

# **Framework Agreement for the Provision of Patient Survey Services**

**National Patient Survey Programme – Approved Contractors  
(Lot 03)**

**BMG RESEARCH LTD**

**Ref: CQC PSO 114**

**December 2018**

CONFIDENTIAL

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# SECTION 1- FORM OF AGREEMENT

This Agreement is made on this 24th day of August 2018

## PARTIES:

- (1) **THE CARE QUALITY COMMISSION** of 3<sup>rd</sup> Floor, 151 Buckingham Palace Road, London, SW1W 9SZ ("the **Authority**");

## AND

- (2) **BMG RESEARCH LTD** of Beech House, Greenfield Crescent, Birmingham West Midlands B15 3BE (registered in England and Wales under number **02841970**) (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

## WHEREAS

The Authority published a contract notice 2018/S 073-162078 on 17 April 2018 in the Official Journal of the European Union for the provision of NHS Patient Survey Programme Services ("the Services").

- B Following an invitation to tender for the Services the Contractor submitted a tender on 25 May 2018.
- C On the basis of the Contractor's tender the Authority selected the Contractor to enter into this agreement to provide the Services to the Authority and any other contracting authority on a call-off basis in accordance with this agreement.
- D This agreement sets out the terms and conditions on which the Authority and any other contracting authority may order the Services from the Contractor and on which the Contractor will supply those Services.
- E The Authority hereby appoints the Contractor as a potential provider of the Services. The Contractor shall be eligible to be considered for the award of Orders pursuant to a Call-Off Contract for the Services during the Term. In consideration of the Contractor agreeing to enter into this Framework Agreement and to perform its obligations under it, the Authority agrees to pay and the Contractor agrees to accept on the signing of this Framework Agreement the sum of five (£5.00) pounds sterling (receipt of which is hereby acknowledged by the Contractor).

**IT IS HEREBY AGREED as follows:**

**1. TERMS OF CONTRACT**

**1.1** The “**Agreement**” comprises the following:

Section 1:	Form of Agreement
Section 2:	Terms and Conditions of Framework Agreement
Annexe 1:	Part A: Services
Annexe 1:	Part B: Award Criteria
Annexe 1:	Part C: Award Procedure
Annexe 2:	Order Form
Annexe 3:	Tender Response (Including Pricing Matrix)
Annexe 4:	Management Information
Annexe 5:	Terms and Conditions of Call-Off Contract
Schedule 1:	Change Control
Schedule 2:	Non-Disclosure Agreement
Schedule 3:	Contractor and Third-Party Software
Schedule 4:	Security Requirements
Schedule 5:	Deed of Guarantee Template
Schedule 6:	Exit Management Strategy
Schedule 7:	Key Performance Indicators
Schedule 8:	Business Continuity and Disaster Recovery Plan
Schedule 9:	Mobilisation Plan
Schedule 10:	Processing, Personal Data and Data Subjects

**1.2** The Contract starts on **01 December 2018** (the “**Commencement Date**”) and ends on **30 November 2021** (the “**End Date**”) the “Initial Period” unless it is terminated early or extended in accordance with the Contract.

**1.3** The Authority may extend the term of the Contract until **30 November 2022** (“**Extension**”). The Authority may, by giving written notice to the Contractor not less than the three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for further periods of up to a further 12 Months. Any such period shall not exceed a maximum extension of 12 Months. The terms of the Contract will apply throughout the period of any Extension.

# SECTION 2- TERMS AND CONDITIONS

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G1	Liability, Indemnity and Insurance
G2	Warranties and Representations
G3	Force Majeure
H1	Termination on Insolvency and Change of Control
H2	Termination on Default
H3	Non-Default Termination or Change of Government Policy
H4	Termination under the Regulations
H5	Consequences of Expiry or Termination
H6	Disruption
H7	Recovery upon Termination
H8	Retendering and Handover
H9	Exit Management
H10	Exit Procedures
H11	Knowledge Retention
I1	Governing Law and Jurisdiction
I2	Dispute Resolution

# GENERAL PROVISIONS

## 1 DEFINITIONS AND INTERPRETATION

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

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

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

**“Agreement”** means this framework agreement together with its Annexes;  
;

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

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

**“Authority Data”** means:

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

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

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

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

**“Award Criteria”** means the criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

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

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

**“Call-Off Contract”** means a legally binding agreement (made pursuant to the provisions of the Agreement) for the provision of Services between a Customer and the Contractor comprising an Order Form and the Call-Off Terms;

**“Call-Off Terms”** means the terms and conditions set out in Annexe 5;

**“CCN”** means a change control notice in the form set out in Schedule 4;

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

**“Commercially Sensitive Information”** means the information listed in Schedule 5:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in Schedule 5; and/or
- (b) that constitutes a trade secret;

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

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

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

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

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

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

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

**“Contractor Personnel/Staff”** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7;

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

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

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

**“Customer”** means any contracting authority listed as a potential customer of the Contractor in the OJEU Notice;

**“Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer”** shall each have the same meaning given in the GDPR;

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to the processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;

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

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

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

**“Direct Award Criteria”** means the award criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

**“Direct Ordering Procedure”** means the ordering procedure set out in Part C of Annexe 1 to be used in the award of Call-Off Contracts;

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

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

**“DPA”** means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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

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

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

**“Further Competition Award Criteria”** means the criteria in set out Part B of Annexe 1 to be used in the award of Call-Off Contracts;

**“Further Competition Award Procedure”** means the procedure in set out Part C of Annexe 1 to be used in the award of Call-Off Contracts;

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

**“General Anti-Abuse Rule”** means:

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

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

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

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

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

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

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

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

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

**“Key Performance Indicators”** means the key performance indicators listed in the Schedule 4 and a Key Performance Indicator (“KPI”) shall mean any one of them;

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

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

**“LED”** means Law Enforcement Directive (*Directive (EU) 2016/680*);

**“Loss”** means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **“Losses”** shall be construed accordingly;

**“Lot”** means the lot in respect of which Services may be ordered from the Contractor;

**“Malicious Software”** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information,

executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**“Management Information”** means the management information specified in Annexe 4;

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

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

**“Month”** means calendar month;

**“NAO”** means the National Audit Office;

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

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

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

**“OJEU Notice”** means the contract notice [insert reference] published in the Official Journal of the European Union;

**“Order”** means an order for Services sent by a Customer to the Contractor in accordance with the award procedure set out in clause 5.

**“Order Form”** means a document setting out details of an Order substantially in the form set out in Annexe 2 or as otherwise agreed in accordance with clause 5;

**“Personal Data”** personal data (as defined in the Data Protection Legislation) which is Processed by the Contractor or any Sub-contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Contract;

**“Potential Contractors”** mean the parties appointed to be potential contractors under the Agreement;

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

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

**“Pricing Matrix”** means the pricing matrix set out in Annexe 3;

**“Price”** means the price (excluding any applicable VAT) payable to the Contractor by the Customer under the Call-Off Contract for the full and proper performance by the Contractor of its obligations under the Contract;

**“Pricing Schedule”** means Schedule 3 containing details of the Price;

**“Processing”** has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

**“Prohibited Act”** means:

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

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Authority or a Customer in connection with the Agreement;



**“Protective Measures”** means appropriate technical and organisational measures which 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;

**“Purchase Order”** means the document in which the Authority or a Customer specifies the Services which are to be supplied by the Contractor under the Contract;

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

**“Receipt”** means the physical or electronic arrival of the invoice at the address given by the Authority or a Customer to the Contractor for the submission of invoices from time to time;

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

**“Regulator Correspondence”** means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract;

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

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

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

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

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

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

**“Restricted Countries”** means

- (a) any country outside the European Economic Area; and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

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

**“Security Policy”** means ISO/IEC 27001 Information Security Management;

**“Services”** means the services set out in Annexe 1 including any modified or alternative services;

**“Services Requirement”** means the requirements of the Authority or any Customer (as appropriate) for the Services from time to time;

**“Statement of Requirements”** means a statement issued by the Authority or any Customer detailing its Services Requirements as set out in Annexe 1 and issued in accordance with the Direct Ordering Procedure in detailed in Part C of Annex 1;

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

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

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

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

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

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

**“Supplier Code of Conduct”** means means HM Government Supplier Code of Conduct dated September 2017

**“Tender”** means the Authority’s invitation to supply to contractors consisting of the Specification, these clauses and form of Letter of Engagement;

**“Tender Response”** means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 2;

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

**“TFEU”** means the Treaty on the Functioning of the European Union;

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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7;

**“Treaties”** means the Treaty on European Union and the TFEU;

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

**“TUPE Information”** means the information set out in clause B17.1;

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

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

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

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

**“Year”** means a calendar year.

*In the Contract, unless the context implies otherwise:*

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

## 2. TERM OF AGREEMENT

- 2.1 The Agreement commences on [insert date] (the “**Commencement Date**”) and (unless it is terminated early or extended in accordance with the Agreement shall end on [insert date]

## 3. SCOPE OF THE AGREEMENT

- 3.1 The Agreement governs the relationship between a Customer and the Contractor in respect of the provision of the Services by the Contractor to a Customer.
- 3.2 Customers may order the Services from the Contractor in accordance with the procedure in clause 5.
- 3.3 If there is any conflict between the Agreement and the Call-Off Contract, the conflict shall be resolved according to the following order of priority:
- 3.3.1 the Call-Off Terms;
  - 3.3.2 the Order Form; and
  - 3.3.3 the Agreement.

## 4. NON-EXCLUSIVITY

- 4.1 The Contractor acknowledges that in entering into this Agreement no form of exclusivity or volume guarantee has been granted by the Authority and Customers for Services from the Contractor and that the Authority and Customers are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

## 5. CALL-OFF CONTRACT AWARD PROCEDURE

- 5.1 If the Authority or a Customer requires Services in respect of any Lot to which the Contractor has been appointed, the Authority or the Customer shall award its Services Requirements in accordance with the Award Procedure detailed in Part C of Annexe 1.

## **6. RESPONSIBILITY FOR AWARDS**

- 6.1 The Contractor acknowledges that each Customer is independently responsible for its award of Call-off Contracts and that the Authority has no liability for:
  - 6.1.1 the conduct of any Customer (except the Authority) in relation to the Agreement; or
  - 6.1.2 the performance or non-performance of any Call-Off Contracts between the Contractor and any Customer (except the Authority).

## **7. WARRANTIES AND REPRESENTATIONS**

- 7.1 The Contractor warrants and represents to the Authority and to other Customers that:
  - 7.1.1 it has full capacity and authority to enter into and perform its obligations under the Agreement and any Call-Off Contract;
  - 7.1.2 the Agreement is executed by a duly authorised representative of the Contractor;
  - 7.1.3 it has not committed and will not commit any Prohibited Act by entering into the Agreement or any Call-Off Contract;
  - 7.1.4 all information, statements and representations contained in its tender for the Services are true and accurate and not misleading;
  - 7.1.5 no claim is being asserted and no litigation or similar action is being taken against it that might affect its ability to provide its obligations under the Agreement or any Call-Off Contract;
  - 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under the Agreement and any Call-Off Contract which may be entered into with the Authority or any other Customer;
  - 7.1.7 no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
  - 7.1.8 it is not subject to any contractual obligation that is likely to have a detrimental effect on its ability to perform its obligations under the Agreement or any Call-Off Contract; and

- 7.1.9 from the commencement date of any Call-Off Contract it shall have all necessary licences, authorisations, consents or permits and shall be fully compliant with all applicable law in supplying the Services.

## **8. PERFORMANCE**

- 8.1 The Contractor shall perform all Call-Off Contracts in accordance with the requirements of the Agreement and the Call-Off Contract.
- 8.2 If reasonably requested to do so by the Authority, the Contractor shall cooperate fully with any Customer in providing the Services and with other suppliers engaged by the Customer.

## **9. PRICES FOR SERVICES**

- 9.1 The prices set out in the Pricing Matrix shall apply to any Services ordered pursuant to the Agreement.
- 9.2 The Authority is not liable to the Contractor or any other Customer for payment or otherwise in respect of any Services provided by the Contractor to any other Customer.

## **10. STATUTORY REQUIREMENTS**

- 10.1 The Contractor shall obtain all licences, authorisations, consents or permits required in relation to the performance of the Agreement and any Call-Off Contract.

## **11. TRANSFER AND SUB-CONTRACTING**

- 11.1 The Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Agreement or any part thereof without the Authority's prior written consent.
- 11.2 The Contractor shall not be entitled to sub-contract any of its rights or obligations under the Agreement.
- 11.3 The Authority may:
- 11.3.1 assign, novate or otherwise dispose of its right and obligations under the Agreement or any part thereof to any other Customer; or
  - 11.3.2 novate the Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority provided that such assignment, novation or

disposals shall not increase the burden of the Contractor's obligations under the Agreement.

## **12. VARIATIONS TO THE AGREEMENT**

- 12.1 Any variations to the Agreement, a Call-Off Contract or an Order Form must be made in accordance with the change control notice procedure set out in the Call-Off Contract using the form in Annexe 5.

## **13. RIGHTS OF THIRD PARTIES**

- 13.1 A person who is not a Party shall have no right to enforce any provision of the Agreement which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause 13 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **14. ENTIRE AGREEMENT**

- 14.1 The Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with therein. The Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause 14 shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

## **15. TERMINATION AND SUSPENSION**

- 15.1 The Authority may terminate the Agreement by serving written notice on the Contractor with immediate effect if:

15.1.1 the Contractor commits a Material Breach and:

i) it has not remedied the Material Breach to the Authority's satisfaction within 20 working days or such other period as may be specified by the Authority after issue of a written notice specifying the Material Breach and requesting it to be remedied; or

ii) the Material Breach is not, in the Authority's reasonable opinion, capable of remedy

15.1.2 there is a material detrimental change in the Contractor's financial standing and/or credit rating which adversely affects the Contractor's ability to supply the Services

- 15.2 The Authority may terminate the Agreement by giving 3 months' written notice to the Contractor.
- 15.3 The Contractor may terminate the Agreement by giving 3 months' written notice to the Authority.
- 15.4 Without prejudice to the Authority's rights to terminate the Agreement pursuant to clauses 15.1 and 15.2, if a right to terminate the Agreement arises in accordance with clauses 15.1 or 15.2, the Authority may suspend the Agreement with regard to any or all of the Lots by giving notice in writing to the Contractor.
- 15.5 If the Authority suspends the Agreement in accordance with clause 15.4 the Agreement shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.
- 15.6 Termination or expiry of the Agreement shall not cause any Call-Off Contracts to terminate automatically. All Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the Call-Off Contract.
- 15.7 Termination or expiry of the Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Agreement prior to termination or expiry.

## 16. DISPUTES

- 16.1 If a dispute arises out of or in connection with the Agreement (a "**Dispute**") either Party shall give to the other Party a written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**").
- 16.2 On service of a Dispute Notice, the Parties shall in good faith attempt to resolve the Dispute within 20 working days of the date of the Dispute Notice and if they cannot do so they shall consider and use a process of alternative dispute resolution which is appropriate for the Dispute and to which they both agree.
- 16.3 Neither Party may commence any court proceedings against the other Party in connection with a Dispute until 60 working days after the date of the Dispute Notice provided that the right to issue proceedings is not prejudiced by a delay.

## 17. REPORTS AND MEETINGS

- 17.1 If requested by the Authority:

17.1.1 the Contractor shall submit Management Information to the Authority throughout the term of the Agreement in any form reasonably required by the Authority on the last day of every month and thereafter in respect of any Call-Off Contract; and

17.1.2 the Parties shall meet and discuss the Management Information.

- 17.2 The Authority may:



17.2.1 share the Management Information supplied by the Contractor with any other Customer; and

17.2.2 change the scope of Management Information and shall give the Contractor at least one month's written notice of any change.

## 18. RECORDS AND AUDITS

18.1 The Contractor shall keep and maintain for 6 years after the date of termination or expiry (whichever is the earlier) of the Agreement accurate records and accounts of the operation of the Agreement including the Services provided under it, any Call-Off Contracts and the amounts paid by each Customer.

18.2 The Contractor shall keep the records and accounts referred to in clause 18.1 in accordance with good accountancy practice.

18.3 The Contractor shall afford the Authority and the NAO access to such records and accounts as may be required from time to time.

18.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the term of the Agreement and for a period of 6 years after expiry of the Agreement to the Authority (or relevant Customer) and the NAO.

18.5 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services; save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the NAO is outside of the Authority's control.

18.6 Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the NAO with all reasonable co-operation and assistance in relation to each Audit, including:

18.6.1 all information requested by the NAO within the scope of the Audit;

18.6.2 reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and

18.6.3 access to its staff.

18.7 The Parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause<sup>18</sup>, unless the Audit reveals a material Default by the Contractor in which case the Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

## 19. CONFIDENTIALITY

19.1 Subject to clause 19.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent

their representatives from making any disclosure to any person of any matters relating hereto.

19.2 Clause 19.1 shall not apply to any disclosure of information:

19.2.1 required by any applicable law, provided that clause 21.1 shall apply to any disclosures required under the FOIA or the EIR;

19.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under the Agreement;

19.2.3 that is reasonably required by other Customers;

19.2.4 if a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;

19.2.5 by the Authority of any document to which it is a party and which the Parties to the Agreement have agreed contains no Confidential Information;

19.2.6 to enable a determination to be made under clause 16;

19.2.7 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;

19.2.8 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and

19.2.9 by the Authority relating to the Agreement and in respect of which the Contractor has given its prior written consent to disclosure.

## **20 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**

20.1 The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under Data Protection Legislation and both Parties will duly observe all their obligations under Data Protection Legislation which arise in connection with the Contract.

20.2 The Contractor will, in conjunction with the Authority, in its own right and in respect of the Services, shall ensure it will be compliant with the provisions of the GDPR and Data Protection Legislation.

20.3 The Contractor shall designate and will provide the Authority with the contact details of its data protection officer where this position is required by the Data Protection Legislation or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause 20.

20.4 If the Contractor is Processing Personal Data as a Data Processor for the Authority, the Contractor shall:

- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Authority provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment ("DPIA"). Such assistance may, at the discretion of the Authority include (but not be limited to):
  - i. A systematic description of the envisaged processing operations and the purpose of the processing;
  - ii. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- (c) Process the Personal Data only in accordance with Schedule 10 and/or written instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
- (e) Keep a record of all categories of processing activities carried out on behalf of the Authority, containing:
  - i) the categories of processing carried out on behalf of the Authority;
  - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- (f) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;

- (g) take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
- a. do not process Personal Data except in accordance with this Agreement;
  - b. are aware of and comply with the Contractor's duties under this Clause 20 and 19;
  - c. are subject to appropriate confidentiality undertakings with the Contractor or any relevant Sub-contractor;
  - d. 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 Authority or as otherwise permitted by this Contract; and
  - e. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- (h) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (i) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor 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 Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (j) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Authority within 48 hours if it:
- a. receives from a Data Subject (or third party on their behalf):
    - i. a Data Subject Access Request (or purported Data Subject Access Request);
    - ii. a request to rectify, block or erase any Personal Data; or
    - iii. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - b. considers that any of the Authority's instructions from the Authority infringe the Data Protection Legislation;
  - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any

- other regulatory Authority in connection with Personal Data processed under this Contract; or
  - d. 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
  - e. is required by Law to commit an act or omission to that would, but for Clause 20.10, constitute a breach of this Clause 20;
  - f. becomes aware of a Data Loss Event
- (l) The Contractor's obligation to notify under Clause 20.4(k) shall include the provision of further information to the Authority in phases, as details become available.
- 20.4A Notwithstanding the provisions of clauses 20.1 and 20.4, where the Contractor is Processing Personal Data for the Authority, the parties acknowledge that the Authority is the Data Controller and the Contractor is the Data Processor. The Authority shall set out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and the categories of Data Subject in the form appended hereto in Schedule 10 – Processing, Personal Data and Data Subject.
- 20.5 Taking into account the nature of the processing, the Contractor shall provide the Authority with full co-operation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Legislation or any complaint, communication or request made as referred to in Clause 20.4(k), including by promptly providing:
- a. the Authority with full details and copies of the complaint, communication or request;
  - b. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
  - c. the Authority, on its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Authority following any Data Loss Event; and
  - e. assistance as requested by the Authority with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Authority with the Information Commissioner's Office;
- 20.6 The Contractor shall, if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 20 and provide to the Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- 20.7 The Contractor shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Contractor's Data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;

- 20.8. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Authority's prior written consent. If, after the Effective Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the Authority's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Contractor's cost and expense using the Change Control Procedure.
- 20.9 The Contractor will notify the Authority immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the notification will be made regardless as to whether or not the Contractor has established any unauthorised access or other harm has actually arisen from the event. Notification must not be delayed for the purpose of establishing the effects of an identified Data Loss Event. In particular the Contractor will;
- i) when notifying the Authority of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
  - ii) cooperate fully with any Authority investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
  - iii) [provide immediate access to the Contractor's premises and systems for the purposes of any Authority investigation under [Clause 20.4 ii] above]
  - iv) take all necessary actions to remedy the causes or adverse effects of the Data Loss Event and to ensure the protection of Personal Data from any further loss. Where the contractor reasonably considers that immediate action is required to ensure the protection of personal data, or to prevent or mitigate a serious risk of harm, damage or loss to data subjects arising from a Data Loss Event, they may take such action without requiring prior authorisation from the Authority circumstances where it is not reasonably possible to seek or obtain such authorisation in a timely manner;
  - v) Not make any public statement of any kind without the prior Approval of the Authority;
  - vi) Where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and

- vii) notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

- 20.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 20. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines that the processing is not occasional;
  - (b) the Authority 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
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 20.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 20 such that they apply to the Sub-processor; and
  - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 20.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 20.13 The Authority may, at any time on not less than 30 Working Days' notice, 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 Agreement).
- 20.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 20.15 At the end of the Term or earlier termination of this Contract, at the Authority's request, the Contractor shall delete or return all Personal Data to the Authority and delete any copies of such Personal Data except where required to retain any copies by Law.
- 20.16 The Contractor shall comply at all times with Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 20.17 The Contractor shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the Data Protection Legislation to the extent the

Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

- 20.18 The Contractor shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority arising from the Contractor's Default under this Clause 20 and/or any failure by the Contractor or any Sub-Contractor to comply with their respective obligations under Data Protection Legislation.
- 20.19 Nothing in this Clause 20 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Legislation.
- 20.20 The provision of this clause 20 applies during the Contract Period and indefinitely after its expiry.

## 21. FREEDOM OF INFORMATION

21.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.

21.2 The Contractor shall and shall procure that its subcontractors shall:

21.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 2 working days of receiving a Request for Information;

21.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 working days (or such other period as the Authority may specify) of the Authority requesting that Information; and

21.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

21.3 The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by the Authority.

21.4 The Contractor acknowledges that the Authority may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (Code)) be obliged under the FOIA or the EIR to disclose Information:

21.4.1 without consulting with the Contractor; or

21.4.2 following consultation with the Contractor and having taken its views into account

provided always that where clause 21.4.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.



21.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

21.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 21.3.

## **22. PUBLICITY**

22.1 Unless otherwise directed by the Authority, the Contractor shall not make any press announcements or publicise the Agreement in any way without the Authority's prior written consent.

22.2 The Authority may publicise the Agreement in accordance with any legal obligation on the Authority including any examination of the Agreement by the NAO or otherwise.

22.3 The Contractor shall not do anything that may damage the Authority's reputation or bring the Authority into disrepute.

## **23. PREVENTION OF BRIBERY**

23.1 The Contractor:

23.1.1 shall not, and shall procure that its staff and all sub-contractor personnel shall not, in connection with the Agreement and any Call-Off Contract commit a Prohibited Act; and

23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by a Customer, or that an agreement has been reached to that effect, in connection with the execution of the Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of the Agreement.

23.2 The Contractor shall:

23.2.1 if requested by a Customer, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

23.2.2 within 60 working days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 23 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 23.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to Customers) to prevent its staff and sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 23.4 If any breach of clause 23.1 is suspected or known, the Contractor must notify the Authority immediately.
- 23.5 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of this clause 23 the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.
- 23.6 The Authority may terminate the Agreement by written notice with immediate effect if the Contractor, its staff or sub-contractors (in all cases whether or not acting with the Contractor's knowledge) breaches clause 23.1.
- 23.7 Any notice of termination under clause 23.6 must specify:
- 23.7.1 the nature of the Prohibited Act;
  - 23.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
  - 23.7.3 the date on which the Agreement will terminate.
- 23.8 Notwithstanding clause 16, any dispute relating to:
- 23.8.1 the interpretation of this clause 23 or
  - 23.8.2 the amount or value of any gift, consideration or commission
- shall be determined by the Authority and its decision shall be final and conclusive.
- 23.9 Any termination under this clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **24. GOVERNING LAW**

- 24.1 The Agreement shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 24.2 The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

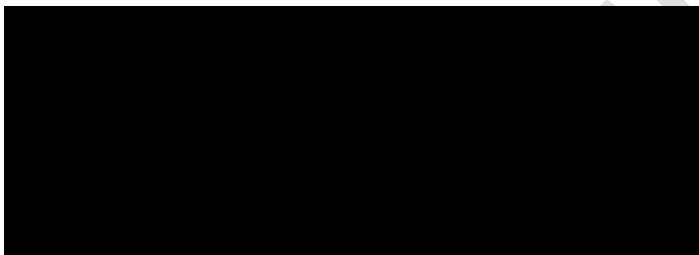
**BY SIGNING AND RETURNING THIS FRAMEWORK AGREEMENT THE CONTRACTOR AGREES** to comply with all the terms of this legally binding Framework Agreement.

**IN WITNESS** of which this Framework Agreement has been duly executed by the Parties.

Signed duly authorised for and on behalf of BMG Research Ltd

A large black rectangular redaction box covering the signature area for BMG Research Ltd.

Signed for and on behalf of the Contracting Authority

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# ANNEXE 1 – PART A: SERVICES

## Statement of Requirements for Lot 3 (Approved Contractor Framework)

### 1. Background

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. Our purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage care services to improve. To deliver this we monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety, and we publish what we find, including performance ratings, to help people make care choices.

CQC's corporate strategy '[Shaping the Future: CQC's strategy for 2016 – 2021](#)' sets out the organisation's aim of transforming the way that we use knowledge and information to deliver the purpose stated above.

This includes that:

- we are seeing changes to technology that has made it easier for people to leave instant feedback about services, and new tools to analyse data across the health and care system. As a result we will do more to improve how we use and capture the views and experiences of people as part of an intelligence-driven approach to regulation.
- we will better use information from the public to help us spot problems quickly, so we can prevent poor care and abuse happening to others in the future, and to celebrate improvements.

CQC collects, analyses and uses a range of intelligence that can inform us about people's experiences of care. Part of that information comes from people who have recently used specific NHS services and are asked about their experiences as part of a NHS Patient Survey Programme delivered by CQC (see definitions below regarding national survey). The programme is designed to capture the views of representative samples of patients in a systematic way from all eligible NHS trusts in England. Each survey contains a set of questions that is designed and tested to provide insight into people's experiences and to highlight areas where individual providers could improve how they provide services.

The programme currently includes annual surveys of adult inpatients and community mental health services. CQC also undertakes three acute surveys on a biennial schedule: maternity services, emergency department services and children's and young people's inpatient and day case services. Information on all of these surveys is available on the two websites stated below.

Typically, the surveys are sent to a sample of between 850 – 1,250 patients, who meet specific eligibility criteria, per provider. The sample is drawn from people who have experienced care in a specified month, or months, and on average between 25% and 50% of eligible patients respond.

The results of these surveys, including local and national reports, are published on CQC's own [website](#) and [NHS Surveys](#) along with the guidance and tools used to deliver the survey.

## 2. Strategic Direction

The strategic direction for the NHS Patient Survey Programme for the period covered by this procurement process (as approved by CQC's Board in October 2017) sets out CQC's proposals to develop the programme in three main ways:

- create a digital method of survey delivery utilising mobile phones and potentially email addresses. The digital solution will be part of a mixed methods approach to surveys which will reduce the costs of running the programme for trusts and allow us to, potentially, increase frequency and sample sizes with minimal cost impact
- support CQC's next phase approach (see, for example, the consultation response for the first wave on our [website](#)) for regulating providers where CQC has already inspected and rated every provider by potentially allowing CQC to increase the frequency of surveys and sample sizes
- review opportunities for collecting people's views on the quality of new care models as they emerge or on the quality of care in local areas and health systems.

For the purposes of this procurement, CQC defines the following terms as:

- Co-ordination centre: CQC is seeking to appoint two Co-ordination Centre services (this may be provided by one bidder) to act as expert partners in the development and delivery of CQC's NHS Patient Survey Programme. These are the Co-ordination Centre for Existing Methods (Lot 1) and the Co-ordination Centre for Mixed Methods (Lot 2). The Co-ordination Centres will work with the Commissioning Authority, as a partner, developing innovation and improvement, as well as ensuring the delivery of surveys through, for example, the development of guidance documentation, sampling checks and analysis. Lot 1, sections 4, 5 and 6 define the services of the Co-ordination Centre for Existing Methods and Lot 2, sections 4, 5 and 6 define the services of the Co-ordination Centre for Mixed Methods. This document refers to these as the 'Co-ordination Centre' throughout as Approved Contractors will be expected to work with both Co-ordination Centres to deliver its work. Further details, including how the Co-ordination Centres will work together are outlined in section 5 below.
- Approved contractor: CQC is seeking to appoint a number of Approved Contractors to work directly, on contract, with providers registered with CQC, CQC or other Commissioning Authorities to deliver surveys and survey-related projects. The Approved Contractor will ensure that providers are able to undertake national surveys and ensuring that Commissioners are able to complete survey-related products such as pilots, surveys or other specific work.

## 3. Definitions

CQC wants to ensure that its surveys continuously improve and reflect the way health and social care services are delivered. We will do this by developing national surveys and undertaking on-going development or a substantive review of existing methods.

