contract.
Availability	<p>means when the Service Provider System and the Services are accessible and can be utilised by End Users and "Available" shall be construed accordingly.</p> <p>For the avoidance of doubt, a Service Provider System will not be held to be Unavailable in circumstances where End Users are not able to access the relevant solution (or part thereof) as a result of performance issues which are outside of the boundary of the relevant solution and/or which relate to services which are outside of the Service Provider's responsibility (e.g. networks, other systems to which the Service Provider System interfaces such as national services e.g. Spine services).</p>

	<p>"Unavailable" shall be construed when the whole user base of the Service Provider Solution receives no responses at all from the central server, no matter which functions are trying to be performed.</p>
Availability Reports	means reports submitted by the Service Provider to the Customer as specified in Schedule 2-7 (Contract, Service Management and Reporting).
BACS	means the Banks Automated Clearing System.
BCDR Plan	means the plan consisting of general business continuity and disaster recovery principles, the Business Continuity Plan and Disaster Recovery Plan as further described in paragraph 1.2 of Schedule 2-16 (BCDR Plan).
Benchmarker	has the meaning given in Schedule 2-25.
Benchmarking Report	means the report produced by the Benchmarker following a Benchmark Review.
Benchmark Review	means any benchmarking of the Charges as conducted by the Benchmarker under Schedule 2-25.
Beneficiary	means a Party having (or claiming to have) the benefit of an indemnity under this Contract.
Breach of Security	means in accordance with the security requirements in Schedule 2-17 (Security Management Plan) and the Security Policy, the occurrence of (a) any unauthorised access to or use of the Services, the Customer Premises, the Sites, the Service Provider System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Service Provider in connection with this Contract; and/or (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Service Provider in connection with this Contract.
Business As Usual Date	has the meaning set out in paragraph 3.1.1 of Schedule 2-4 (Charges and Invoicing).
Business Continuity Plan	has the meaning set out in paragraph 1.2.2 of Schedule 2-16 (BCDR Plan).
Cabinet Office Statement	means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector 2000 (January 2000 as revised in November 2007 and December 2013 and as may be further amended from time to time) and the annex to the Cabinet Office Statement entitled "A Fair Deal for Pensions: staff transfer from central government" (October 2013 and as may be further amended from time to time) and, where applicable, any related guidance notes issued by HM Treasury (as amended from time to time).

CCN Effective Date	has the meaning ascribed to it in paragraph 3.3.1 of Schedule 2-8 (Contract Change Procedure).
CEDR	means the Centre for Effective Dispute Resolution.
Charges	means the Delivery Milestone Payments and the Monthly Service Charges made by the Customer to the Service Provider both ascertained in accordance with Schedule 2.4 (Charges and Invoicing).
Claim	means any claim which it appears that a Beneficiary is, or may become entitled to indemnification under this Contract.
Code	has the meaning ascribed to it in Clause 18.5 of this Contract.
Commercially Sensitive Information	means (i) the information listed in Schedule 2-11 (Commercially Sensitive Information); or (ii) the information notified to the Customer in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information: a) which is provided by the Service Provider to the Customer in confidence for the period set out in that Schedule or notification; and/or b) which constitutes a trade secret.
Confidential Information	means the Customer Confidential Information and/or the Service Provider Confidential Information.
Consumables	means any consumables supplied to the Customer by the Service Provider under this Contract (to include, without limitation, any consumables referred to in the Specification).
Contract	means the Clauses of this contract together with the Schedules and annexes to it and any documents referred to in it or attached to it.
Contract Change Note (CCN)	means the contract change note specified in Annex A to Schedule 2-8 (Contract Change Procedure).
Contract Change Procedure	means the contract change procedure specified in Schedule 2-8 (Contract Change Procedure) for making changes to this Contract.
Contract Generated Intellectual Property Rights	means any Intellectual Property Rights created by the Service Provider as a result of the performance by the Service Provider of its obligations under this Contract including the Specially Written Software. There is and will be no Contract Generated Intellectual Property Rights under this contract.
Contracted Hours	means 24 hours each day, seven days each week and 365 days each year (or 366 days in each leap year) unless otherwise notified by the Customer to the Service Provider.
Contracting Authority	means a contracting authority as listed in the OJEU Notice.
Contract Year	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data	take the meaning given in the GDPR.

Protection Officer	
Conviction or Convictions	means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) and the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2001 (SI 2001/1192) or any replacement or amendment to those Orders) provided any such convictions are not “protected” convictions as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended)).
Crown Body	means any department, office or agency of the Crown and “ Crown Bodies ” shall be construed accordingly.
Customer Confidential Information	means all Personal Data, Customer Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably be considered to be confidential.
Customer 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 Service Provider by or on behalf of the Customer; or (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Customer is the Data Controller.
Customer Furnished Items	means any items issued or otherwise furnished in connection with this Contract by or on behalf of the Customer.
Customer Premises	means premises owned, controlled or occupied by the Customer or any Crown Body which are made available for use by the Service Provider or its Sub-Contractors for provision of the Services on the terms set out in this Contract or any separate agreement or licence.
Customer System	means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Service Provider in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Service Provider System or which is necessary for the Customer to receive the Services.
Customer's Contract Manager	means [REDACTED] or as notified from time to time.
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.
Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
Days	means calendar days.
Deductions	means all Service Credits or any other deductions relevant to the performance of the Service Provider under the Contract
Default	means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of any party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.
Delivery Milestone Payments	means the Charges set out in paragraph 3.1 of Schedule 2-4 (Charges and Invoicing).
Disaster	means 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 2 hours or more or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period.
Disaster Recovery	means the process of restoration of the Services by the provision of the Disaster Recovery Services.
Disaster Recovery Plan	has the meaning set out in paragraph 1.2.3 of Schedule 2-16 (BCDR Plan).
Disaster Recovery Services	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Service Provider pursuant to Schedule 2-16 (BDCR Plan).
Disaster Recovery Systems	means the system identified by the Service Provider in the Service Provider Solution which shall be used for the purpose of delivering the Disaster Recovery Service.
DPA 2018	Data Protection Act 2018.
Effective Date	means the 1 st December 2023.
Employee Liabilities	means all claims and staffing related liabilities whatsoever, including without limitation, claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on any of the protected grounds under the Equality Act 2010 or claims for equal pay, compensation for less favourable

	treatment of part-time workers, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation 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), and any expenses and legal costs on an indemnity basis.
End User	means any person authorised to use the Service Provider System.
Emergency Maintenance	means ad hoc and unplanned maintenance provided by the Service Provider where: a) the Customer reasonably suspects that the ICT Environment or the Goods and/or Services, or any part of the ICT Environment or the Goods and/or Services, has or may have developed a fault, and notifies the Service Provider of the same; or b) the Service Provider reasonably suspects that the ICT Environment or the Goods and/or Services, or any part the ICT Environment or the Goods and/or Services, has or may have developed a fault.
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.
Environmental Management System	includes EMAS, ISO 14001 and other environment management standards as notified to the Service Provider by the customer from time to time.
Estimated Yearly Charges	means for the purposes of calculating each Party's annual liability under Clause 14: i. in the first Contract Year, the Estimated Year 1 Contract Charges; or ii. in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or iii. after the end of the Contract, the Charges paid or payable in the last Contract Year during the Contract Period.
European Economic Area	means the European Economic Area consists of the European Union and all European Free Trade Association countries except Switzerland.
Exit and Service Transfer Arrangements	means the arrangements set out in Schedule 2-12 (Exit and Service Transfer Arrangements) which shall apply in the event of the expiry or termination (howsoever arising) of this Contract.
Fair Deal for Staff Pensions	means the annex to the Cabinet Office Statement entitled "A Fair Deal for Pensions: staff transfer from central government" (October 2013 and as may be further amended from time to time) and, where

	applicable, any related guidance notes issued by HM Treasury (as amended from time to time).
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner's Office or relevant Government Department in relation to such legislation.
Force Majeure Event	means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident; and any labour or trade dispute, strikes, industrial action or lockouts. Excluding for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements.
Framework Agreement	means the meaning ascribed to it in recital b) of this Contract.
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679).
General Principles	has the meaning ascribed to it in paragraph 1.2.1 of Schedule 2-16 (BDCR Plan).
Good Industry Practice	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Goods	means any goods used in the provision of the Services including hardware and software.
Guidance	means any applicable binding guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Service Provider by the Customer and/or have been published and/or notified to the Service Provider by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body.
ICT Environment	means the Customer System and the Service Provider System.
Implementation Plan	means the plan necessary to implement provision of the Services incorporated in Schedule 2-5 (Implementation Plan).
Indemnifier	means a Party from whom an indemnity is sought under this Contract.
Information	has the meaning given under section 84 of FOIA.

Information Commissioner's Office	means the independent body responsible for policing and enforcing the data protection and freedom of information regime in the UK.
Insolvency Event	<p>means where:</p> <ul style="list-style-type: none"> a) the Service Provider is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company); d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company); e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider; f) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or g) any event occurs, or proceedings is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) – (f).
Intellectual Property Rights	means patents, patent applications, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom).
Installation Works	means the process of installing a software application in a Customer's or a Customer's nominated hosting environment. Installation will include all necessary works specified by the Customer from readying the application for Customer testing to promotion to a live production environment.
Interested Party	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Service Provider or any Sub-Contractor and who had confirmed such interest in writing to the Customer.
Invoicing Procedure	means the procedure by which the Service Provider invoices the Customer, as set out in Schedule 2-4 (Charges and Invoicing).

ISMS	means the Information Security Management System. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services.
Law	means any applicable law, statute, bye-law, regulation, order, regulatory policy, binding guidance or industry code, rule of Court or mandatory directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body including the Security Policy Framework, the Code.
LED	means the Law Enforcement Directive (Directive (EU) 2016/680).
Liquidated Damages	means the liquidated damages specified in Schedule 2-15 (Liquidated Damages).
Liquidated Damages Period	means the period specified in paragraph 4 of Schedule 2-15 (Liquidated Damages) for each instance where Liquidated Damages apply.
Losses	means all claims, actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs incurred.
Maintenance Schedule	has the meaning given to it in Clause 51 (Maintenance of the ICT Environment).
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.
Managed Services	means the service described in the Specification for Managed Services to be performed by the Service Provider in accordance with this Contract.
Materials	has the meaning ascribed to it in Clause 52.10 of this Contract.
Mediator	has the meaning ascribed to it in Schedule 2-10 (Dispute Resolution Procedure).
Medical Devices Laws	means: (a) in respect of service/solution placed on the market or put into service prior to 26 May 2020, the Medical Devices Directive (as implemented into UK law); (b) in respect of service/solution placed on the market or put into service after 26 May 2020, the Medical Devices Regulation (as implemented into UK law); (c) the requirements of a Quality Management System in respect of medical devices as set out in ISO 13485; (d) any other Laws relating to the promotion and sale of medical devices; and

	(e) any applicable guidance (including MEDDEVs), direction or determination and any policies, advice or industry alerts which apply to the service/solution, published by the MHRA, Notified Bodies (as defined in the Medical Devices Regulation 2017/745), the Medicines and Healthcare products Regulatory Agency, the European Commission and/or any other regulator or competent body from time to time.
Monthly Service Charge	means the Charges set out in paragraph 3.2 of Schedule 2-4 (Charges and Invoicing).
NHS Employment Check Standards	means the legal and mandatory checks employers must carry out for the appointment and on-going employment of all individuals in the NHS and include all pre-appointment checks that are required by law, those that are mandated by Department of Health policy, and those that are required for access to the NHS Care Record Service. The standards apply to permanent staff, staff on fixed-term contracts, temporary staff, volunteers, students, trainees, contractors as well as on the appointment of locums and agency staff (in which case the standards must be met by providers of such staff).
Non-Core Hours	17.30-08.30
Notice of Arbitration	means the formal notice from the Service Provider or the Customer to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-10 (Dispute Resolution Procedure).
OJEU Notice	means the contract notice issued by the Authority in respect of the Framework Agreement.
Open Source Ordered Software	means the open software source listed in Schedule 2-18 (Software and Software Licence Terms).
Operating Environment	means the Customer System and the Sites.
Outgoing Service Provider	means the party providing services to the Customer similar or the same as the Services and which is being replaced by the Service Provider.
Parent Company	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term " Holding Company " shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto.
Performance Improvement Plan Service Credit	NOT USED
Permitted Maintenance	has the meaning given to it in Clause 51.3 (Maintenance of the ICT Environment).
Persistent Breach	has the meaning ascribed to it in Schedule 2-3 (Performance Management).

Policies	means the policies, rules and procedures of the Customer as notified to the Service Provider from time to time.
Pre-Existing Intellectual Property Rights	means any Intellectual Property Rights vested in or licensed to (a) the Service Provider prior to or independently of the performance by the Service Provider of its obligations under this Contract; and (b) the Customer prior to or independently of the performance by the Customer of its obligations under this Contract.
Problem	means an unknown underlying cause of one or more incidents.
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.
Quarter	means a three (3) month period beginning on 1 st January, 1 st April, 1 st July or 1 st October. The term “ Quarterly ” shall be similarly construed.
Rectification Time	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
Regulatory Bodies	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer and “ Regulatory Body ” shall be construed accordingly.
Related Service Provider	means any person who provides services to the Customer in relation to the Customer’s project from time to time.
Relevant Transfer	means a transfer of employment to which TUPE applies or is treated as applying.
Requests for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Resolved	has the meaning given to it in paragraphs 2.23 and 2.24 of Schedule 2-3 (Performance Management) and “ Resolve ” and “ Resolution ” shall be construed accordingly.
Review Report	has the meaning ascribed to it in paragraph 6.2 of Schedule 2-16 (BDCR Plan).
Scheduled Downtime	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
Security Management Plan	means the Service Provider’s security plan prepared pursuant to paragraph 3 of Schedule 2-17 (Security Management Plan), an outline of which is set out in Annex B of Schedule 2-17 (Security Management Plan).

Security Policy	means the Customer's security policy annexed to Annex A of Schedule 2-17 (Security Management Plan), as updated from time to time.
Security Policy Framework	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division).
Security Tests	has the meaning ascribed to it in paragraph 4.1 of Schedule 2-17 (Security Management Plan).
Services	means the services referred to in Schedule 2-2 (Service Specification).
Service Commencement Date	means the date of commencement of the provision of the Services by the Service Provider – 01 December 2023.
Service Credits	means the service credits specified in Schedule 2-3 (Performance Management) which shall be payable to the Customer by the Service Provider in the event that the Service Levels are not met.
Service Downtime	means the period during which the Services are not live, accessible and/or fully functioning.
Service Failure	means a failure by the Service Provider to deliver any part of the Services.
Service Incident	means an unplanned interruption to the Services or reduction in the quality of the Services.
Service Incident Reports	means reports submitted by the Service Provider to the Customer as specified in Schedule 2-7 (Contract, Service Management and Reporting).
Service Levels	means the levels of service defined in Schedule 2-3 (Performance Management).
Service Provider Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Service Provider, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
Service Provider Contract Manager	means [REDACTED] Account Manager
Service Provider Equipment	means the hardware, computer and communication devices and equipment supplied by the Service Provider or its Sub-Contractors (but not hired, leased or loaned from the Customer) for the provision of the Services.
Service Provider Personnel	means all employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor.

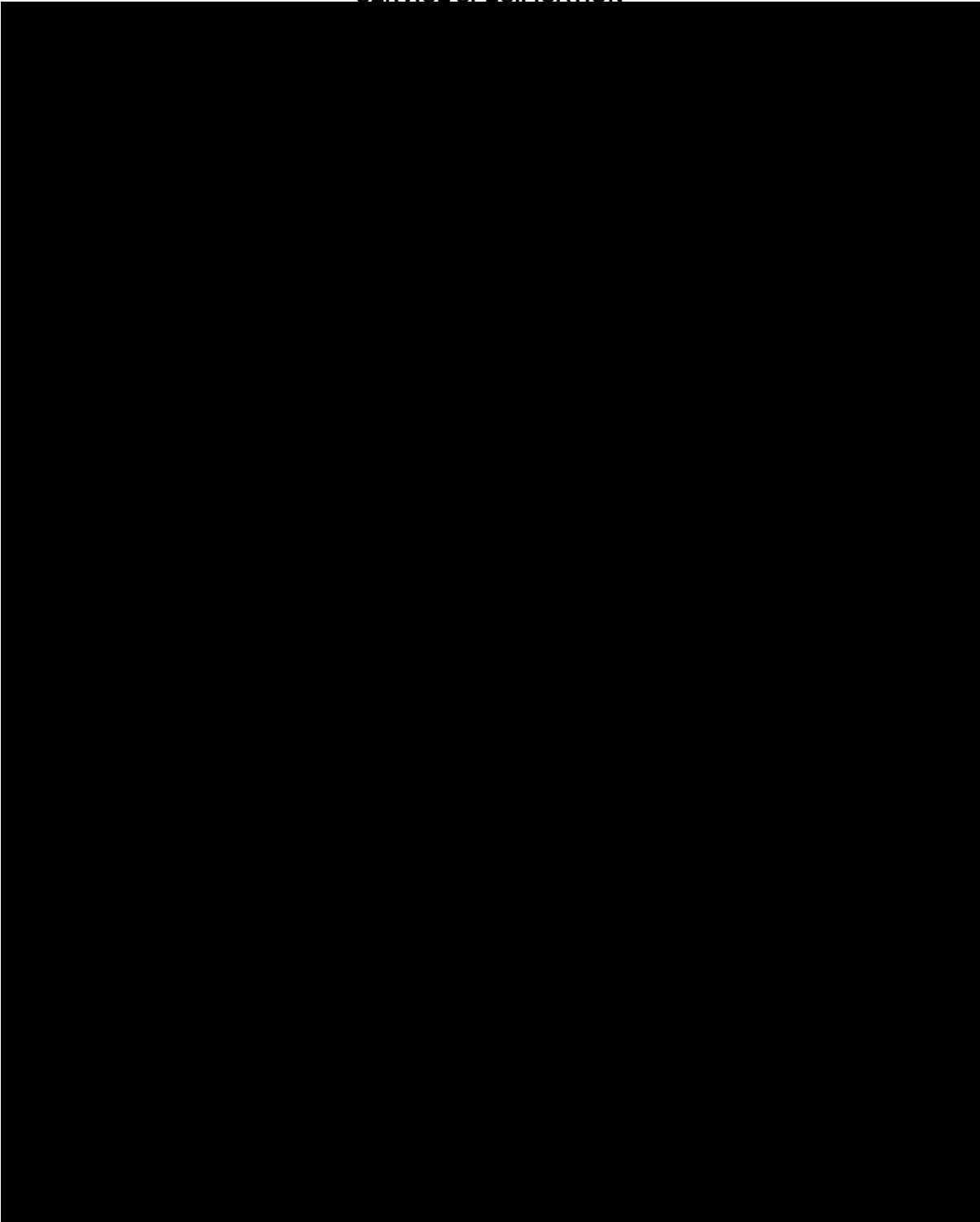
Service Provider Proposals	has the meaning ascribed to it in paragraph 6.2.3 of Schedule 2-16 (BCDR Plan).
Service Provider Software	means the proprietary software of the Service Provider as set out in Schedule 2-18 (Software and Software Licence Terms).
Service Provider Solution	means the Service Provider's solution to the Customer's requirements as set out in Schedule 2-3 (Performance Management).
Service Provider System	means the information and communications technology system used by the Service Provider in providing the Services including the Software, the Service Provider Equipment and related cabling (but excluding the Customer System).
Service Transfer	means any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to the Customer or to a replacement service provider.
Service Transfer Date	means the date of a Service Transfer.
Service Transfer Plan (STP)	means (if applicable) the plan produced in accordance with paragraph 3 of Schedule 2-12 (Exit and Service Transfer Arrangements) by the Service Provider to be agreed by the Customer to facilitate any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-Contractor to the Customer or to a replacement service provider.
Set-up Services	means the due diligence, configuration and related work referred to in Clause 54 and Schedule 2-24, to be performed by the Service Provider to set up the Managed Services.
Severity Level	means the level of severity allocated to Service Incident by the Customer in accordance with Schedule 2-3 (Performance Management).
Sites	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services or where any part of the Service Provider System is situated or where any physical interface with the Customer System takes place.
Software	means any Specially Written Software, Service Provider Software and Third Party Software.
Specially Written Software	means any software created by the Service Provider (or by a third party on behalf of the Service Provider, including by any Sub-Contractor) specifically for the purposes of this Contract.
Staff Vetting Procedures	means the Customer's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures.
Staffing Information	means written information about each of the Service Provider's or its Sub-Contractor's staff as may be requested by the Customer including, without limitation, all details which demonstrate to the

	satisfaction of the Customer that such staff are properly organised in respect of and assigned to the Services for the purposes of TUPE; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with Section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) years, details of any grievances raised by any of them in the preceding two (2) years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) years, any potential proceedings which the Service Provider's or its Sub-Contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested and any other information required by Regulation 11 of TUPE.
Standards and Regulations	means the standards and regulations as set out in Schedule 2-13 (Standards and Regulations) with which the Service Provider shall comply in the provision of the Services and its responsibilities and obligations hereunder.
Sub-Contractor	means any supplier selected, appointed and managed by the Service Provider in accordance with the provisions of Schedule 2-9 (Sub-Contractors), including the Sub-Contractors specified in Schedule 2-9 (Sub-Contractors). The terms " Sub-Contract " and " Sub-Contracting " shall be similarly construed.
Sub-processor	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.
Subsequent Transfer Date	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Customer, as appropriate, giving rise to a relevant transfer under TUPE.
Subsequent Transferring Employees	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Customer, as appropriate.
Successor	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Service Provider upon the expiry or earlier termination of the Contract.
Term	means the term of this Contract as set out in Clause 10 of this Contract, subject to early termination (howsoever arising) pursuant to Clause 10.
Third Party	means any supplier of services fundamentally the same as the Services (in whole or in part) immediately before the Transfer Date.
Third Party Software	means software which is proprietary to any third party (other than an Affiliate of the Service Provider) which is or will be used by the Service Provider for the purposes of providing the Services, including the software specified as such in Schedule 2-18 (Software and

	Software Licence Terms).
Transfer Date	means the Transferred Staff's first day of employment with the Service Provider (or its Sub-Contractor)
Transferred Staff	means those employees whose employment compulsorily transfers to the Service Provider or a Sub-Contractor by operation of TUPE, COSOP or for any other reason, as a result of the award of this Contract, including the Transferring Customer Employees or the Transferring Outgoing Service Provider Employees.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.
UnScheduled Downtime	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
URN	Prior to raising a Purchase Order (PO) with the Service Provider the customer/drawdown authority must first request a Unique Reference Number (URN) from the Framework Authority (London Procurement Partnership). This URN will be unique to each individual call off contract and must be referenced on all PO's and invoices relating to this corresponding call off contract. This provides a clear audit trail linking the order back to both this specific call off contract and the overarching framework agreement.
Value Added Tax	means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax.
Wilful Default	means a knowingly wrongful action or failure to act, or acting with reckless carelessness, not caring what the results of the carelessness may be.
Workaround	has the meaning ascribed to it in Schedule 2-3 (Performance Management).
Working Days	means Monday to Friday inclusive between 09.00am and 17.30pm, excluding English public and bank holidays.
Year	means a period of twelve (12) months.