For the purposes of this procurement, CQC defines 'national survey' as:

A data collection of the self-reported experiences of those who use services, undertaken at all relevant sites at the same time and using the same tools and methodology to ensure comparability across providers. Samples are sufficiently robust to draw conclusions about experiences of care at a local and national level without the need for further investigation.

For the purposes of this procurement, CQC defines the following terms as:

- on-going development: small scale changes to maintain the quality and relevance of an existing survey. Changes will be limited to parts of a questionnaire or individual tools or processes. Examples of this include where we may want to:
  - understand any learning from previous iterations of the survey including information that may improve sampling, questionnaires and reporting.
  - add, improve or remove a small number of questions in a questionnaire.
  - review how questions or response options are phrased to ensure that they reflect the findings of cognitive testing.
  - improve guidance documents to ensure compliance with requirements around data cleaning or sampling.
  - add or improve quality assurance checks.
  - amend or tighten processes to ensure consistency and effectiveness across all aspects of the survey cycle
- substantive review: a review of a whole, or the majority of, a questionnaire, feedback mechanisms, underlying methodology or output. Examples of this include where we may want, for example, to:
  - update an entire questionnaire in line with changes to national policy concerning best practice within the health or social care area being reviewed. An update may also be required where CQC changes its approach to assessing quality.
  - change a survey process following a pilot of an alternate approach within the health or social care area being reviewed.
  - change the layout, content or method of production for benchmark reports that compare the results of providers and identifies performance that is statistically different.
  - change the analytical method used for calculating the results of the benchmarking reports based on the findings of a review by CQC's Statistics Team.

#### **4. Approved Contractor Framework**

CQC is seeking to appoint a number of Contractors to form an Approved Contractor Framework, and to work with and provide a range of survey-related services to Commissioners when contracted to do so.

The approved contractors work, on contract, directly with providers of services registered with CQC and other commissioners, including CQC. The purpose of Approved Contractors is to:

- ensure that providers are able to undertake national surveys by providing the required skills and expertise to draw samples, distributing and collecting questionnaires and analysing results on behalf of providers
- ensure that other commissioners (see below) are able to pilot approaches to improving surveys, and other specific work as required.

As CQC delivers a mixed methods approach to surveys the role of the Approved Contractor may change as electronic questionnaires are sent and automated analysis developed.

The specific requirements for Approved Contractors are set out in Sections 5, 6, and 7 below. This includes current expectations, a known timetable and detailed requirements.

In some cases the Approved Framework may be used by other organisations and bodies to commission national surveys. For the purposes of this procurement, CQC defines 'Commissioner' at two levels:

- Nationally: This includes CQC, its Co-ordination Centre, other arm's length bodies of the Government including NHS England, the Department of Health and Social Care and other bodies and organisations agreed by CQC.

For details of organisations that this may include please see the [.GOV.UK website](https://www.gov.uk).

- Locally: This includes providers registered with CQC. For details of the providers regulated by CQC please see [our website](#).

As this is a framework agreement, CQC does not guarantee any work either from providers of services or other commissioners through this framework and requirements may be called-off as and when required by commissioners.

CQC will select those bidders that best meet the evaluation criteria outlined in Section B below. CQC seeks to select between 4 and 10 Approved Contractors but will use the scores derived from evaluation to determine the exact number of selected contractors.

## **5. Anticipated Volumes of Work & Cost Envelope**

We would expect that Approved Contractors will work, on contract, with providers of services and commissioning authorities to deliver national surveys and survey-related work.

Approved contractors will be supported by CQC, the Co-ordination Centre or Commissioning Authorities to deliver programmes of work in line with appropriate guidance and using any identified tools and methods as needed.

It is expected that, in line with CQC's strategy for the NHS Patient Survey Programme that, surveys will be paper based initially as development work is completed which will allow us to adopt a mixed methods approach. We expect that all surveys will be digital by November 2021 with only a small proportion of paper-based questionnaires being collected where electronic methods are not appropriate.

Approved Contractors will work with Co-ordination Centre for Existing Methods (see Lot 1) to ensure the continued delivery of the paper-based survey programme and the Co-ordination

Centre for Mixed Methods (see Lot 2) to take forward a mixed methods approach to delivering national surveys and associated work. CQC expects that, over the period of the Approved Contractor Framework, the Co-ordination Centre for Mixed Methods will increasingly deliver work packages as CQC implements its strategic direction for the programme to support digital surveys. Work volumes supported by the Co-ordination Centre for Existing Methods will decrease over time accordingly.

### **Framework Duration**

<b>Anticipated Start Date</b>	<b>End Date</b>	<b>Extension (If Applicable)</b>
<b>01 December 2018</b>	<b>30 November 2021</b>	<b>Further extension of up to 12 months (to 30 November 2022)</b>

### **Cost Envelope**

<p>While CQC recognises that costs will vary depending on the scope of the contracts set with registered providers locally, costs per survey are expected to be between £3,000 and £5,000 per survey per provider.</p> <p>The anticipated value of the framework overall, based on 13 surveys with a range of providers eligible to participate is expected to be between c. £5m and c. £8m.</p> <p>Please note: as this framework will operate on a “call-off” basis (i.e. work requirements will be called off as and when required) CQC does <u>not</u> guarantee any work either from providers of services or other commissioners through this contract and requirements may be called-off as and when required by commissioners.</p>
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While CQC recognises that costs will vary depending on the scope of the contracts set with registered providers locally, costs per survey are expected to be between £3,000 and £5,000 per survey per provider. The value of the framework overall, based on 13 surveys with a range of providers eligible to participate is expected to be between c. £5m and c. £8m.

Our current expectations about the programmes of work, each year across both Lots 1 and 2, are as follows:

- Expected minimum:
  - **two** annual national surveys: adult inpatient and community mental health. In each case the surveys will be subject to on-going development and delivery of the survey.
  - **three** surveys on a biennial rotation every **two** years: maternity, emergency department, and children and young people’s inpatient and day case.
  - **one** pilot alongside, or separate to, each survey to allow CQC to improve response rates, improve our products and tools, or develop



the programme in line with our strategy.

- Likely mid-point:
  - **three** annual national surveys: adult inpatient, community mental health and maternity services. In each case the surveys will be subject to on-going development and delivery of the survey.
  - **two** surveys on a biennial rotation every **two** years: emergency department, and children and young people's inpatient and day case.
  - **two or three** pilots alongside, or separate to, each survey to allow CQC to improve response rates, improve our products and tools, or develop the programme in line with our strategy.
- Potential maximum:
  - **three** annual national surveys: adult inpatient, community mental health and maternity services. In each case the surveys will be subject to on-going development and delivery of the survey.
  - **two** surveys on a biennial rotation every **two** years: emergency department, and children and young people's inpatient and day case.
  - **four** pilots alongside, or separate to, each survey to allow CQC to improve response rates, improve our products and tools, or develop the programme in line with our strategy.
  - **one** new survey commissioned by CQC on a biennial rotation every **two** years, for example an outpatients survey.
  - **one** survey requested by another commissioner, for example NHS England.

As CQC implements its strategy the potential maximum may include shorter surveys with all five existing surveys being undertaken annually.

It is expected that, in line with CQC's strategy for the NHS Patient Survey Programme that, surveys will be paper based initially as development work is completed allowing us to adopt a mixed methods approach. We expect that all surveys will be digital by November 2021 with only a small proportion of paper-based questionnaires being collected where electronic methods are not appropriate.

All works detailed within the expected minimum, likely mid-point, and potential maximum will include the delivery of digital and paper questionnaires and the tools and methods for their dissemination, collection, cleaning and analysis. Sample information, including email addresses and mobile telephone numbers, will also need to be collected as needed to support this strategy. Where paper materials are produced (cover letters in particular) presentation of these will become more important than present and there will be a focus on making these as engaging as possible including, for example, the use of colour.

The existing programme is predominately delivered across NHS organisations. However, this may expand to include providers within the Independent health and social care sectors as required.

The table below provides an indicative outline of the NHS Patient Survey Programme typically operates, as outlined in the 'Expected Minimum' programme of work above:

**Table 1: Expected Minimum Programme of Work**

Survey	Questionnaire Development	Fieldwork	Reporting
Acute inpatient survey (annual)	January to May	September to January	May
Community Mental Health Survey (annual)	August to December	March to June	September
Children and Young People's Inpatient and Day Case (biennial)	April to September	February to June	October
Maternity Survey (biennial)	October to February	April to August	December
Emergency Department Survey (biennial)	February to July	October to March	August

Please note that whilst the timescales listed above are likely to be maintained to ensure the comparability of data, they may be subject to review and change particularly as questionnaires, methods and tools are reviewed during the implementation of our strategy.

As this is a framework agreement, CQC does not guarantee any work either from providers of other commissioners through this framework and requirements may be called-off as and when required by commissioners.

## 6. Detailed Requirements

Commissioners will use the framework to commission services for a range of surveys. Commissioners may also use the framework to commission parts of a full survey process or specific pilots work as needed. Commissioners may also wish to contract services that are only paper based, as with our existing method, and/or all, or aspects of digital services as required.

Approved Contractors will be required to provide the services listed below:

- **Support.** Approved Contractors must provide practical support and advice in the undertaking of surveys of people's experiences of care. This must be in line with any guidance provided by CQC or its Co-ordination Centre or best practice where such guidance is not provided. This will include:
  - Providing general survey-related support and advice to providers of care. This must include, but is not limited to, standardised advice on what is required in the undertaking of NHS Patient Surveys or collecting feedback including associated timescales; and attendance on any

necessary groups and boards established by the provider. This must also include ensuring providers are aware of particular points at which there are risks to timeliness including delivering samples on time.

- Ensuring that all survey materials and questionnaires go into the field on time and at the start of fieldwork as set by CQC or its Co-ordination Centre, and that the duration between mail outs or other forms of communication with sampled patients adhere to relevant guidance
- Ensuring linkage with any centralised digital tool that hosts electronic questionnaires and CQC's web service which we expect to be developed by 2021. This may include supporting patient queries communicated through this tool and queries about the operation and use of the tool itself.
- Providing a FREEPHONE and email helplines to respond to the questions and concerns of those undertaking national surveys or the collection of feedback; those responding to questionnaires; and the public as needed.
- Logging contact through the survey FREEPHONE and email helplines including, but not limited to: details of individual contacts (including, but not limited to, who the contact was with, day and time of the contact, overall theme of the contact, content of contact, response provided, who provided the response, further actions required, and whether the call was closed).
- The themes and logs of contacts should be sufficiently detailed to allow a review of trends in contacts to be undertaken. This could support, for example, the development of guidance or standardised responses to common questions and an understanding, for example, of numbers of questionnaires completed over the phone, translation services required etc. Anonymised details from these logs should be made available to at the end of each survey or as required.
- ensure that all stages associated with supporting providers are completed in a timely manner and in line with any guidance supplied by the commissioning organisation(s).
- Support the commissioner with information and ideas to enable improvement in methodology and processes across the programme.
- **Sampling.** Approved Contractors must work with and support providers of care to draw a survey sample. The Approved Contractor must:
  - work closely with registered providers to draw a survey sample against specific criteria. This could include samples or lists of people who have used, provided or otherwise experienced services.
  - follow all guidance issued by the commissioner in relation to this process. This also includes any requirements set out either by the Confidentiality Advisory Group of the Health Research Authority, ethics committees or similar bodies. All Approved Contractors must ensure that they have processes and procedures in place to limit the likelihood

of breaches to any approval.

- manage this process to ensure that derived samples are sufficiently robust for the purposes that they are being used. This must include thoroughly checking samples locally and supporting trusts to re-draw samples until a final draft sample is drawn.
  - liaise with the Co-ordination Centre to raise concerns or queries on the selecting of samples and ensuring the quality of those samples as needed.
  - submit samples or respondent lists to the commissioner or its Co-ordination Centre, as required by (and in line with) provided guidance, to be checked before they are used.
  - provide the commissioner or its Co-ordination Centre with appropriate assurance that all samples or respondent lists have been collected in accordance with any guidance, data protection and confidentiality requirements. Assurance will be sought in line with CQC's own [Quality Assurance Framework](#).
  - consider all samples/lists, and their content, as confidential and the data will only be stored, shared, used and deleted as directed within guidance or as separately requested by CQC or its Co-ordination Centre in writing.
  - ensure that all stages associated with sampling are completed in a timely manner and in line with any guidance supplied by the commissioner or its Co-ordination Centre.
- **Questionnaire and information dissemination.** Approved Contractors must work with, and support, providers of care to ensure that questionnaires and appropriate information are delivered to all potential respondents. Approved Contractors must:
    - ensure that registered providers and potential respondents have any pre-collection communication, flyers, leaflets and materials needed to advertise the collection of experience information. This will include any materials to advise respondents of how their information is managed in relation to confidentiality and information governance.
    - print all paper based documents and materials required to send questionnaire packs to respondents including a reply paid return envelope as requested. This will include materials to issue reminders for response as required by any published guidance.
    - access and use electronic documents and materials required to send questionnaires to respondents. This will include materials to issue reminders for response as required by any published guidance.
    - consider all samples/lists, and their content, as confidential and the data will only be stored, shared, used and deleted as directed within guidance or as separately requested by the commissioner.

- meet all stationary costs (including but not limited to letters, envelopes and, reminders) to disseminate any letters, questionnaires and any subsequent reminders.
  - adhere to all mailing, and electronic invitation specifications outlined in any guidance, including timings. This will include guidance on, for example, the use of trust headed paper or logos and personalising all communication.
  - meet all postage and courier costs for sending postal questionnaires and reminders and the costs for establishing and operating any online questionnaires. Minimal costs for the distribution of any electronic materials may also be met although CQC may develop these materials centrally so that they can be accessed and used by Approved Contractors.
  - provide the commissioner with appropriate assurance that all questionnaire development and dissemination has been undertaken in accordance with any guidance, data protection and confidentiality requirements. Assurance will be sought in line with CQC's own [Quality Assurance Framework](#).
  - ensure that all stages associated with questionnaire development, printing, and mailing are completed in a timely manner and in line with any guidance timing supplied by the commissioner. Where delays are incurred these should be reported to the commissioner or its Co-ordination Centre as appropriate, and actions to prevent similar delays considered for future surveys.
- **Receipt of information, cleaning and transfer.** Approved Contractors must receive, log and capture all responses to questionnaires as outlined in guidance issued by the commissioner or its Co-ordination Centre. Data must be checked and cleaned as necessary by the Approved Contractor or, as where stated in guidance to the Approved Contractor, raw data must be transferred to the commissioner or its Co-ordination Centre as required. The Approved Contractor must:
    - generate a log of mailing outcomes. This should be sufficiently detailed, for example, to provide information and dates about when a questionnaire has been received, where a questionnaire is undelivered, where a respondent opts out, where partially completed questionnaires are returned, or where a respondent has died. It should accurately record whether questionnaires are blank or completed to ensure weekly outcome figures can be used to assess impact of each mailing.
    - inform the commissioner or its Co-ordination Centre, as directed in guidance, about progress during the fieldwork stages. For national surveys this will be a minimum of each week using a standardised form.
    - liaise with trusts about survey responses as required including non-respondents to support the issuing of reminders and the identification of any issues with contact information data quality at that stage.
    - have in place stringent data quality controls for data checking and entry

to ensure the accuracy of the data collected.

- submit, as stated in guidance, raw datasets to the commissioner or the Co-ordination Centre for all national survey data. Raw dataset shall mean data that has been entered verbatim from completed questionnaires without any editing taking place to remove contradictory or inappropriate responses.
- send core data for the national surveys (identification code, demographic non-sensitive data and response data) to CQC's Co-ordination Centre in a specified format including all sample information as instructed in written guidance along with the responses of individuals. This information will be sent in a secure format as directed by the commissioner or the Co-ordination Centre.
- consider all samples, and their content, as confidential. The data will only be stored, shared, used and deleted as directed within guidance or as separately requested by the commissioner or its Co-ordination Centre in writing.
- transfer data in a secure way to ensure the confidentiality and security of the data. Approved Contractors must undertake all transfers of data in line with guidance which may include, for example, using appropriate encryption and password protection, and requirements for data to be removed as required by relevant ([section 251 of the National Health Service Act 2006](#)) approvals.
- provide the commissioner or its Co-ordination Centre with appropriate assurance that all information has been received, cleaned and transferred in accordance with any guidance, data protection and confidentiality requirements. Assurance will be sought in line with CQC's [Quality Assurance Framework](#).
- ensure that all stages associated with the receipt, cleaning or transfer of data are completed in a timely manner and in line with any guidance supplied by the commissioner or the Co-ordination Centre.
- **Analysis, reporting and publicising.** Approved Contractors must undertake any appropriate analysis or reporting requested by registered providers as part of its contract with the Approved Contractor itself or separately requested by the commissioner or its Co-ordination Centre. Such analysis should be in line with best practice and stated survey requirements, to ensure the integrity of the programme overall. Approved Contractors must:
  - undertake any additional analysis required for the registered providers that it has contracted with as agreed. This must not deviate from suppression thresholds set to protect confidentiality.
  - undertake any basic analysis and reporting as required by CQC to support our understanding and use of all feedback from those who use services, and to develop survey methodologies and processes.
  - support the publicising of the surveys both pre-questionnaire and post-publication.

- provide the commissioner or its Co-ordination Centre with appropriate assurance that all analysis and reporting required by the commissioner or its Co-ordination Centre has been undertaken in accordance with any guidance, data protection and confidentiality requirements. Assurance will be sought in line with CQC's [Quality Assurance Framework](#).
- ensure that all stages associated with the receipt, cleaning or transfer of data are completed in a timely manner and in line with any guidance supplied by the commissioner or its Co-ordination Centre.
- Review free text comments or any other information supplied by patients during the survey process for safeguarding concerns. If concerns are identified and are escalated to a local authority, the provider or the police, the approved contractor must alert CQC, or the appropriate commissioning authority at the same time.

The Approved Contractor will ensure that local and national data is protected and that confidentiality requirements and publication embargoes are maintained. This includes ensuring that the publication or promotion of results locally is not undertaken until after the publication of the national survey results.

- **Governance.** In addition to the above, Approved Contractors must work with the commissioner and its Co-ordination Centre to support, develop and deliver the programme as required. The Approved Contractor must:
  - attend all briefings and meetings as required by the commissioner or the Co-ordination Centre. Frequency will be directed by the number and frequency of surveys but will be a minimum of once per year at a Programme level. Attendance at survey launch events/ webinars is also essential.
  - supply appropriate details of the volume, scope and value of contracts with providers, breaches in confidentiality and security, and other information as required by the commissioner or its Co-ordination Centre to ensure the continued quality of the Approved Contractors within the Framework.
  - inform the commissioner or its Co-ordination Centre, as stated in any guidance, of all breaches to data security, confidentiality or governance within 24 hours of any breach being identified.

Commissioners may also use the framework to commission the following services:

- **Feedback.** The distribution, collection, analysis and reporting of questionnaires designed to collect non-survey feedback for CQC, other commissioners or its Co-ordination Centre.
- **Advice and thought leadership.** Specific advice and support on the methods, processes and tools for collecting feedback from people who use services separate from the NHS Patient Survey Programme. This would include advice on the collection of feedback using web and other tools, general survey and questionnaire methods or similar processes.

## 7. Authority Responsibilities

CQC's Survey Team will:

- appoint a Service/Contract Manager to manage the contract and act as a primary contact for all contractual matters.
- set the strategic direction for the NHS Patient Survey Programme and will set individual requirements for the number of work packages.
- work with Approved Contractors to manage the delivery of the NHS Patient Survey Programme in line with set timelines and guidance.
- develop and communicate any quality assurance requirements to ensure that all tools and services are delivered to a high standard.
- ensure that clear guidance is developed and made available to Approved Contractors for development and delivery of the survey programme.

Where commissioners other than CQC use the framework similar responsibilities will be delivered by the commissioning organisation.

## 8. Contractor Responsibilities

Each Approved Contractor must:

- appoint a person as the main point of contact for any queries in relation to the management or monitoring of the contract. This will include performance against any key performance indicators as set out below.
- attend all briefings and meetings as required by the commissioner or its Co-ordination Centre. Frequency will be directed by the number and frequency of surveys but will be a minimum of once per year at Programme level, and once per survey.
- provide information on progress to the commissioner and its Co-ordination Centre as required. This will include, but is not limited to, information on response rates during fieldwork.
- supply appropriate management information including details of the volume and scope of contracts with providers, including volumes of work bid for, to ensure the continued quality of the Approved Contractors within the Framework.
- undertake evaluation and quality assurance on its work to provide the commissioner or its Co-ordination Centre with sufficient assurance that its work meets required quality standards and learns from experience. Assurance must be in line with CQC's [Quality Assurance Framework](#).
- adhere to all requirements outlined by the Confidentiality Advisory Group of the Health Research Authority and any other body involved in approving the survey. Approved Contractors will also adhere to the requirements set out in the Security Baseline Document issued by CQC. Where breaches to confidentiality or data



protection occur they must be raised with the commissioner or its Co-ordination Centre as required along with any action plans and learning needed to ensure that similar future breaches do not occur.

- Maintain an up to date IG tool kit to a standard set by CQC, its Co-ordination centre or the Confidentiality Advisory Group. Where scores fall below 100% an action plan must be submitted to CQC detailing how scores will be improved before the next assessment. Each Approved Contractor must also be listed on the Data protection register for the purposes of research and adhere to all conditions and agreements made between the CAG and CQC.
- deliver all of its work in a timely manner and in line with any guidance supplied by the commissioner or its Co-ordination Centre.

Each Approved Contractor must be able to demonstrate compliance with the General Data Protection Regulation which will become effective from 25 May 2018. Approved contractors are expected to:

- maintain records of data processing activities and ensure information relating to the fair processing of data is available in a clear, concise and understandable way. Privacy Notices should include mention of surveys undertaken for the NPSP, to include detail on how data is held, used, stored and retained as set out in the legislation, and summarised by the [Information Commissioner's Office guide to the GDPR](#).
- have appropriate governance measures in place to support compliance with GDPR. This can include having data protection policies, data protection impact assessments, codes of conducts and a Data Protection Officer in order to clearly document and account for how data is processed.
- have appropriate technical and organisational measures in place to ensure the security of data storage and processing, that data is not accessed unlawfully, and is protected against accidental loss or destruction.
- be able to provide the data controller (Commissioning organisation) with sufficient guarantees that the requirements of the GDPR will be met and the rights of data subjects protected. In order to achieve this, the processing of personal data must be governed by a contract. It is expected that model service contracts provided by CQC and The Survey Coordination Centre will fulfil this function. However, should this not be used contracts between Commissioning organisations and approved contractors must be GDPR compliant.

CQC reserves the right to audit Approved Contractors on their adherence with these requirements at any time. CQC retains the right to remove any Approved Contractor from the Framework including where:

- they not meet the above contractor responsibilities listed above.
- they do not bid for and undertake work in relation to this Framework.
- They breach any security or confidentiality requirement outlined in guidance.

## 9. Contract Management and Monitoring

The key personnel involved in the management of this contract will be as follows:

- **Authority Service/Contract Manager:** This role will be undertaken by the Authority's Survey's Manager. They will manage the contract on a day-to-day basis, and also chair the contract review meeting outlined below. The Authority Service/Contract Manager will also act as the first point of escalation for risks and issues in performance against the KPIs listed below and demonstrating value for money from the contract. The Authority Service/Contract Manager will work with the Authority's Head of Function who is accountable for the survey programme as required as a secondary stage of escalation.
- **Authority Senior Responsible Officer:** The Authority's Director of Intelligence will be the Senior Responsible Officer (SRO) for this contract. They will be the senior supplier and relationship manager for the Authority and the final point of escalation for service related issues.
- **Authority Commercial Contracts Lead:** The Authority's Senior Commercial Contracts Lead will be the primary contact for any commercial matters or contractual issues/disputes.

Approved Contractors will be expected to attend the following meetings:

Meeting Title & Frequency	Purpose
<b>Contract Review Meeting (annually)</b>	<p>To discuss and review the delivery of the programme including the escalation of any:</p> <ul style="list-style-type: none"><li>• matters escalated from performance review meetings including any risks and issues, and complaints or feedback.</li></ul> <p>To discuss and review the delivery and development of the programme including:</p> <ul style="list-style-type: none"><li>• review management information (annually and year to date)</li><li>• review overall performance against the contract, including compliance and achievement of KPIs, and actions needed</li><li>• review of any continuing risks and issues and any actions identified in previous quarterly meetings</li><li>• potential improvements, opportunities and innovation.</li></ul> <p>This meeting should be attended, as a minimum, by the Authority's Service/Contract Manager, the Authority's Commercial Contracts Lead (if required) and an appropriate lead from the successful tenderer.</p>

## 10. Key Performance Indicators

Approved Contractors will be expected to deliver services in line with the Key Performance Indicators (KPIs) outlined below. These are the minimum key performance indicators which will be used to measure the success of this Contract.

No	Key Performance Indicator	Threshold
1	<b>Delivery of Survey and Feedback outputs</b> The Contractor is required to deliver good quality survey outputs for each of the defined work packages, in line with CQC's guidance, instructions or commissioning notes for any work package.	100% Critical KPI
2	<b>Resource mobilisation in line with survey programme requirements profile</b> The Contractor is required to ensure that there are sufficient personnel and other resources to deliver the work packages on time and to the quality standards required.	95% Critical KPI
3	<b>Attendance at Meetings</b> The Contractor is required to attend all planned meetings including briefing meetings for each survey and an annual contract review meeting unless otherwise agreed with the Commissioning organisation	97% Critical KPI
4	<b>Availability of Contractor</b> The Approved Contractor will be contactable to the Commissioning organisation between the hours of 9am to 5pm Monday to Friday (excluding Bank Holidays)  The Contractor is required to respond to all general queries within 24 hours.  Simple queries should be resolved within 48 hours.  Complex queries should be resolved within 5 days.	95% Critical KPI   95% Non-critical KPI  95% Non-critical KPI  95% Non-critical KPI
5	<b>Security Requirements</b> Services will be delivered in accordance with information security, data protection, GDPR, any confidentiality requirements including those agreed with the Confidentiality Advisory Group (CAG). The Approved Contractors will advise CQC or its Co-ordination Centre where any such breach occurs.	100% Critical KPI

6	<b>Delivery Timescales</b>  Services will be delivered in accordance with agreed timelines and any change is raised and agreed with the commissioning authority.	95% Critical KPI
7	<b>Evaluation and learning</b>  Evaluation and learning will be completed at the end of each delivered package, and any identified improvements flagged along with an action plan for development.	95% Non-critical KPI
8	<b>Quality of Expertise</b>  The Approved Contractor is to ensure that individuals providing support to the survey programme are those stated in the response or an equivalently qualified individual where the stated personnel have left.	100% Critical KPI
9	<u><b>Quality Assurance Framework</b></u>  The Approved Contractor is required to deliver survey and feedback outputs to a standard that is in line with our quality assurance framework.	100% Critical KPI

The Authority reserves the right to use the performance data associated with this as a means to measure contract and supplier performance and these will be used to determine contract remedy to be applied.

Performance will be scored on a points system, with a failure to meet critical KPIs (3 points) and non-critical (1 point). If a breach of 3 points or more is made over two consecutive months then the supplier will be in breach of contract and remedy applied. This breach can be made up of either 1 critical breach or a number of non-critical breaches or a mixture of the two.

Numbers of points will be used to determine actions needed including a mechanism of “requires action” and or “contract action notices”.

All reports showing adherence to KPIs is to be sent to the Authority's Service/Contract Manager and discussed in line with the timings outlined above

## 11. Management Information

As a minimum, Approved Contractors will be expected to provide the following Management Information annually. A template will be developed by CQC, with approved contractors, to facilitate its collection. All commercially sensitive information will be treated confidentially by CQC and will not be used for any purpose other than the national survey programme or shared with any other organisation including CQC's Co-ordination Centre.

Name of Report	Description
Financial Report <i>annual collection</i>	A report highlighting your activity of events within the survey programme. This will be based on number of surveys bid for, number of bids won, cost of award.
Services offered <i>annual collection</i>	A report highlighting the range of services your company provides under this framework.
Key Performance Indicators <i>annual collection</i>	Provide a report showing compliance with Key Performance Indicators, breaking results down to show compliance against each indicator for each survey commissioned.

The Authority reserve the right to request additional Management Information reports and Approved Contractors are asked to detail any other reports they believe would be beneficial to the Authority.

## 12. Skills and Knowledge Transfer

Approved Contractors must log any significant decisions and actions undertaken in delivering agreed packages of work to provide a clear audit trail. The audit trail should be sufficient to allow the commissioning authority to respond to any queries made about the work and to use it in the planning, development and delivery of future work to identify learning and risks and issues. This audit trail should also be sufficient for CQC to identify any sampling errors, breaches of confidentiality raised, and limitations within the data.

Approved Contractors must provide CQC or its Co-ordination Centre with the results of evaluation, lessons learned or other review of a work package on completion of that work package.

All project specific intellectual property rights mean Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this framework will be retained by CQC.

## 13. Additional Information

Approved Contractors must ensure that their work and its outputs are quality assured to a standard equivalent to [CQC's Assurance Framework](#). The framework requires that data producers make appropriate plans for quality assurance, undertake an agreed review of the quality of its outputs, complete analytical sign off and organisational sign off before it is delivered.

CQC expects that learning and feedback from the quality assurance process is undertaken. Approved Contractors must be able to demonstrate their quality assurance processes and be able to assure CQC that this process is robust and applied in all cases.

Approved Contractors must ensure that their work supports the delivery of all requirements set out in the UK Statistics Authority's Code of Practice for Official Statistics. It is expected that Approved Contractors will provide all necessary support and work to ensure that official statistics are compliant with the code.

All Approved Contractors will also be expected to ensure adherence to the HM Government Supplier Code of Conduct. For more information please visit:

<https://www.gov.uk/government/publications/supplier-code-of-conduct>

CONFIDENTIAL

## ANNEXE 1 – PART B: AWARD CRITERIA

### 1. DIRECT AWARD CRITERIA

**1.1** The following criteria shall be applied in respect of any Lot which a Contractor capable of meeting the Customer's Statement of Requirements during the Direct Award Procedure.

Criterion Number	Criterion - ranked in order of importance
1	Relevance of Services to requirement
2	Contract Price

### 2. FURTHER COMPETITION AWARD CRITERIA

**2.1** The following criteria shall be applied to Contractors' compliant tenders submitted through the Further Competition Procedure. The Customer shall set the percentage weightings in accordance with its requirements prior to commencing the Further Competition Procedure.

	Criterion	Percentage Weightings (or rank order of importance where applicable)
a	Provision of the Services Other sub criteria to be set by the Customer conducting the further competition	to be set by the Customer conducting the further competition
b	Maintaining the Services Other sub criteria to be set by the Customer conducting the further competition	to be set by the Customer conducting the further competition
c	Price	to be set by the Customer conducting the further competition

## ANNEXE 1 – PART C: AWARD PROCEDURE

- 1.1 If the Authority or any Customer decides to source the Services through the Services Framework then it will award its Services Requirements in accordance with the procedure in this Part D of Annexe 1.
- 1.2 If a Customer can determine that:-
- 1.2.1 its Services Requirements can be met by the any of the Lots submitted by the Contractors on the Framework Agreement as set out in Annex 1 and
  - 1.2.2 all of the terms of the proposed contract are laid down in this Framework Agreement and the Call Off Terms and Conditions do not require amendment or any supplementary terms and conditions;
- then the Customer may place an Order in accordance with the Direct Ordering without a Further Competition procedure set out in clause 2 below.
- 1.3 If a Customer:-
- 1.3.1 requires the Contractor to develop a proposal or a solution in respect of such Customer's Services Requirements [and/or it is not possible to determine which Contractor is able to provide best value for money]; and/or
  - 1.3.2 needs to amend or refine the Call-Off Terms and Conditions to reflect its Services Requirements;
- then the Customer shall comply with Further Competition Procedure set out in clause 3 below.

### 2. DIRECT AWARD ORDERING PROCEDURE

- 2.1 Subject to clause 1.2 any Customer ordering Services under the Framework Agreement without holding a further competition shall:-
- 2.1.1 develop a clear Statement of Requirements setting out its requirements for the Services;
  - 2.1.2 apply the Direct Award Criteria to the catalogue of Services for all Contractors capable of meeting the Statement of Requirements in order to establish which of the Contractors provides best value for money;
  - 2.1.3 on the basis set out above, award its Services Requirements by placing an Order with the successful Contractor in accordance with clause 6.

### 3. FURTHER COMPETITION PROCEDURE

#### 3.1 Customer's Obligations

Any Customer ordering Services under the Framework Agreement through a further competition is expected to:-



- 3.1.1 develop a Statement of Requirements setting out its requirements for the Services and identify the Contractors capable of performing the Services;
- 3.1.2 consider the Call-Off Terms and Conditions to ensure that it meets its Services Requirements;
- 3.1.3 invite tenders by conducting a further-competition for its Services Requirements in accordance with the this Further Competition Award Procedure:-
  - (a) invite the Contractors to develop a proposed statement of work setting out its proposals in respect of such Customer's Statement of Requirements ("Statement of Work") and submit a tender in writing for each specific contract to be awarded by giving written notice by email to the Account Manager of each Contractor;
  - (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
  - (c) keep each tender confidential until the time limit set out in clause 3.1.2(b) above has expired.
- 3.1.4 apply the Further Competition Award Criteria to the Contractors' compliant tenders submitted through the further competition as the basis of its decision to award a Call-Off Contract for its Service Requirements;
- 3.1.5 on the basis set out above, award its Services Requirements by placing an Order with the successful Contractor in accordance with Clause 6 which:-
  - (a) states the Services Requirements;
  - (b) states the Statement of Work submitted by the successful Contractor;
  - (c) states the price payable for the Services Requirements in accordance with the tender submitted by the successful Contractor; and
  - (d) incorporates the Call-Off Terms and Conditions applicable to the Services.

## **3.2 Contractor's Obligations**

The Contractor will in writing, by the time and date specified by the Customer in accordance with Clause 3.1.3 (b), provide the Customer with either:-

- 3.2.1 a statement to the effect that it does not wish to tender in relation to the relevant Services Requirements; or
- 3.2.2 the Statement of Work and full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Contractor submits a Statement of Work, it should include, as a minimum:-

- (a) email response subject line to comprise unique reference number and Contractor name, so as to clearly identify the Contractor;
- (b) a brief summary, in the email, stating whether or not the Contractor is bidding for the Statement of Requirements;
- (c) a proposal covering the Services Requirements; and
- (d) if required CVs of Key Personnel – as a minimum any lead consultant, with others, as considered appropriate along with required staff levels.

3.2.3 The Contractor shall ensure that any prices submitted in relation to a further competition held pursuant to this clause 3 shall be based on the prices as set out in as set out in the Pricing Matrix in Annex 3.

3.2.4 The Contractor agrees that all tenders submitted by the Contractor in relation to a further competition held pursuant to this clause 3 shall remain open for acceptance for thirty (30) days (or such other period specified in the invitation to tender issued by the relevant Customer in accordance with the ordering procedure).

#### **4. NO AWARD**

Notwithstanding the fact that the Customer has followed a procedure as set out above in clauses 2 or 3, the Customer shall be entitled at all times to decline to make an award for its Services Requirements. Nothing in this Framework Agreement shall oblige any Customer to place any Order for the Services.

#### **5. RESPONSIBILITY FOR AWARDS**

The Contractor acknowledges that each Customer is independently responsible for the conduct its award of Call-Off Contracts under the Services Framework and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:-

- 5.1 the conduct of other Customer in relation to the Services Framework; or
- 5.2 the performance or non-performance of any the Call-Off Contracts between the Contractor and Other Contracting Bodies entered into pursuant to the Services Framework.

#### **6. FORM OF ORDER**

Subject to clauses 1 to 5 above, each Customer may place an Order with the Contractor by serving an order in writing in substantially the form set out in Annexe 2 (the “Order Form”) or such similar or analogous form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this clause 6 shall not constitute an Order under this Framework Agreement.

## **7. ACCEPTING AND DECLINING ORDERS**

7.1 Following receipt of an Order, the Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Customer and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and either: -

7.1.1 notify the Customer that it declines to accept the Order; or

7.1.2 notify the relevant Customer that it accepts the Order by signing and returning one copy of the Order Form.

7.2 If the Contractor: -

7.2.1 notifies the Customer that it declines to accept an Order; or

7.2.2 the time-limit referred to in clause 7.1 has expired;

then the offer from the Customer to the Contractor shall lapse and the Customer may offer that Order to another Contractor that submitted the next economically advantageous tender in accordance with the relevant Award Criteria.

7.3 The Contractor in agreeing to accept such an Order pursuant to in Clause 6 above shall enter a Call-Off Contract with the relevant Customer for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Customer's receipt of the signed Order Form provided by the Contractor pursuant to clause 7.1.2.

## ANNEXE 2 – ORDER FORM

Customer	
Address	
Contact Ref:	Ref: Phone: E-mail:
Order Number	[To be quoted on all correspondence relating to this Order]
Order Date	

Contractor	
For attention of:	Name: Phone: E-mail:
Address	

### 1. REQUIREMENTS

(1.1) Services required including any key personnel:

(1.2) Commencement Date:

(1.3) End Date:

(1.4) Key Personnel of the Contractor

(1.5) Quality/Technical/Performance Standards

(1.6) Location(s) at which Services are to be provided:

### 2. PRICE AND PAYMENTS

(2.1) The Price excluding VAT, payment profile and method of BACS)) [ ]/[Set out in schedule ]

[Guidance: Insert details of the Price, payment profile and method of payment. This should not be different from the Pricing Matrix set out in Annex 3 to the Framework Agreement.]

(2.2) Invoicing and Payment

The Contractor shall issue invoices [monthly]/[quarterly] in arrears.

[Guidance: if known, specify any additional supporting information which the Contractor should provide with the invoice].

### 3. COMMERCIALLY SENSITIVE AND CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

[ ]

[Guidance: Include details of any Commercially Sensitive Information identified by the Contractor and the duration it should be confidential for. This will assist the Authority in respect of compliance with Freedom of Information Act and the section 45 Code published by the Department of Constitutional Affairs.]

### 4. LIABILITY

For the purposes of clause G1.4 of the Call-Off Terms and subject to the remainder of clause G1 of the Call-Off Terms the Contractor's total liability shall be limited in aggregate to the greater of:

- (a) one million pounds GBP £1,000,000.00; or
- (b) one hundred and twenty-five percent (125%) of the total Price total in no event exceed a sum equal to 125% of the Price paid or payable by the Customer to the Contractor for the Services.

### 5. TERMINATION

For the purposes of clause H3.1 of the Call-Off Terms the Customer may terminate the Call-Off Contract on 30 days' notice to the Contractor.

### 6. NOTICES

Notices shall be sent to the addresses set out below for the purpose of service of notices under the Call-Off Contract:

#### For the Customer:

Contact Name:

Address:

Email:

#### For the Contractor:

Contact Name:

Address:

Email:

BY SIGNING AND RETURNING THIS ORDER FORM THE CONTRACTOR AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in the Order Form, incorporating the Call-Off Terms set out in the framework agreement entered into by the Contractor and the Authority on \_\_\_\_\_ [insert date].

For and on behalf of the Contractor:

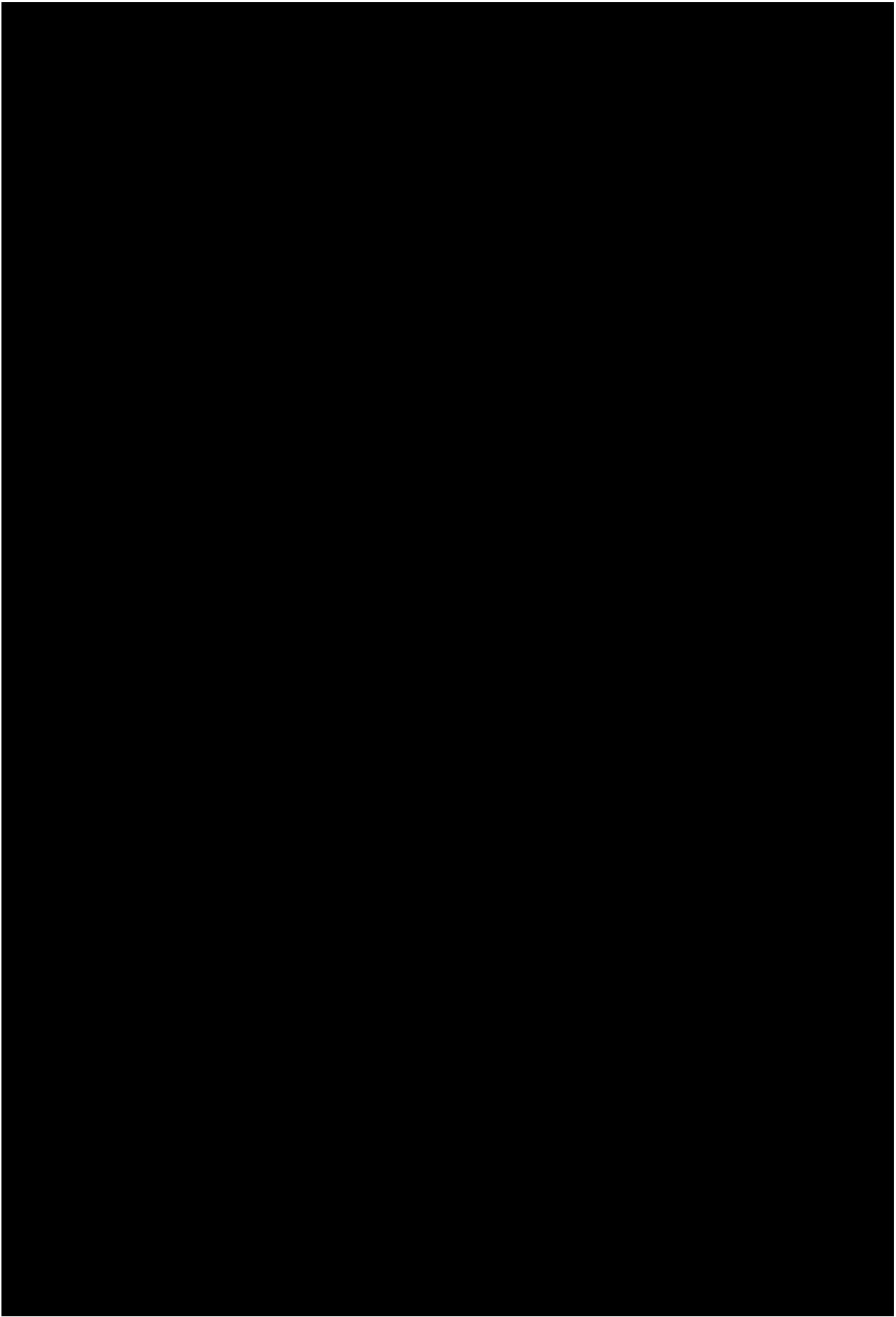
Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

For and on behalf of the Customer:

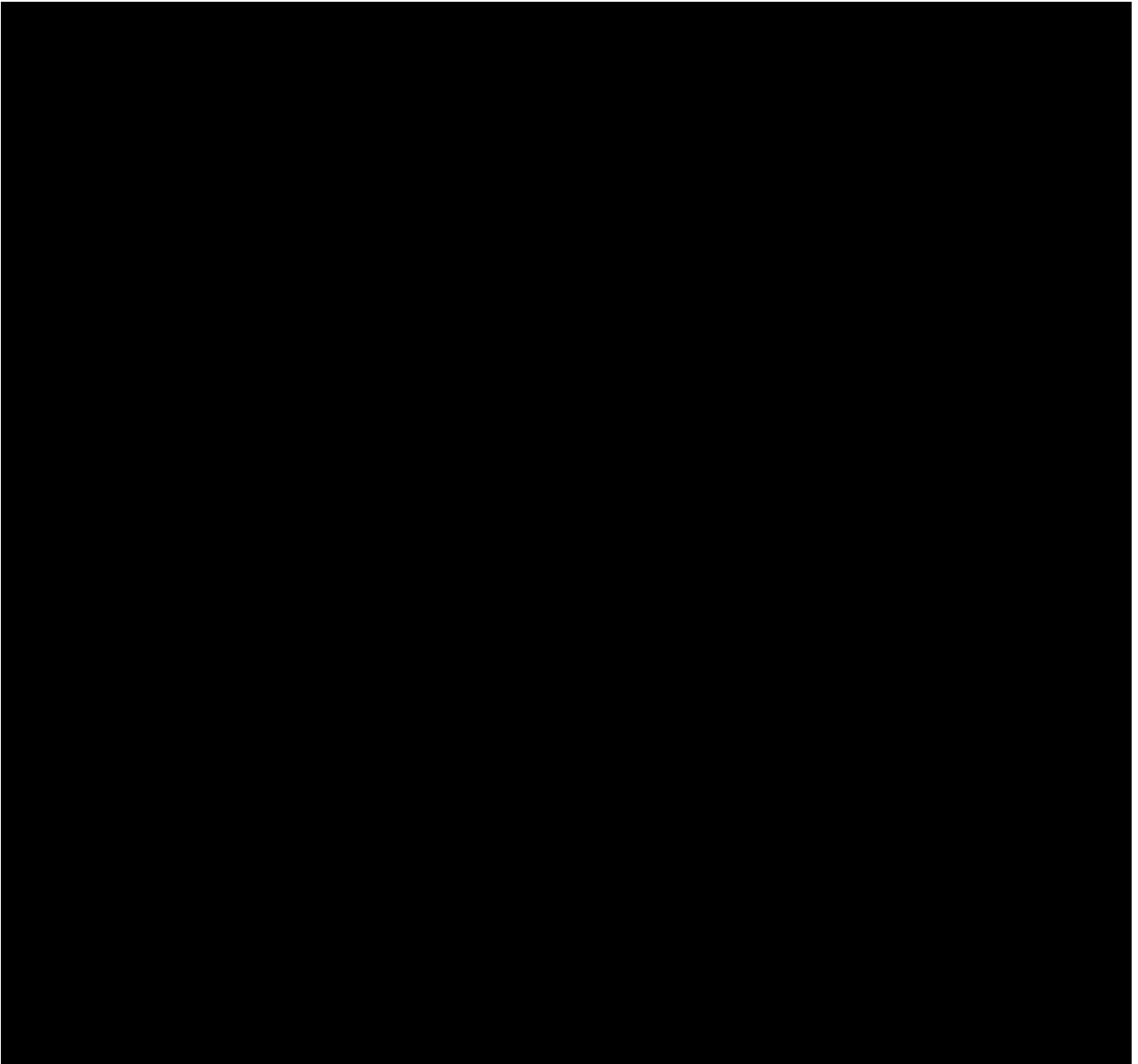
Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

## ANNEXE 3 – TENDER RESPONSE (INCLUDING PRICING MATRIX)

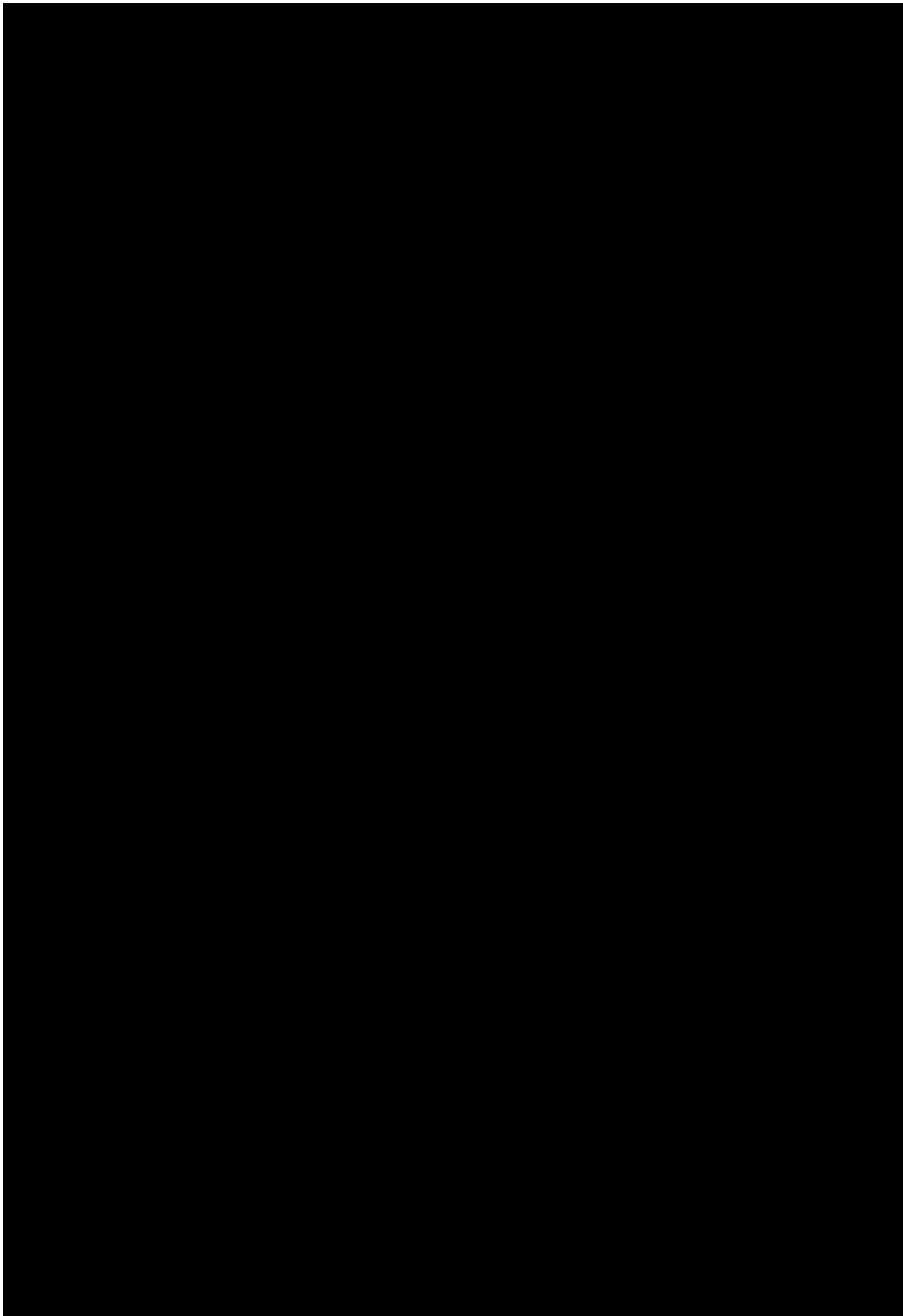
EVALUATION QUESTION 01 – STRATEGIC VISION	WEIGHTING
Please describe your organisation's vision for supporting the NHS Patient Survey Programme	5%
<p><i><u>Evaluation intention</u> - This criterion seeks to establish the Tenderer's vision for the delivery and development of national surveys.</i></p> <p><i>Evaluation of this criterion will include an assessment of your organisation's views on how CQC could incrementally improve the NHS Patient Survey Programme.</i></p>	
<b>RESPONSE:</b>	