SCHEDULE 2-2

SERVICE SPECIFICATION

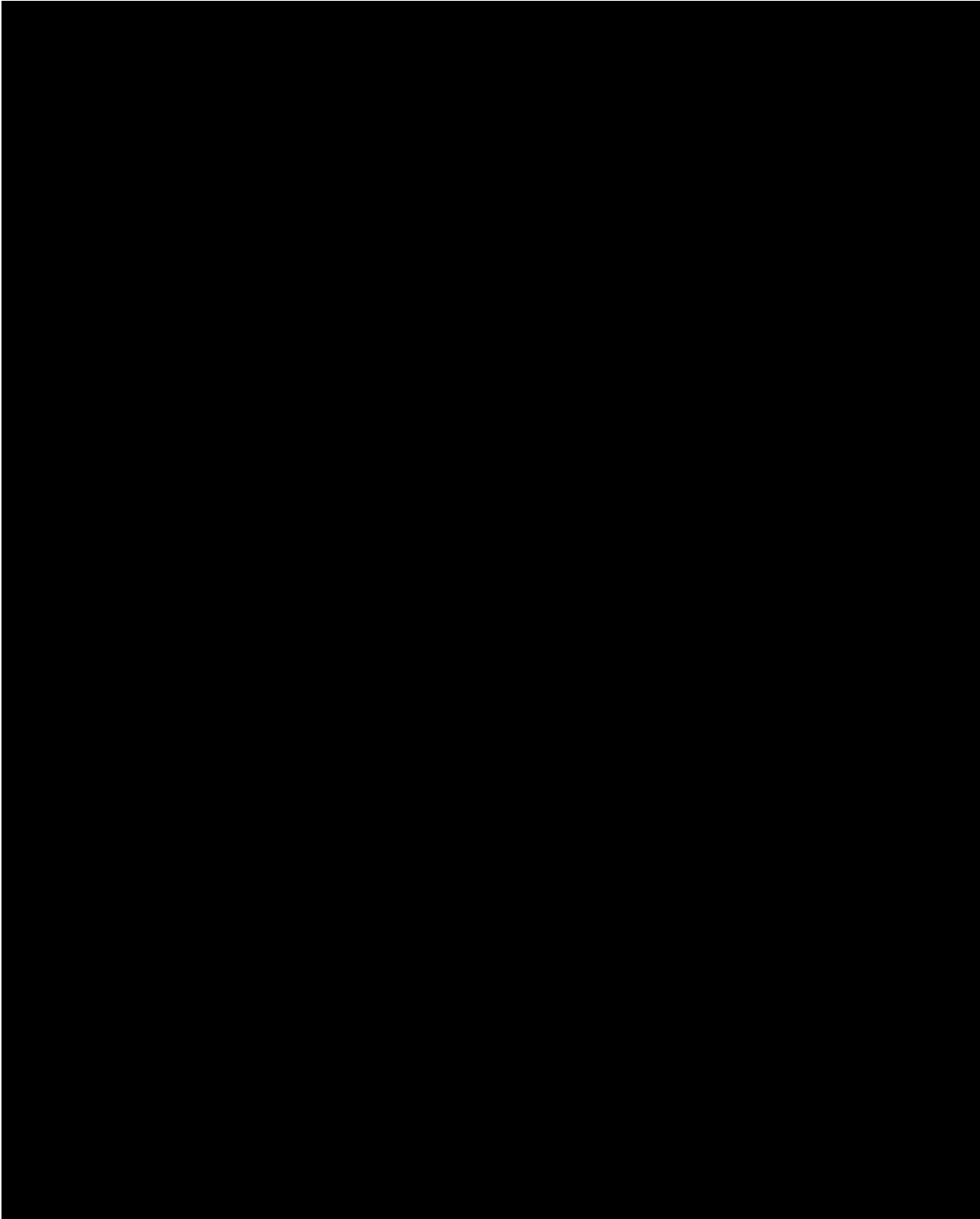


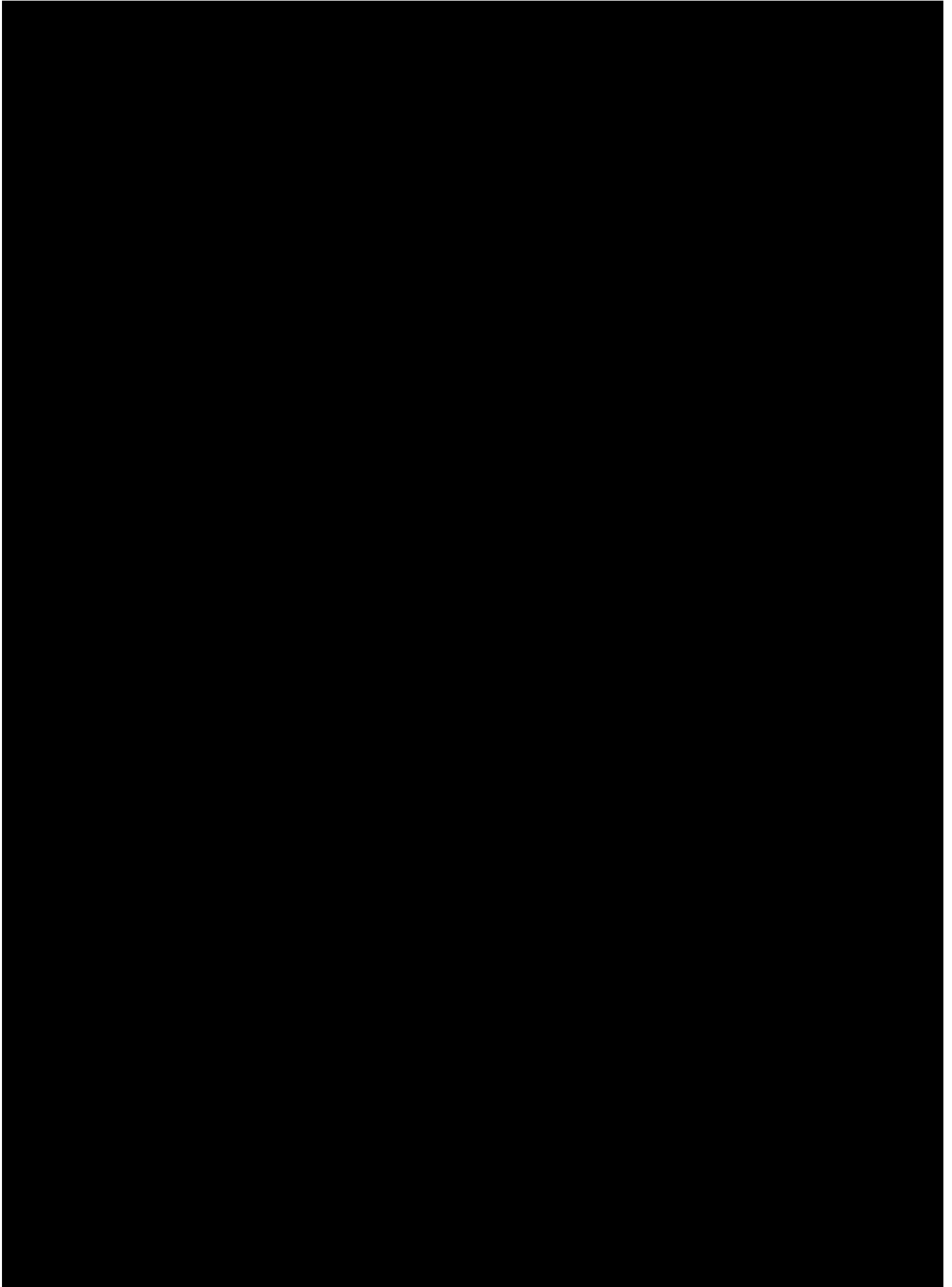
SCHEDULE 2-3

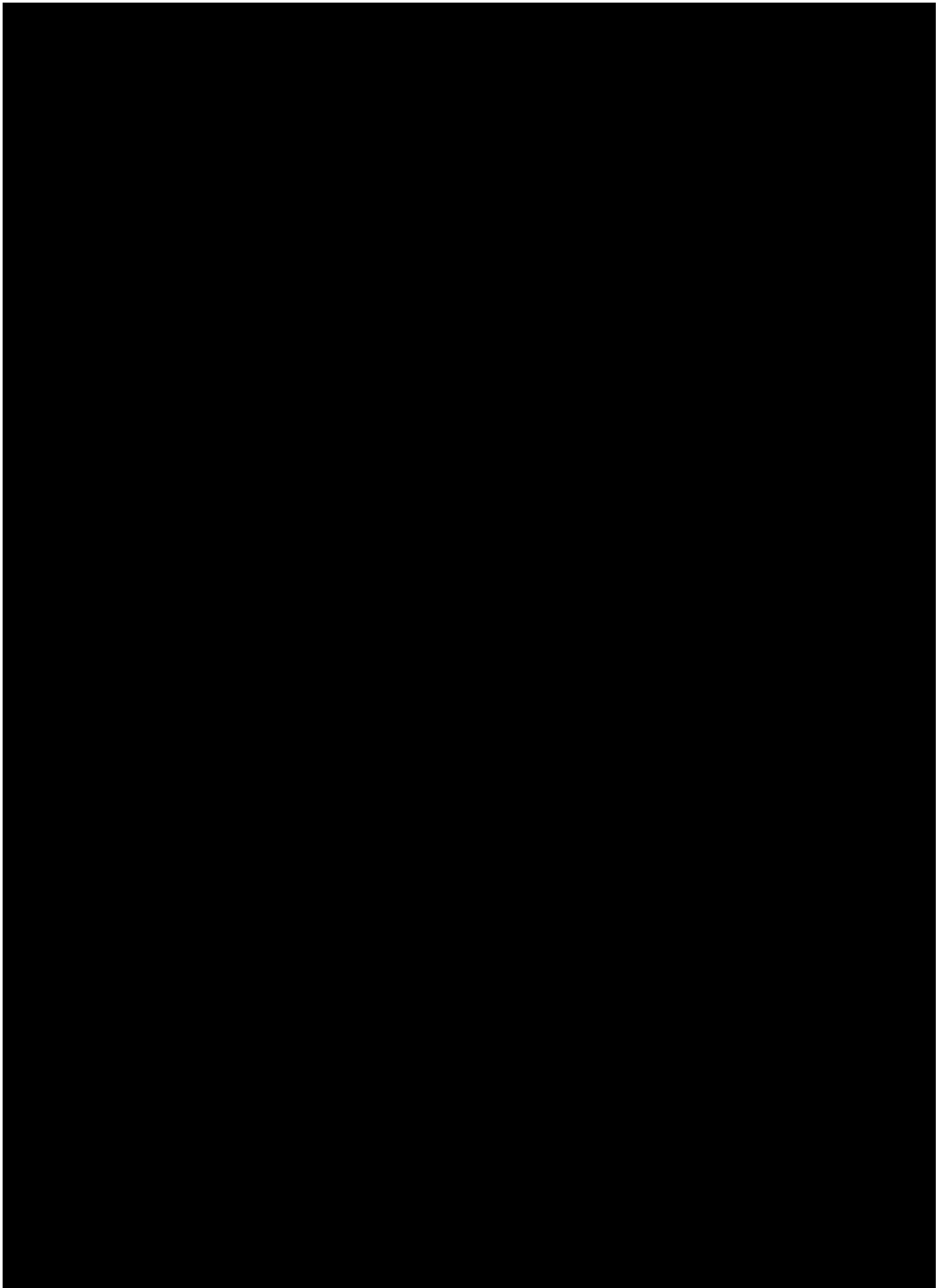
PERFORMANCE MANAGEMENT

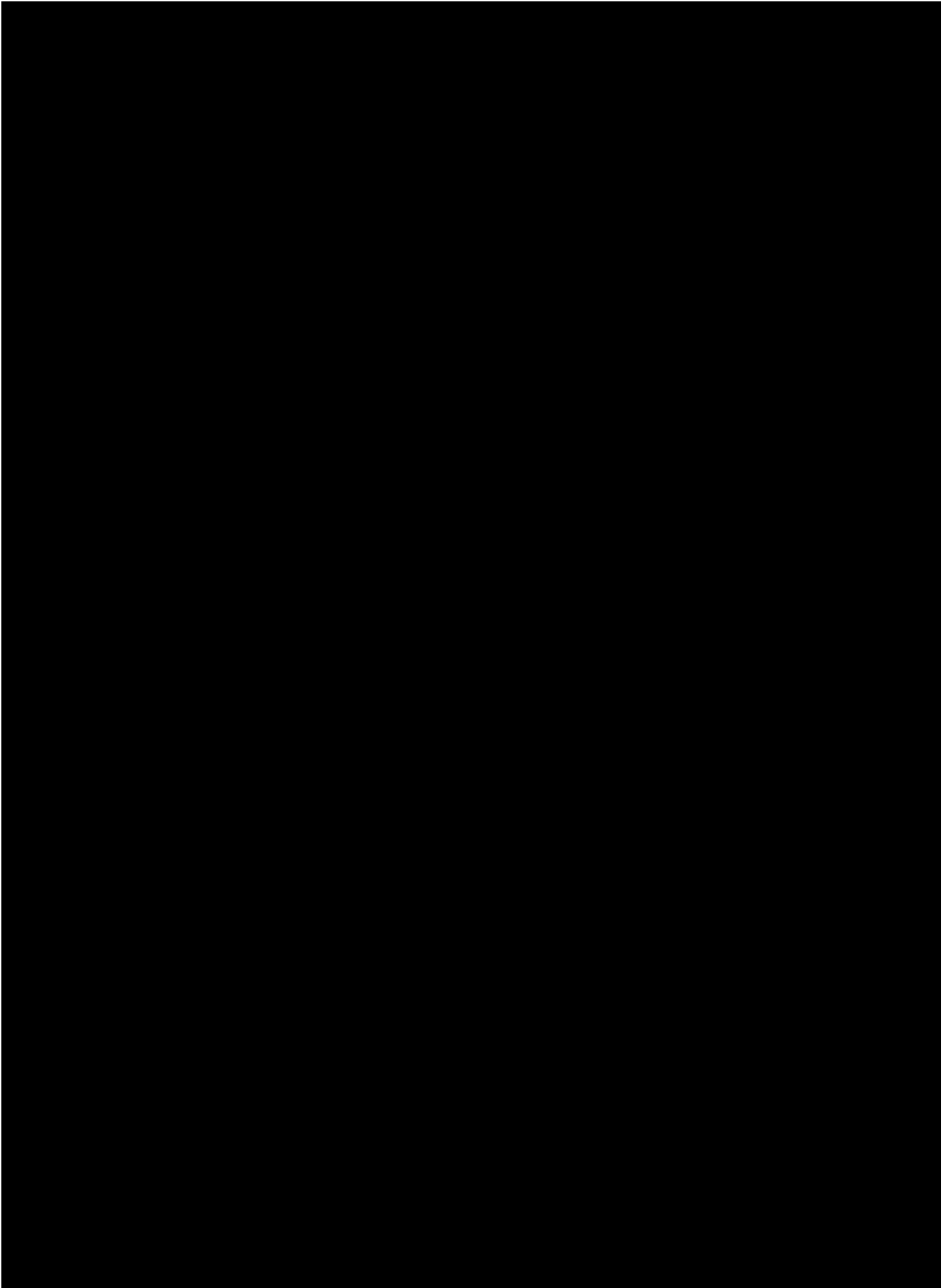
☒ (only applicable to the Contract if this box is checked and the requirements are listed)

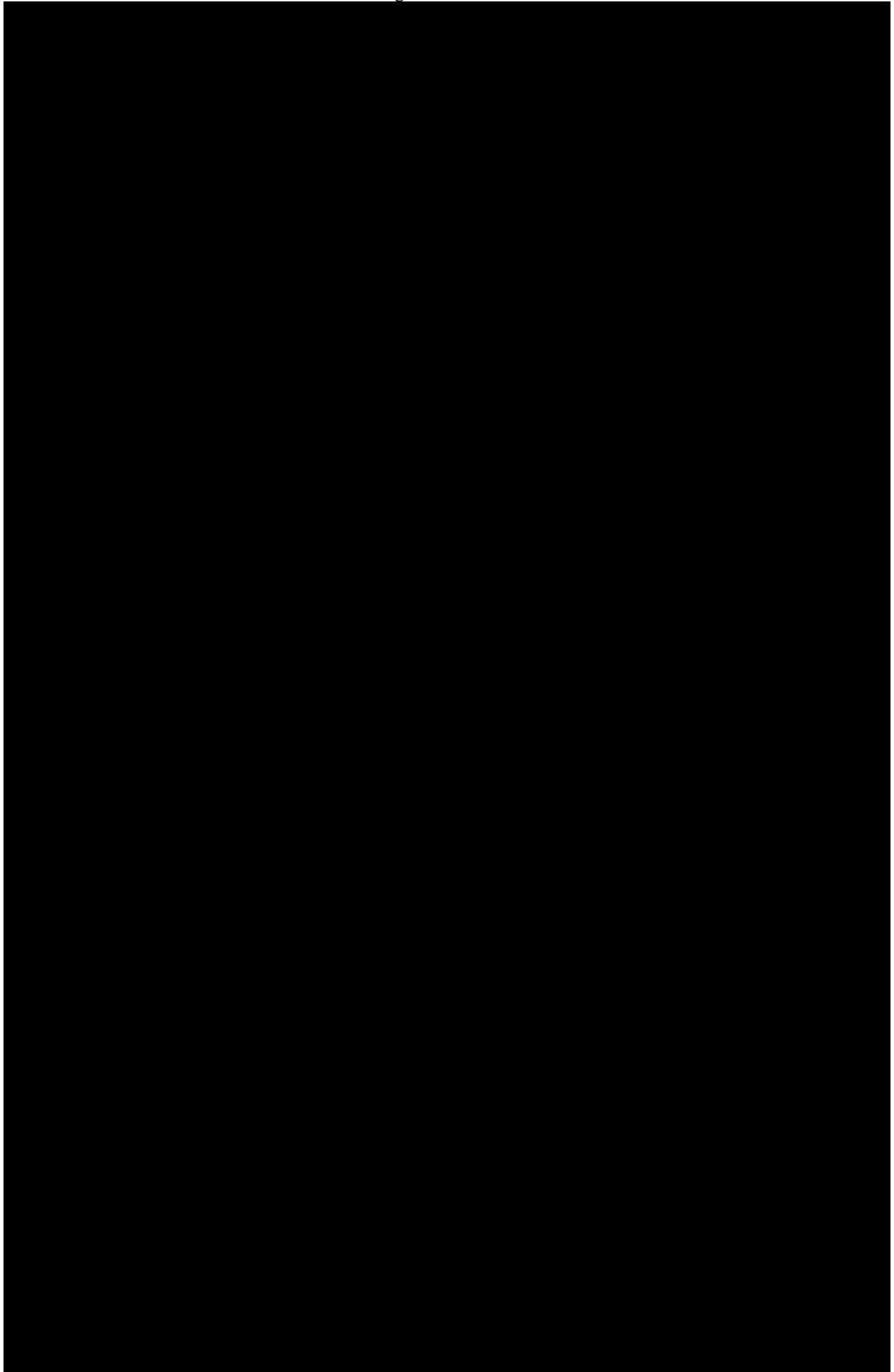
Service Levels and Performance Monitoring