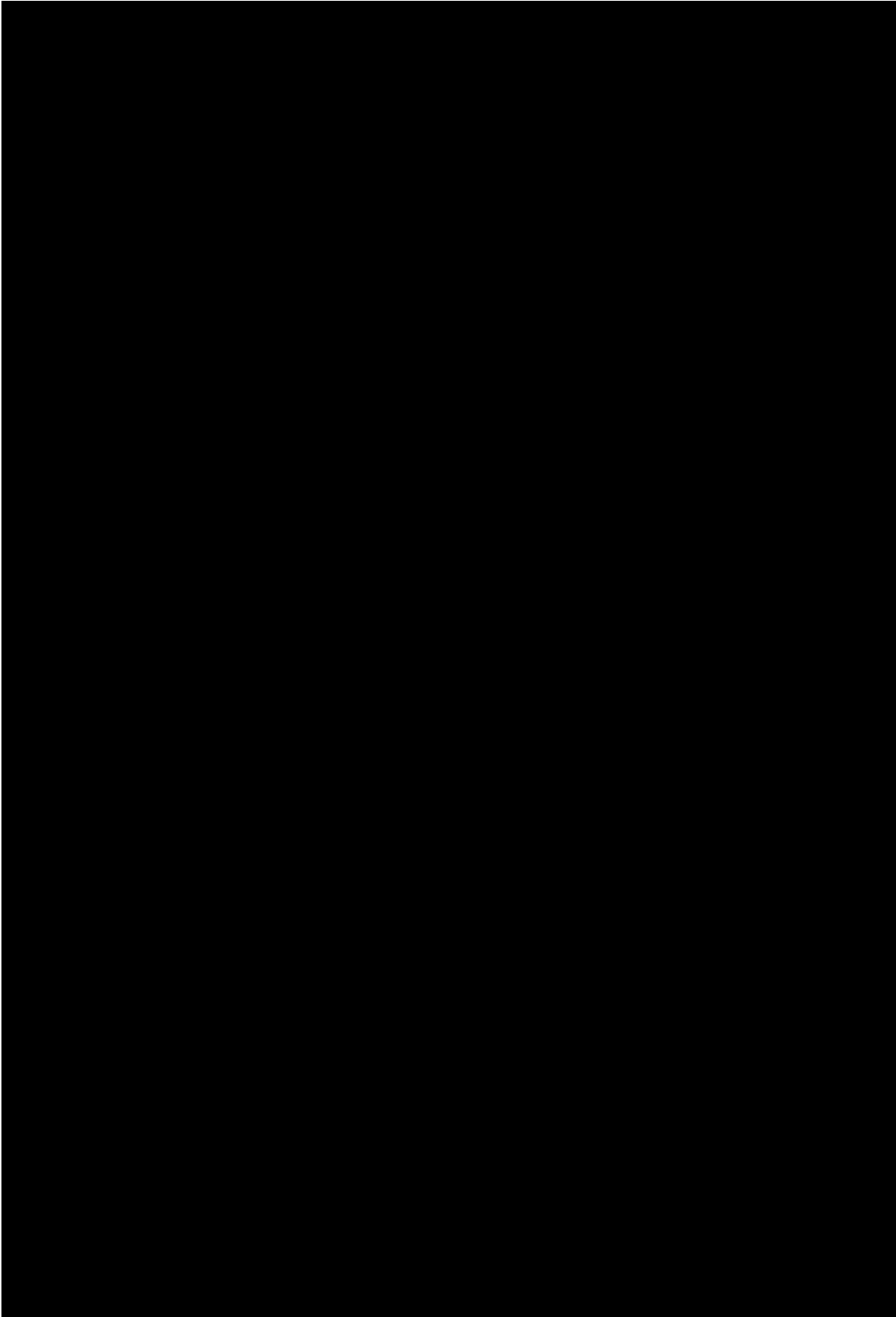


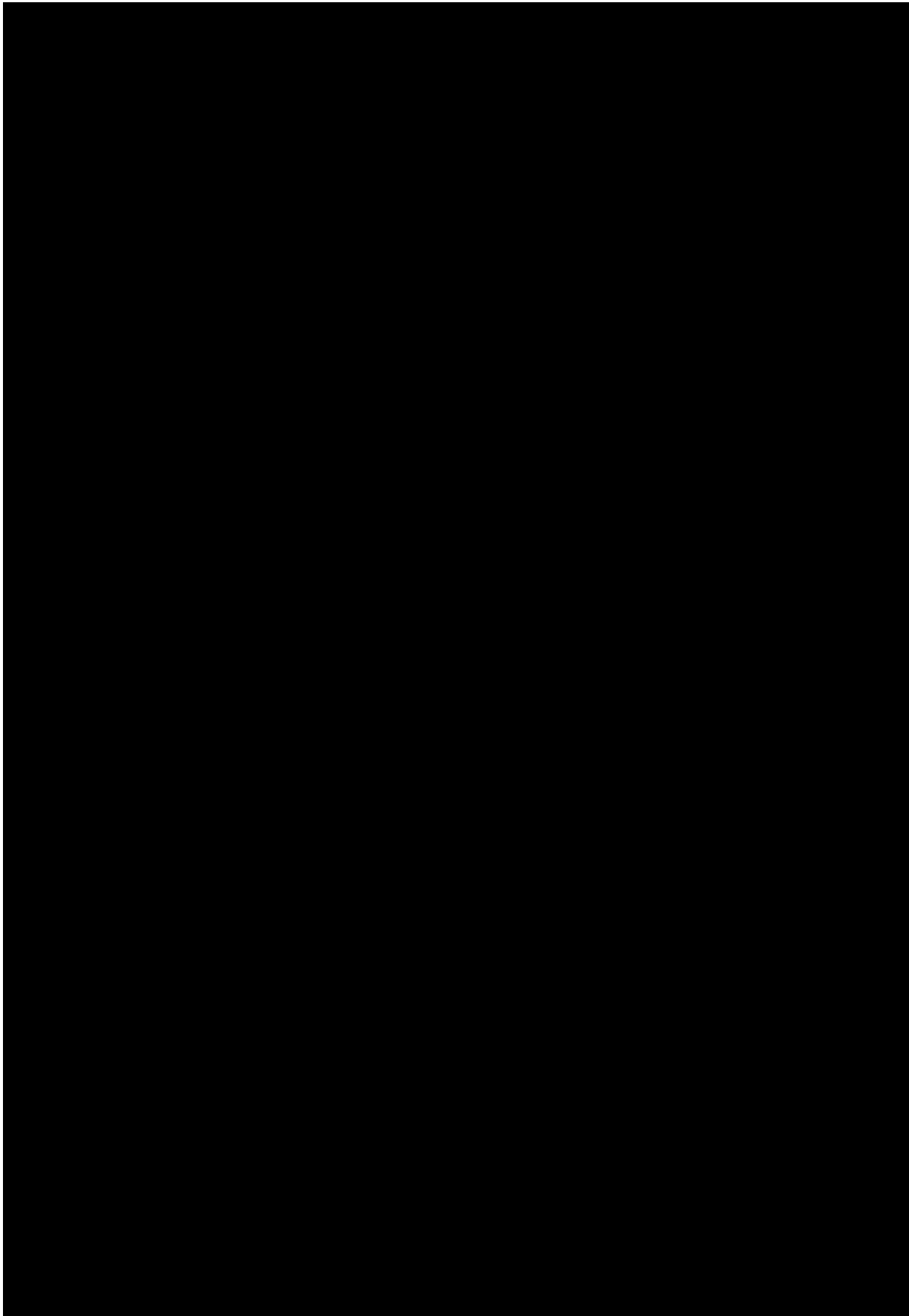


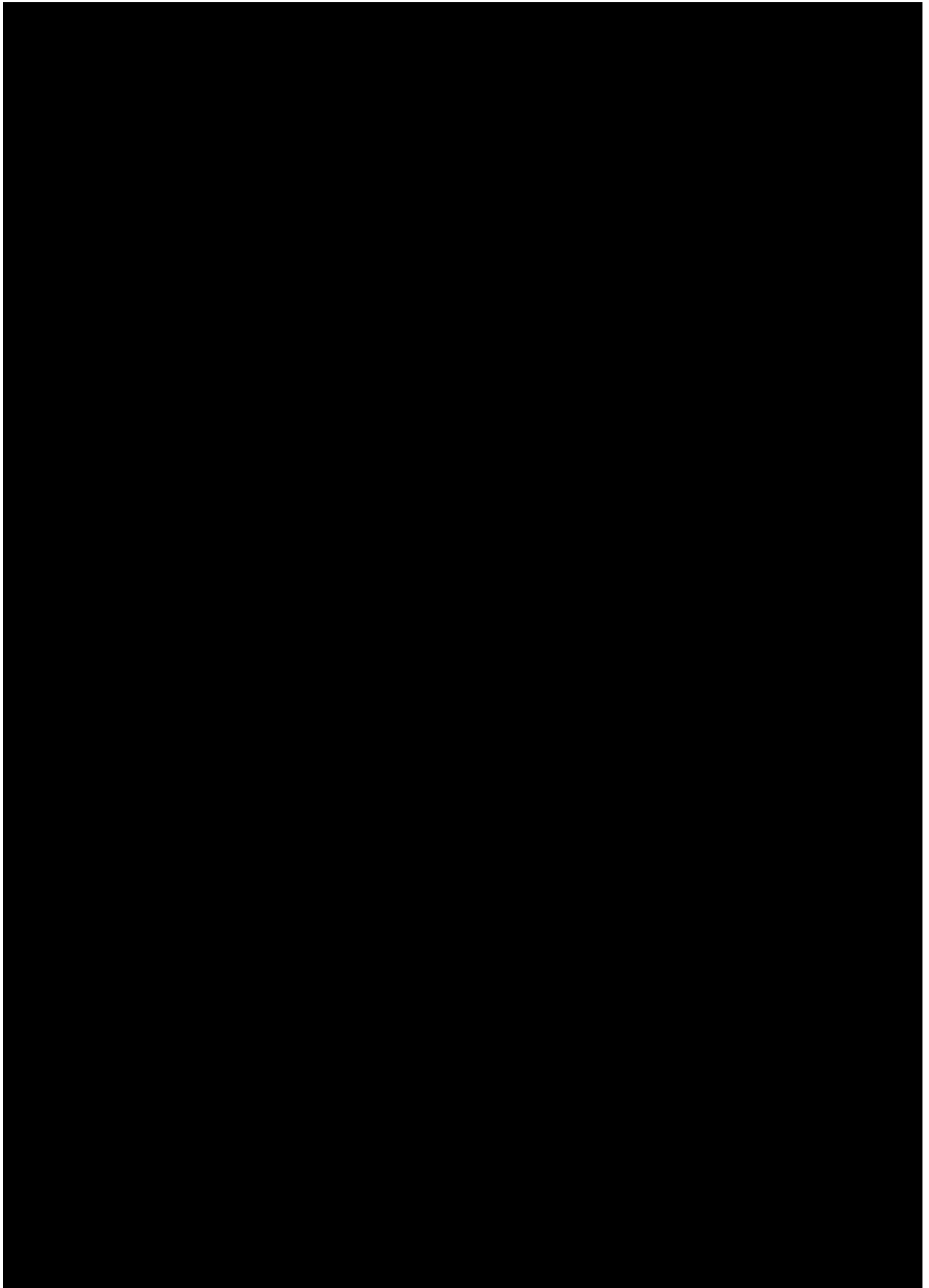


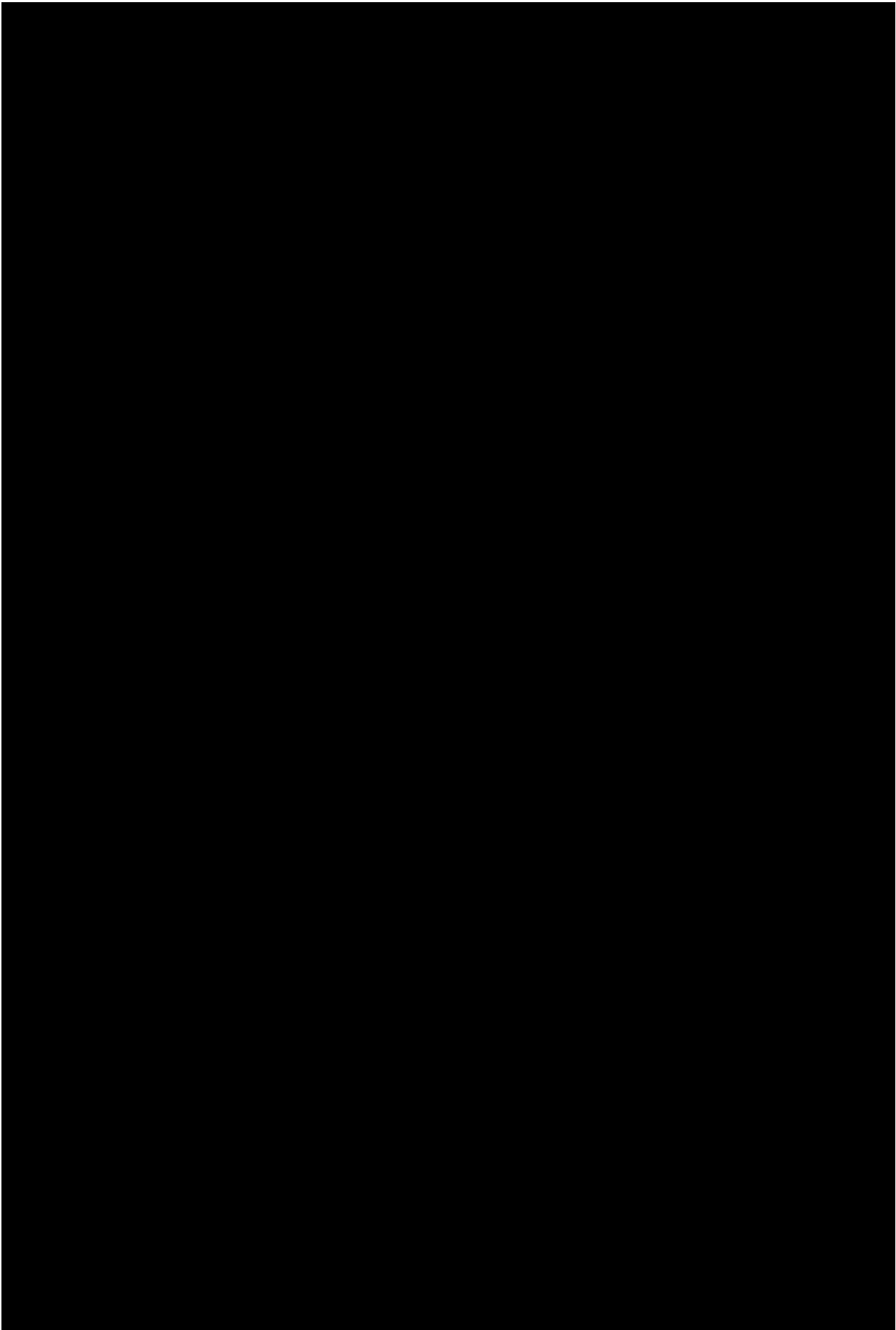
EVALUATION QUESTION 02 – DELIVERY AND DEVELOPMENT OF SURVEYS	WEIGHTING
Please describe (with specific reference to the requirement and the outcomes expected) how your organisation intends to deliver the requirements outlined within the Specification	20%
<p><i><u>Evaluation intention</u> - This criterion seeks to establish that the Tenderer has the experience and expertise needed to deliver the requirements outlined within the Specification</i></p> <p><i>Evaluation of this criterion will include an assessment of how your organisation intends to deliver and develop surveys in collaboration with CQC. This should outline your approach to ensuring on-going delivery and improvements to the programme.</i></p>	
<b>RESPONSE:</b>	

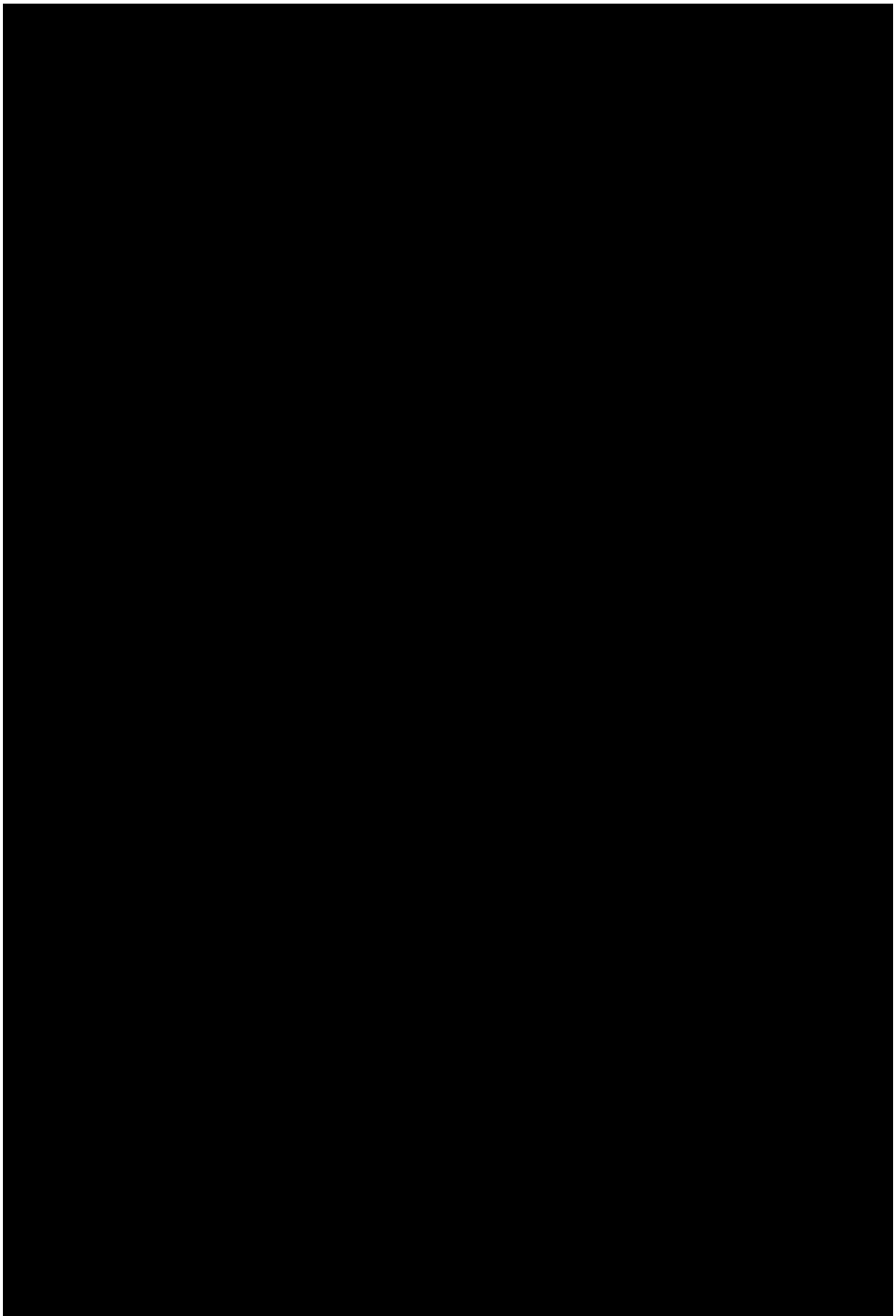




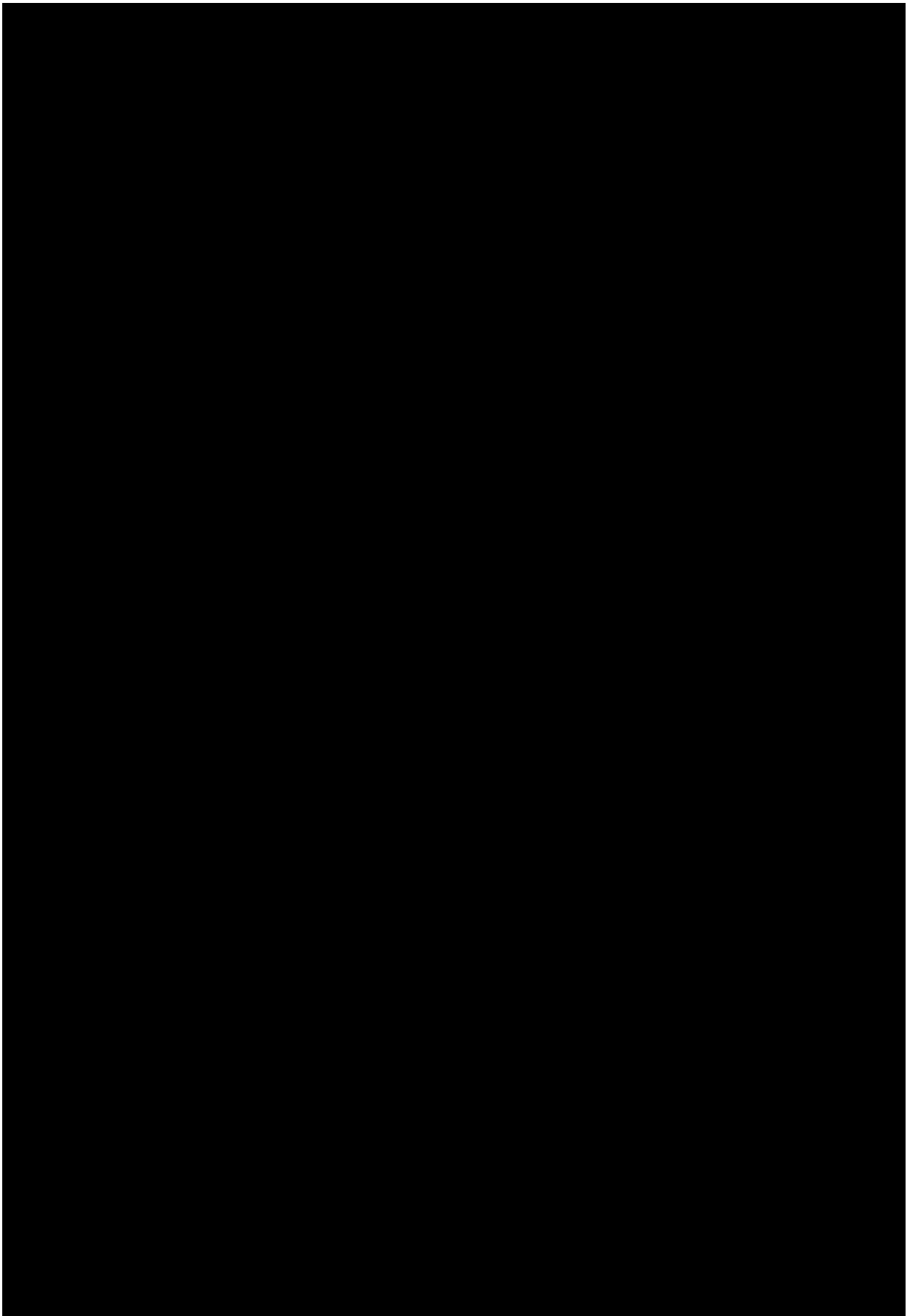


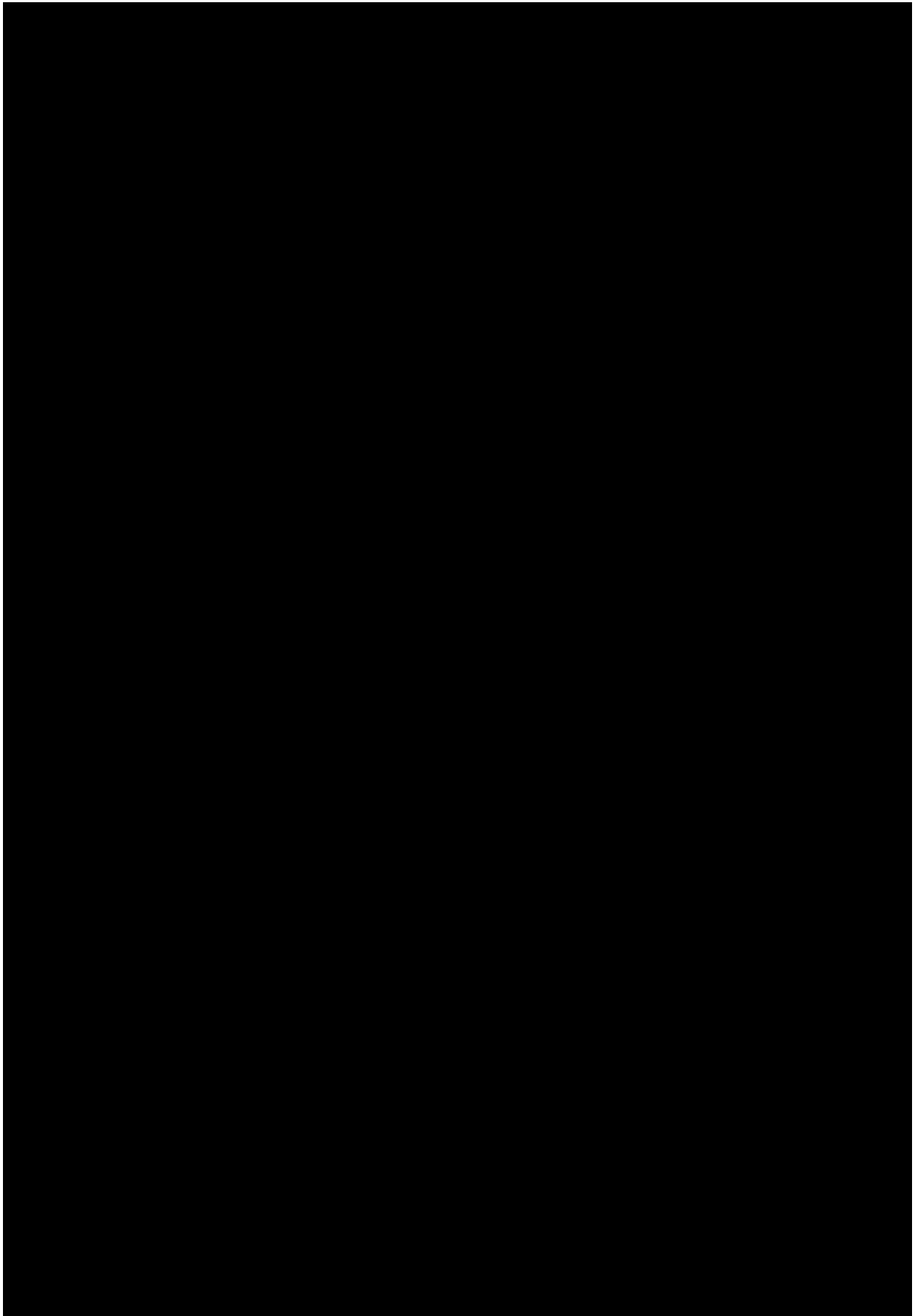


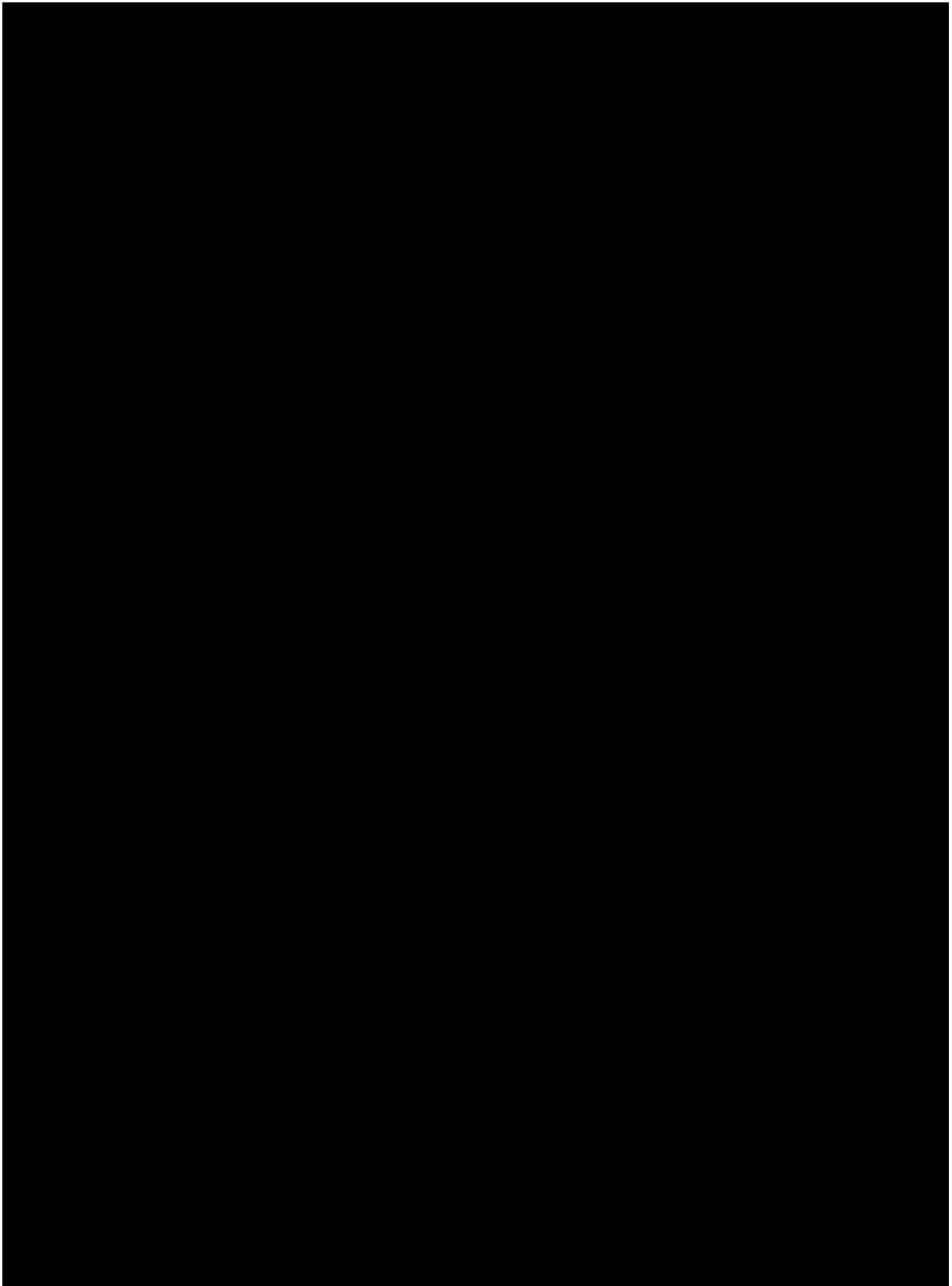


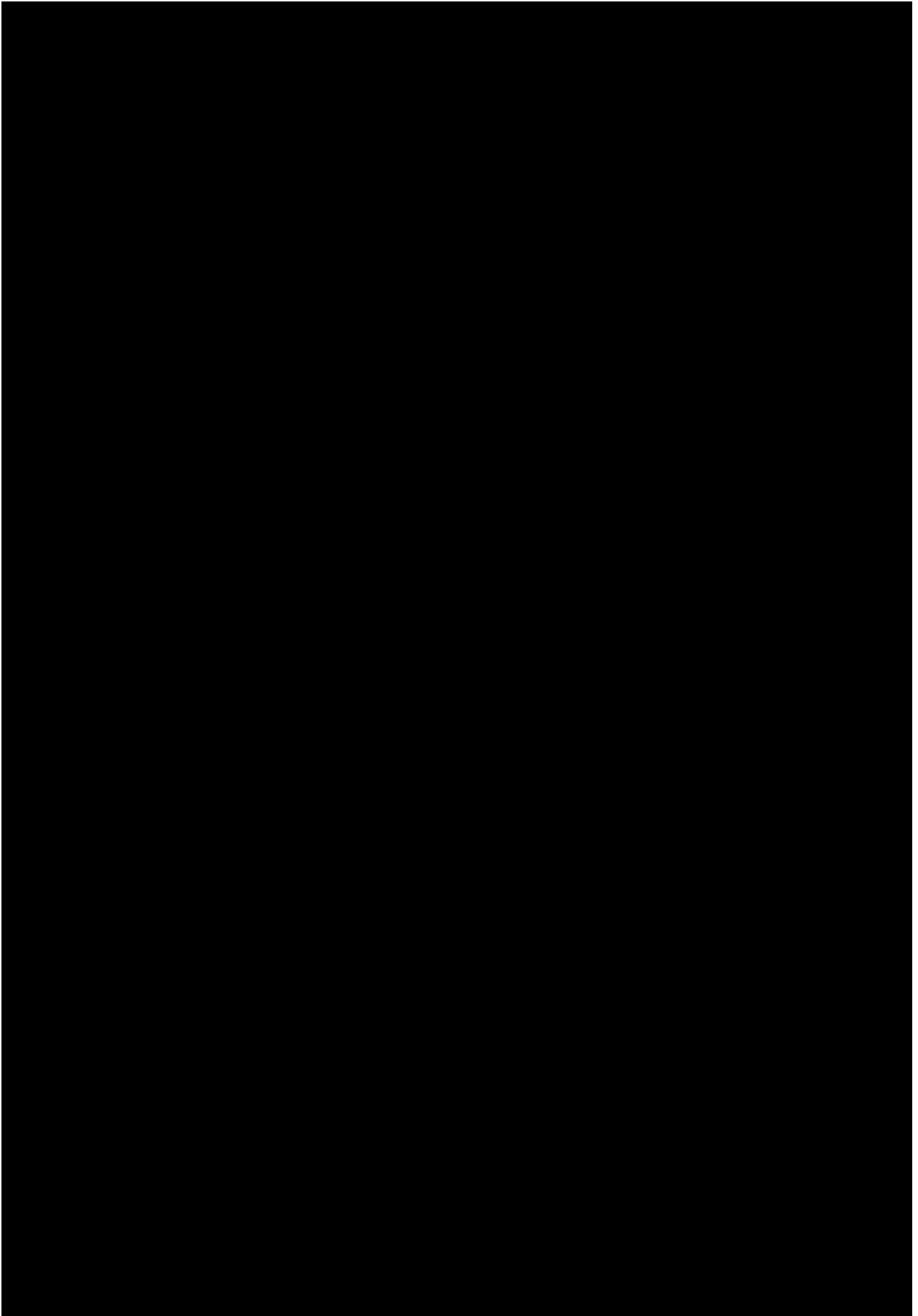


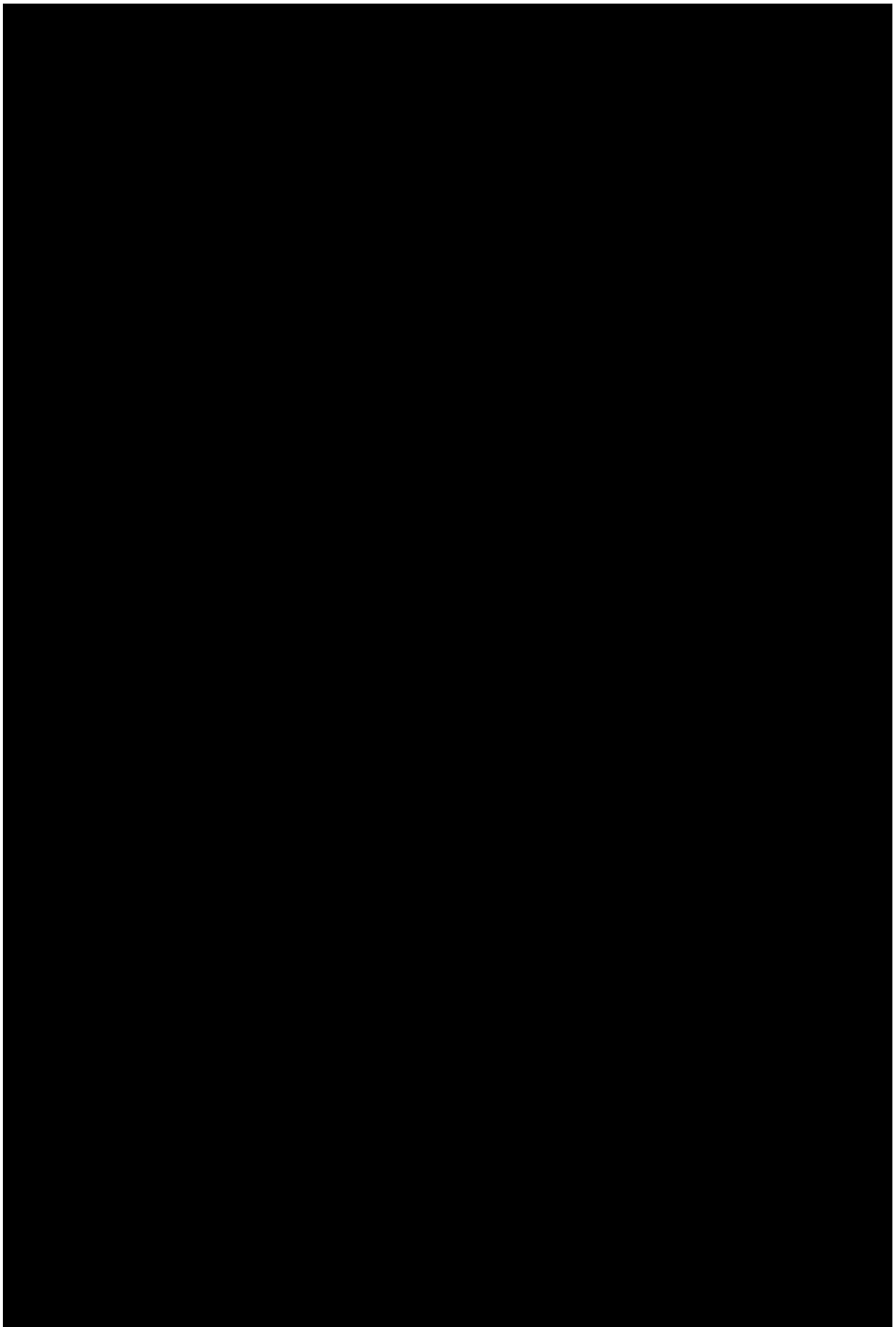


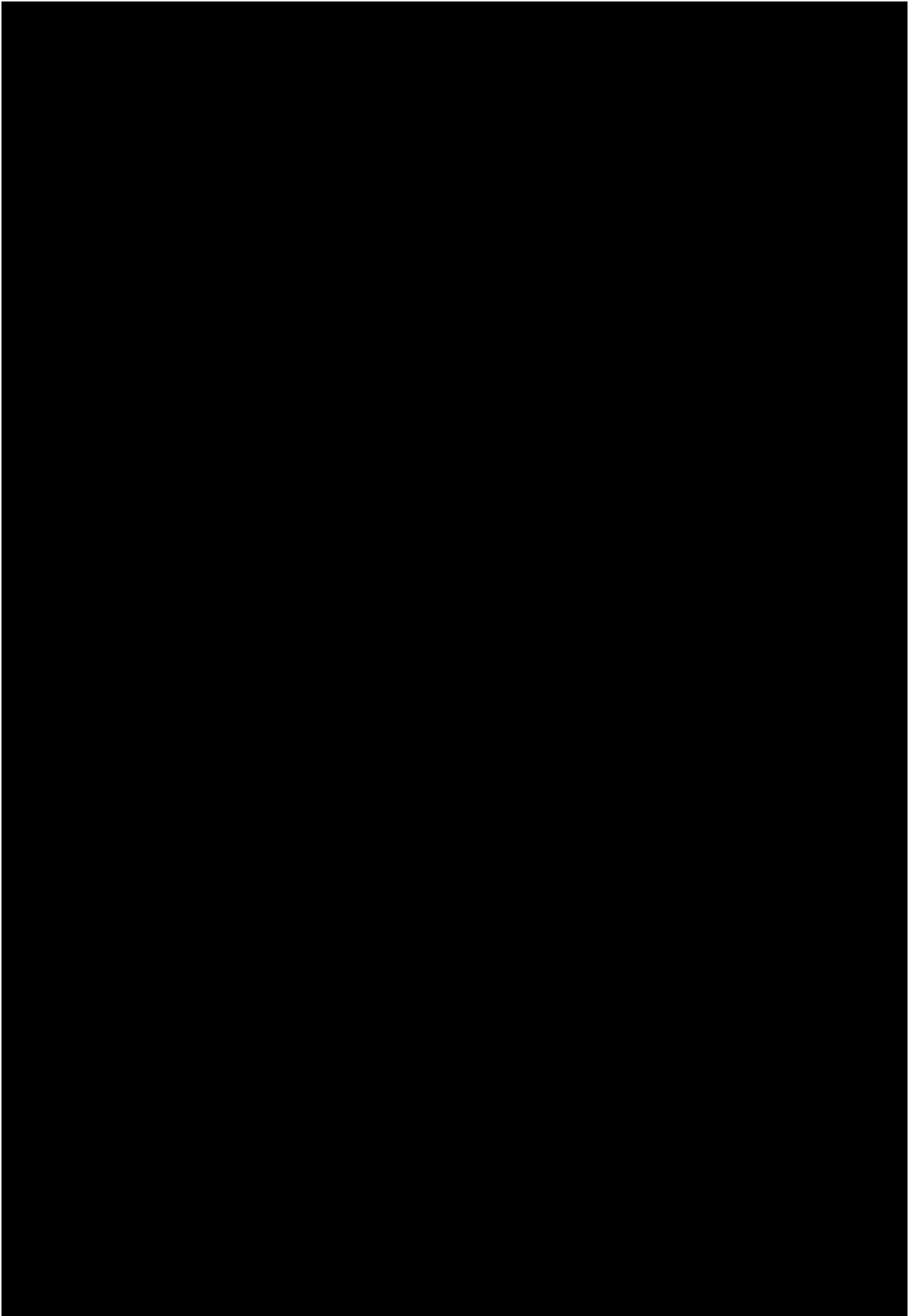


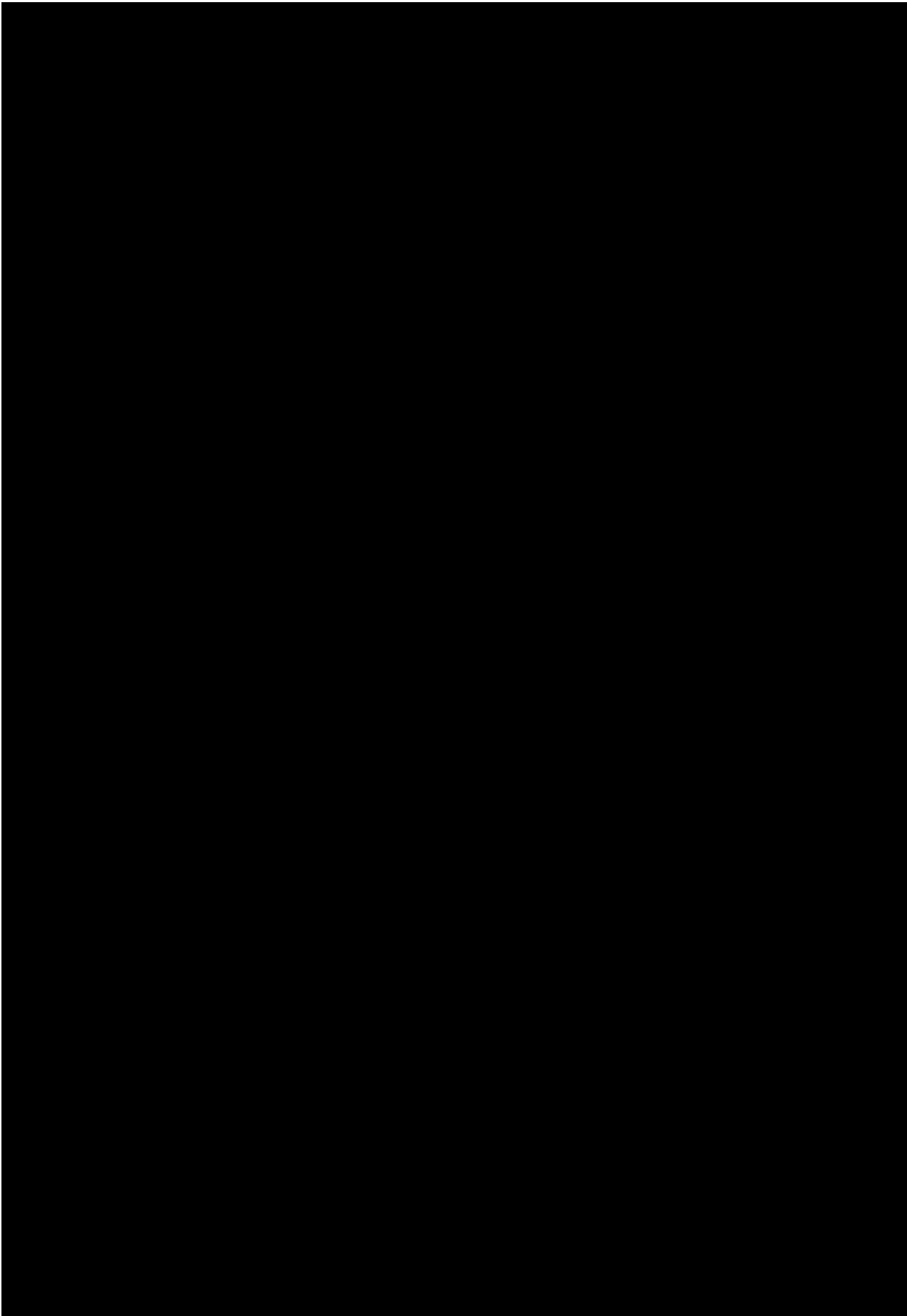


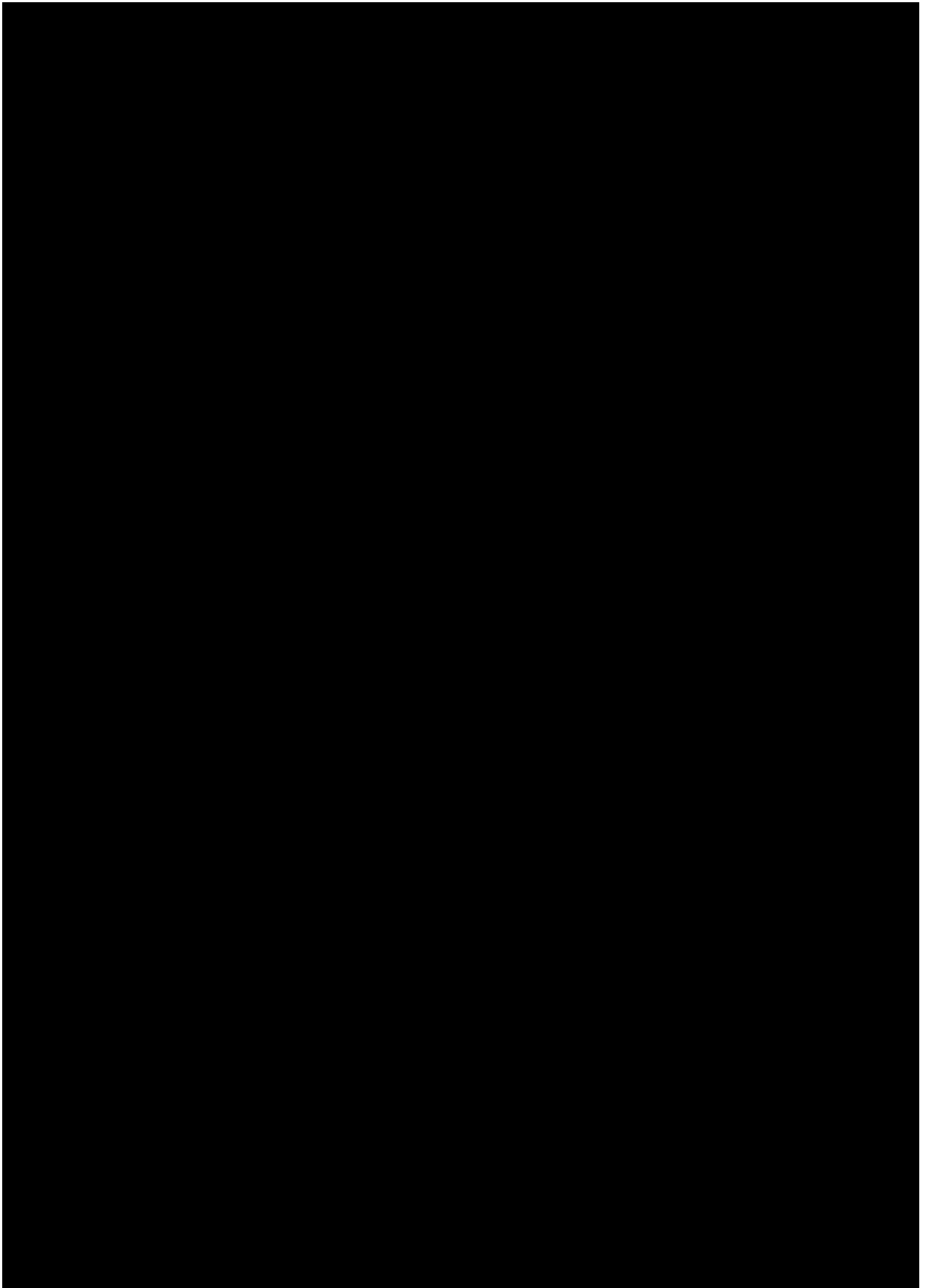




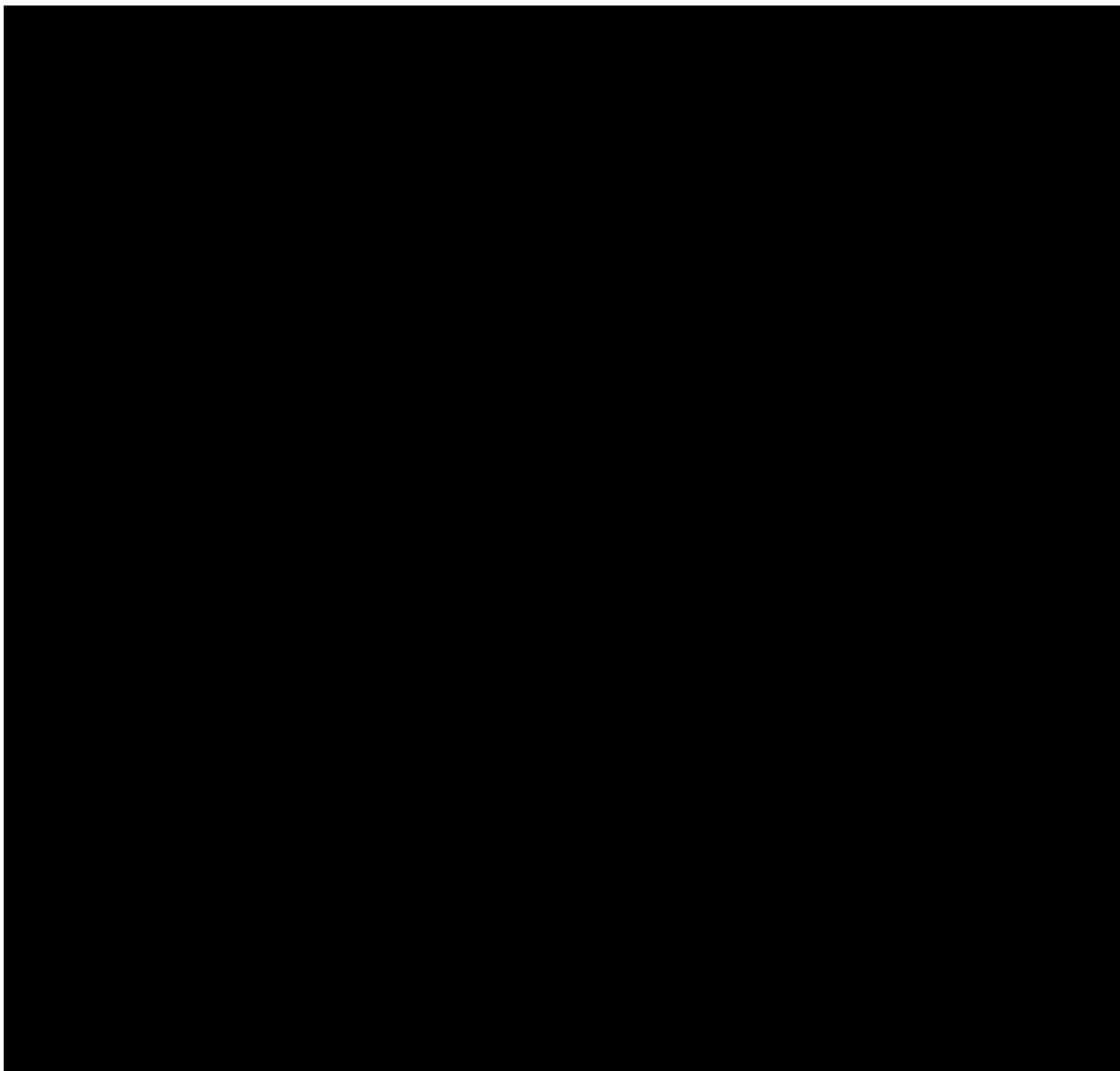




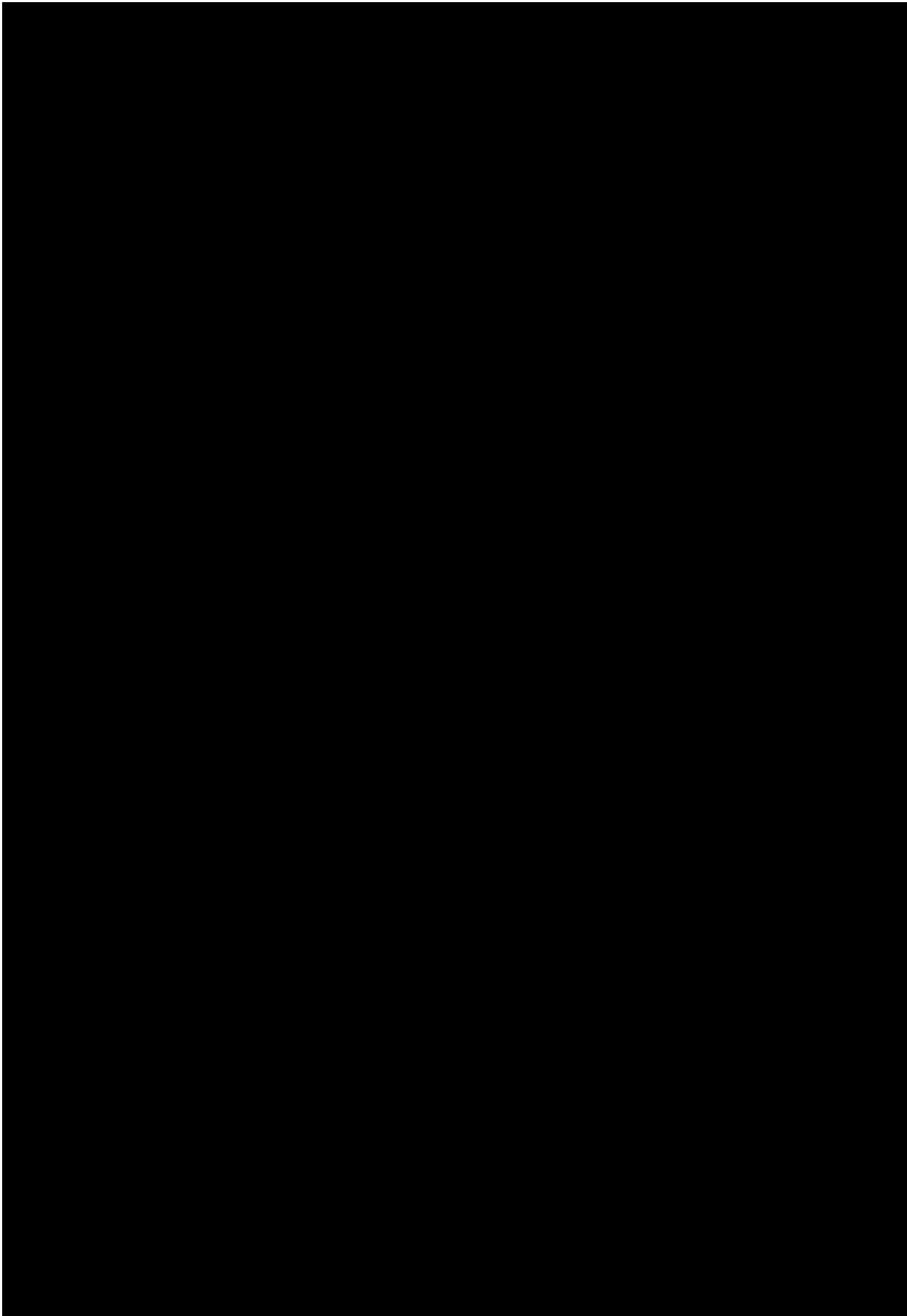


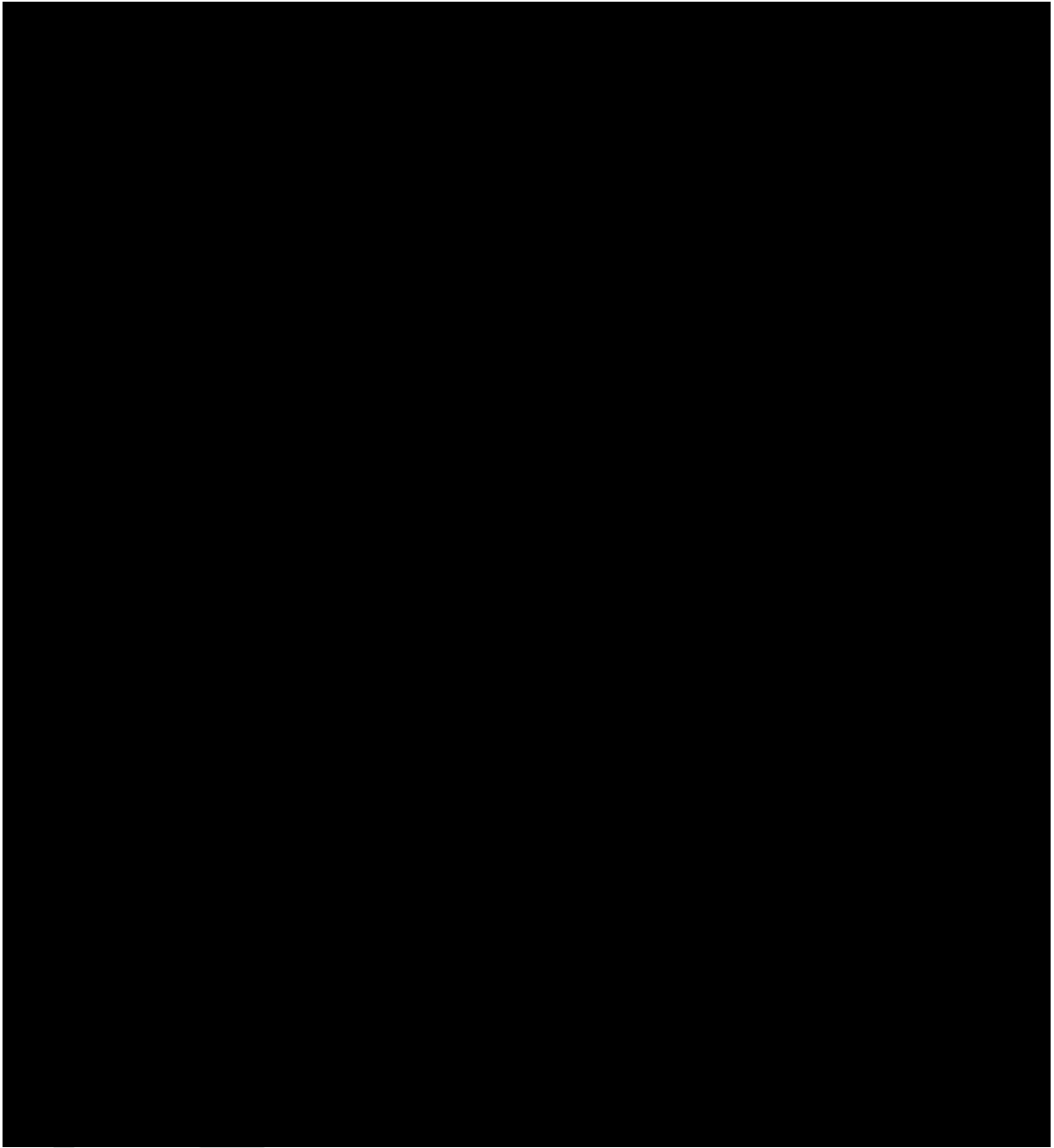






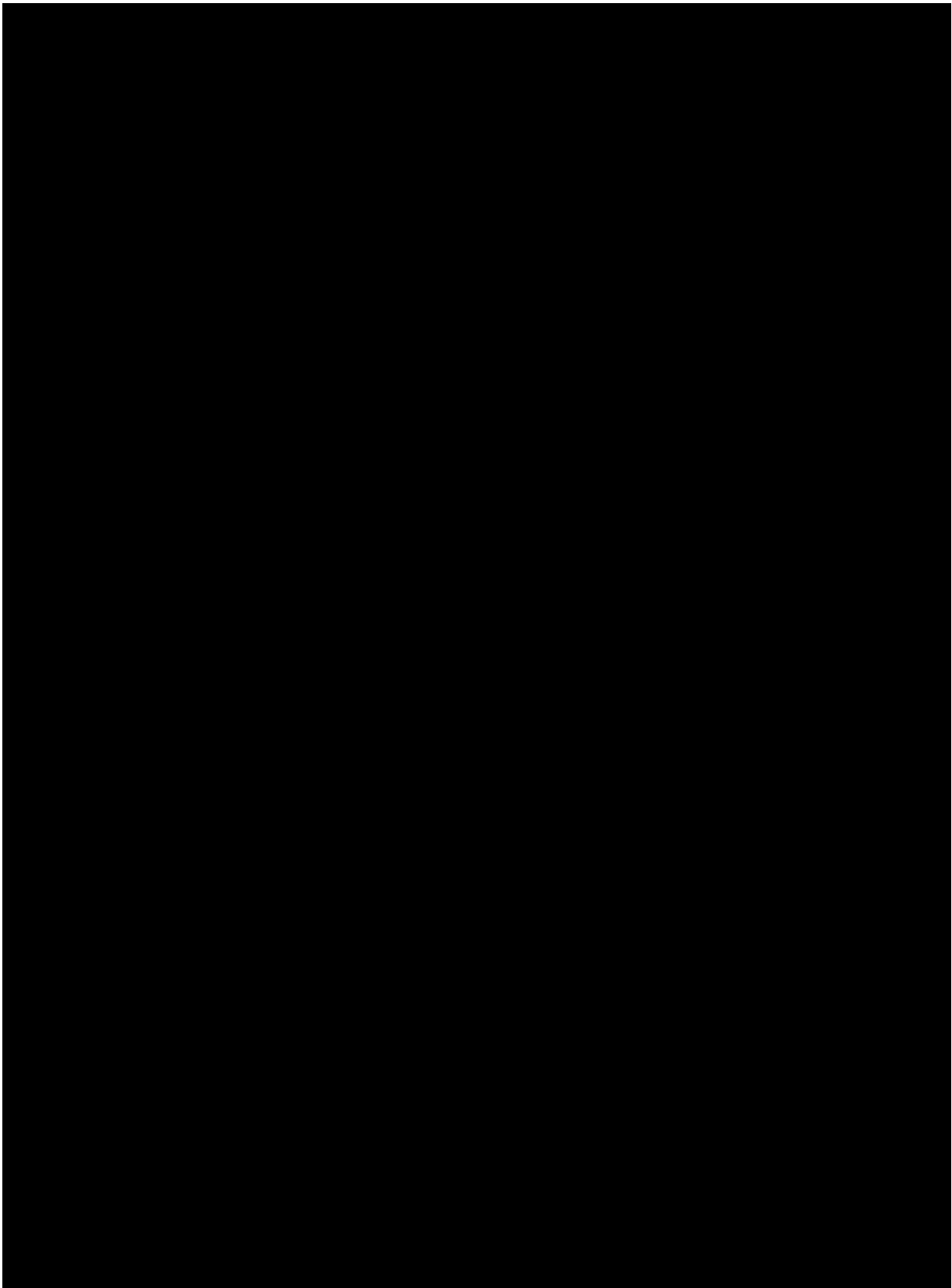
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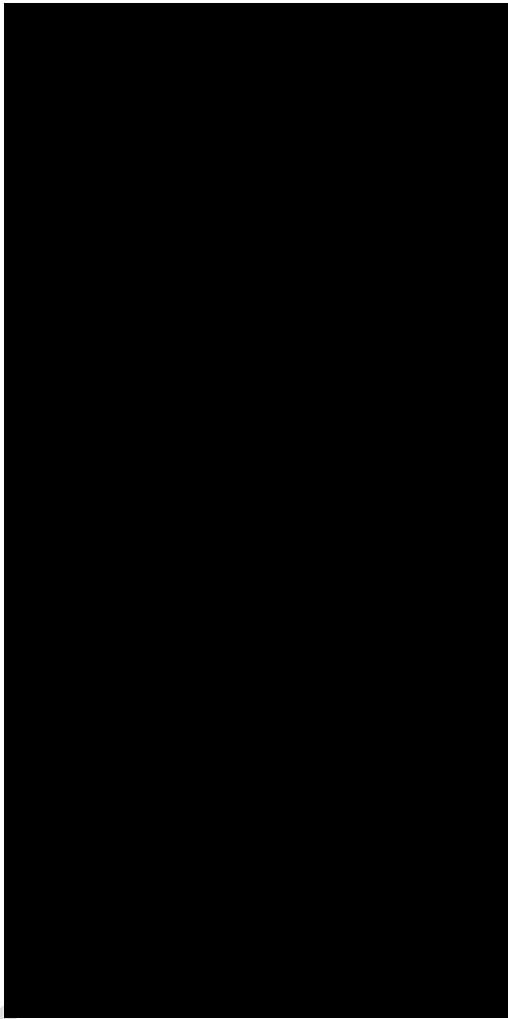