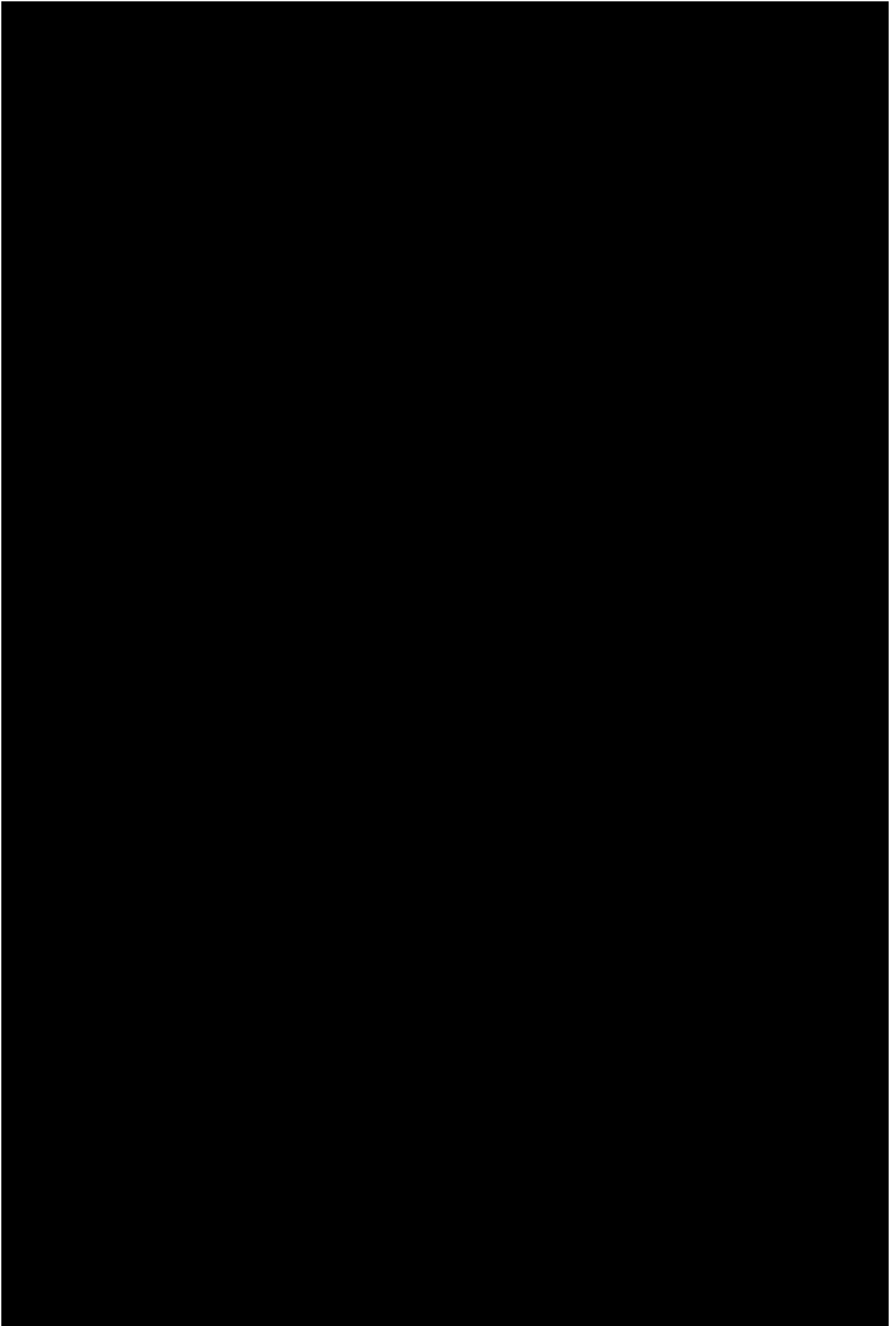


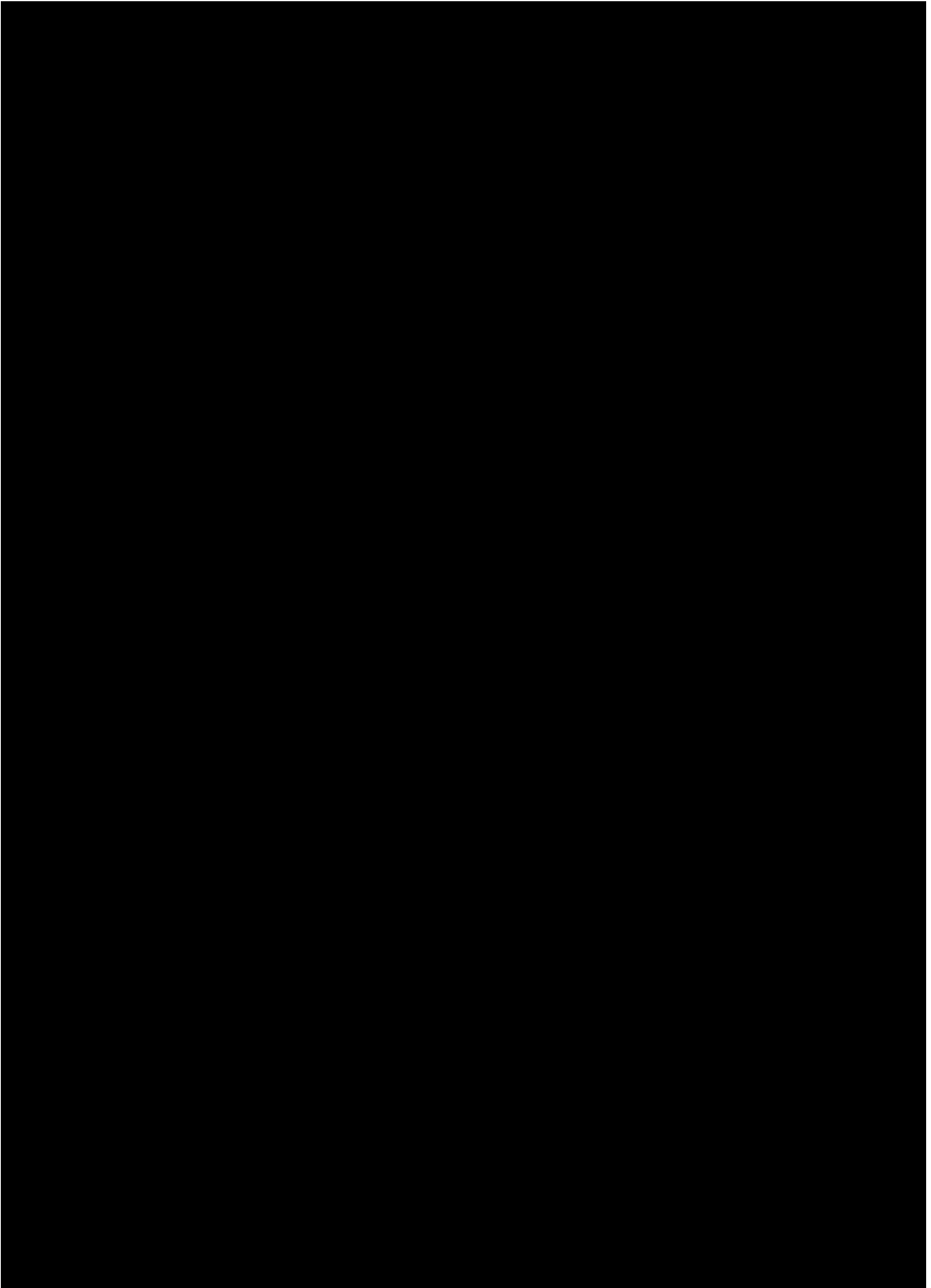






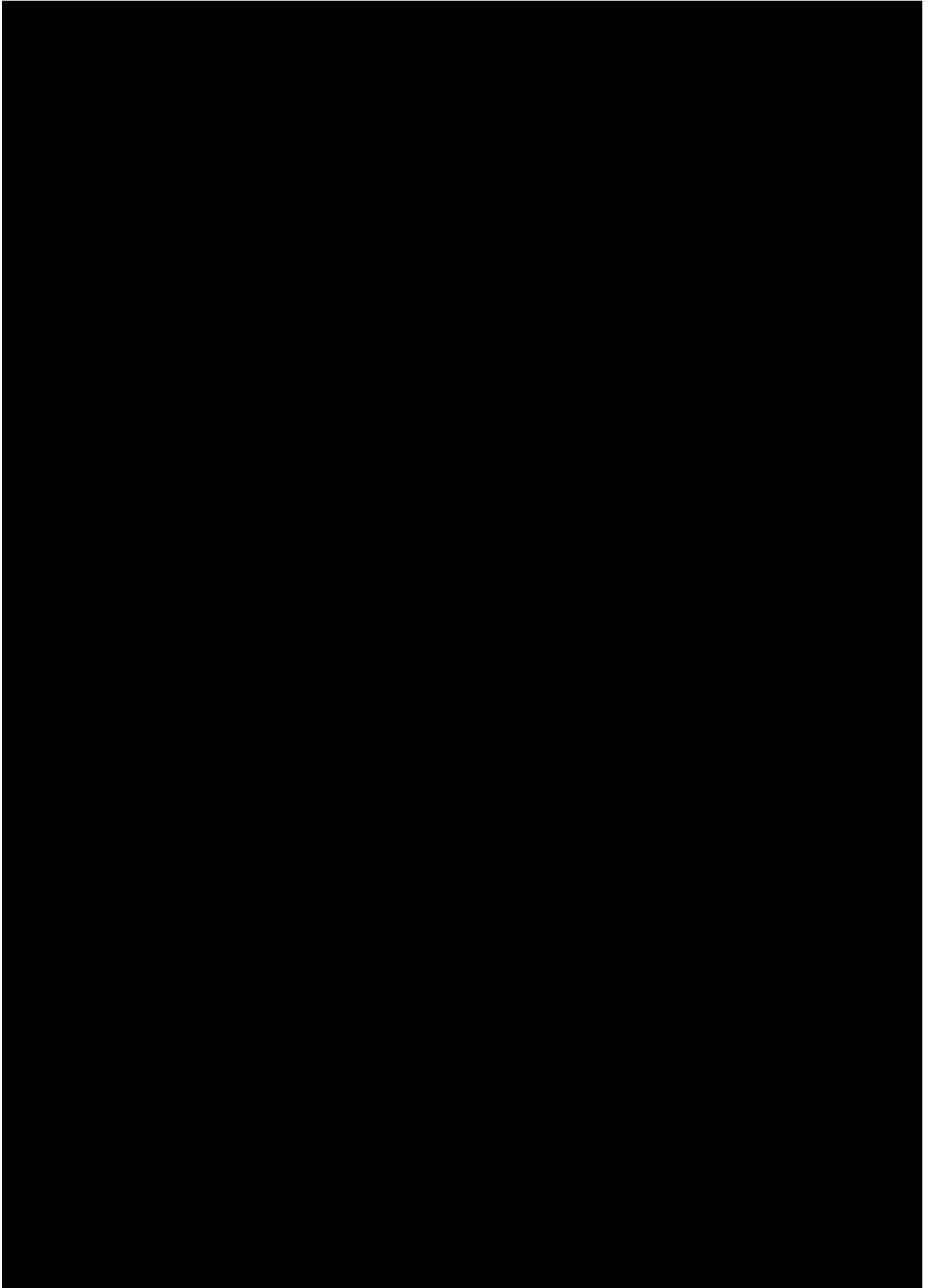


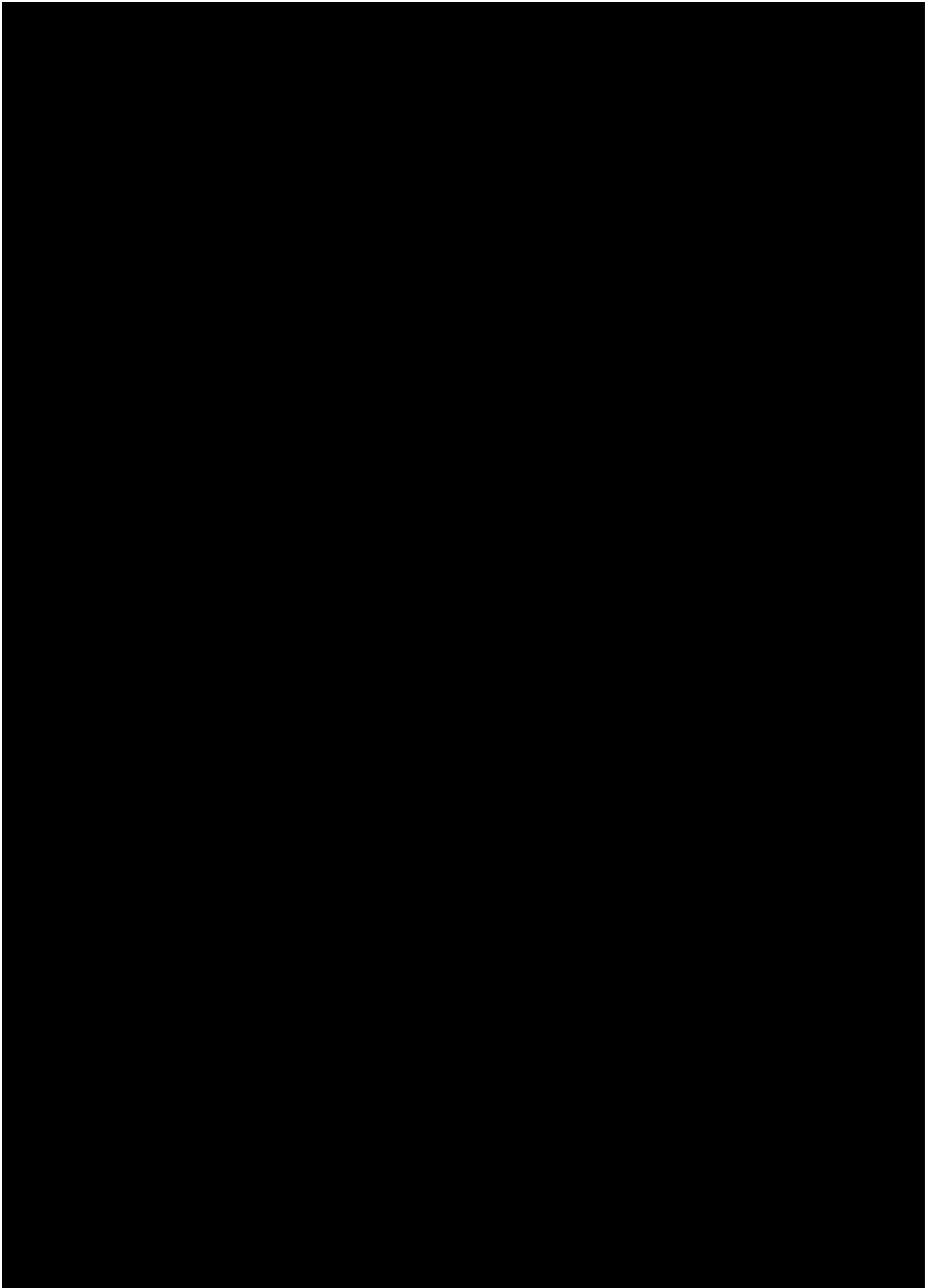


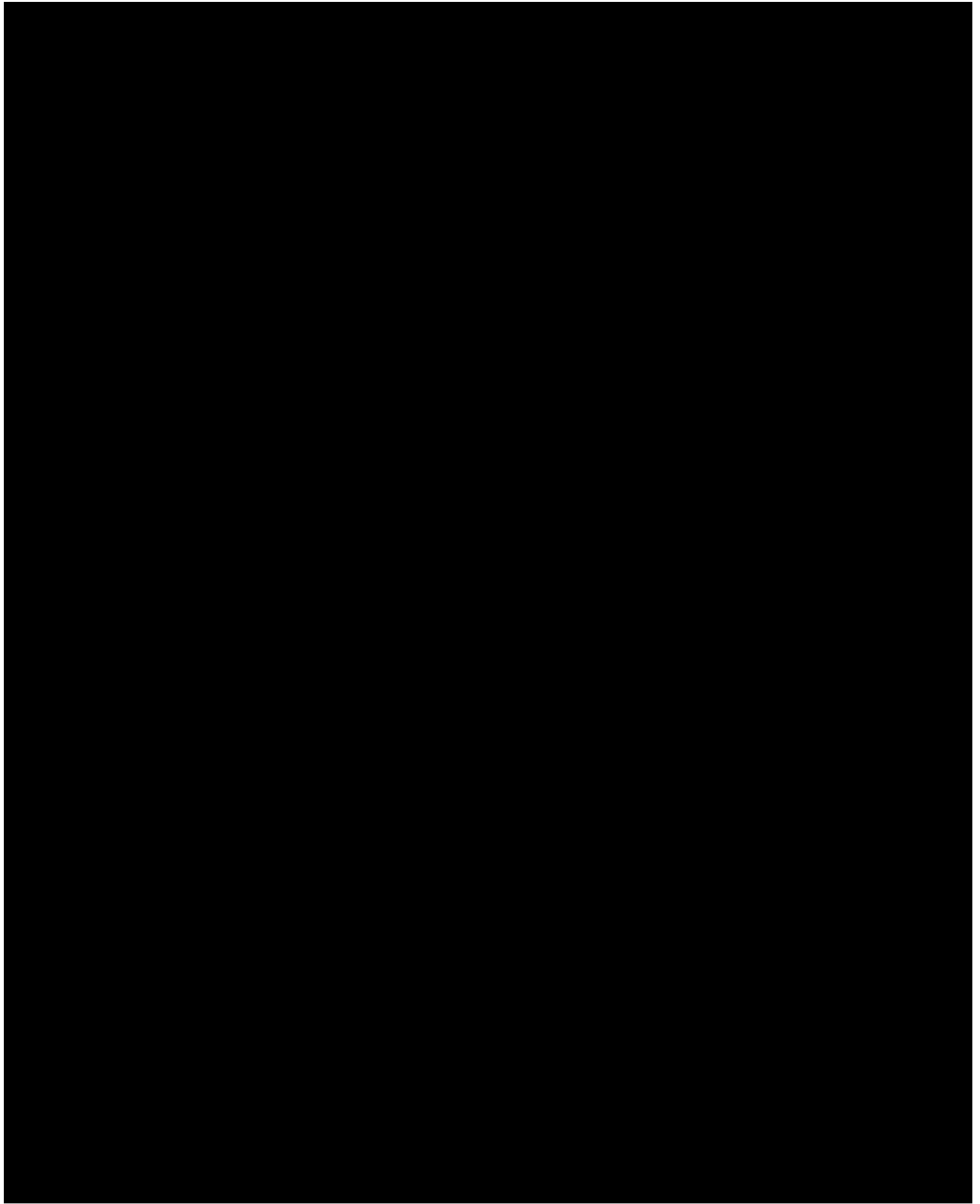


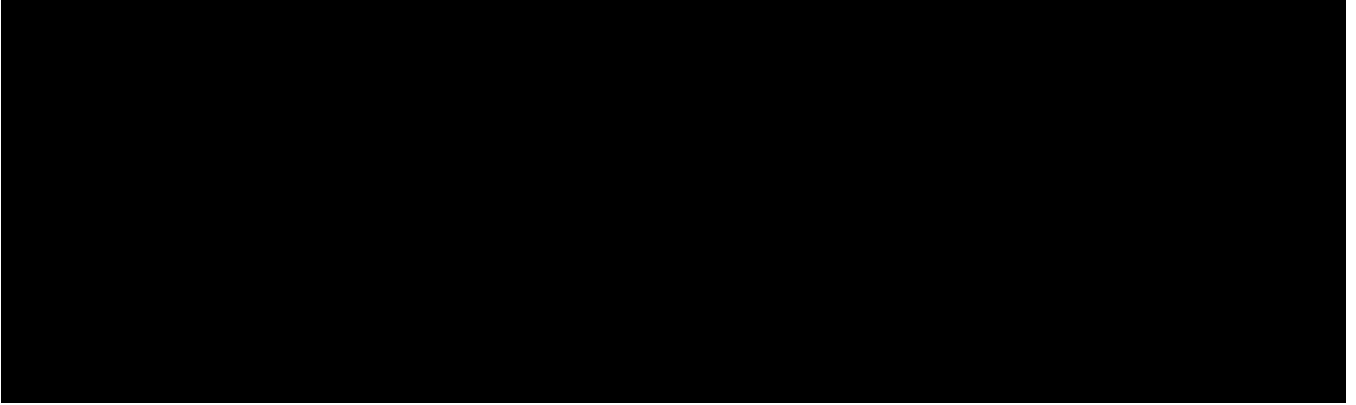
5.