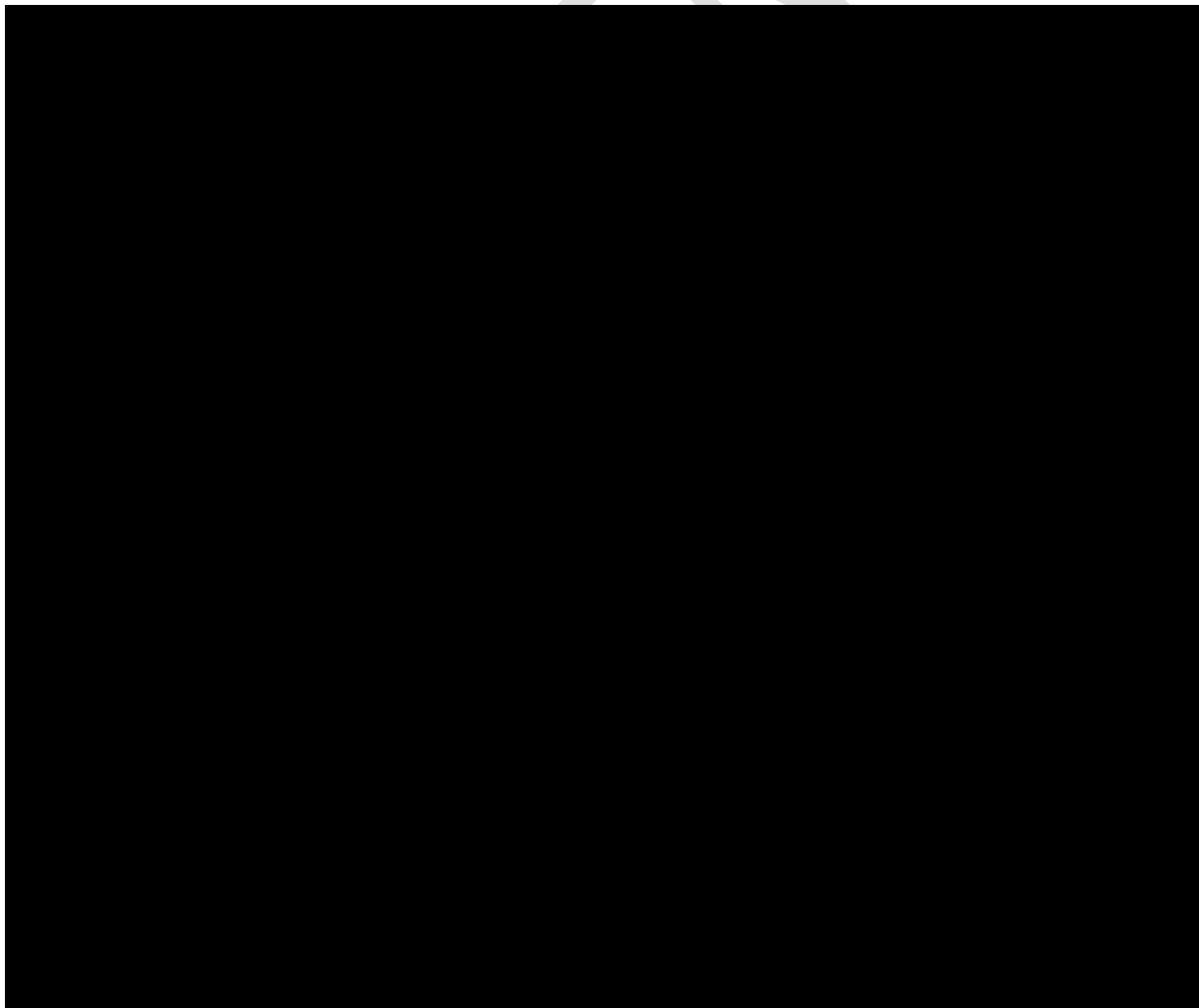
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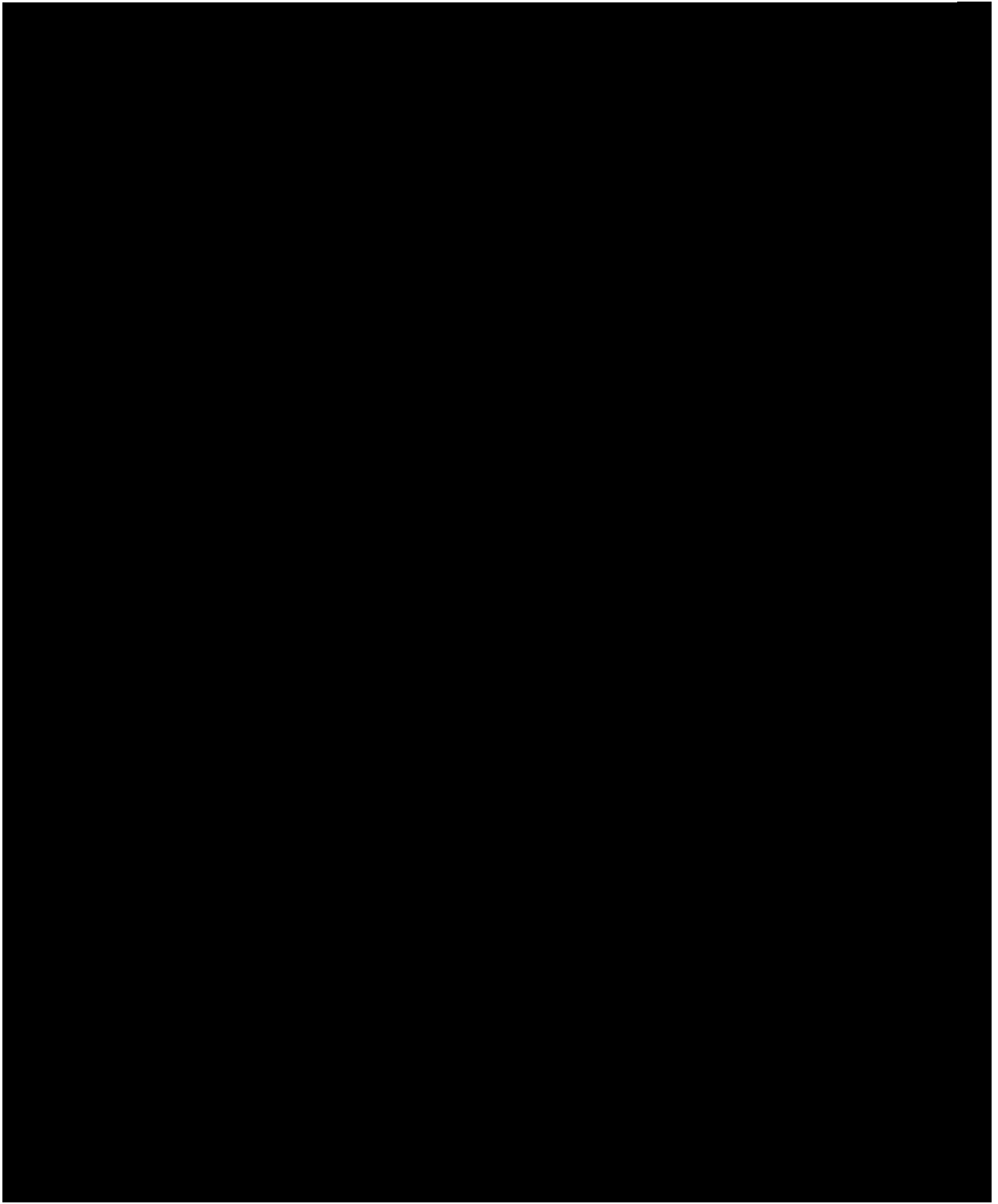




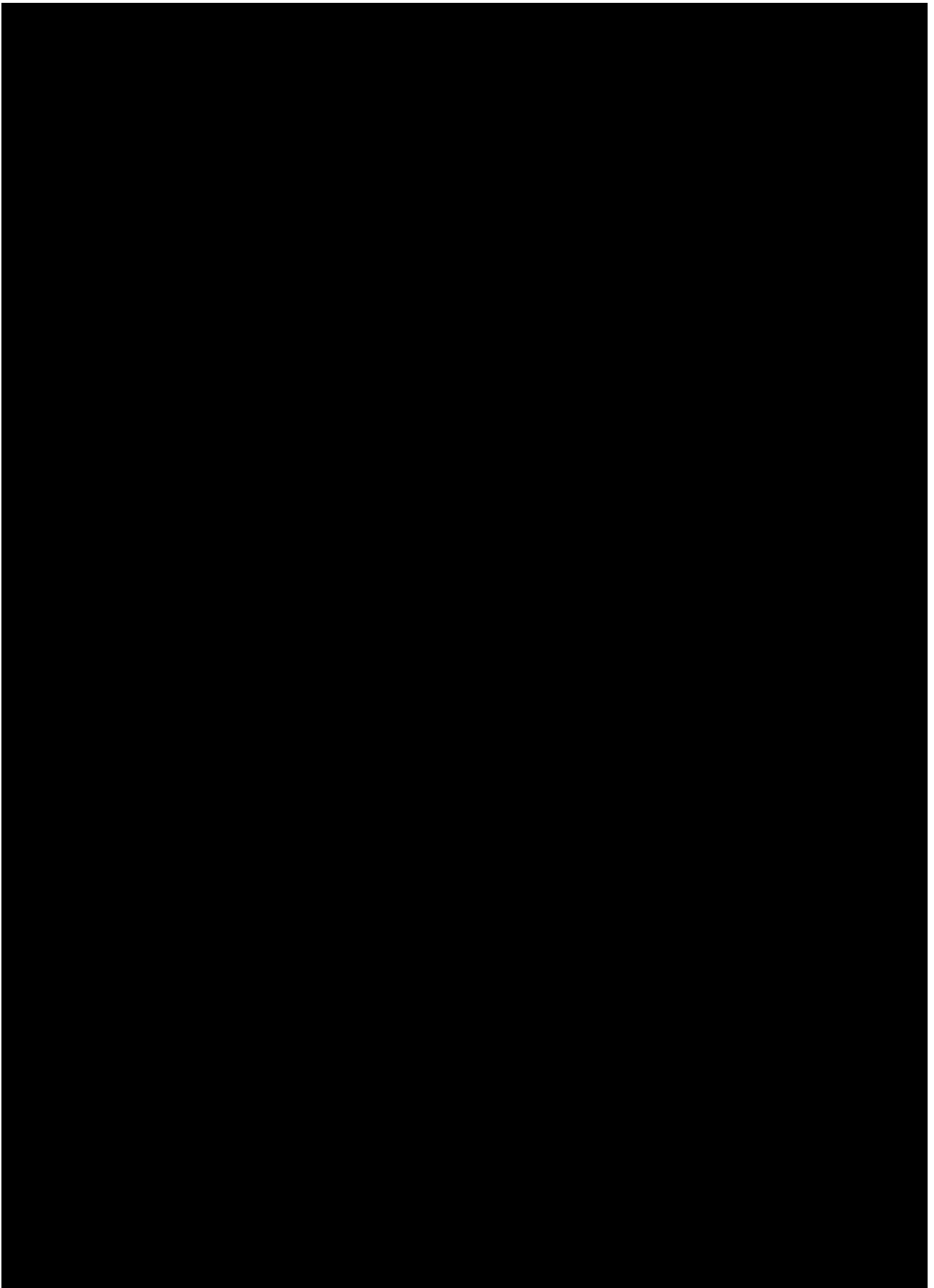
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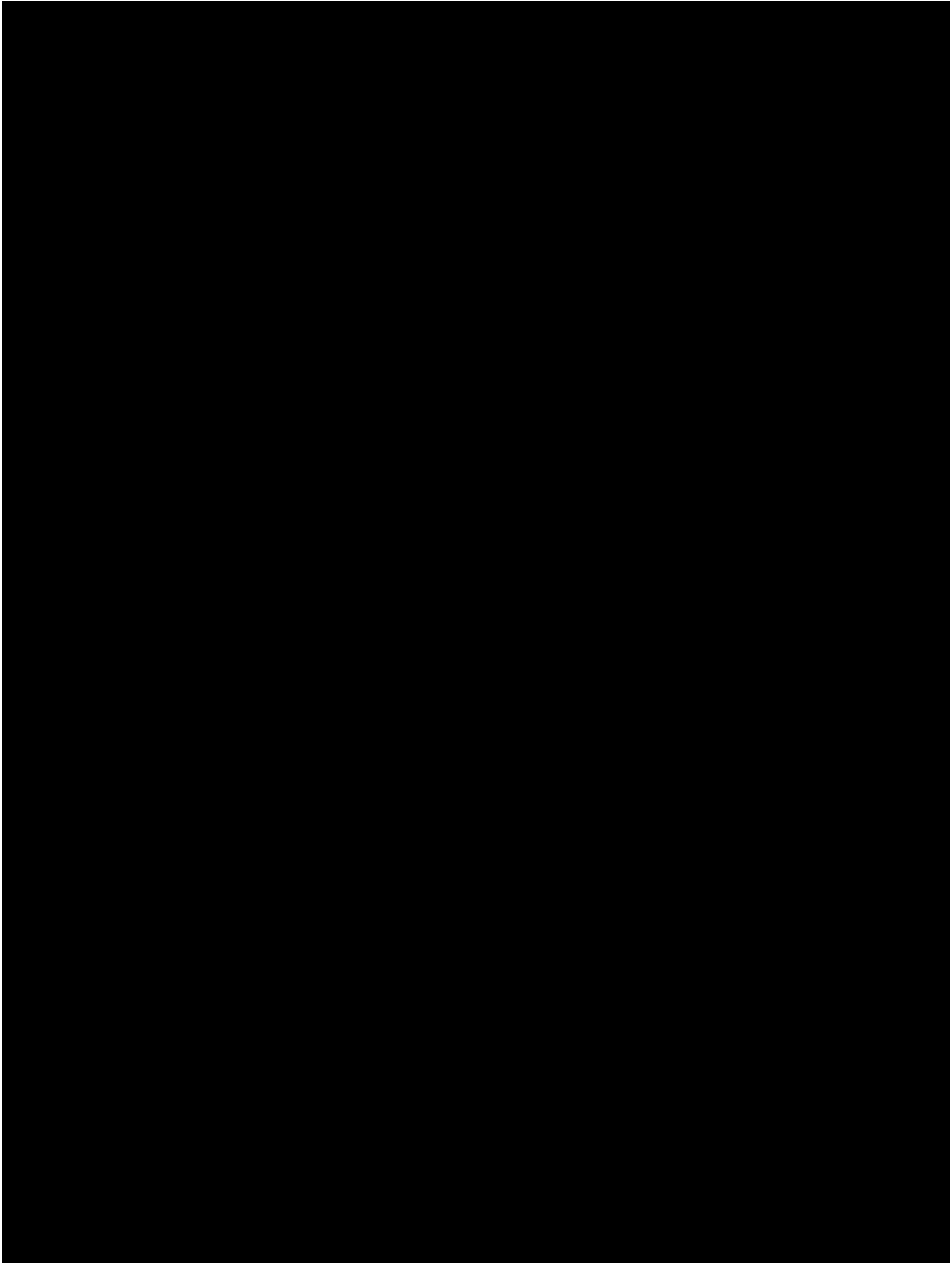
EVALUATION QUESTION 03 – RELATIONSHIP MANAGEMENT	WEIGHTING
Please provide an assessment of your organisation's approach to working, in partnership, with Commissioning Authorities to ensure the successful delivery of outputs	10%
<p><i><u>Evaluation intention</u> - This criterion seeks to establish how the Tenderer will work with CQC to ensure successful delivery and to meet expected quality standards. Evaluation of this criterion will include:</i></p> <ul style="list-style-type: none"> <li><i>• an assessment of your organisation's approach to working, in partnership, with a Commissioning organisation to ensure the successful delivery the requirements outlined within the Specification.</i></li> <li><i>• how you intend to provide appropriate assurance that the work will be delivered to a high-quality standard and within agreed timescales and budgets.</i></li> <li><i>• an assessment of your approach to the management of risks and issues in developing and delivering this work and the information governance arrangements you will put in place to support delivery.</i></li> </ul>	
<b>RESPONSE:</b>	