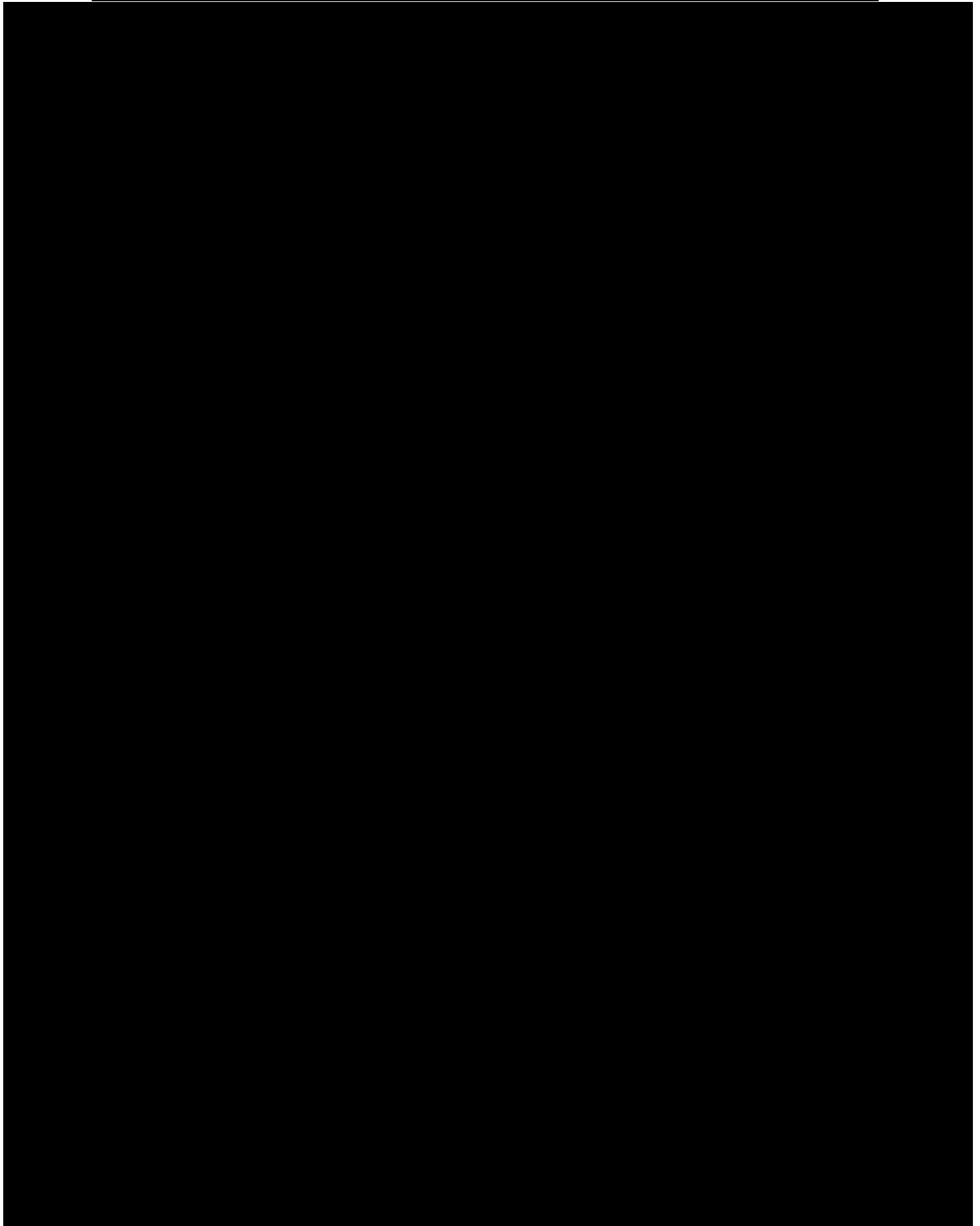




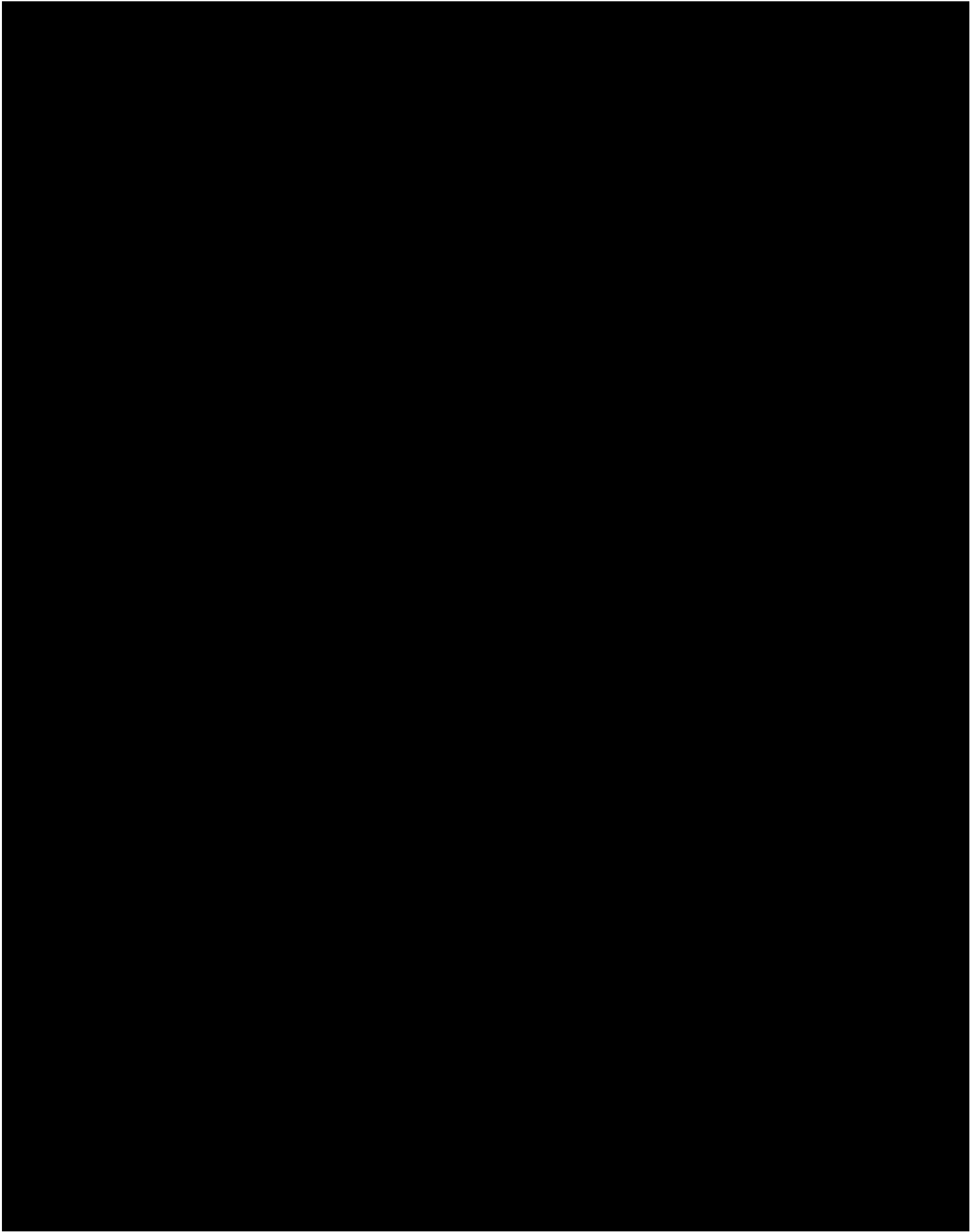




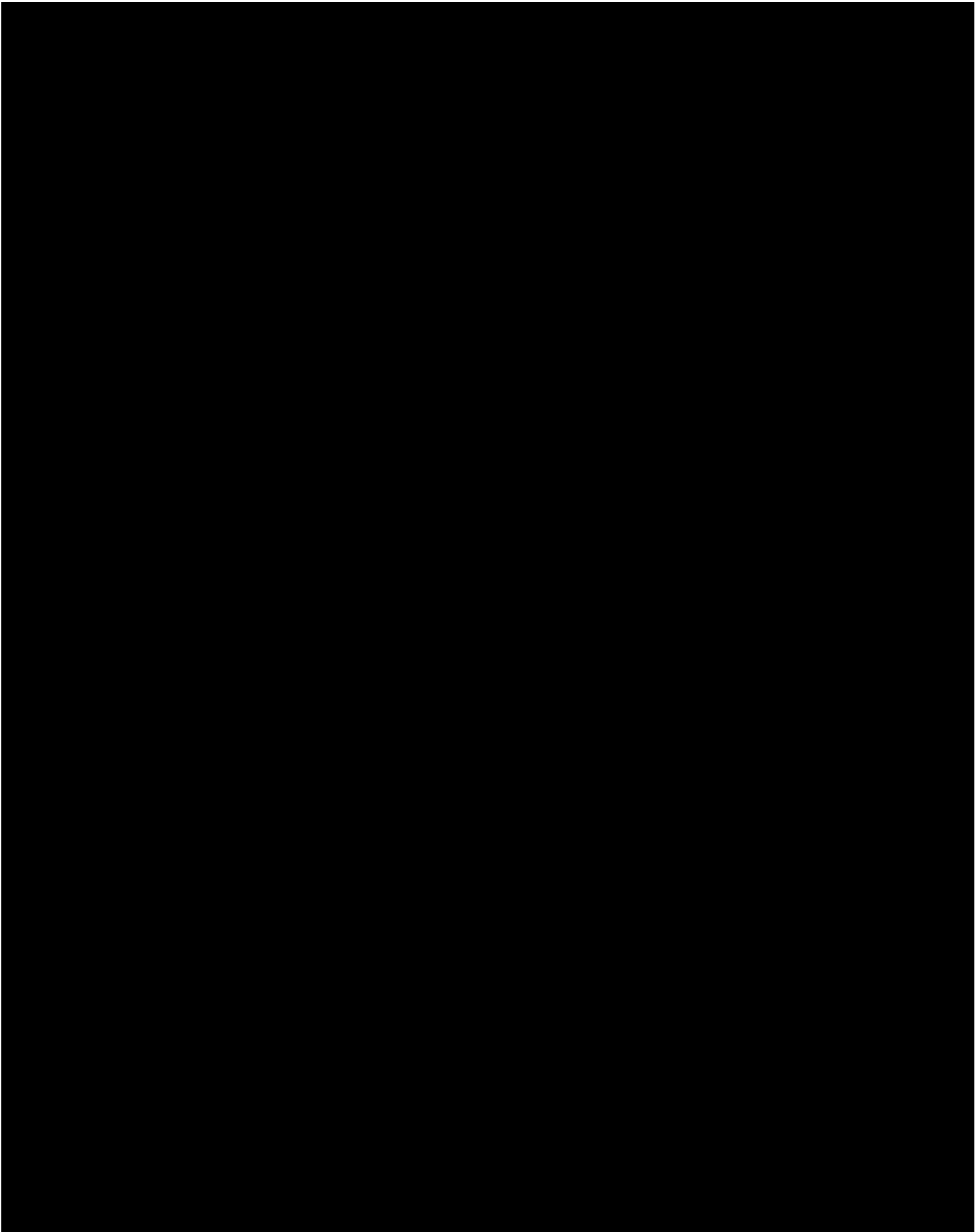
CALL OFF TERMS AND CONDITIONS



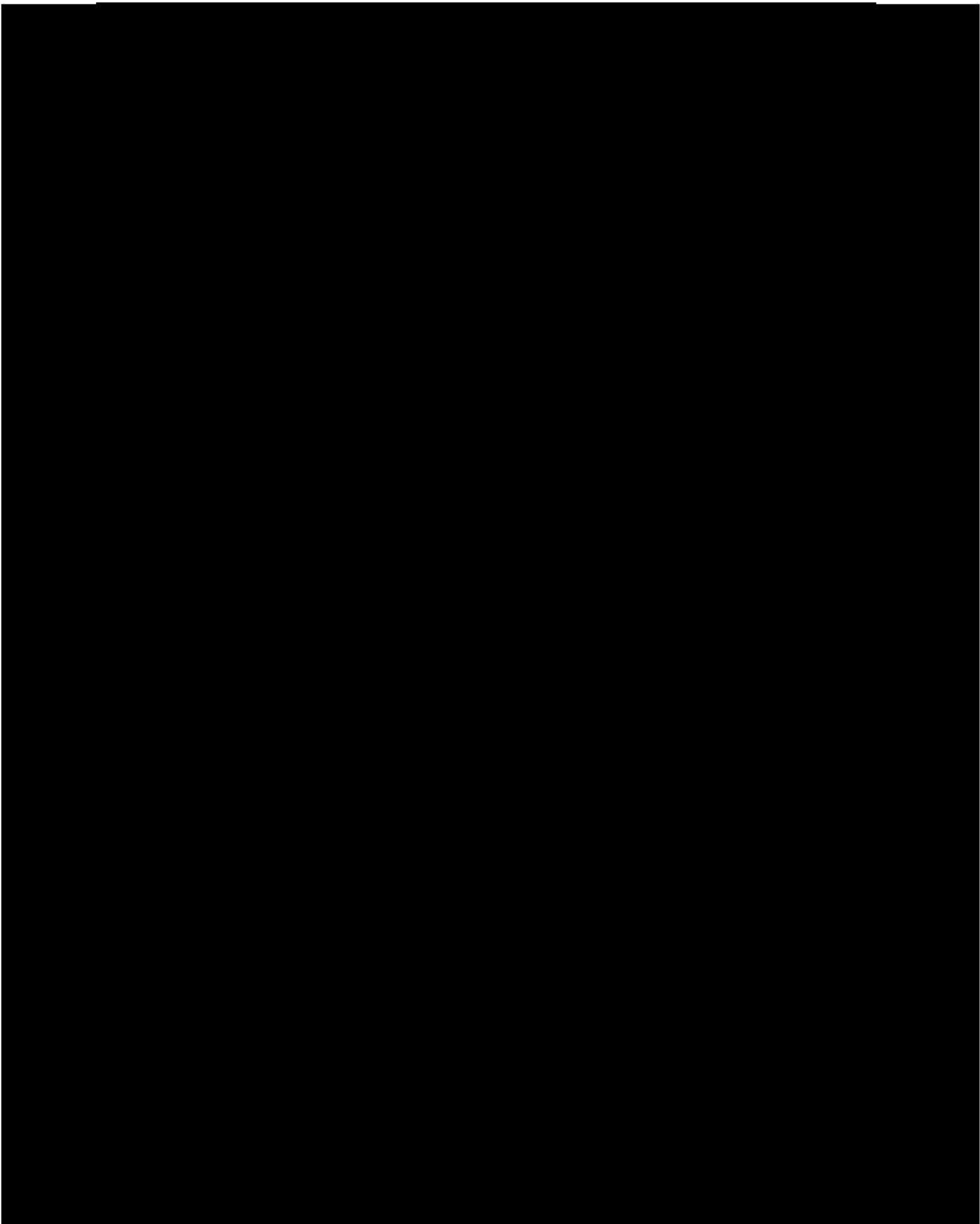
CALL OFF TERMS AND CONDITIONS



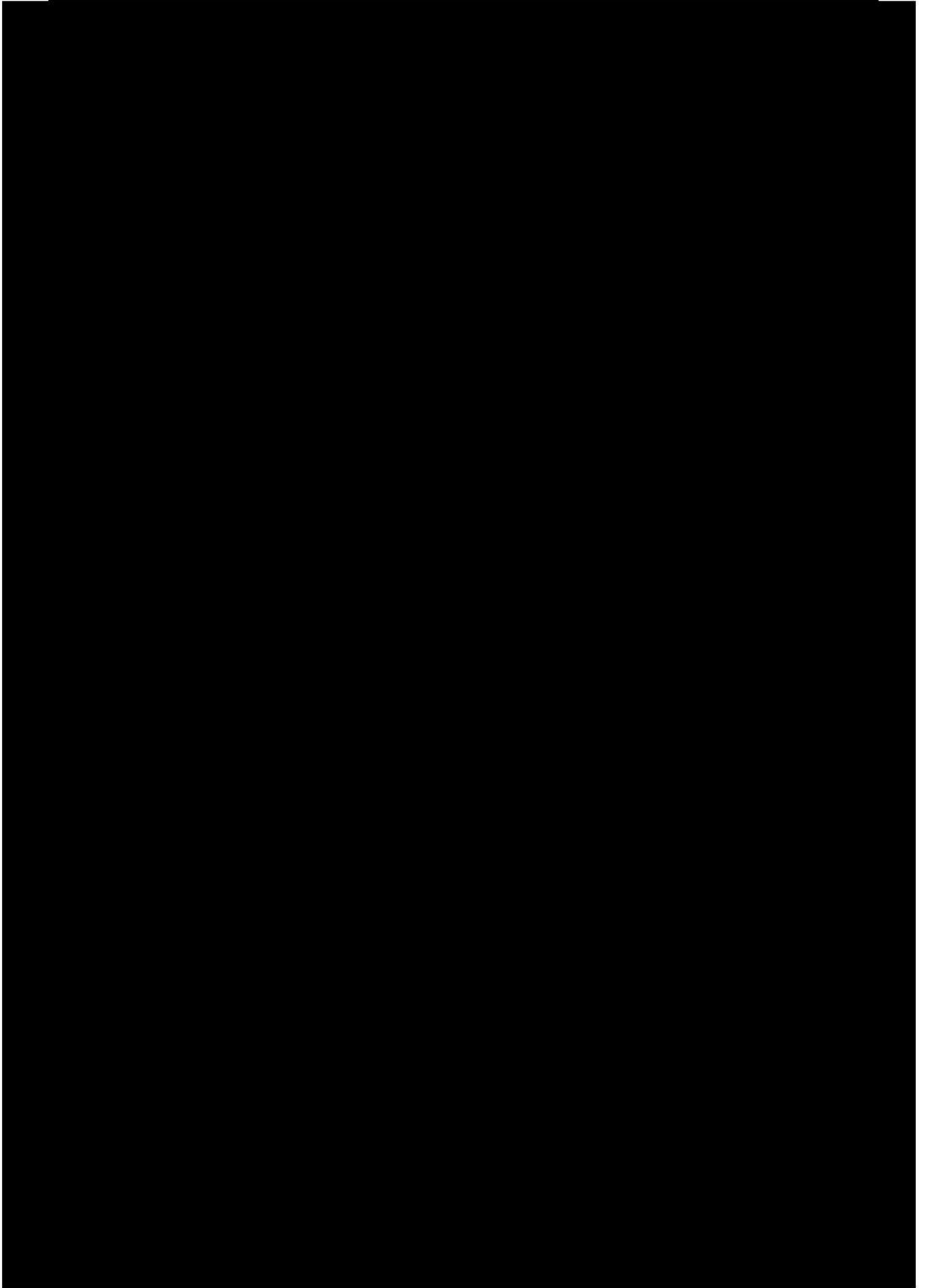
CALL OFF TERMS AND CONDITIONS



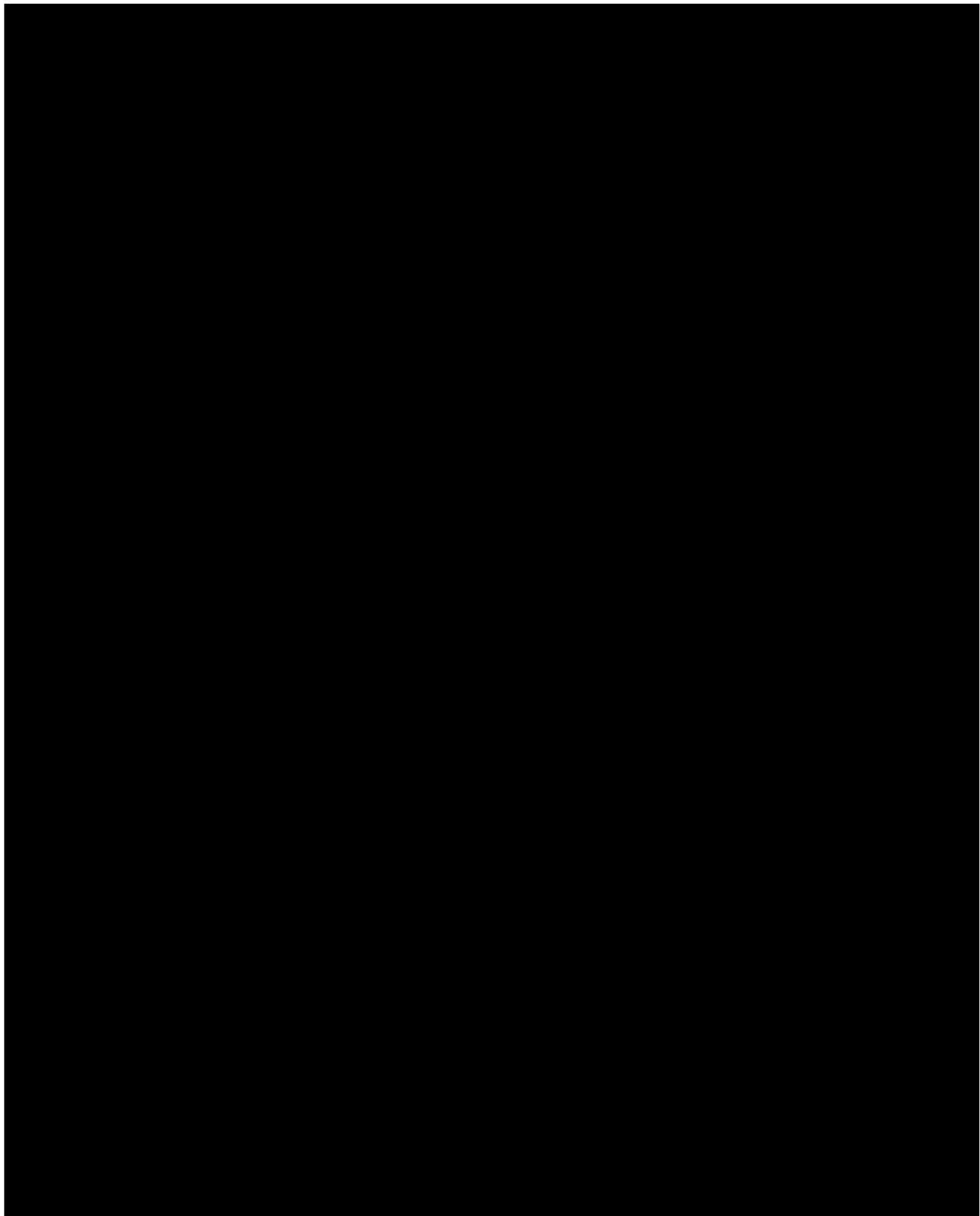
CALL OFF TERMS AND CONDITIONS



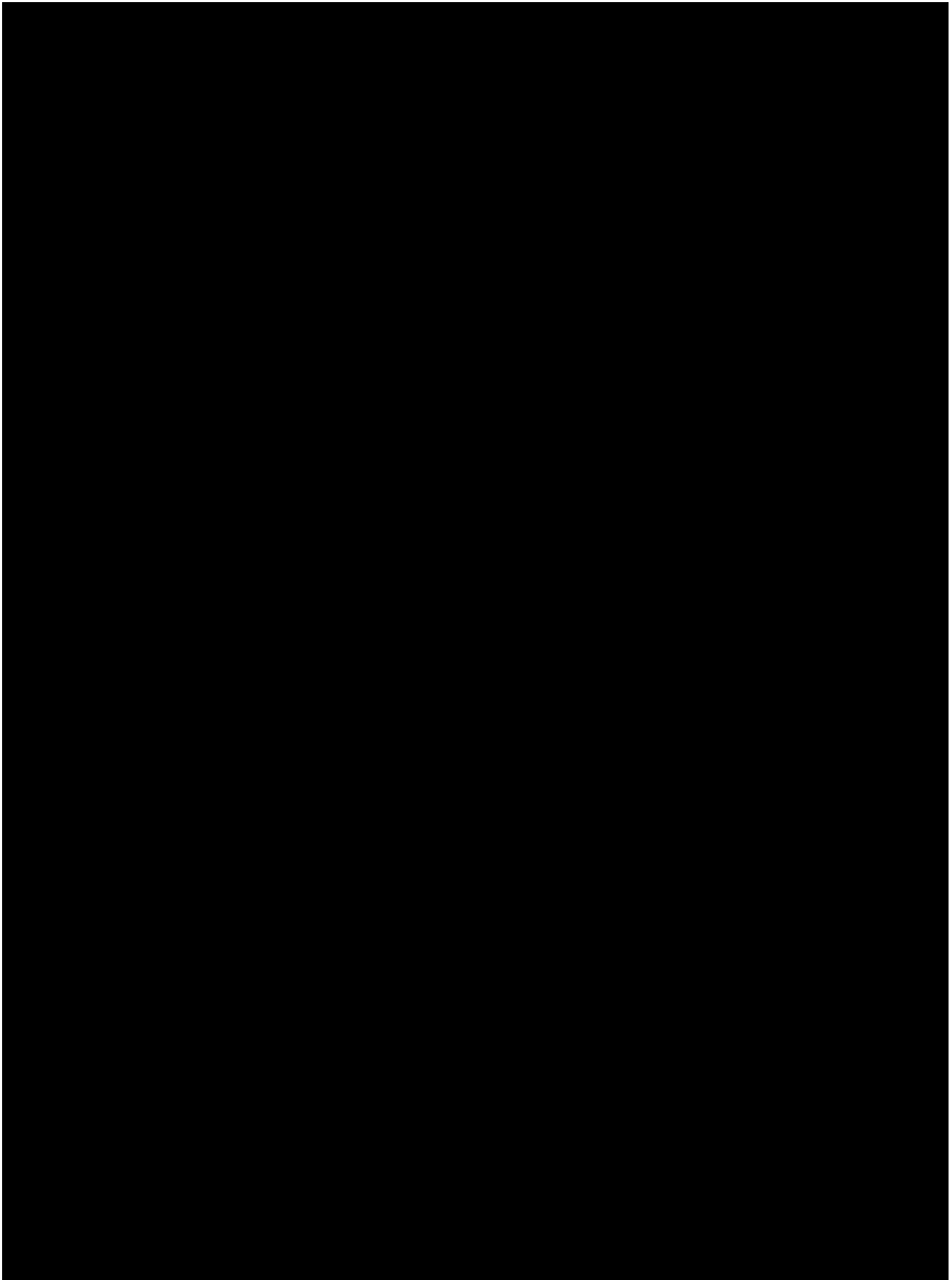
CALL OFF TERMS AND CONDITIONS



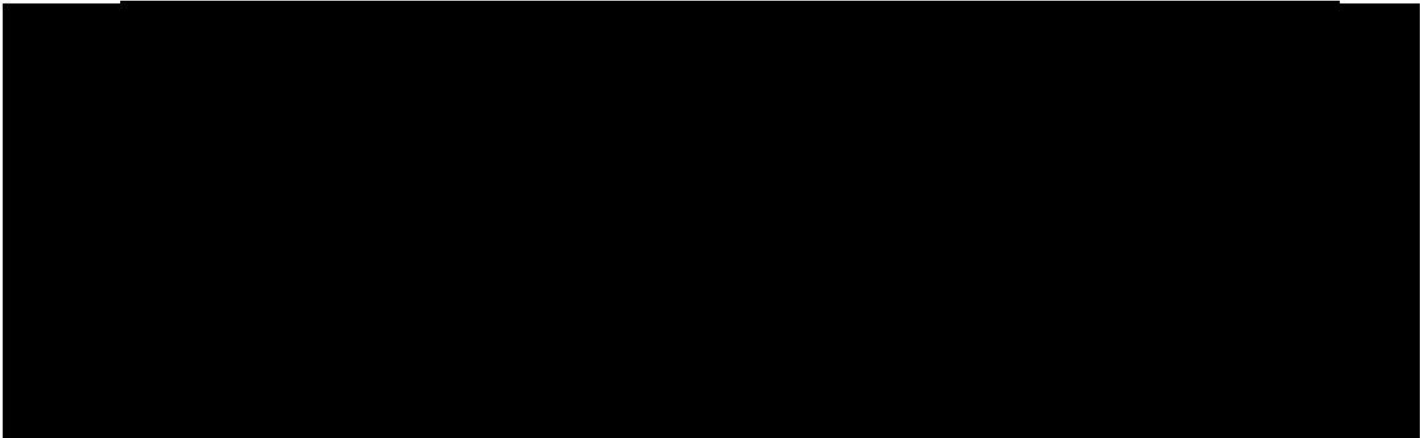
CALL OFF TERMS AND CONDITIONS



CALL OFF TERMS AND CONDITIONS



CALL OFF TERMS AND CONDITIONS



Annex 1

Service Levels

Service Availability

Table 1

A large black rectangular box redacting the content of Table 1.

Incident Resolution

Table 2a

A large black rectangular box redacting the content of Table 2a.

CALL OFF TERMS AND CONDITIONS

Table 2b

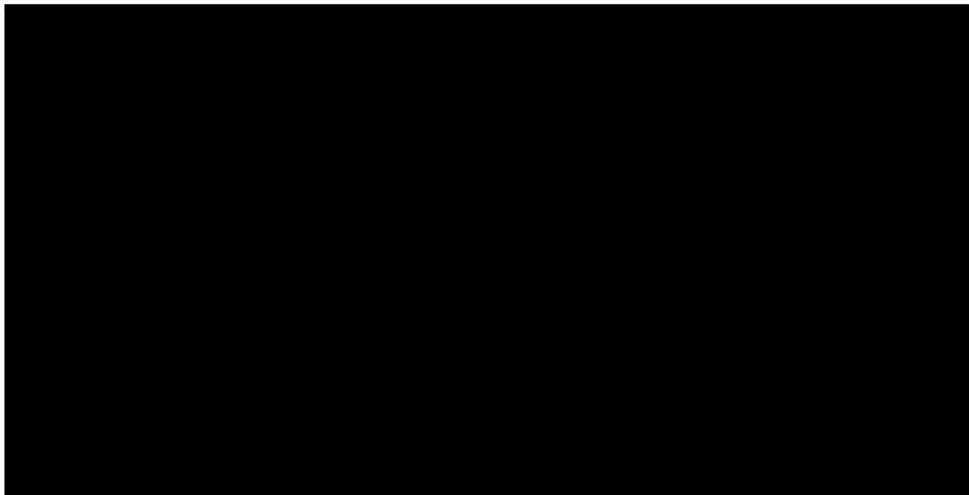
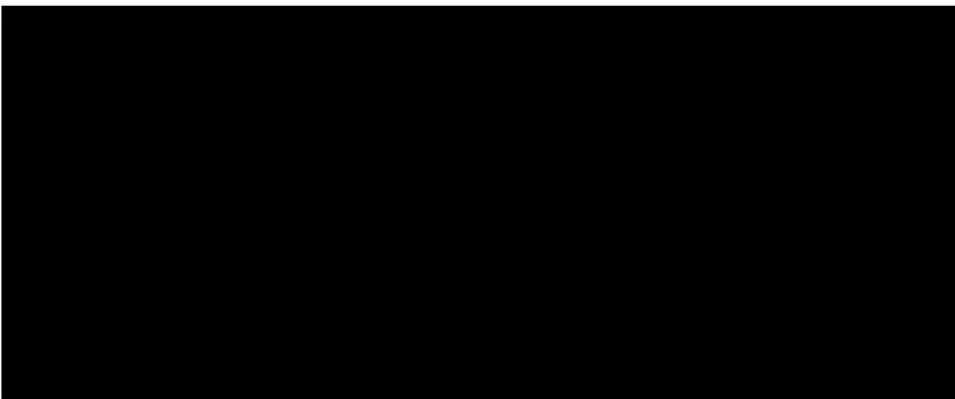
A large rectangular area that has been completely redacted with a solid black fill, obscuring all content of Table 2b.

Table 2c

A large rectangular area that has been completely redacted with a solid black fill, obscuring all content of Table 2c.

Table 2d

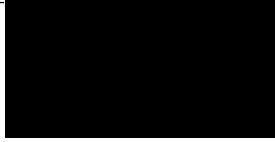
A large rectangular area that has been completely redacted with a solid black fill, obscuring all content of Table 2d.

Appendix 2

A rectangular area that has been completely redacted with a solid black fill, obscuring all content of Appendix 2.

Appendix 3

CALL OFF TERMS AND CONDITIONS



CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-4

CHARGES AND INVOICING

1. INTRODUCTION

- 1.1. This Schedule 2-4 details:
- 1.1.1. the Charges for the Services; and
 - 1.1.2. the Invoicing Procedure that shall apply to the Services provided under this Contract.

2. GENERAL

- 2.1. The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 2.2. The Service Provider shall continuously indemnify the Customer against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time on receipt of a written demand in respect of the Service Provider's failure to account for or to pay any Value Added Tax relating to payments made to the Service Provider under this Contract.
- 2.3. Any amounts due under paragraph 2.2 of this Schedule 2-4 shall be paid in cleared funds by the Service Provider to the Customer within five (5) Working Days of receipt of a written demand.
- 2.4. If at any point during the Term the Service Provider reduces its charges for the Services offered under the Framework Agreement in accordance with the terms of the Framework Agreement, the Service Provider shall immediately notify the Customer and reduce the Charges for the Services under this Contract by the same amount.

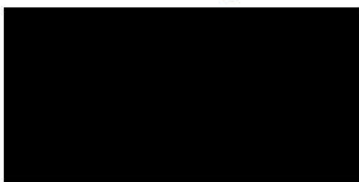
3. CHARGES

3.1. Annual Service Charges

- 3.1.1. The Customer shall pay the following Charges to the Service Provider on the terms agreed between the parties -annually-in advance- for the remainder of the Term (the "**Service Charges**") as follows:

Charge	£
Annual Service Charge (per patient)	£ [REDACTED]

- 3.2. The Charges will be ascertained in accordance with the terms set out in this Schedule 2-4 and Pricing Schedule embedded below.



- 3.3. This Contract has a total contract value of £4,450,621.00 excl VAT. Any spend that may exceed this value will require written agreement by both parties in advance of service delivery in accordance with the Contract Change procedure (2-8).

4. INVOICES

CALL OFF TERMS AND CONDITIONS

-
- 4.1. Prior to raising a Purchase Order (PO) with the Service Provider the customer/drawdown authority must first request a Unique Reference Number (URN) from the Framework Authority (London Procurement Partnership). This URN will be unique to each individual call off Contract and must be referenced on all PO's relating to this corresponding call off contract. This provides a clear audit trail linking the order back to both this specific call off contract and the overarching Framework Agreement.
 - 4.2. When the Service Provider receives a PO from a customer/drawdown authority containing a URN linking the order back to both this specific call off Contract and the overarching Framework Agreement they must quote the URN on the corresponding invoice in order to maintain the audit trail.
 - 4.3. Under the terms of the overarching Framework Agreement London procurement Partnership (LPP) have the right to request copies of all PO's from the customer/drawdown authority and/or invoices from the Framework Service provider relating to a specific URN/s in order to ensure that they are accurately invoicing a given Framework Service Provider for the correct amount of ABI owed.
 - 4.4. The Service Provider shall ensure that invoices in respect of the Charges include the following information:
 - 4.4.1. the event to which the invoice relates and a summary of the corresponding Service;
 - 4.4.2. any Service Credits due;
 - 4.4.3. total value excluding Value Added Tax;
 - 4.4.4. the Value Added Tax percentage;
 - 4.4.5. the total value including Value Added Tax; and
 - 4.4.6. the tax point date relating to the rate of Value Added Tax shown;
 - 4.4.7. The URN provided by LPP.
 - 4.5. Without limitation, the Service Provider shall demonstrate that the Charges have been properly and justifiably incurred, and will provide evidence of the Charges to the Customer prior to issuing an invoice.
 - 4.6. The Service Provider shall submit invoices directly to an authorised representative of the Customer.

5. INVOICE PAYMENT

- 5.1. The Service Provider shall accept payment of the Charges via electronic bank transfer. The Service Provider shall provide the Customer with bank details for BACS.
- 5.2. All invoices submitted by the Service Provider shall be payable by the Customer within twenty (20) Working Days of the date of receipt of the invoice, unless otherwise specified in accordance with the provisions of this Schedule 2-4.
- 5.3. In the event of an invoice being disputed by the Customer, the Customer shall make payment in respect of any undisputed amount in accordance with this Schedule 2-4 and raise a dispute with the Service Provider as soon as practicable with a covering statement providing sufficient detail of the reason for any non-payment to enable the Service Provider to understand the nature of the dispute.
- 5.4. The Service Provider shall respond to the Customer within ten (10) Working Days of receipt of a disputed invoice stating whether or not the Service Provider accepts the Customer's dispute. If the Service Provider accepts the Customer's dispute then the Service Provider

CALL OFF TERMS AND CONDITIONS

shall supply the Customer with a replacement valid invoice. If it does not accept the dispute then the matter shall be dealt with in accordance with the provisions of Clause 20 (Dispute Resolution) under the Contract.

- 5.5. Interest shall be payable on any late payments of the Charges under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-5

IMPLEMENTATION

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

1. IMPLEMENTATION

- 1.1. If required by the Customer, both parties shall perform all their obligations under this Contract in accordance with the following Implementation Plan:
- 1.2. In the event that the Service Provider fails (or is likely to fail), due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the Service Provider shall notify the Customer in writing of such failure (including full details of the reasons for and consequences of the delay) and, at the request of the Customer and without prejudice to the Customer's other rights and remedies:
 - 1.2.1. arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Customer; and
 - 1.2.2. take all reasonable steps necessary to eliminate or mitigate the consequences of the delay, including issuing a correction plan (covering those aspects for which the Service Provider is responsible) for approval not later than ten (10) Working Days after the initial notification under paragraph 1.2 of this Schedule, which once approval has been secured from the Customer, shall be followed by the Service Provider.
- 1.3. In the event that any obligation of the Service Provider specified in the Implementation Plan is (or is likely to become) delayed as a result of a Default by the Customer then:
 - 1.3.1. the Service Provider shall immediately notify the Customer of the fact of the delay (including full details of the consequences of the delay);
 - 1.3.2. the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such Customer's Default (or other such period as the parties agree);
 - 1.3.3. both parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Services; and
 - 1.3.4. the Customer shall reimburse those reasonable costs of the Service Provider which are both reasonably and necessarily incurred by the Service Provider as a direct result of such delay.
- 1.4. Where a delay is attributable in part to the Service Provider's Default and in part to a Customer Default, the parties shall negotiate in good faith with a view to agreeing a fair and reasonable apportionment of responsibility for the delay. If necessary, the parties may escalate the matter in accordance with Clause 20.
- 1.5. Time shall be of the essence in relation to milestones and/or deliverables in the Implementation Plan which are stated by the Customer to be key milestones and/or deliverables.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-6

ACCEPTANCE PROCEDURES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1 This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Services.

2. ACCEPTANCE PROCEDURES

- 2.1 The Service Provider shall, during the Acceptance Test Period, make available the Services to the Customer (including any products supplied by the Service Provider necessary to enable the provision of the Services) for the Acceptance Procedures to be performed.
- 2.2 The Customer will conduct Acceptance Tests on the Services to test whether it meets the appropriate Service Levels.
- 2.3 The Customer will perform the Acceptance Procedures in respect of the Services (including any applicable delivery milestones stated within the Implementation Plan of this Contract).
- 2.4 The Acceptance Procedures shall be recorded as successful and the Service Provider notified accordingly when all the Acceptance Test Criteria are met.
- 2.5 The Acceptance Procedures shall be recorded as unsuccessful and the Service Provider notified accordingly where any of the Acceptance Test Criteria are not met.
- 2.6 For the avoidance of doubt, the Acceptance Date shall be deemed to have occurred on the expiry of [five (5) Working Days] after all Acceptance Tests are recorded as successful.
- 2.7 In the event that the Acceptance Procedures in respect of the Services or any part thereof, have not been recorded as successful pursuant to paragraph 2.5 of this Schedule by the end of the relevant Acceptance Test Period, the Customer will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the Service Provider shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.
- 2.8 In the event that after the Customer has extended the Acceptance Test Period pursuant to paragraph 2.67 of this Schedule the relevant Acceptance Procedures have not been recorded as successful by the end of that period, the Customer shall, without prejudice to its other rights and remedies, be entitled to:
- 2.8.1 extend the Acceptance Test Period for a further period (or periods) specified by the Customer during which the Service Provider shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or
- 2.8.2 reject the Services, terminate this Contract and receive a [pro rata] refund of all sums paid under this Contract. [DN: Need to consider the acceptance of this by Service Providers if there is work they can validly be expected to be paid for.]

CALL OFF TERMS AND CONDITIONS

- 2.9 If the Customer fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the Customer, the Acceptance Tests shall be deemed to have been completed successfully.
- 2.10 The Acceptance Procedures set out in paragraph 2 of this Schedule shall apply to each of the phases of testing set out in paragraph 3 of this Schedule (unless stated otherwise in paragraph 3).
- 2.11 The right to reject and terminate in paragraph 2.8.2 of this Schedule shall apply to each element of the Services so that the Customer can reject and terminate parts of the Service rather than the entire Services if it so wishes. If the Customer only terminates the rejected part of the Services the refund referred to in paragraph 2.8.2 of this Schedule shall be in respect of the part of the Service so rejected.
- 2.12 The Service Provider shall provide such assistance as the Customer requires in relation to the conducting of the Acceptance Tests.
- 2.13 During the implementation/rollout phase (as further described in paragraph 3 of this Schedule), the Customer reserves the right to re-test any service element which failed the Acceptance Tests conducted in the previous testing phase (as further described in paragraph 3 of this Schedule) even if such service element subsequently passed the Acceptance Test and was signed off by the Customer. In the event of such re-test, the Customer shall have all rights and remedies set out in the Contract.

3. ACCEPTANCE TEST CRITERIA

[DN: The Acceptance Test Criteria pertaining to the Services to be inserted here]

Ref	Service	Pre-Conditions	Acceptance Criteria

[DN: You may also want to consider including agreed Acceptance Testing Pro-Forma Forms or Sign Offs]

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-7

CONTRACT, SERVICE MANAGEMENT & REPORTING

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. CONTRACT MANAGEMENT

- 1.1. If required by the Customer, the Service Provider shall provide to the Customer's other suppliers (as are notified to the Service Provider periodically) such reasonable co-operation, data, information (including any documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services (such connection to be governed by the Service Provider's standard interface licencing provisions) and on the termination (howsoever arising) or expiry of this Contract, to enable the timely transition of the Services (or any of them) to any replacement service provider.
- 1.2. In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Service Provider System, the Service Provider shall:
 - 1.2.1. ensure that there is no interference with the provision of the Services in accordance with this Contract; and
 - 1.2.2. take all necessary steps within its power to ensure that the interface is successfully achieved,

and the cost of such activity pursuant to it following the Service Provider's standard interface licencing provisions and procedures shall be incorporated within the existing Charges, provided that if it is subsequently agreed by the parties, or determined in accordance with Clause 20, that the third party supplier (or the Customer where provided by the Customer) should have been responsible, or partly responsible, for resolving the relevant incident, the Service Provider may recover its reasonable additional expenses for resolving the issue to the extent that the third party contractor is agreed, or is determined, to have been responsible for resolving the incident, and to the extent that the Customer is able to recover an equivalent amount from the relevant third party contractor.
- 1.3. Any change in the way in which the Service Provider provides the Services which would affect the Customer's use of the Services, materially increase the Customer's risk or reduce the effect of the governance provisions of the Contract shall require the Customer's prior written approval.
- 1.4. The Service Provider undertakes to:
 - 1.4.1. inform the Customer in writing reasonably in advance of any adverse effects of carrying out its obligations under this paragraph 1.2 on the Services;
 - 1.4.2. minimise any such adverse effects to the extent reasonably practicable in the circumstances; and
 - 1.4.3. liaise with the Customer regarding the most appropriate time to carry out these obligations and comply with the Customer's requirements in this regard.
- 1.5. The Service Provider shall ensure that any new releases and upgrades of the Software:
 - 1.5.1. comply with the interface requirements in this Contract; and

CALL OFF TERMS AND CONDITIONS

- 1.5.2. are communicated to the Customer in advance of implementation;
- 1.5.3. are co-ordinated with the Customer to ensure it minimises any disruption to the Services, the ICT Environment or the Customer's operations.

2. PERFORMANCE MONITORING

- 2.1. The Service Provider shall ensure that the Services and its performance is measured consistently in order to:
 - 2.1.1. provide data to monitor the Service Provider's performance against the Service Levels;
 - 2.1.2. enable the pro-active management of the Services;
 - 2.1.3. the preparation of the Availability Reports and Service Incident Reports by the Service Provider;
 - 2.1.4. verify if the Service Provider is complying with the Service Levels; and
 - 2.1.5. document any issues in the Service Provider's performance and/or delivery of the Services.

3. AVAILABILITY REPORTS

- 3.1. The Service Provider shall be responsible for measuring the Availability of the Service Provider System and the Services in accordance with paragraph 2 of this Schedule 2-7.
- 3.2. The Service Provider shall provide the Customer with monthly Availability Reports detailing a record of the Availability of the Services for the previous month.
- 3.3. Availability Reports shall be provided by the Service Provider to the Customer by the 5th Working Day of the following month.

4. SERVICE INCIDENT REPORTS

- 4.1. The Service Provider shall be responsible for monitoring the Service Incidents in relation to the Services and shall provide the Customer with a Service Incident Report on a monthly basis summarising the following:
 - 4.1.1. a record of any failures to provide the Services in accordance with this Contract including a summary of all Service Incidents and those which remain in an "open" status and those which have been excluded in accordance with paragraph 3.4 of Schedule 2-3 (Performance Management);
 - 4.1.2. the Service Credits to be applied, if applicable;
 - 4.1.3. Not Used and
 - 4.1.4. details of the number and nature of any complaints from the Customer.

5. LOGGING A SERVICE INCIDENT

- 5.1. The Customer shall contact the Service Provider directly by telephone to report a Service Incident, as soon as a potential or actual Severity Level 1, 2, 3 or 4 Service Incident being identified. The Customer shall contact the Service Provider directly by email to log a Service Request.
- 5.2. Allocation of the Incident Severity Levels are for determination by the Service Provider, The Service Provider shall define and utilise Incident Severity Level guidelines which will be issued to the Customer for approval (not to be unreasonably withheld). If the Service

CALL OFF TERMS AND CONDITIONS

Provider and the Customer are not able to agree on the Severity Level of a Service Incident, the matter shall be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure). Any such challenge a Severity Level above a Severity Level 2 shall not affect the obligations of the Service Provider to respond to the Service Incident in accordance with the Severity Level proposed by the Customer.

- 5.3. The Customer is expected to log all Service Incidents via telephone.
- 5.4. Outside the Working Day the Service Provider shall provide an on-call point of contact in the event that a Severity Level 1 or 2 Service Incident occurs.
- 5.5. The Service Provider shall log a Service Incident as soon as it becomes aware of such Service Incident either through being notified by the Customer/ End User or otherwise.
- 5.6. Where the Service Provider receives more than one report of a Service Incident then the first report shall be deemed to be the Service Incident.
- 5.7. The Service Provider, on receiving notification of each Service Incident, will:
 - 5.7.1. triage the call and review the information provided by the Customer;
 - 5.7.2. document the action intended to be taken or which has been taken to rectify the Service Incident;
 - 5.7.3. document the Service Provider's plans for remedying the Service Incident and/or for preventing the Service Incident from re-occurring including details where applicable of the estimated time within which such Service Incident will be Resolved.