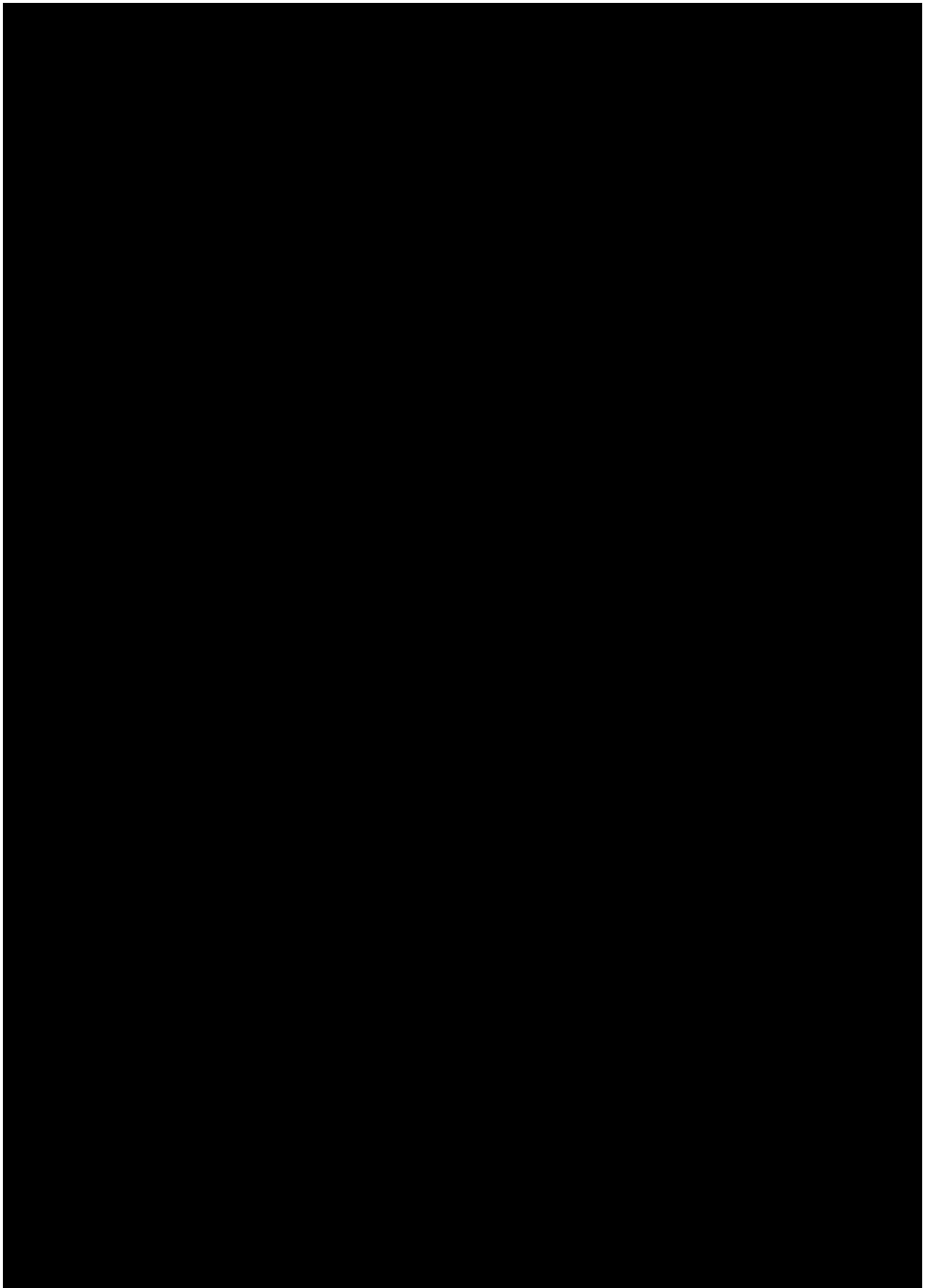


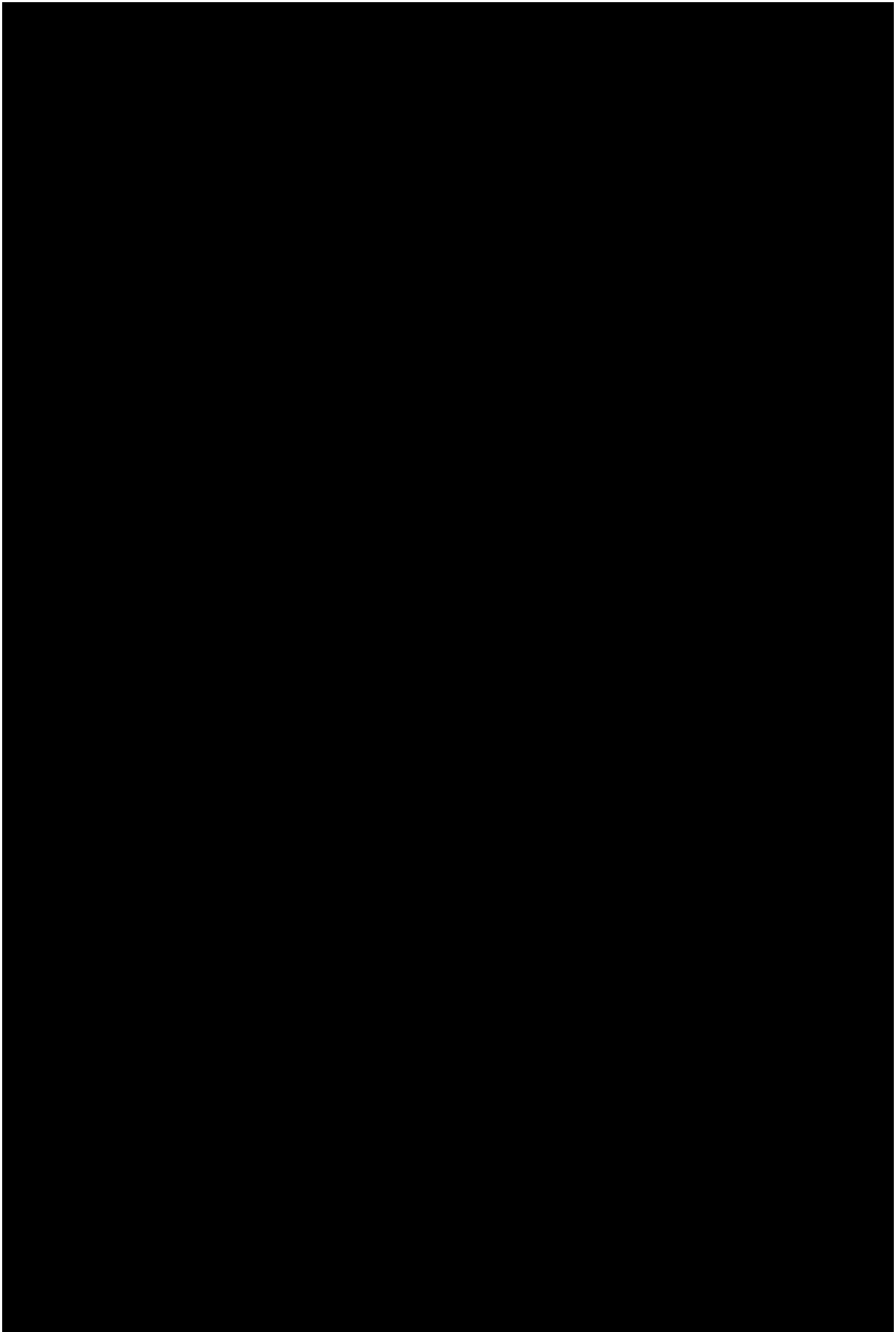


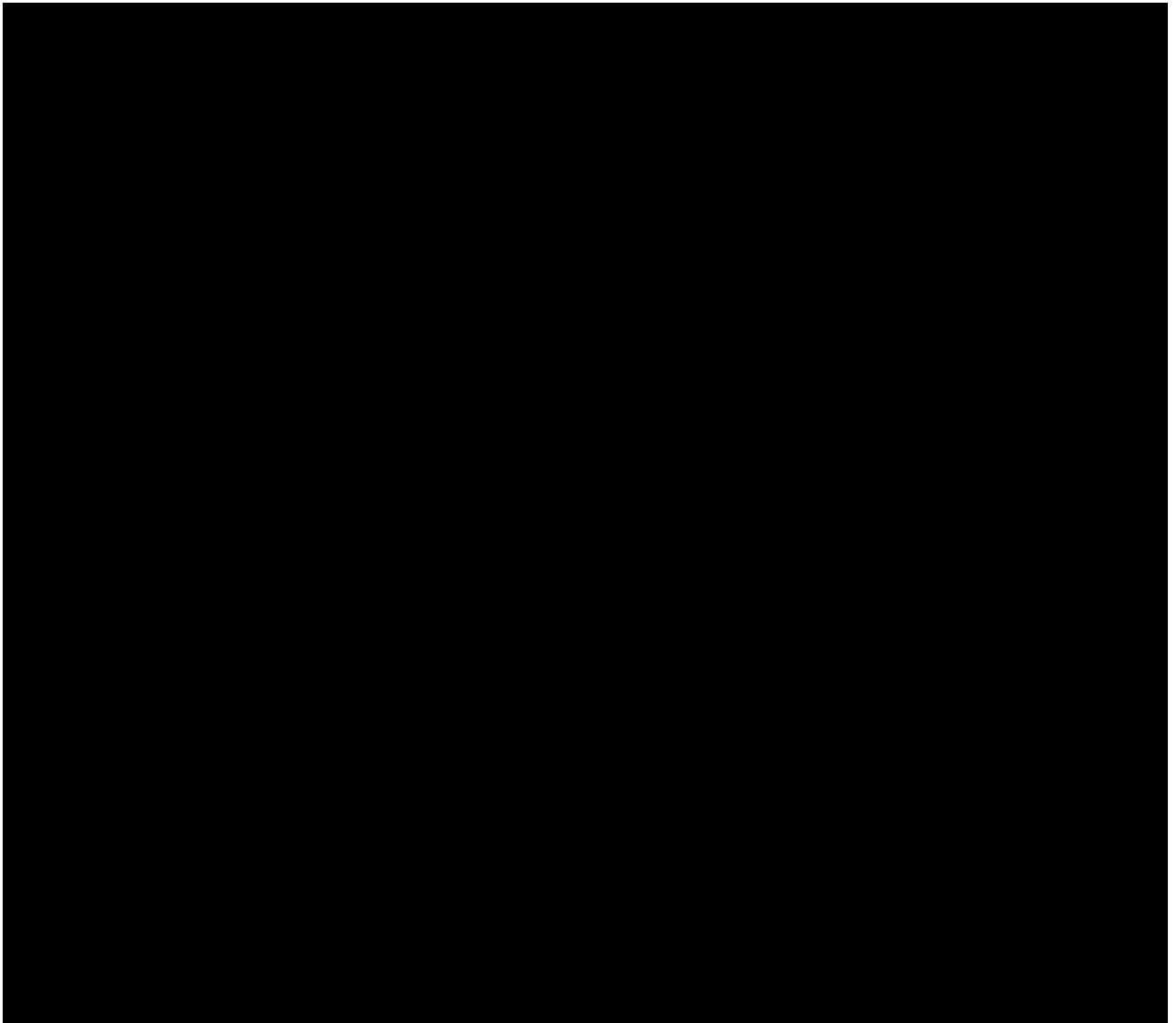






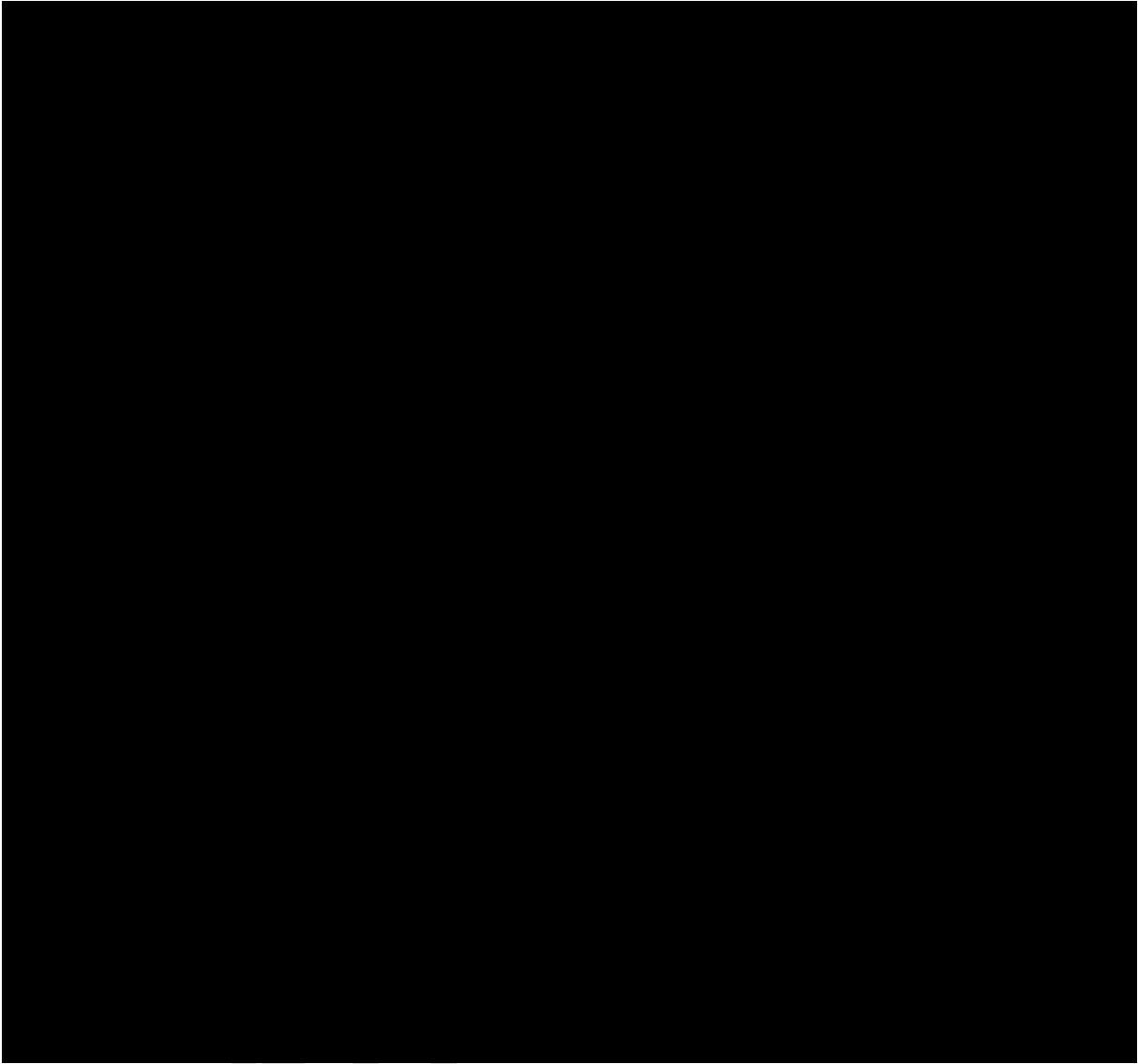


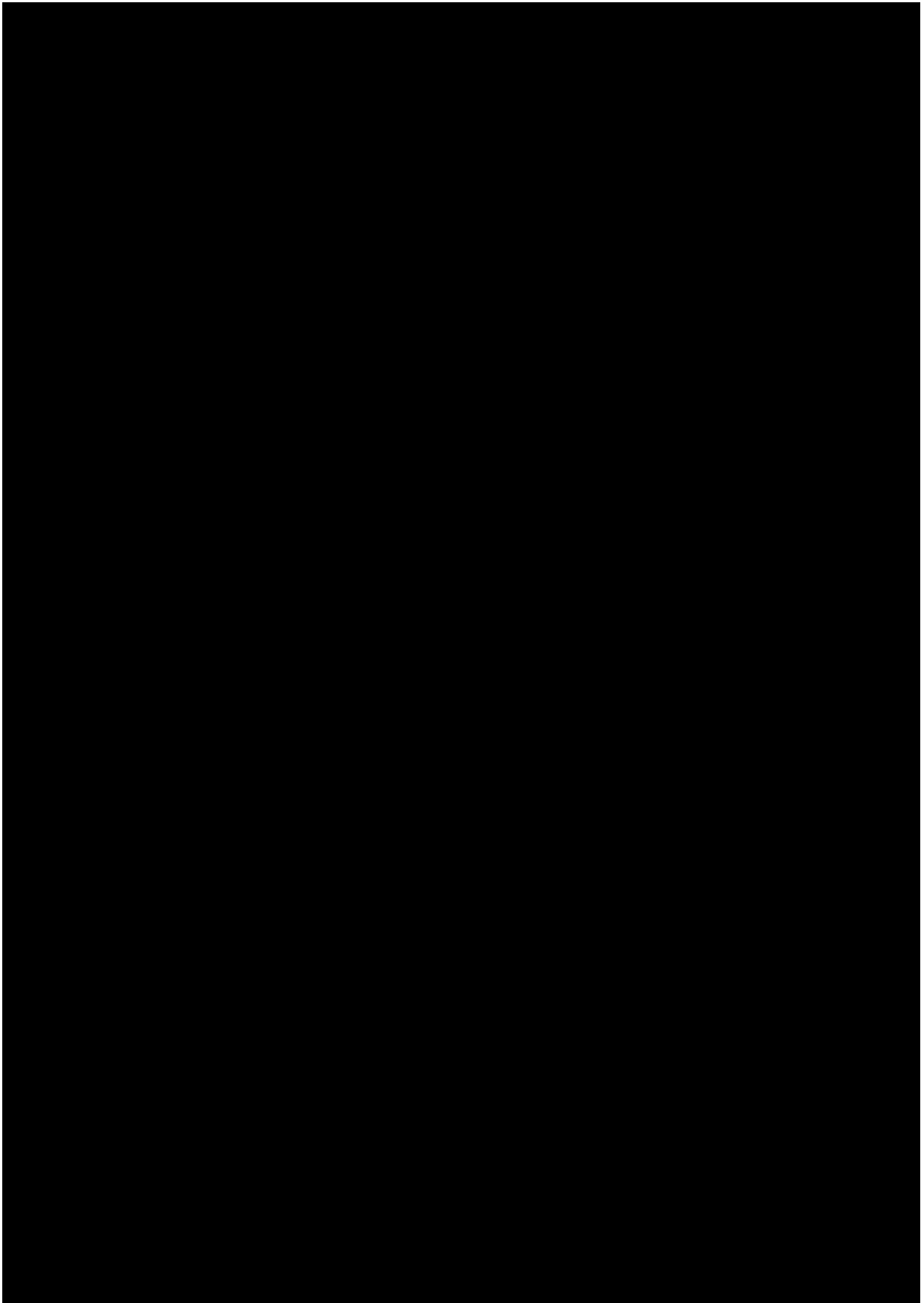




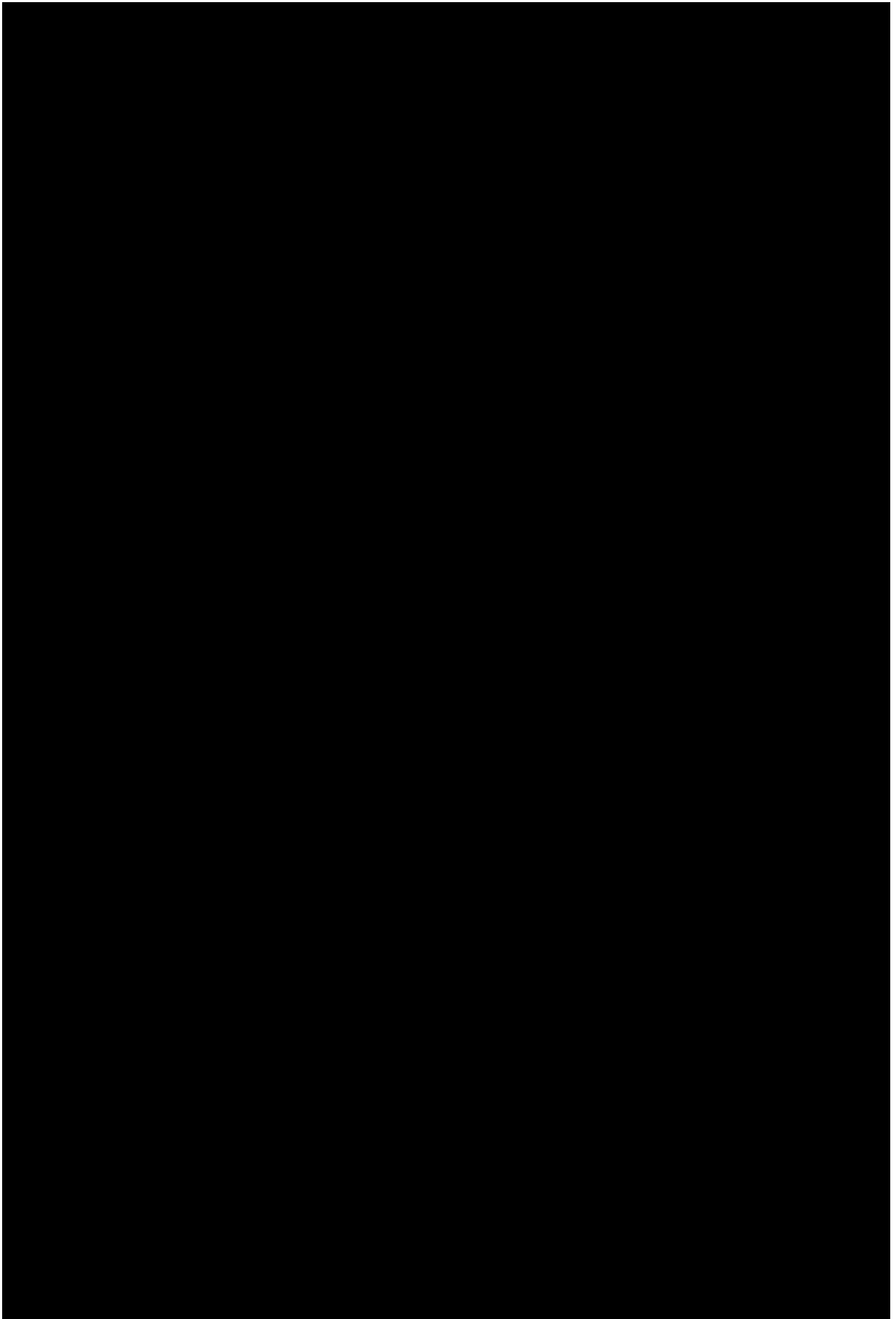
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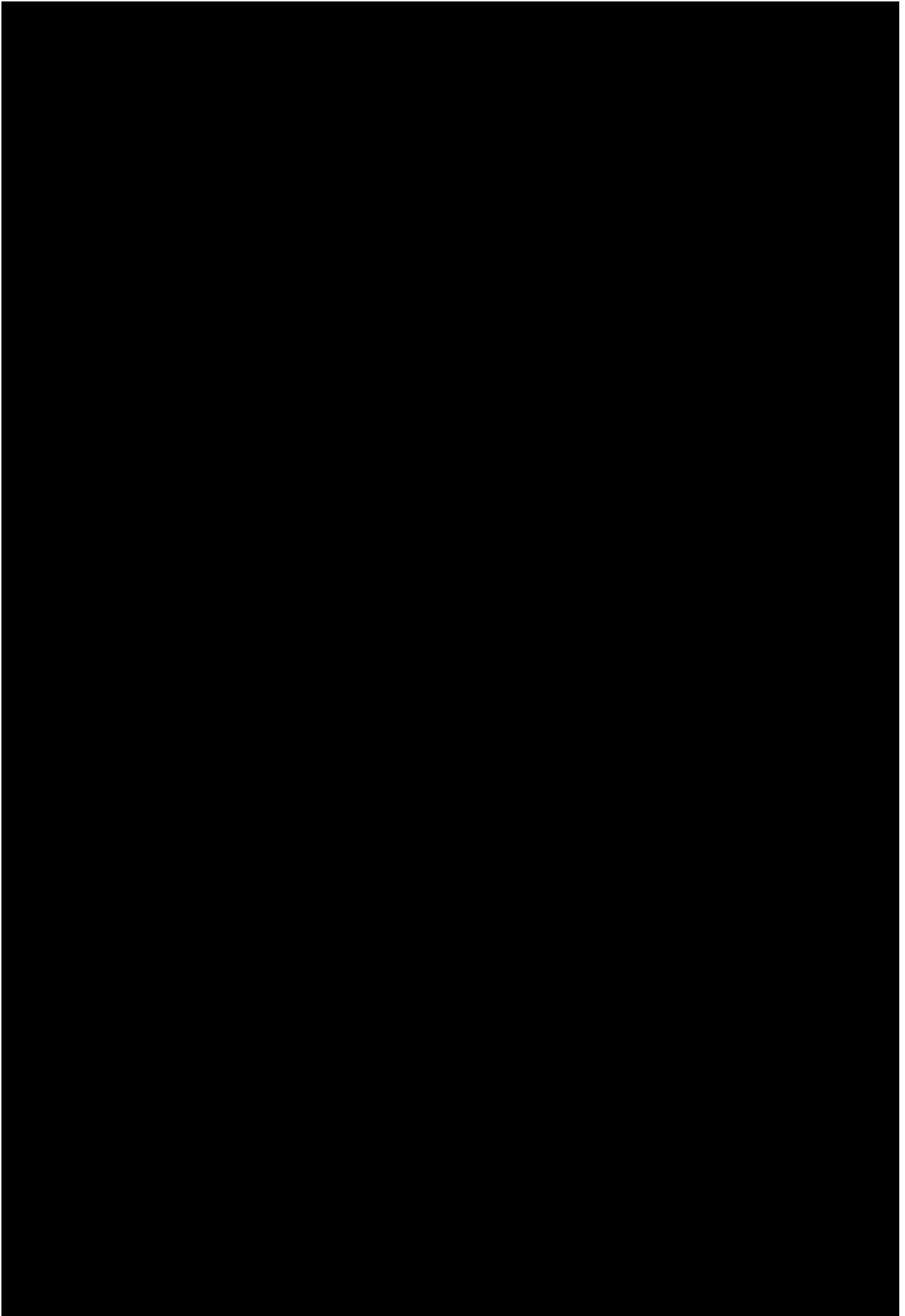
EVALUATION QUESTION 04 – EXPERIENCE AND TEAM		WEIGHTING
Please provide details of the expertise and experience of key individuals and/or teams whose responsibility will be to ensure that the requirements are delivered.		20%
<p><i><u>Evaluation intention</u> - This criterion seeks to establish that the Tenderer has the resources, expertise and capability to ensure successful delivery of Commissioning Authority requirements. This must include a plan to increase resources as needed for additional work packages that require either additional personnel or additional technical or specialist experience and skills.</i></p> <p><i>Evaluation of this criterion will include an assessment of the team who will deliver the work including the number of FTE posts dedicated to the programme, their grade and experience in delivering similar work within the last three years.</i></p>		
PERMITTED SUPPORTING ATTACHMENTS	CVs for each team member who will be working on the project directly. Please note that each CV must not exceed 800 words per team member.	
RESPONSE:		