6. TRANSPARENCY REPORTS:

- 6.1. The Service Provider recognises that the Customer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Service Provider shall comply with the provisions of this Schedule in order to assist the Customer with its compliance with its obligations under that PPN.
- 6.2. If at any point during the term, the Customer identifies the need for the Service Provider to provide transparency report as required in the form set out below in this Schedule the parties shall meet to discuss the requirement, content, frequency and format and the particulars and agreement will be introduced through a Contract Change Note in accordance with Schedule 2-8 (Contract Change Procedure).
- 6.3. Not Used .
- 6.4. The Service Provider shall provide accurate and up-to-date versions of each Transparency Report to the Customer at the frequency referred to in the Annex of this Schedule.

List of Transparency Reports

Title	Content	Format	Frequency
[Performance]	[]	[]	[]
Contract Charges]	[]	[]	[]
[Key Sub-Contractors]	[]	[]	[]

CALL OFF TERMS AND CONDITIONS

[Technical]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
[Performance management]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CALL OFF TERMS AND CONDITIONS

Annex A

Management Information

Not Used

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-8

CONTRACT CHANGE PROCEDURE

1. INTRODUCTION

- 1.1. This Schedule sets out the Contract Change Procedure to be used by the Customer and the Service Provider to effect changes to this Contract.
- 1.2. In accordance with Clause 27 of the Contract, changes to the Sub-Contractors listed in Schedule 2-9 (Sub-Contractors) shall not be subject to the Contract Change Procedure and shall be subject to Clause 29.5 of the Contract.

2. PRINCIPLES

- 2.1. The Customer and the Service Provider shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold nor delay consent to the other party's proposed changes to this Contract.
- 2.2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the Service Provider shall continue to provide and make available to the Customer the Services in accordance with this Contract.
- 2.3. Any work undertaken in connection with any changes to this Contract by the Service Provider, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule) shall be undertaken entirely at the expense and liability of the Service Provider unless otherwise agreed between the Customer and the Service Provider in advance.
- 2.4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed changes to this Contract, including the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

3. PROCEDURE

- 3.1. Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change to the other party using the proforma at Annex A to this Schedule in accordance with Clause 8.1 of this Contract.
- 3.2. Within ten (10) Working Days of the submission of a draft CCN (or such other period as may be agreed between the parties) the receiving party shall respond to the draft CCN in accordance with this Contract. If appropriate, the parties shall enter into discussions to discuss the draft CCN.
- 3.3. Discussion between the parties following the submission of a draft CCN shall take place within five (5) Working Days (or such other period as agreed by the parties) and result in either:
 - 3.3.1. agreement between the parties on the changes to this Contract to be made (including agreement on the date upon which the changes to this Contract are to take effect (the "**CCN Effective Date**")) within five (5) Working Days (or such other period as agreed by the parties), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract; or
 - 3.3.2. no further action being taken on that draft CCN.
- 3.4. Where agreement is reached in accordance with paragraph 3.3.1 of this Schedule, the party submitting the draft CCN shall prepare a final CCN for execution by both parties within five (5) Working Days (or such other period as agreed by the parties). The final CCN, the content of which has been agreed between the parties in accordance with

CALL OFF TERMS AND CONDITIONS

paragraph 3.3.1 of this Schedule, shall be uniquely identified by a sequential number allocated by the Customer.

- 3.5. The Service Provider shall sign two (2) copies of each CCN and submit these to the Customer not less than ten (10) Working Days prior to the CCN Effective Date.
- 3.6. Subject to the agreement reached in accordance with paragraph 3.3.1 of this Schedule remaining valid, the Customer shall sign both copies of the approved CCN within five (5) Working Days of receipt by the Customer. Following signature by the Customer, one (1) copy of the signed CCN shall be returned to the Service Provider by the Customer.
- 3.7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause 8 of this Contract.

4. CHARGE VARIATIONS

- 4.1. The Charges, shall only be varied due to:
 - 4.1.1. agreement between the parties at any time to either increase or decrease any of the Charges (where applicable); and
 - 4.1.2. reduction in the charges in accordance with paragraph 2.4 of Schedule 2-4 (Charges and Invoicing).

CALL OFF TERMS AND CONDITIONS

Annex A

Contract Change Note for the Contract Change Procedure

Sequential Number: [to be allocated by the Customer]
Title:
Originator: for the [Customer/Service Provider]
Date change first proposed:
Number of pages attached:

WHEREAS the Service Provider and the Customer entered into a Contract for the provision of the Services dated [insert date] and now wish to amend that Contract as follows:

Reason for proposed change

[Party proposing change to complete]

Full details of proposed change

[Party proposing change to complete]

Target date for implementing proposed change

[Party proposing change to complete]

Details of likely impact, if any, of proposed change on other aspects of the Contract

[Party proposing change to complete]

IT IS AGREED as follows:

- 1. With effect from [date] the Contract shall be amended as set out below:

[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]
- 2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

Signed for and on behalf of the Service Provider

By
Name
Title
Date

CALL OFF TERMS AND CONDITIONS

Signed for and on behalf of the Customer

By
Name
Title
Date

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-9

SUB-CONTRACTORS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule contains:
 - 1.1.1. details of the Sub-Contractors to be engaged or employed by the Service Provider in the provision of the Services; and
 - 1.1.2. the procedure to select, appoint and manage Sub-Contractors.
- 1.2. Clause 27 of this Contract sets out the conditions and restrictions placed on amending or changing Sub-Contractors.

2. SUB-CONTRACTORS

Name and full contact details	Obligation
<div></div>	<div></div>

CALL OFF TERMS AND CONDITIONS

3. PROCEDURE TO SELECT, APPOINT AND MANAGE SUB-CONTRACTORS

The following procedure shall be followed by the Service Provider when selecting, appointing and managing Sub-Contractors under this Contract:

Appointment of Sub-Contractors

- 3.1. The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Service Provider is able to:
 - 3.1.1. manage any Sub-Contractors in accordance with Good Industry Practice; and
 - 3.1.2. comply with its obligations under this Contract in the delivery of the Services.
- 3.2. Prior to sub-contracting any of its obligations under this Contract, the Service Provider shall notify the Customer in writing of:
 - 3.2.1. the proposed Sub-Contractor's name, registered office and company registration number;
 - 3.2.2. the scope of the Services to be provided by the proposed Sub-Contractor; and
 - 3.2.3. where the proposed Sub-Contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 3.3. The Customer consents to the appointment of the Sub-Contractors as set out in Schedule 2-9 of this Contract at the date of this Contract.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-10

DISPUTE RESOLUTION PROCEDURE

1. INTRODUCTION

- 1.1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.
- 1.2. In the event that a dispute cannot be resolved by the Customer and Service Provider representatives nominated under Clause 20.3 of this Contract within a maximum of thirty (30) Working Days (or such other period as agreed by the parties) after referral, the dispute shall be further referred to mediation in accordance with the provisions of Clause 20.4 of this Contract.
- 1.3. Subject always to the provisions of Clause 20 of this Contract, nothing in this dispute resolution procedure shall prevent the Customer or the Service Provider from seeking from any Court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.

2. MEDIATION

- 2.1. The procedure for mediation pursuant to Clause 20.5 of this Contract and consequential provisions relating to mediation shall be as follows:
 - 2.1.1. a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Customer and the Service Provider or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator; and
 - 2.1.2. the Customer and the Service Provider shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 2.2. Unless otherwise agreed by the Customer and the Service Provider, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3. In the event that the Customer and the Service Provider reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by Customer’s CHIS Director and Service Provider’s Senior Account Manager.
- 2.4. Failing agreement, either the Customer or the Service Provider may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or otherwise without the prior written consent of both parties.
- 2.5. The Customer and the Service Provider shall each bear their own costs in relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.
- 2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.

CALL OFF TERMS AND CONDITIONS

-
- 2.7. In the event that the Customer and the Service Provider fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of Clause 20.5 of this Contract.

3. ARBITRATION

- 3.1. In the event that a dispute between the Customer and the Service Provider, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph 2 of this Schedule, the parties may, in accordance with the provisions of Clause 20.5 of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.
- 3.2. The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:
- 3.2.1. that the dispute is referred to arbitration;
- 3.2.2. the particulars of this Contract; and
- 3.2.3. a brief summary of the subject of the dispute.
- 3.3. Unless otherwise agreed in writing by the Customer and the Service Provider, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.
- 3.4. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Schedule shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration (which are deemed to be incorporated into this Contract save that in the event of any conflict between those rules and this Contract, this Contract shall prevail).
- 3.5. It is agreed between the Customer and the Service Provider that for the purposes of the arbitration, the decision of the arbitrator shall be final and binding on the parties, except in the case of fraud, bias, manifest error, material breach of instructions on the part of the Arbitrator, or any material failure by the arbitrator to comply with the London Court of International Arbitration procedural rules, in which case a party will be permitted to apply to Court for an Order that:
- 3.5.1. the Arbitrator reconsider his decision (either all of it or part of it);
- 3.5.2. the Arbitrator's decision be set aside (either all of it or part of it).
- 3.6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the Customer and the Service Provider, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.
- 3.7. The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the laws of England. The arbitration tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the Court.
- 3.8. The Customer and the Service Provider shall each bear their own costs in relation to any

CALL OFF TERMS AND CONDITIONS

reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.

- 3.9. In the event that the Customer and the Service Provider do not agree to refer the matter to arbitration, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of Clause 36 of this Contract.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-11

COMMERCIALLY SENSITIVE INFORMATION

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. Without prejudice to the Customer's general obligation of confidentiality, the parties acknowledge that the Customer may have to disclose Information in or relating to this Contract following a Request for Information pursuant to Clause 18 of this Contract.
- 1.2. In this Schedule the parties have sought to identify the Service Provider's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3. Where possible, the parties have sought to identify where any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4. Without prejudice to the Customer's obligation to disclose Information in accordance with FOIA, the Customer will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the following Information:

	Item(s)	Duration of Confidentiality
1.	All breakdowns of prices provided by the Service Provider as disclosed by the Service Provider to the Customer in connection with this Call Off Agreement. Any rates or other information relating to the methodology used to calculate prices and rates.	The term of the agreement plus 10 years.
2.	All information relating to the Service Provider's prices, rates and charges, as disclosed by the Service Provider in connection with the Call Off Agreement and/or as agreed with the Customer.	The term of the agreement plus 10 years.
3.	Any information in relation to the Service Provider's technical solution, including any technical and design information disclosed by the Service Provider that would be reasonably considered as Commercially Sensitive.	The term of the agreement plus 10 years.
4.	The Service Provider's Intellectual Property Rights used in connection with this Call Off Agreement including but not limited to the Service Provider Background IPRs, Service Provider Software and all other information in relation to the Intellectual Property	The term of the agreement plus 10 years.

CALL OFF TERMS AND CONDITIONS

	Rights.	
5.	Any information in relation to the Service Provider's (or Subcontractor's) proprietary business policies and processes, methodologies and tools.	The term of the agreement plus 10 years.
6.	Any information in connection with Service Provider locations relating to any data centres	The term of the agreement plus 10 years.
7.	The Service Provider's security management plans, including the Service Provider's Information Security Management System Plan and Security Policy.	The term of the agreement plus 10 years.
8.	The Service Provider's Business Continuity and Disaster Recovery Plan.	The term of the agreement plus 10 years.
9.	Any information provided or created under the Exit terms, plans and provisions including but not limited to the information set out in Schedule 2-12 (Exit and Service Transfer).	The term of the agreement plus 10 years.
10.	Items submitted to the Customer during the performance of this Call Off Agreement, which, by prior agreement with the Customer, are specifically marked as Commercially Sensitive Information.	The term of the agreement plus 10 years.
11.	Personnel information regarding employees of the Service Provider and its Subcontractors except as required to meet the Parties' statutory obligations	The term of the agreement plus 10 years.
12.	Any information relating to the Service Provider Insurance provisions.	The term of the agreement plus 10 years.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-12

EXIT AND SERVICE TRANSFER ARRANGEMENTS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule describes the duties and responsibilities of the Service Provider to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a replacement service provider or whether the Services are to be run down to a close.
- 1.2. The objectives of the Exit and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Services from the Service Provider to a replacement service provider at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

2. EXIT AND SERVICE TRANSFER ARRANGEMENTS

Not Used

3. SERVICE TRANSFER PLAN

- 3.1. Where required by the Customer, no later than three (3) months prior to the Effective Date, and thereafter as specified in paragraph 3.3 of this Schedule, the Service Provider shall prepare a Service Transfer Plan (STP) for review by the Customer. The Customer shall review the STP within twenty (20) Working Days of receipt from the Service Provider and shall notify the Service Provider of any suggested revisions to the STP. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed STP shall be signed as approved by each party.
- 3.2. The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details (where applicable):
 - 3.2.1. proposals for the identification and transfer of documentation providing details of the Services;
 - 3.2.2. proposals for the identification of all Goods;
 - 3.2.3. proposals for the identification of all leases, circuit agreements, maintenance agreements and support agreements utilised by the Service Provider in connection with the provision of Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
 - 3.2.4. proposals for the identification and return of all Customer Furnished Items in the possession and/or control of the Service Provider or any third party (including any Sub-Contractor);
 - 3.2.5. a detailed summary identifying the owners of title and risk in all the Goods and Customer Furnished Items following transfer of the Services;
 - 3.2.6. proposals to enable the Customer or the replacement service provider to recruit suitably skilled personnel;
 - 3.2.7. proposals for the training of key members of the replacement service provider's

CALL OFF TERMS AND CONDITIONS

-
- personnel in connection with the continuation of the provision of Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
- 3.2.8. proposals for the granting of licences to use all software (including the Software) necessary for the Customer's receipt of Services and the provision of copies of all related documentation;
 - 3.2.9. proposals for the transfer of all Customer Data then in the Service Provider's possession to either the Customer or a replacement service provider, including:
 - 3.2.9.1. an inventory of all Customer Data;
 - 3.2.9.2. details of the data structures in which the Customer Data is stored, in the form of an agreed data model together with information on other data structures in which the Customer Data could be stored;
 - 3.2.9.3. proposed transfer methods, both physical and electronic; and
 - 3.2.9.4. proposed methods for ensuring the integrity of the Customer Data on transfer;
 - 3.2.10. proposals for providing the Customer or a replacement service provider copies of:
 - 3.2.10.1. all documentation used in the provision of the Service and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Service Provider; and
 - 3.2.10.2. all documentation relating to the use and operation of the Goods;
 - 3.2.11. proposals for the methods of transfer of the Goods to the Customer or a replacement service provider;
 - 3.2.12. proposals for the assignment or novation of all leases, circuit agreements, maintenance agreements and support agreements utilised by the Service Provider in connection with the performance of the Services;
 - 3.2.13. proposals for the disposal of any redundant Goods and materials; and
 - 3.2.14. proposals for the supply of any other information or assistance reasonably required by the Customer or a replacement service provider in order to effect an orderly hand over of the provision of the Services.
- 3.3. The STP shall be reviewed and updated by the Service Provider. In this regard, the Service Provider shall provide a revised version of the STP to the Customer on or before [31 July and 31 January] each year (or more frequently as may be agreed between the parties). The revised STP shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Schedule.

4. ASSISTANCE ON EXPIRY OR TERMINATION

- 4.1. In the event that this Contract expires or is terminated the Service Provider shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a replacement service provider including as set out in the Service Transfer Plan.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-13

STANDARDS AND REGULATIONS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule 2-13 sets out the Standards and Regulations with which the Service Provider shall comply in its provision of the Services.

GENERAL STANDARDS

1. COMPLYING WITH FUTURE GOVERNMENT REQUIREMENTS AND STANDARDS

The Service Provider shall comply with future Government requirements and Standards in accordance with any Government Guidance issued during the Term of this Contract and as developed and updated, from time to time insofar as any directions are not determined by the Service Provider to have the potential to cause significant alteration to the existing data architecture of its System or Solution..

2. CURRENT STANDARDS

- 2.1. The Service Provider shall at all times comply with the Standards.
- 2.2. The Service Provider shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures.
- 2.3. The Service Provider warrants that all the Service Provider Personnel and Sub-Contractors used to provide the Goods and the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 2.4. The introduction of new methods or systems which impinge on the provision of the Service shall be subject to prior Approval.
- 2.5. The Service Provider shall undertake its obligations arising under this Contract in accordance with the ISO 13485:2016 Quality Management System standard, and all other quality and technical standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with and any other applicable quality Standards, Government codes of practice and Guidance.

The Service Provider shall comply with the following standards at all times during the Term where applicable to the goods and services provided:

- a) The Service Provider acknowledges that the definitive source for NHS and social care standards and amendments to them is the Information Standards Board for Health and Social Care (www.isb.nhs.uk). The definitive source for British (BS), European (CEN) or International (ISO) standards and amendments to them is the British Standards Institution (www.bsigroup.co.uk).
- b) The Service Provider must also adhere to the Information Governance requirements as set out in Annex A.

CALL OFF TERMS AND CONDITIONS

-
- c) The Service Provider shall observe and keep track of NHS and industry standards as such standards evolve and emerge and are issued by the Customer. The Service Provider will use these standards in the development of future releases of the Services.
 - d) Unless otherwise agreed by the Customer, the Service Provider shall comply with latest approved versions of the standards as published by the Information Standards Board for Health and Social Care and the British Standards Institution.
 - e) If the Customer requires the Service Provider to implement additional standards, then this shall be requested using the Contract Change Procedure.

Release Management

- f) Not Used
- g) Not Used .
- h) Should the Service Provider reasonably believe that adoption of any standard conflicts with any other obligation under this Contract, then the Service Provider shall request direction from the Customer.
- i) Any other variation from the standards must be agreed by the Customer as part of the design and development of an update to the Services. The variation must be explicitly stated and agreed by the Customer.

Audit

- j) The Service Provider shall on reasonable request provide the Customer with documents showing how standards have been implemented in the provision of Services.
- k) If the Customer finds that the Services do not comply with a standard where compliance has been agreed as part of the release then this will be raised as a defect. The Service Provider shall resolve the service issue in accordance with the procedures set down in the terms and conditions.

Information Governance

2. General Standards

2.1. Quality Management System

- 2.1.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 13485:2016 Quality Management System standard or equivalent.
- 2.1.2. The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under Contracts in accordance with the ISO 13485:2016 Quality Management System standard or equivalent.

2.2. Environmental Management System

- 2.2.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO 14001:2015 Environmental Management System standard or equivalent.
- 2.2.2. The Service Provider shall ensure that its Sub-Contractors undertake their obligations arising under Contracts in accordance with the ISO 14001:2015 Environmental Management System standard or equivalent.

CALL OFF TERMS AND CONDITIONS

3. Project management

- 3.1. For project management responsibilities, the Service Provider shall ensure that PRINCE 2 or an equivalent methodology is used.

4. Information Security

- 4.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the ISO27001:2013 Information Security Management standard or equivalent.
- 4.2. The Service Provider shall ensure that all Goods and the Services intended for the transmission of protectively marked material or for the protection of systems accredited to store or process protectively marked material shall be protected and delivered to the standards set out in the Manual of Protective Security (MPS) or equivalent.
- 4.3. The Services shall comply with the Information Age Government Security Framework or equivalent.
- 4.4. The Service Provider shall prepare a Risk Management Accreditation Document Set (RMADS) (as defined in HMG Infosec Standard 2) covering the scope of the Services and shall maintain said RMADS throughout the term of this Contract. .

5. Health and Safety at Work

- 5.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the OHSAS 18001 Occupational Health and Safety Management System or equivalent.
- 5.2. Both parties shall take all necessary measures to ensure the health and safety of the other party's employees and agents visiting their premises.
- 5.3. The Service Provider shall notify the Customer of any use of substances listed under COSHH regulations or the Montreal Protocol in the provision of the Goods and the Services.

6. Environmental Standards

- 6.1. The Service Provider shall undertake its obligations in accordance with Directive 2002/96/EC on Waste Electrical and Electronic Equipment and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment.

7. Data protection

- 7.1. The Service Provider shall undertake its obligations arising hereunder and in all Contracts in accordance with the Data Protection Act 2018, as described in Schedule 2-22 within this Contract.

8. SUSTAINABILITY

- 8.1. The Service Provider undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services (including the Services) are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.
- 8.2. The Service Provider shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2002/96/EC.

CALL OFF TERMS AND CONDITIONS

9. SECURITY

- 9.1. The Service Provider shall ensure that security is maintained to the level required by Schedule 2-17, and subject to the relevant audit rights at Clause 32 of this Contract.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-14

TITLE AND RISK

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

1. INTRODUCTION

- 1.1. This Schedule 2-14 specifies the ownership and passing of title and risk from one party to another under certain circumstances during and following the Term of this Contract.

2. CONTRACT COMMENCEMENT

- 2.1. The Goods and the Customer Furnished Items to be used in the provision of the Services may (as applicable) be provided by the Service Provider, the Customer, a third party (e.g., lessor) or a previous service provider of the Customer. Subject always to the provisions of paragraph 3 of this Schedule, title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 2 of this Schedule.
- 2.2. Where any Goods are provided by the Service Provider (other than Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.4 of this Schedule):
- 2.2.1. title and risk remains with the Service Provider and such Goods (if required) shall be licensed to the Customer or its authorised agents; and
- 2.2.2. if the Goods are licensed in accordance with paragraph 2.2.1 of this Schedule and are in the Customer's sole possession and control, the Customer:
- 2.2.2.1. undertakes the safe custody, and the due return in accordance with the Service Transfer Plan, of those Goods; and
- 2.2.2.2. shall be responsible for any deterioration in those Goods, fair wear and tear excepted.
- 2.3. Where any Customer Furnished Items are provided by the Customer (other than Customer Furnished Items which are provided by a previous service provider in accordance with paragraph 2.5 of this Schedule):
- 2.3.1. title remains with the Customer and such Customer Furnished Items (if required) shall be licensed to the Service Provider or its Sub-Contractors for use only for the purposes of this Contract;
- 2.3.2. the Service Provider undertakes the safe custody, and the due return in accordance with the Service Transfer Plan, of those Customer Furnished Items;
- 2.3.3. the Service Provider shall be responsible for any deterioration in such Customer Furnished Items, fair wear and tear excepted; and
- 2.3.4. neither the Service Provider, nor any Sub-Contractor, nor any other person shall have a lien on such Customer Furnished Items for any sum due to the Service Provider, any Sub-Contractor or any other person and the Service Provider shall take all reasonable steps to ensure that the title of the Customer and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other people dealing with such Customer Furnished Items.
- 2.4. Where any Goods are leased, loaned or hired from a third party either directly to the Customer or via the Service Provider (in which case the identity of the third party shall be

CALL OFF TERMS AND CONDITIONS

disclosed to the Customer), title to those Goods shall remain with the lessor and risk shall be determined in accordance with the relevant third party terms and conditions.

- 2.5. Where any Customer Furnished Items are provided by a previous service provider to the Customer, title shall remain with the previous service provider (or the third party leasing, loaning or hiring such Customer Furnished Items) and shall be licensed to the Customer, its authorised agents or the Service Provider, as agreed between the parties concerned.

3. DURING THE TERM

- 3.1. Where ownership of any Goods and/or Customer Furnished Items to be used in the provision of the Services changes during the Term, the passing of title and risk in those Goods and Customer Furnished Items shall be as specified in this paragraph 3 of this Schedule.
- 3.2. Title in all Goods provided by the Service Provider shall pass to the Customer on the earlier of:
- 3.2.1. payment for such Goods; or
- 3.2.2. such Goods successfully passing the Acceptance Tests.
- 3.3. Notwithstanding paragraph 3.2.1 of this Schedule, risk in Goods provided by the Service Provider shall pass to the Customer when such Goods successfully pass the Acceptance Tests. If the Customer has paid for the Goods prior to conclusion of the Acceptance Tests, the Service Provider shall promptly repay the amounts paid by the Customer if the Goods (or any part thereof) do not successfully pass the Acceptance Tests.
- 3.4. Notwithstanding paragraph 3.2 of this Schedule, at anytime prior to the transfer of such Goods to the Customer in accordance with paragraph 3.2 of this Schedule, the Customer may request that the Service Provider transfer to a lessor nominated by the Customer certain Goods specified in the Customer's request. The title and risk in such Goods during the Term shall be determined in accordance with the relevant lease agreement. Where any terms in the lease agreement conflict or are inconsistent with any terms contained in this Contract, the Service Provider agrees not to enforce such conflicting or inconsistent terms against the Customer.
- 3.5. Where title and risk in any Customer Furnished Items is to transfer to the Service Provider, the Customer and the Service Provider shall agree the terms of such transfer in accordance with the Contract Change Procedures.

4. SERVICE TRANSFER

- 4.1. Title and risk in the Goods after the Term shall be determined as specified in the Service Transfer Plan.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-15

LIQUIDATED DAMAGES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

1. INTRODUCTION

- 1.1. This Schedule sets out the circumstances under this Contract where the Customer has a right to claim Liquidated Damages rather than the other rights and remedies expressed in the Contract. The Schedule sets out the period of such Liquidated Damages and their amounts.

2. LIQUIDATED DAMAGES

- 2.1. Without prejudice to any other remedies available to the Customer:

2.1.1. if:

2.1.1.1. any milestone or deliverable has not been met by the date set out in the Implementation Plan; and/or

2.1.1.2. the Acceptance Procedures have not been recorded as successful in accordance with paragraph 2.4 of Schedule 2-6 (Acceptance Procedures) by the end of the Acceptance Test Period,

the Service Provider shall pay to the Customer as Liquidated Damages for each Day of delay the relevant sum specified in paragraph 5 of this Schedule up to the end of the relevant Liquidated Damages Period. Such payment shall be in full and final settlement of the Service Provider's financial liability for any loss or damage incurred by the Customer during the Liquidated Damages Period; and

2.1.2. if:

2.1.2.1. any milestone or deliverable has not been met; and/or

2.1.2.2. the Acceptance Procedures have not been recorded as successful, by the end of the Liquidated Damages Period,

the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

- 2.2. No payment or concession to the Service Provider by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Liquidated Damages pursuant to the provisions of paragraph 2.1 of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Liquidated Damages.

- 2.3. At the Effective Date, the Service Provider and the Customer agree that the daily Liquidated Damages sum specified in paragraph 5 of this Schedule represents a genuine pre-estimate of the Customer's loss, calculated in accordance with paragraph 6 of this Schedule.

3. CIRCUMSTANCES WHERE LIQUIDATED DAMAGES APPLY

- 3.1. [DN: full details of circumstances where Liquidated Damages would apply to be inserted]

CALL OFF TERMS AND CONDITIONS

here by Customer as set out in requirement]

4. PERIOD OF LIQUIDATED DAMAGES

- 4.1. [DN: full details of the period of Liquidated Damages to be inserted here by Customer as set out in requirement]

5. AMOUNT OF LIQUIDATED DAMAGES

- 5.1. [DN: full details of value of Liquidated Damages to be inserted]

6. CALCULATION OF GENUINE PRE-ESTIMATE OF LOSS

- 6.1. [DN: full details of the calculation of the estimate to be inserted]

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-16

BCDR PLAN

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. PURPOSE OF THIS SCHEDULE

- 1.1. This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Service Provider to develop, review, test, change, and maintain a BCDR Plan in respect of the Services.
- 1.2. The BCDR Plan shall be divided into three parts:
 - 1.2.1. Part A which shall set out general principles applicable to the BCDR Plan (**General Principles**)
 - 1.2.2. Part B which shall relate to business continuity (**Business Continuity Plan**); and
 - 1.2.3. Part C which shall relate to disaster recovery (**Disaster Recovery Plan**).
- 1.3. The BCDR Plan shall detail the processes and arrangements which the Service Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

2. DEVELOPMENT OF BCDR PLAN

- 2.1. The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule.
- 2.2. The Service Provider shall ensure that it's Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1. The BCDR Plan shall:
 - 3.1.1. set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of Services and any services provided to the Customer by a Related Service Provider;
 - 3.1.3. contain an obligation upon the Service Provider to liaise with the Customer and (at the Customer's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Service Providers as notified to the Service Provider by the Customer from time to time;

CALL OFF TERMS AND CONDITIONS

- 3.1.5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
- 3.1.6. contain a risk analysis, including:
 - 3.1.6.1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 3.1.6.2. identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - 3.1.6.3. identification of risks arising from the interaction of Services with the services provided by a Related Service Provider; and
 - 3.1.6.4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7. provide for documentation of processes, including business processes, and procedures;
- 3.1.8. set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-Contractors) and for the Customer;
- 3.1.9. identify the procedures for reverting to "normal service";
- 3.1.10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to (i) ensure that there is no data loss; and (ii) preserve data integrity;
- 3.1.11. identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12. if required by the Customer, provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2. The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1. the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2. the adverse impact of any Disaster, Service Failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
 - 3.2.3. it complies with the relevant provisions of ISO 22301 and 27002 (as amended) and all other industry standards from time to time in force; and
 - 3.2.4. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3. The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

CALL OFF TERMS AND CONDITIONS

-
- 3.4. The Service Provider shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Contract.

4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

- 4.1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including and unless the Customer expressly states otherwise in writing:
- 4.1.1. the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- 4.1.2. the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2. The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy to the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

- 5.1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of Service Failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2. The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3. The Disaster Recovery Plan shall include the following:
- 5.3.1. the technical design and build specification of the Disaster Recovery System;
- 5.3.2. details of the procedures and processes to be put in place by the Service Provider and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
- 5.3.2.1. data centre and disaster recovery site audits;
- 5.3.2.2. backup methodology and details of the Service Provider's approach to data back-up and data verification;
- 5.3.2.3. identification of all potential disaster scenarios;
- 5.3.2.4. risk analysis;
- 5.3.2.5. documentation of processes and procedures;
- 5.3.2.6. Not used;
- 5.3.2.7. network planning including details of all relevant data networks and communication links;
- 5.3.2.8. invocation rules;

CALL OFF TERMS AND CONDITIONS

- 5.3.2.9. service recovery procedures; and
- 5.3.2.10. steps to be taken upon Service resumption to address any prevailing effect of the Service Failure or disruption;
- 5.3.3. any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4. details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5. access controls to any disaster recovery sites used by the Service Provider or any Sub-Contractor in relation to its obligations pursuant to this Schedule; and
- 5.3.6. testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1. The Service Provider shall review part or all of the BCDR Plan and the risk analysis on which it is based:
 - 6.1.1. on a regular basis and as a minimum once every six (6) calendar months;
 - 6.1.2. within three (3) months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
 - 6.1.3. where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Customer's written requirements. The costs of both parties for any such additional reviews will be met by the Customer.
- 6.2. Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or 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 BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:
 - 6.2.1. the findings of the review;
 - 6.2.2. any changes in the risk profile associated with Services; and
 - 6.2.3. the Service Provider's proposals ("Service Provider Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider 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.
- 6.3. The Service Provider shall as soon as is reasonably practicable after receiving the Customer's approval, not to be unreasonably delayed, of the Service Provider Proposals

CALL OFF TERMS AND CONDITIONS

(having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider Proposals. Any such change shall be at the Service Provider's expense unless it can be reasonably shown that the changes are required because of a material change to the Project's risk profile.

7. TESTING OF THE BCDR PLAN

- 7.1. The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every Year or such other basis as agreed by the Customer). Subject to paragraph 7.2 of this Schedule, the Customer may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying Service Provider business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2. If the Customer requires an additional test of the BCDR Plan it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 7.3. Following each test, the Service Provider shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4. The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5. The Service Provider shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6. The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
 - 7.6.1. the outcome of the test;
 - 7.6.2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.6.3. the Service Provider's proposals for remedying any such failures.
- 7.7. Following each test, the Service Provider shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Schedule or otherwise.
- 7.9. Not Used

CALL OFF TERMS AND CONDITIONS

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

- 8.1. Where any element of the BCDR Plan requires additional consents or approvals of the Customer, the Service Provider shall not test or invoke such element(s) of the BCDR Plan without the prior consent or approval of the Customer.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-17

SECURITY MANAGEMENT PLAN

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

1.1. This Schedule covers:

- 1.1.1. principles of protective security to be applied in delivering the Services;
- 1.1.2. wider aspects of security relating to the Services;
- 1.1.3. the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.4. the creation and maintenance of the Security Management Plan;
- 1.1.5. audit and testing of ISMS compliance with the security requirements (as set out in Schedule 2-3 (Performance Management)).
- 1.1.6. conformance to relevant ISMS requirements and;
- 1.1.7. obligations in the event of actual, potential or attempted breaches of security.

2. PRINCIPLES OF SECURITY

- 2.1. The Service Provider acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2. The Service Provider shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 2.2.1. is in accordance with Good Industry Practice, Law and this Contract;
 - 2.2.2. complies with the Security Policy;
 - 2.2.3. complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD) unless advised otherwise by the Customer;
 - 2.2.4. meets any specific security threats to the ISMS;
 - 2.2.5. complies with the security requirements as set out in Schedule 2-3 (Performance Management); and
 - 2.2.6. complies with the Customer's ICT standards where these do not conflict with the Security Management Plan.
- 2.3. Subject to Clause 50.3 of this Contract, the references to standards, guidance and policies set out in paragraph 2.2 of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

CALL OFF TERMS AND CONDITIONS

-
- 2.4. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Service Provider should notify the Customer's Contract Manager of such inconsistency immediately upon becoming aware of the same, and the Customer's Contract Manager shall, as soon as practicable, advise the Service Provider which provision the Service Provider shall be required to comply with.

3. ISMS AND SECURITY MANAGEMENT PLAN

3.1. Introduction

- 3.1.1. The Service Provider shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2 of this Schedule, be approved, by the Customer, tested in accordance with this Schedule, periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2. The Service Provider shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Term.
- 3.1.3. The Service Provider shall comply with its obligations set out in the Security Management Plan.
- 3.1.4. Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Customer Premises, the Sites, the Service Provider System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Service Provider in connection with this Contract.

3.2. Development of the Security Management Plan

- 3.2.1. Within 30 Working Days after signature of this Contract and in accordance with paragraph 3.4 of this Schedule, the Service Provider will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in Annex B of this Schedule.
- 3.2.2. If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 of this Schedule, is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan at Annex B. If the Security Management Plan is not approved by the Customer the Service Provider shall amend it within ten (10) Working Days of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with Schedule 2-10 (Dispute Resolution Procedure). No approval to be given by the Customer pursuant to this paragraph 3.2.2 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 of this Schedule shall be deemed to be reasonable.

3.3. Content of the Security Management Plan

- 3.3.1. The Security Management Plan will set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and

CALL OFF TERMS AND CONDITIONS

shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the principles set out in paragraph 2.2 of this Schedule).

- 3.3.2. The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the date of signature of this Contract to those incorporated in the Service Provider's ISMS at the date set out in the Implementation Plan for the Service Provider to meet the full obligations of the security requirements at Schedule 2-3 (Performance Management).
- 3.3.3. The Security Management Plan will be structured in accordance with ISO /IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within that standard.
- 3.3.4. The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Service Provider and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

3.4. **Amendment and Revision of the ISMS and Security Management Plan**

- 3.4.1. The ISMS and Security Management Plan will be fully reviewed and updated by the Service Provider annually, or from time to time to reflect:
 - 3.4.1.1. emerging changes in Good Industry Practice;
 - 3.4.1.2. any change or proposed change to the Service Provider System, the Services and/or associated processes;
 - 3.4.1.3. any new perceived or changed security threats; and/or
 - 3.4.1.4. any reasonable request by the Customer.
- 3.4.2. The Service Provider will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include:
 - 3.4.2.1. suggested improvements to the effectiveness of the ISMS;
 - 3.4.2.2. updates to the risk assessments;
 - 3.4.2.3. proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and/or
 - 3.4.2.4. suggested improvements in measuring the effectiveness of controls.
- 3.4.3. On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2 of this Schedule.
- 3.4.4. Any change or amendment which the Service Provider proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the Schedule 2-3 (Performance Management) or otherwise) shall be subject to the Contract Change Procedure and shall not be implemented until approved in writing by the Customer.

CALL OFF TERMS AND CONDITIONS

4. TESTING

- 4.1. The Service Provider shall conduct tests of the ISMS ("**Security Tests**") on an annual (or such otherwise period as advised by the Customer) basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 4.2. The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Service Provider shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3. Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Service Provider, to carry out such tests as it may deem necessary in relation to the ISMS and the Service Provider's compliance with the ISMS and the Security Management Plan. The Customer may notify the Service Provider of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Service Provider's ability to deliver the Services to the agreed Service Levels, the Service Provider shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4. Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 of this Schedule reveals any actual or potential Breach of Security, the Service Provider shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Service Provider proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 3.4.4 of this Schedule, the Service Provider shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Schedule 2-3 (Performance Management)), the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

5. COMPLIANCE WITH APPLICABLE ISO STANDARDS

- 5.1. ISO/IEC 27001
- 5.2. ISO/IEC 20000

6. BREACH OF SECURITY

- 6.1. Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 6.2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule, the Service Provider shall:
 - 6.2.1. immediately take all reasonable steps necessary to:
 - 6.2.1.1. remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
 - 6.2.1.2. prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is

CALL OFF TERMS AND CONDITIONS

determined by the Customer acting reasonably not to be covered by the obligations of the Service Provider under this Contract, then the Service Provider shall be entitled to refer the matter to the Contract Change Procedure; and

- 6.2.2. as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

CALL OFF TERMS AND CONDITIONS

Annex A

☐ (only applicable to the Contract if this box is checked and the requirements are listed) NOT USED

Security Policy

The Customer's Security Policy is attached below. [DN: to be inserted]

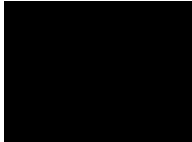
CALL OFF TERMS AND CONDITIONS

Annex B

Security Management Plan

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

The Service Provider's Security Management Plan is attached below. █



CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-18

SOFTWARE AND SOFTWARE LICENCE TERMS

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

1. INTRODUCTION

- 1.1. This Schedule details the various elements of the Software and categorises them into Specially Written Software, Service Provider Software and Third Party Software.
- 1.2. Annexes A and B of this Schedule sets out the licence terms for the Service Provider Software and Third Party Software (including Open Source Ordered Software), respectively.
- 1.3. The Service Provider shall update this Schedule periodically to record any Software subsequently acquired from third parties or developed for the delivery of the Services.

2. SPECIALLY WRITTEN SOFTWARE – NOT USED

- 2.1. The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the Service Provider for use by the Service Provider specifically in the provision of the Services (including any modifications or enhancements made to such software during the Term) and including the following items: [*** insert all details in this table ***]

Software	Supplier (if Affiliate of the Service Provider)	Purpose	To be deposited in Escrow?
			[*** Yes / No ***]
			[*** Yes / No ***]
			[*** Yes / No ***]
			[*** Yes / No ***]

- 2.2. The Service Provider will develop Software to meet the Service Provider's requirements. The following components will be modified to create the Specially Written Software: [*** insert all details ***]

3. SERVICE PROVIDER SOFTWARE

- 3.1. The Service Provider Software comprises the following items: [insert all details in this table]

Software	Supplier (if Affiliate of the Service Provider)	Purpose	[Number of Licences]	[Restrictions]	[Number of Copies]	[Other]	To be deposited in Escrow?
SystmOne	Service Provider	Clinical System Desktop –	N/A	As contracted	N/A	N/A	
SystmOne Mobile	Service Provider	Mobile Clinical	N/A	As contracted	N/A	N/A	

CALL OFF TERMS AND CONDITIONS

Software	Supplier (if Affiliate of the Service Provider)	Purpose	[Number of Licences]	[Restrictions]	[Number of Copies]	[Other]	To be deposited in Escrow?
		Application					
Airmid	Service Provider	Patient Portal	N/A	As contracted	N/A	N/A	
Brigid	Service Provider	Clinical System – Clinician App	N/A	As contracted	N/A	N/A	

4. THIRD PARTY SOFTWARE

4.1. The Third Party Software shall consist of the following items, including any Open Source Ordered Software:

Software	Supplier	Purpose	[Number of Licences]	[Restrictions]	Number of Copies	[Other]	To be deposited in Escrow?
██████	████	████ ██████	█ ██████	██████████	████	████	████
████	██████	████ ██████ ██████████ ██████	█ ██████ ████	██████████	████	████	████

CALL OFF TERMS AND CONDITIONS

Annex A

Service Provider Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

[DN: insert licence terms]

Annex B

Third Party Software

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

[DN: software licence to be inserted, if required]

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-19

INSURANCES

1. INTRODUCTION

- 1.1. This Schedule contains the list of insurances to be maintained by the Service Provider.
- 1.2. The Service Provider shall:
 - 1.2.1. maintain these insurances with a reputable insurance company on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market; and
 - 1.2.2. not cancel these insurances or make any material change to them without the express written consent of the Customer.
- 1.3. The Service Provider shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

2. LIST OF INSURANCE PROVISIONS

- 2.1. The Service Provider shall effect and maintain the following insurances in relation to the performance of its obligations under this Contract:
 - 2.1.1. public liability insurance adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of £10 million pounds for each individual claim or such higher limit as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time;
 - 2.1.2. employers' liability insurance with a minimum limit of indemnity as required by Law from time to time; and
 - 2.1.3. product liability insurance adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of £10 million pounds in the aggregate or such higher limit as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time; and
 - 2.1.4. professional indemnity insurance to cover all risks in the performance of this Contract from time to time with a minimum limit of indemnity of £10 million pounds for each individual claim as required by Contracting Bodies to be specified where relevant in an invitation to further competition and as required by Law from time to time.
- 2.2. Any excess or deductibles under the insurances referred to shall be the sole and exclusive responsibility of the Service Provider.
- 2.3. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this Contract.

CALL OFF TERMS AND CONDITIONS

- 2.4. The Service Provider shall produce to the Customer, on request, copies of all insurance policies referred to in this paragraph 2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 2.5. If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by this Contract then the Customer may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Service Provider.
- 2.6. The Service Provider shall maintain the insurances referred to in full force and effect at all times from the Commencement Date until that date which is six (6) Years following the expiration or earlier termination of this Contract or such longer term as may be required by the Customer.
- 2.7. The Service Provider shall use its reasonable endeavours to ensure that it shall not by its acts or omissions cause any policy of insurance to be invalidated or voided.

Class	Minimum Sum Insured
Public Liability	£10m in any one claim
Employers Liability	in accordance with any legal requirement for the time being in force.
Professional Indemnity	£10m in any one claim
Product Liability	£10m in the aggregate
Business Continuity	Business Continuity Insurance is not required on the Service Commencement Date. The Customer may during the Term require the Service Provider to maintain Business Continuity Insurance for a sum as agreed between the parties in the event that during the Term the Service Provider downgrades the support arrangements provided under Schedule 2-16 (BCDR Plan)

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-20

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

STAFFING

- 1.1. The Service Provider shall be entirely responsible for the employment and conditions of service of the Service Provider Personnel employed in the performance of the Services under the Contract.
- 1.2. The Service Provider will employ sufficient employees to ensure that the Service is provided at all times and in all respects in complete conformity with Schedule 2-3 (Performance Management). This will include, but not be limited to, the Service Provider providing a sufficient reserve of trained and competent staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Service Provider will employ only such persons as are careful, skilled and experienced in the duties required of them, and will ensure that every such person is properly and sufficiently trained and instructed (at the Service Provider's expense) and carries out the Services with regard to:
 - 1.2.1. the task or tasks that person has to perform;
 - 1.2.2. all relevant provisions of the Contract including, without limitation, Schedule 2-3 (Performance Management).
 - 1.2.3. all relevant policies, rules, procedures and standards of the Customer (including any racial discrimination and equal opportunities policies);
 - 1.2.4. the need for those working in a health service environment to observe the highest standards of hygiene, customer care, courtesy and consideration;
 - 1.2.5. the need to keep confidential all information howsoever acquired whether relating to the Customer and its business, or relating to patients, including but not limited to patient identity, clinical conditions and treatment.
- 1.3. The adherence of the Service Provider's Personnel to required standards of performance shall be routinely monitored and the Service Provider shall promptly take such remedial action as may be required where such standards are not attained.
- 1.4. Before the Service Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with the provision of the Services, the Service Provider shall comply with the following guidance as amended from time to time:
 - 1.4.1. NHS Employment Check Standards including without limitation the Criminal Record and Barring Check Standard; and
 - 1.4.2. such other checks as required by the Disclosure and Barring Service or which are to be undertaken in accordance with current and future national guidelines and policies.
- 1.5. The Service Provider will, when recruiting potential employees for the purpose of the Contract, act in accordance with Schedule 2-3 (Performance Management).
- 1.6. The Service Provider shall ensure that employees of appropriate levels of experience and expertise perform the Services to achieve cost efficiency.

CALL OFF TERMS AND CONDITIONS

-
- 1.7. The Service Provider shall at all times provide a sufficient number of staff of a supervisory level to ensure that all Service Provider Personnel are at all times adequately supervised and properly perform their duties. The Service Provider shall ensure that such supervisory level staff are sufficiently skilled, trained and instructed with regard to all matters under the Contract, including without limitation the performance of the Services.
 - 1.8. The Customer reserve the right to reject staff whom they consider to be unsuitable for the duties proposed. Where staff are rejected the Service Provider shall supply alternative staff. In addition, the Customer may (but not unreasonably or vexatiously) instruct the Service Provider to remove from work in or about the provision of the Services any person employed or engaged by the Service Provider and the Service Provider shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute and any such instruction shall not give rise to any liability whatsoever on the part of the Customer to the Service Provider or any other Party and shall not affect in any way the obligations of the Service Provider to carry out the Services to Schedule 2-3 (Performance Management).
 - 1.9. The Service Provider shall ensure that any employees to whom reference is made by name in Schedule 2-3 (Performance Management) are actively involved in the provision of the Services or are replaced with employees acceptable to the Customer. The Service Provider acknowledges that if it is ever the wish of the Service Provider to change the partners and/or employees committed to provide the Services as provided for in Schedule 2-3 (Performance Management) it shall first give notice of such wish to the Customer explaining the reasons for such wish together with full details of any proposed replacement partner and/or employee. The Customer shall be under no obligation to approve or accept any such replacement. If any of the partners or employees referred to in Schedule 2-3 (Performance Management) cease, in the reasonable opinion of the Customer, to provide and be responsible for the provision of the Services and the quality of the Services then the Customer may terminate the Contract in accordance with this Contract paying only for the Services provided up to the date of such termination.
 - 1.10. The Service Provider shall procure that all potential staff or persons performing any of the Services during the Term who may reasonably be expected in the course of their employment or engagement to have access to children or other vulnerable persons and/or access to persons receiving clinical services and/or medical services:
 - 1.10.1. are questioned concerning their Convictions; and
 - 1.10.2. in the case of all potential staff or persons performing any of the Service during the Term, obtain standard and enhanced disclosures from the Disclosure and Barring Service before the Service Provider engages the potential staff or persons in the provision of the Services to the Customer. The Service Provider shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Service Provider being registered with the Disclosure and Barring Service and that all such disclosures are renewed every three years while such potential staff are performing any of the Services during the Term.
 - 1.11. The Service Provider shall procure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with paragraph 1.10, or who is found to have any Convictions following receipt of standard and enhanced disclosures from the Disclosure and Barring Service in accordance with paragraph 1.10, or who fails to obtain standard and enhanced disclosures from the Disclosure and Barring Service upon request by the Service Provider in accordance with paragraph 1.10 is employed without the Customer' prior written consent.
 - 1.12. The Service Provider shall procure that the Customer is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Customer, and if the Customer, acting reasonably, considers that the Conviction has a

CALL OFF TERMS AND CONDITIONS

material bearing upon the suitability of the individual concerned to be engaged in the provision of the Services, such person shall only continue to have access to the persons receiving health services and/or have substantial access to children with the Customer's prior written consent. The Service Provider shall indemnify and keep indemnified the Customer against any Losses arising out of any claim by any person in respect of whom the Customer denies consent to continue to provide the Services as a result of such person disclosing or receiving a Conviction.

- 1.13. The Service Provider shall procure that the Customer is kept advised at all times of any:
 - 1.13.1. disciplinary incident relating to the Service Provider Personnel involving visitors, patients or the Customer's staff or property; and
 - 1.13.2. incidence of serious misconduct involving the Service Provider Personnel.
- 1.14. The Service Provider shall only employ staff for the purposes of the Contract who:
 - 1.14.1. fulfil any minimum training and qualification requirements of the Customer as set out in the Service Specification and also all training and qualification requirements that may be deemed necessary by the Customer, legislation, or any special bodies or associations including but not limited to any 'break away training' and secondary security training that may be deemed necessary by the Customer;
 - 1.14.2. are medically and physically fit in so far as the requirements of the work are concerned (subject to the duties imposed by the Equality Act 2010 including, without limitation, the duty to make reasonable adjustments where the relevant employee has a 'disability' within the meaning of the Equality Act 2010).
- 1.15. The Service Provider shall not employ in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially place the health of the Customer's staff, residents, patients or visitors at risk. In all such cases, the Service Provider is required to notify the Customer of each particular incident. The Service Provider may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Sites. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Service Provider at his own expense.
- 1.16. The Service Provider will comply with the Customer's policy and procedures on cross infection and notifiable diseases and will co-operate with and act upon the advice of the Customer's infection control representative. Accordingly, the Service Provider shall be required to fulfil certain responsibilities and carry out certain tasks including but not limited to minimising the risk to service users from staff-borne illnesses and making available a programme of appropriate vaccination and offers to update vaccinations for all of the Service Provider Personnel. In the event that there are outbreaks of infections amongst the Service Provider Personnel, the Service Provider shall liaise with the Customer on the appropriate way of dealing with such occurrences.
- 1.17. The Service Provider will maintain detailed records of its staff employed or engaged in providing the Services including details of names and usual place of duty and any other information relating to the Service Provider's obligations in this paragraph 1.21 as may be reasonably required and these records will be available to the Customer on reasonable request.
- 1.18. As a condition of employment in the contract, Service Provider Personnel:
 - 1.18.1. shall not corruptly solicit or receive any bribe or other consideration from any person, or fail to account for monies or property received in connection with duties under the Contract;

CALL OFF TERMS AND CONDITIONS

- 1.18.2. shall not be uncivil to persons encountered in the course of work, or make unnecessary use of authority in connection with the discharge of their functions under the Contract;
- 1.18.3. shall not act in a manner reasonably likely to bring discredit upon the Customer;
- 1.18.4. shall maintain proper standards of appearance and deportment whilst at work;
- 1.18.5. shall not at any time be on duty under the influence of alcohol or drugs;
- 1.18.6. shall on being charged with any criminal offence, notify the Service Provider immediately;
- 1.18.7. shall not neglect, nor without due and sufficient cause omit, to discharge promptly and diligently a required task within the terms of the Contract.
- 1.18.8. shall not misuse or abuse the Customer's property;
- 1.18.9. shall not smoke while on the Site, except in those areas where smoking is expressly permitted.
- 1.19. The Service Provider shall provide its employees with a form of identification that is acceptable to the Customer and which employees shall display on their clothing at all times while on the Site.
- 1.20. The Customer shall not be liable for loss of, or damage to, the personal property of Service Provider Personnel, howsoever caused.
- 1.21. It is the joint responsibility of the Service Provider and his employees to ensure that the employees supplied to carry out the Services have not worked excessive hours which could prejudice the standards of service. In accordance with the Working Time Regulations 1998 it is the responsibility of the Service Provider to keep records of hours worked for each employee.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-21

PENSIONS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Not Used

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-22

☒ (only applicable to the Contract if this box is checked and the requirements are listed)

Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects

1. Customer Data

- 1.1. The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 1.2. The Service Provider shall not store, copy, disclose, process or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- 1.3. To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule 2-7 (Contract, Service Management and Reporting) or by the Customer from time to time.
- 1.4. The Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data in accordance with the Data Protection Act.
- 1.5. The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 1.6. If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default, the Customer may:
 - 1.6.1. require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the BCDR Plan and the Service Provider shall do so as soon as practicable but not later than the period specified in Schedule 2-16 (BCDR Plan); and/or
 - 1.6.2. itself restore or procure the restoration of Customer Data to a standard that enables the Services to be provided under this Contract, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 1.7. If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.
- 1.8. The Service Provider shall indemnify and keep the Customer indemnified at all times from and against damages, compensation, costs, claims, demands, expenses, professional costs, and/or charges sustained by the Customer arising from enforcement action by the Information Commissioner and/or assertion of rights by Data Subjects, in the event of any loss, destruction, corruption, degradation or inaccuracy of Customer Data arising by reason of any act, omission or Default of the Service Provider in the provision of the Services under this Contract.
- 1.9. The indemnity in clause 1.8 in respect of in respect of the costs, expenses, professional costs and/or charges incurred by the Customer in the event of any loss, destruction, corruption, degradation or inaccuracy of Customer Data arising by reason of any act, omission or Default

CALL OFF TERMS AND CONDITIONS

of the Service Provider shall be limited in accordance with clause 14.1 of this Contract.

- 1.10. Either party shall inform the other immediately, or as soon as practically possible, in writing of:
 - 1.10.1. the nature of the relevant claim;
 - 1.10.2. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other party; and
 - 1.10.3. give the other party and its professional advisors reasonable access to its records and premises so that the claim can be properly investigated.
- 1.11. Each party shall ensure that they comply with, and not breach the provisions of the Data Protection Act and FOIA.

2. DATA PROTECTION

- 2.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 2-22 by the Customer and may not be determined by the Service Provider.
- 2.2. The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 2.3. The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - 2.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 2.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 2.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4. The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 2.4.1. process that Personal Data only in accordance with Schedule 2-22, unless the Contractor is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - 2.4.2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but the failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures) having taken account of the:
 - 2.4.2.1. nature of the data to be protected;
 - 2.4.2.2. harm that might result from a Data Loss Event;
 - 2.4.2.3. state of technological development; and
 - 2.4.2.4. cost of implementing any measures;

CALL OFF TERMS AND CONDITIONS

- 2.4.3. ensure that :
 - 2.4.3.1. the Service Provider personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2-22);
 - 2.4.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider personnel who have access to the Personal Data and ensure that they:
 - 2.4.3.2.1. are aware of and comply with the Service Provider's duties under this Clause;
 - 2.4.3.2.2. are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
 - 2.4.3.2.3. 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 Customer or as otherwise permitted by this Contract; and
 - 2.4.3.2.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 2.4.4. not transfer Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 2.4.4.1. the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - 2.4.4.2. the Data Subject has enforceable rights and effective legal remedies;
 - 2.4.4.3. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - 2.4.4.4. the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and
- 2.4.5. at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Service Provider is required by Law to retain the Personal Data.
- 2.5. Subject to paragraph 2.6, the Service Provider shall notify the Customer immediately if it:
 - 2.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.5.2. receives a request to rectify, block or erase any Personal Data;
 - 2.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 2.5.5. 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; or

CALL OFF TERMS AND CONDITIONS

- 2.5.6. becomes aware of a Data Loss Event.
- 2.6. The Service Provider's obligation to notify under paragraph 2.5 shall include the provision of further information to the Customer in phases, as details become available.
- 2.7. Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - 2.7.1. the Customer with full details and copies of the complaint, communication or request;
 - 2.7.2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4. assistance as requested by the Customer following any Data Loss Event; and
 - 2.7.5. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 2.8. The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
 - 2.8.1. the Customer determines that the processing is not occasional;
 - 2.8.2. the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 2.8.3. the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9. The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 2.10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
 - 2.11.1. notify the Customer in writing of the intended Sub-processor and processing;
 - 2.11.2. obtain the written consent of the Customer;
 - 2.11.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 2 such that they apply to the Sub-processor; and
 - 2.11.4. provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 2.12. The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.

CALL OFF TERMS AND CONDITIONS

- 2.13. The Customer may, following the Contract Change Procedure, request to revise this clause 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 Contract).
- 2.14. The Parties agree to take account of any binding guidance issued by the Information Commissioner's Office. The Customer may, following the Contract Change Procedure, request to amend this Contract to ensure that it complies with any binding guidance issued by the Information Commissioner's Office.

Description	Details
Subject matter of the processing	<p>The Processing is of health and social care data relating to those patients who are receiving care within the NHS, including providers commissioned and paid by the NHS, by Local Authorities, and providers commissioned and paid for by the Police and Crime Commissioners under the current arrangements for care in the Health and Justice System. The care settings using SystmOne are currently as follows:</p> <ul style="list-style-type: none"> • GP practices • Community services such as district nurses, rehabilitation centres, telehealth and diabetes services • Trust Reporting Units • Child health services that undertake scheduling of treatments such as vaccinations • Urgent care organisations such as Minor Injury Units and Out of Hours services • Community hospitals • Palliative care hospices and community services • The Health and Justice estate – care providers within secure units such as prisons and immigration removal centres • NHS Mental health trusts • NHS Hospital trusts • Accident and Emergency departments • Care Homes • Pharmacy • Social Care – registered and regulated professionals within social care organisations co-ordinating care (not social care providers) <p>Some of these health records will contain highly sensitive information such as medical diagnoses and associated information, safeguarding concerns and protections and social care provision for vulnerable people.</p>
Duration of the processing	<p>The duration of processing is in accordance with the Term of the Contract for the particular Data Controller to use SystmOne, unless instructed to continue any specific processing obligation after the end of the term, in which case the contractual agreement will be amended or a further contractual agreement will be entered into.</p>
Nature and purpose of the processing	<p>The nature of the processing means any operation such as collection, organisation, structuring, storage, adaptation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction or data whether or not by automated means) etc.</p> <p>The purpose is to allow health professionals, who have the appropriate controls and access rights, to update, add, amend and view electronic health records (EHRs), including sentencing information for prisoners, for the medical treatment of individuals (this includes care relating to their mental health and social care provision).</p> <p><i>The data is kept in England.</i></p>

CALL OFF TERMS AND CONDITIONS

Type of Personal Data	<p>Personal Data such as: Name, address, date of birth, NHS number, prisoner number, telephone number, email address, gender, next of kin.</p> <p>Special/Sensitive Personal Data such as: Racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health such as medical diagnoses, medications, allergies and sensitivities, images, medical and mental health history, safeguarding concerns and protections, social care provision and convictions and sentencing information, or data concerning a natural person's sex life or sexual orientation</p>
Categories of Data Subject	<p>Any individual attending care services (patients) who could include;</p> <ul style="list-style-type: none"> • Children • Vulnerable adults • Individuals sectioned under the Mental Health Act (MHA) • Persons within the Health and Justice system • The elderly • NHS employees
Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>See TPP's 'Draft Exit Plan' that explains how data is returned and deleted</p>

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-23

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Extra Call-off Terms and Conditions

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-24 FURTHER CUSTOMER OBLIGATIONS

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-25 MANAGED SERVICES – SET UP SERVICES

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

Set-up Services

Outline

Timetable

Stage	Timetable	
	Estimated start date	Estimated completion date
Planning and Due Diligence:		
Implementation:		
Roll-out:		

Planning and Due Diligence

- 1.1 The Service Provider shall conduct a due diligence exercise to examine all relevant Customer Sites, Customer Furnished Items, Customer Systems, Operating Environment, the Customer's contracts with third parties, and shall then prepare the Implementation Plan in co-operation with the Customer. The Implementation Plan shall list any Customer Furnished Items to be transferred to the Service Provider in accordance with paragraph 1.5 of this Schedule and any Assumed Contracts to be transferred in accordance with Clause 55.

Implementation

- 1.2 The Service Provider and the Customer shall co-operate in implementing the Managed Services in accordance with the implementation provisions of the Implementation Plan.

Roll-out

- 1.3 The Service Provider and the Customer shall co-operate in rolling out the Managed Services in accordance with the roll-out provisions of the Implementation Plan.

Asset transfer

- 1.4 In consideration of the sum of one pound sterling (£1.00) receipt of which is acknowledged, the Customer agrees that:

Customer Furnished Items

- 1.5 If the Implementation Plan identifies any Customer Furnished Items then the Customer shall, as from the Managed Services Acceptance Date, transfer the Customer Furnished Items to the Service Provider with full title guarantee.] [DN: To be confirmed.]

CALL OFF TERMS AND CONDITIONS

No warranty

- 1.6 Any transfer (whether by way of sale, licence or sub-licence) of Customer Furnished Items made by Customer to Service Provider under this Schedule is made on an "as is" basis. The Customer excludes all representations (unless fraudulent), warranties and conditions and other contractual terms howsoever arising whether by statute, common law or otherwise and whether express or implied (except that the items are free from encumbrances) to the maximum extent permitted by applicable law in relation to those Customer Furnished Items.

CALL OFF TERMS AND CONDITIONS

SCHEDULE 2-26 MANAGED SERVICES – BENCHMARKING

☐ (only applicable to the Contract if this box is checked and the requirements are listed)

1. Interpretation

- 1.1 In addition to the definitions and rules of interpretation in Clause xx, the definitions and rules of interpretation in this paragraph apply in this Schedule.

Benchmarked Services: the Managed Services taken as a whole.

Benchmarker: the independent third party appointed under paragraph 3 of this Schedule.

Comparison Sample: a sample of organisations providing Equivalent Services identified in accordance with paragraph 4 of this Schedule.

Equivalent Services: services that are identical, or similar in all material respects, to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance), are generally available within the UK and are supplied to a customer similar in size to the Customer over a similar period.

Median Price: in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. If there are an even-numbered number of organisations in the Comparison Sample then the Median Price shall be the arithmetic mean of the middle two prices.

- 1.2 The Benchmarked Services shall be good value if the Fees attributable to the Benchmark Services are, having regard to the Service Level Arrangements, less than or equal to [125]% of the Median Price for Equivalent Services provided by a Comparison Sample (**Good Value**).

2. Purpose and scope of Benchmark Review

- 2.1 The purpose of the Benchmark Review shall be to establish whether the Benchmark Services are Good Value.

3. Appointment of Benchmarker

- 3.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. [If the parties cannot agree on the independent third party within [NUMBER] Working Days of receipt by the Service Provider of the Customer's written request, then the Benchmarker shall be [CONSULTANTS].]
- 3.2 The Service Provider has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 3.3 Each party shall bear its own costs and expenses relating to a Benchmark Review, except that the costs and expenses of the Benchmarker shall be shared equally by the Parties.
- 3.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
- (a) benchmarking shall be carried out in an independent and objective manner;
 - (b) the Benchmarker shall be jointly instructed by the Parties;
 - (c) benchmarking shall be truly comparative in respect of the technology, services and service levels;

CALL OFF TERMS AND CONDITIONS

-
- (d) benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
 - (e) immediately following selection of the Benchmark, the Parties and the Benchmark shall (all acting reasonably and in good faith) agree the general principles and method of benchmarking.
- 3.5 The Service Provider shall not be deemed to be in breach of this Contract for any failure to perform any obligation under this Contract (nor shall it be liable for Service Credits) where such failure results from any disruption to the Service Provider's performance as a result of disruption caused by the Benchmark.
- 4. Benchmarking process**
- 4.1 The instructions to the Benchmark shall require the Benchmark to produce, and to send to each party for approval, a draft plan for the Benchmark Review within [NUMBER] Working Days after the date of appointment of the Benchmark. The plan shall include:
- (a) a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
 - (b) a description of the information that the Benchmark requires each party to provide;
 - (c) a description of the benchmarking methodology to be used; and
 - (d) details of any organisations providing Equivalent Services that the Customer, having consulted with the Service Provider (and including any organisations providing Equivalent Services reasonably proposed by the Service Provider), proposes should be included within the Comparison Sample.
- 4.2 In carrying out the benchmarking analysis, the Benchmark shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:
- (a) the contractual and business environment under which the Equivalent Services are being provided;
 - (b) any front-end investment and development costs and expenses;
 - (c) the relevant supplier's risk profile, including the financial, performance and liability risk (including any limitation or exclusion or limitation of the Service Provider's liability under this Contract) associated with the provision of the Equivalent Services as a whole; and
 - (d) any other factors reasonably identified by the Service Provider which, if not taken into consideration, could unfairly cause the Service Provider's pricing to appear non-competitive.
- 4.3 Each party shall give notice in writing to the Benchmark and to the other party within [NUMBER] Working Days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 4.4 Where a party suggests amendments to the draft plan under paragraph 4.3, the Benchmark shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph [], paragraph [] and paragraph [] shall apply to any amended draft plan. If the Benchmark believes that the suggested amendments are not reasonable, the Benchmark shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within [NUMBER] Working Days of the matter first being referred to each of them by the Benchmark for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.

CALL OFF TERMS AND CONDITIONS

-
- 4.5 Failure by a party to give notice under paragraph 4.4 shall be treated as approval of the draft plan by that party.
- 4.6 Once the plan is approved by both parties, the Benchmarking shall carry out the Benchmark Review in accordance with it. Each Party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarking.
- 4.7 The Benchmarking shall share with the Parties, in an even-handed manner, all data relating to the benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 4.8 The selection of the Comparison Sample (both in terms of number and identity of entities) shall be a matter for the Benchmarking's professional judgment, but such sample shall not include entities providing Equivalent Services in offshore jurisdictions if, and to the extent that, the Service Provider is not itself providing the Benchmarked Service offshore.
- 4.9 In conducting the Benchmark Review, the Benchmarking shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgment. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 4.10 The Benchmarking shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Customer and the Service Provider with full details of all data and methodologies employed at all stages of the Benchmark Review.
- 5. Benchmark Report**
- 5.1 The Benchmarking shall prepare a Benchmark Report setting out its findings. Those findings shall:
- (a) include a finding as to whether or not the Benchmarked Services are Good Value;
 - (b) include other findings regarding the quality and competitiveness or otherwise of the Services; and
 - (c) if the Benchmarked Services are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, in order to make the Benchmarked Services Good Value.
- 5.2 If the Benchmarking Report states that the Managed Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then Clause 57.1 shall apply.