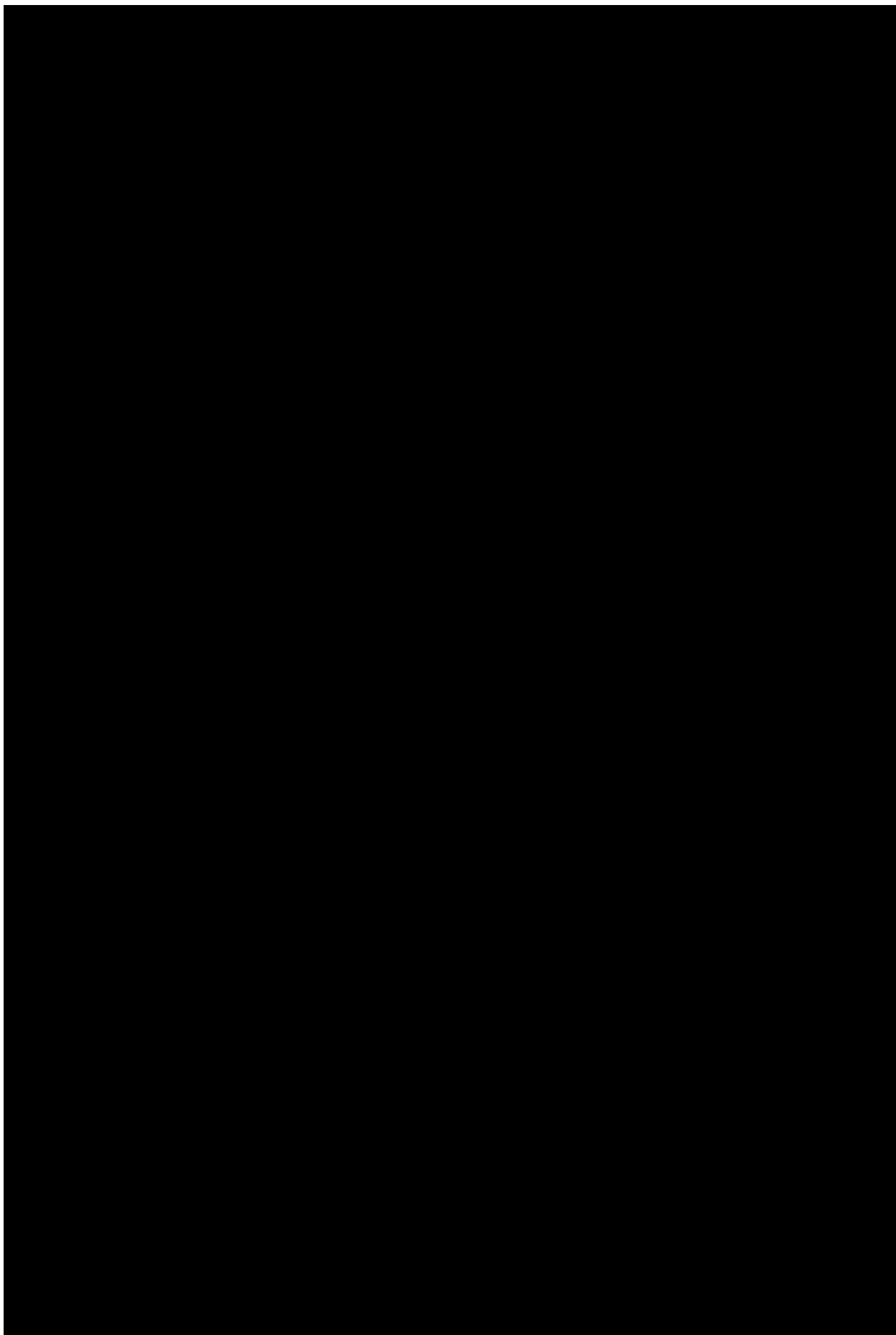


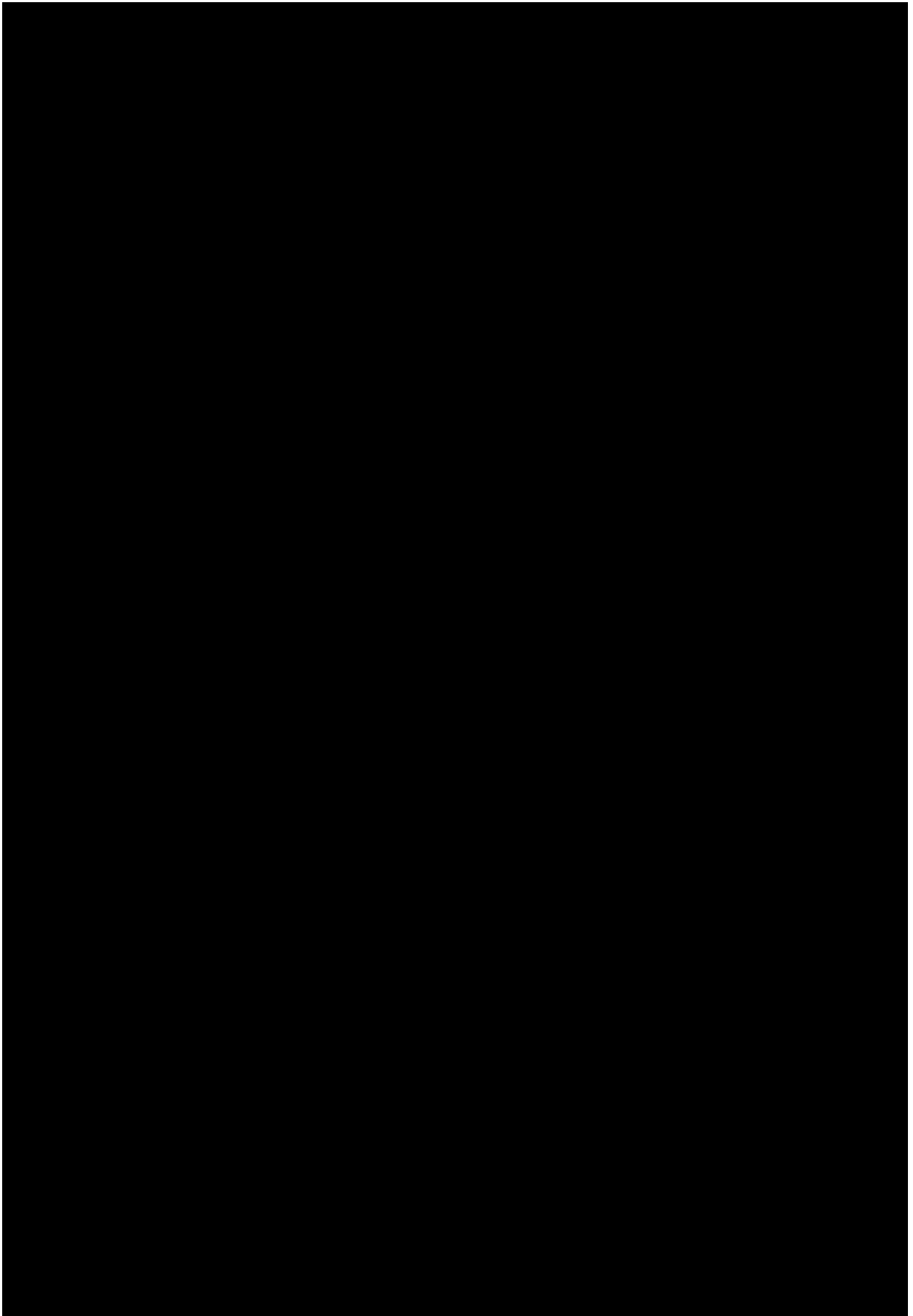


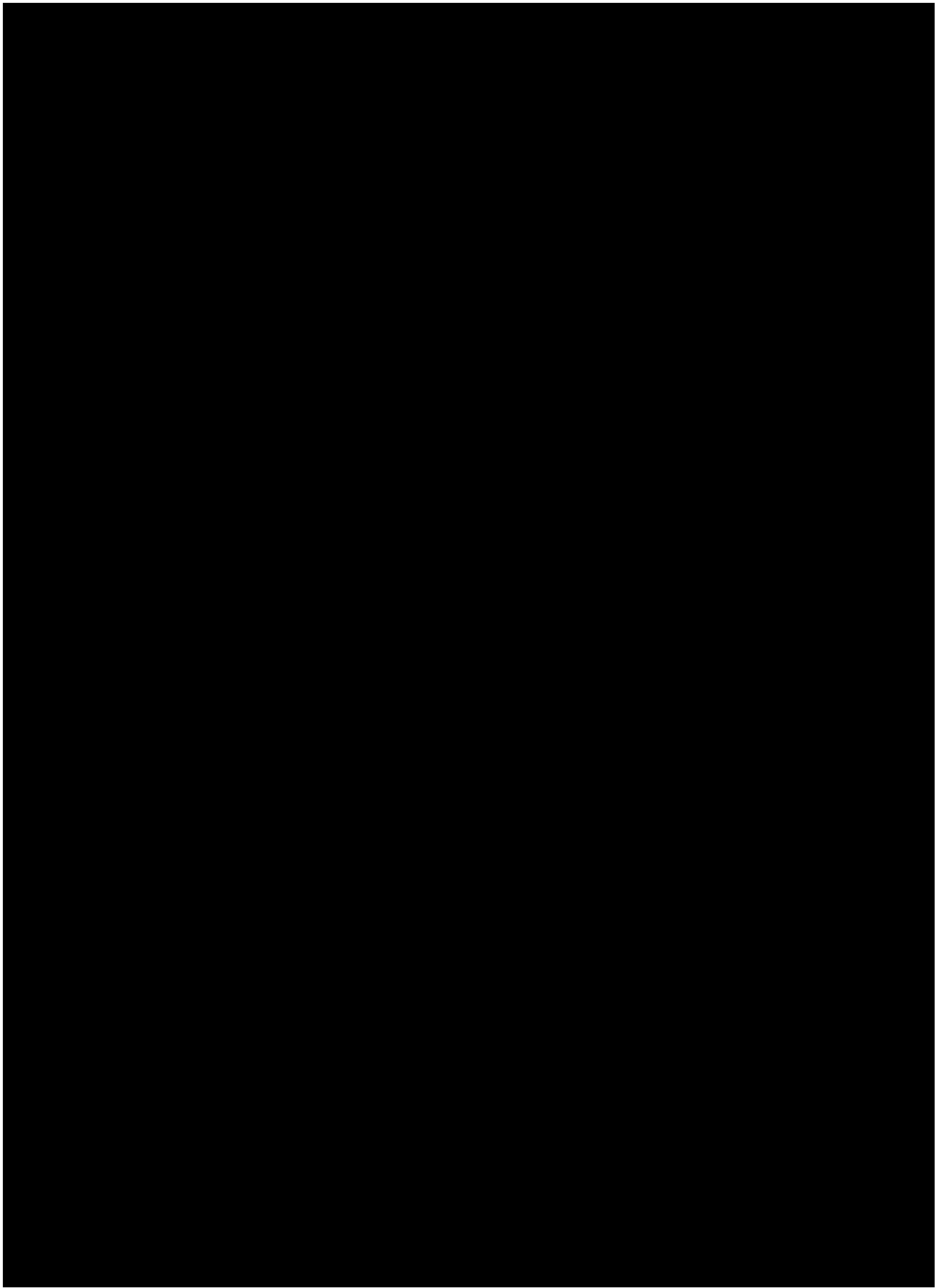


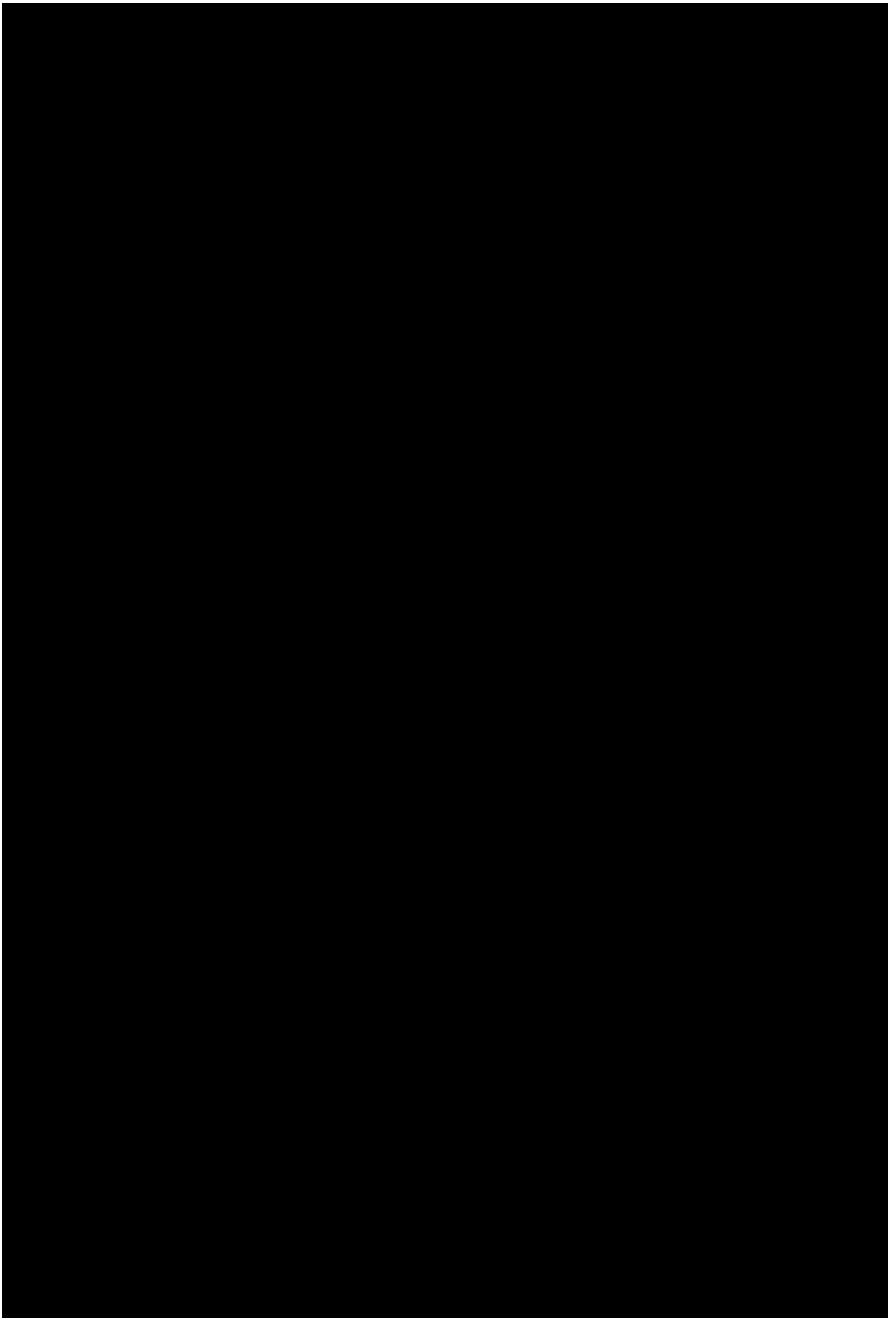


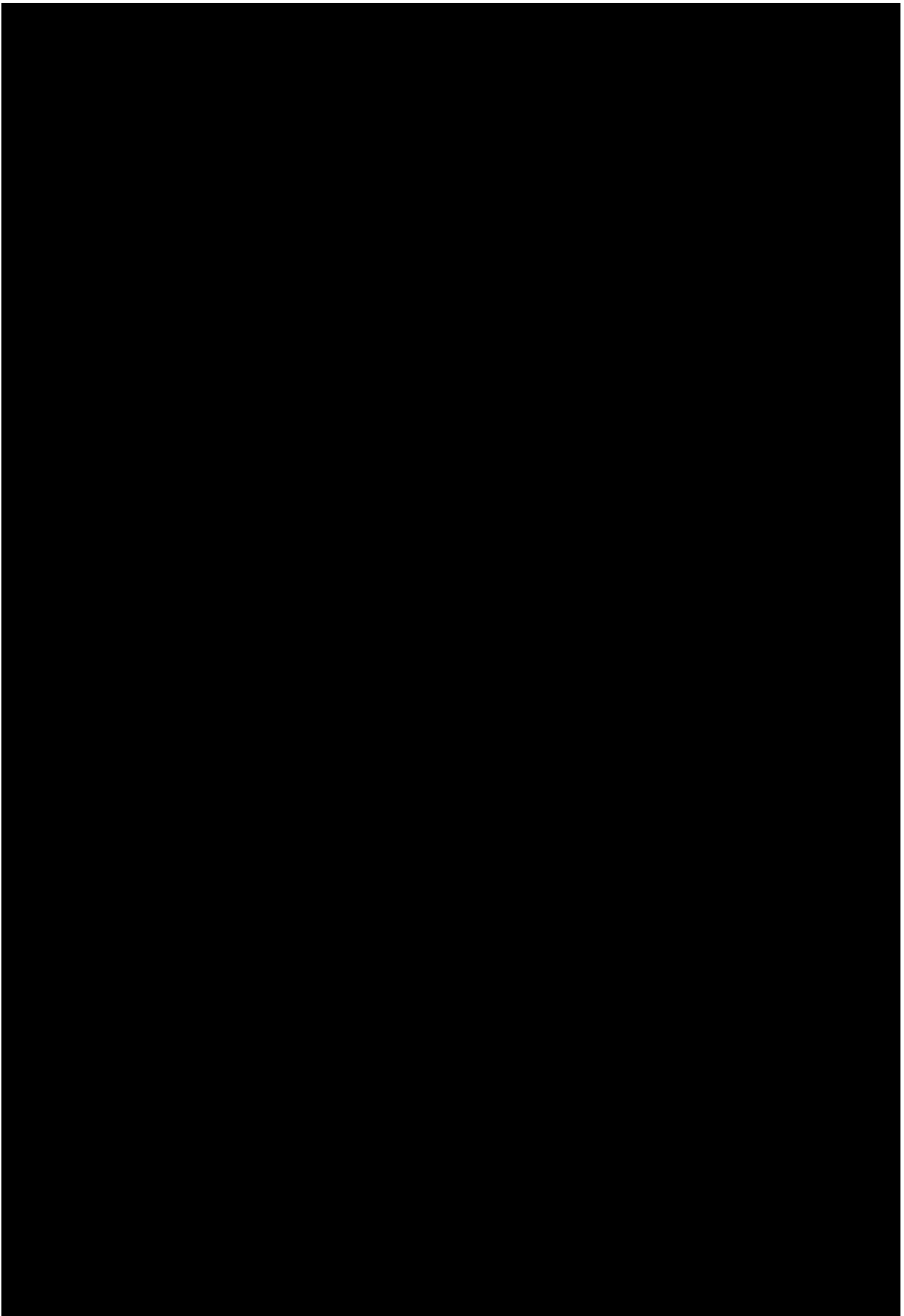


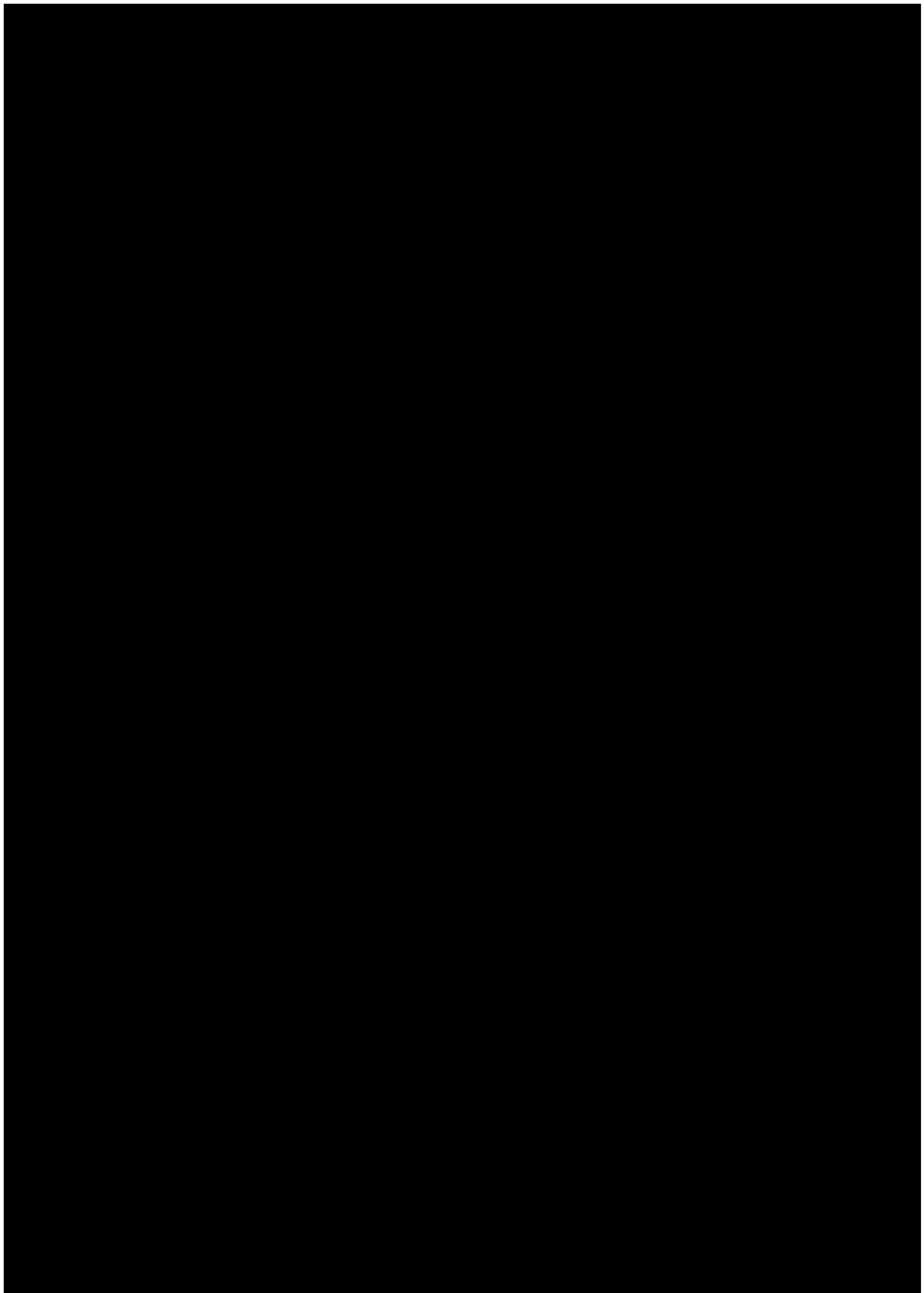




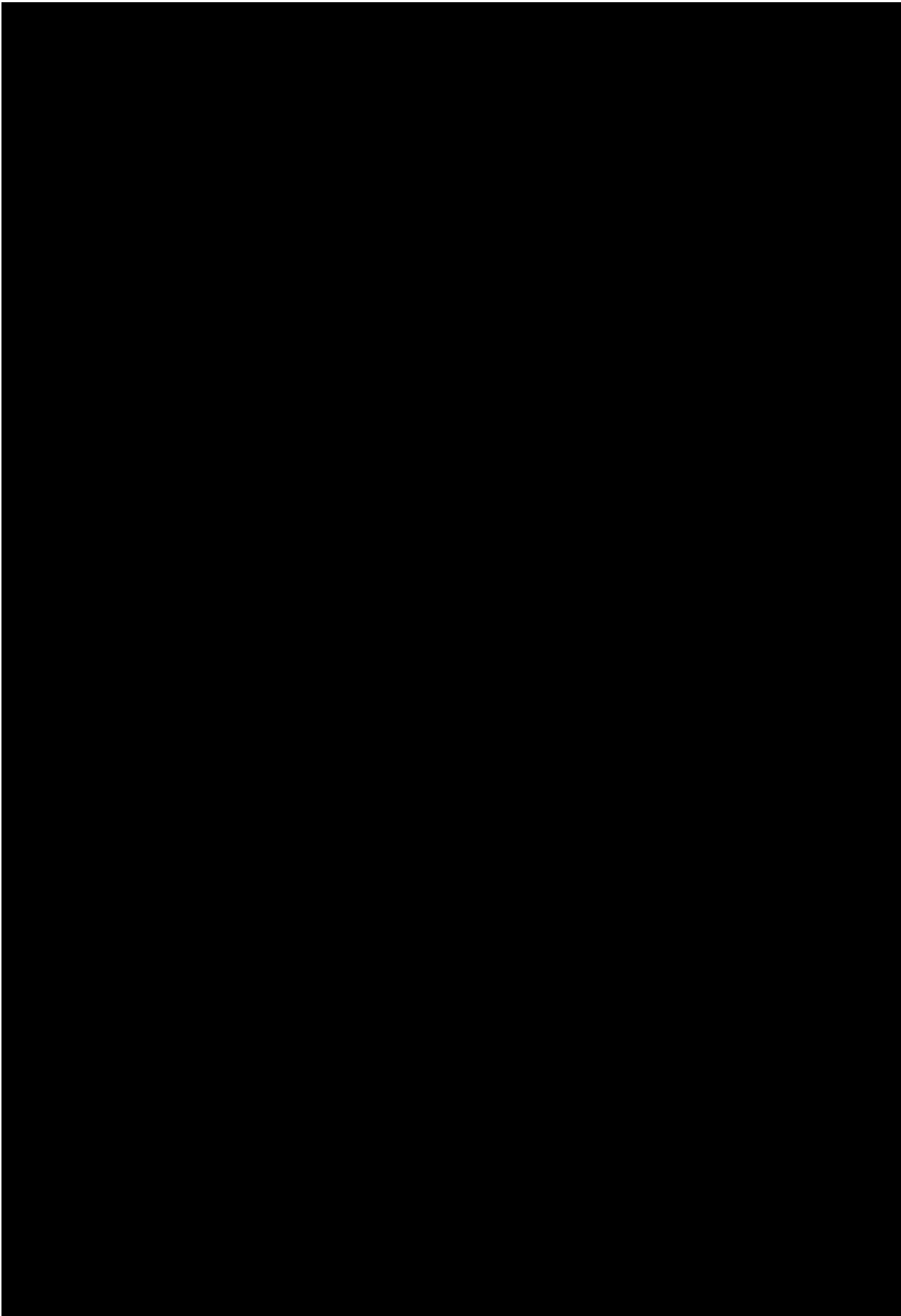








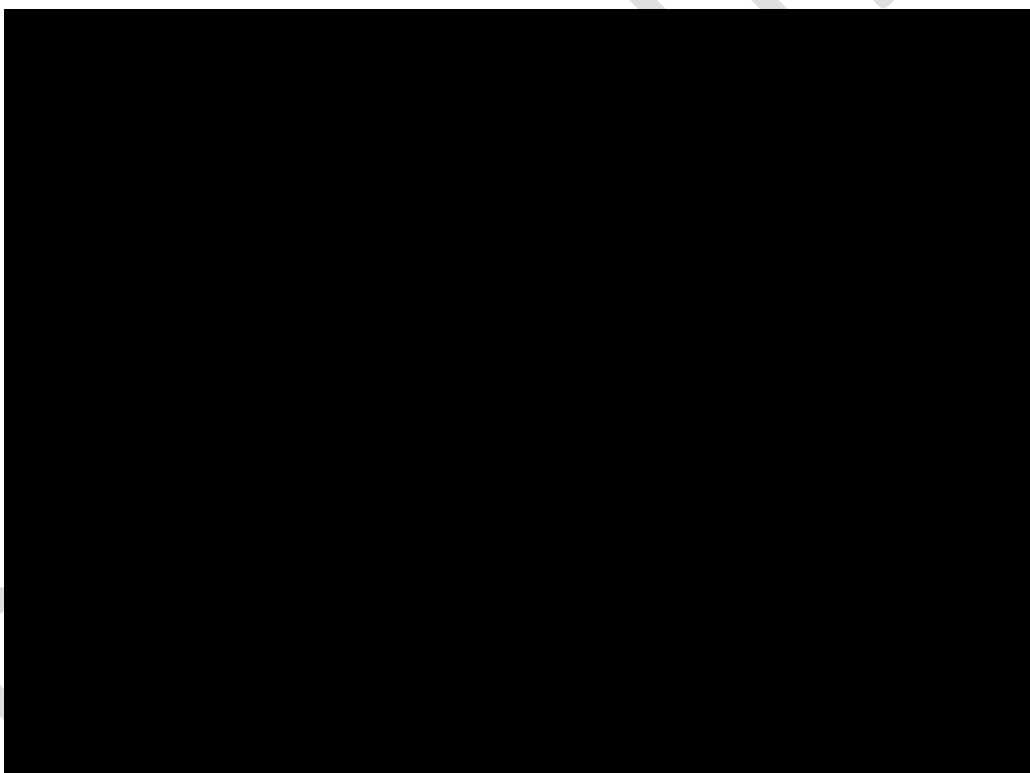


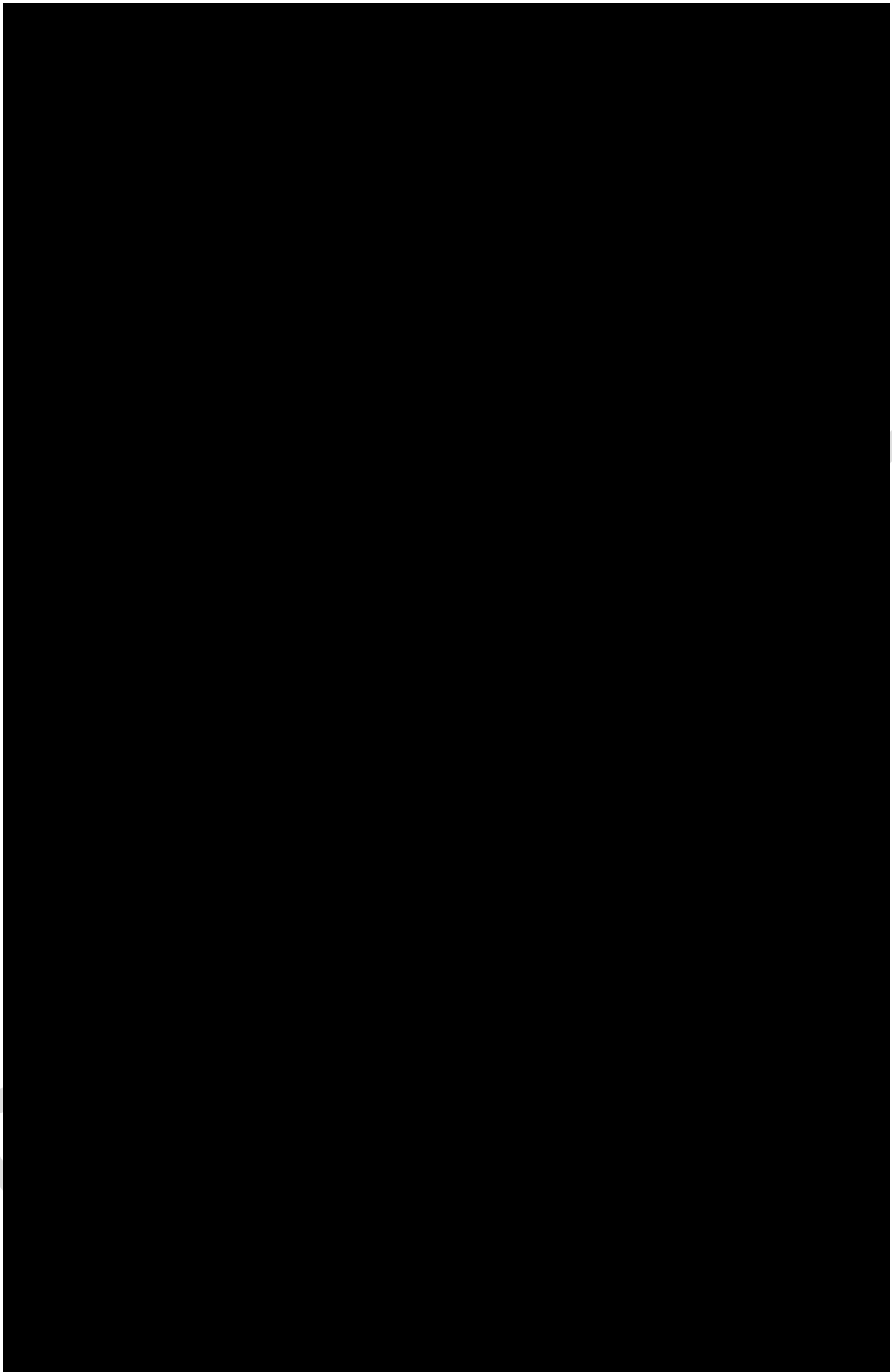


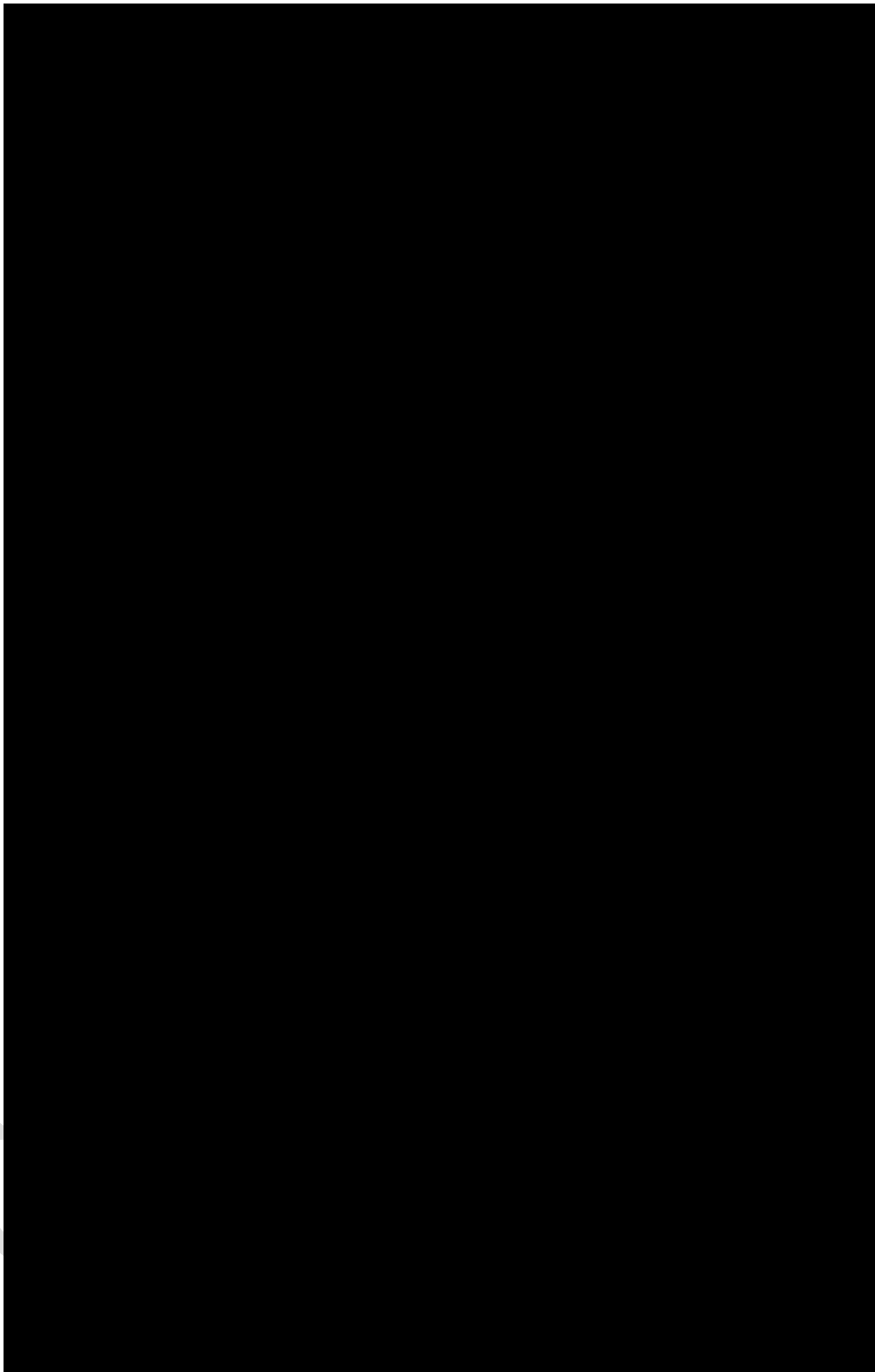


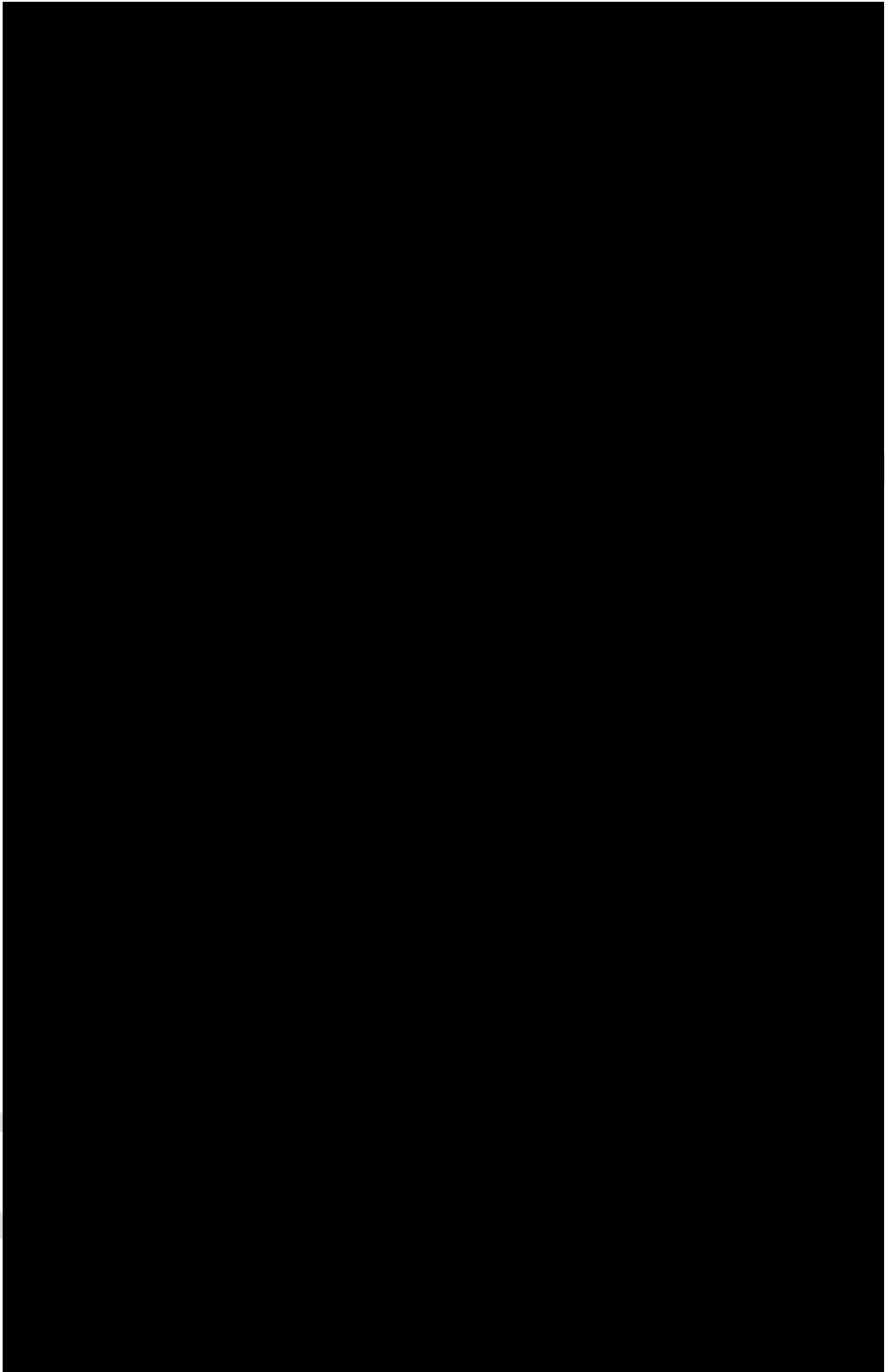
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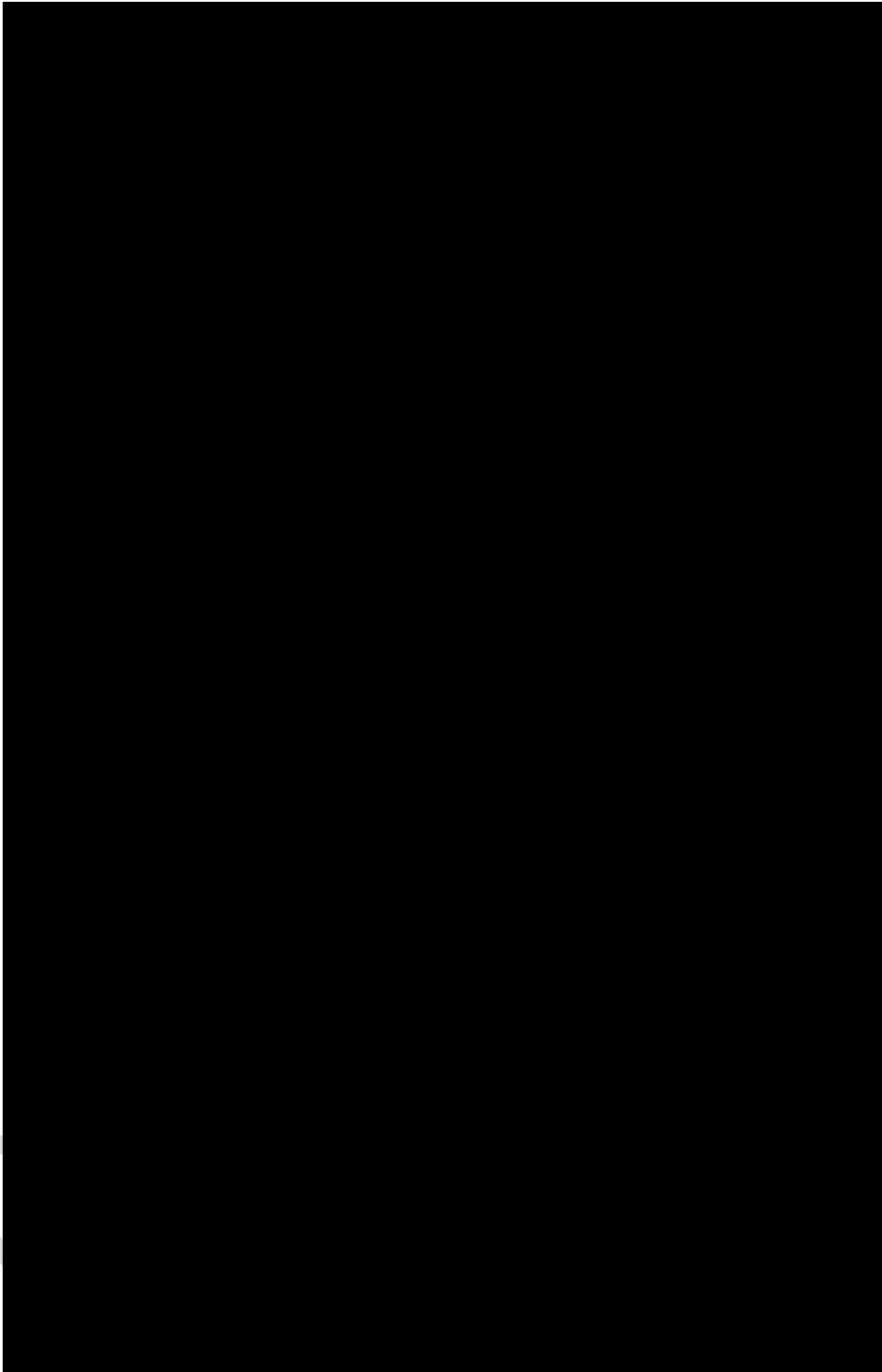
PRESENTATION QUESTION	WEIGHTING
Tenderers who qualify for the Presentation phase will be invited to deliver a presentation which answers the following question(s) below:	20%
<p>As part of CQC's strategy for national surveys it is seeking to transform the programme to a mixed-methods process that supports online surveys.</p> <p>Please describe how you, as an Approved Framework Contractor, would support CQC and the Co-Ordination Centre in achieving this, highlighting your understanding of our strategic direction, how you will support delivering innovation, and how you can ensure that information is appropriately quality assured, and is treated securely and confidentially.</p>	

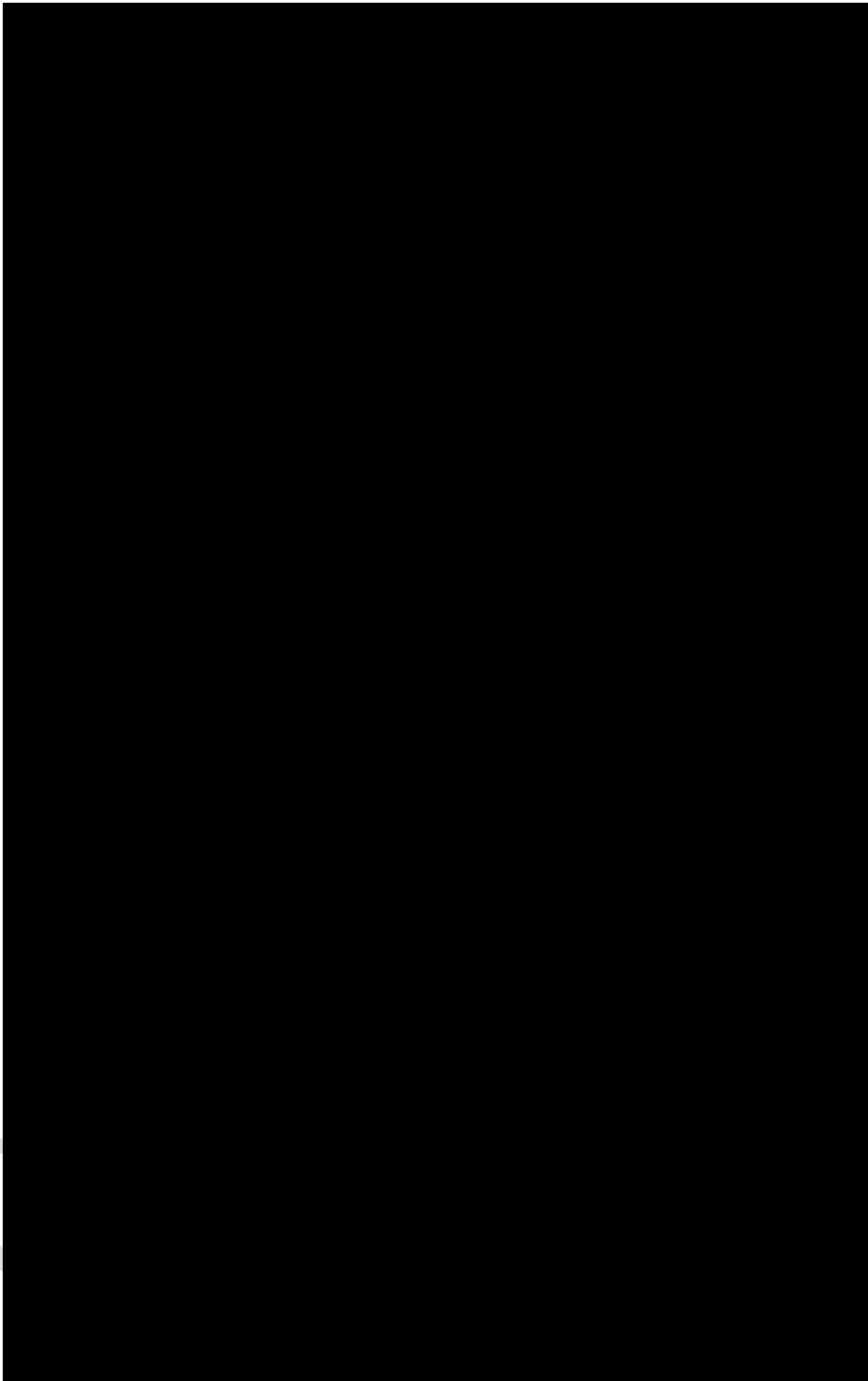




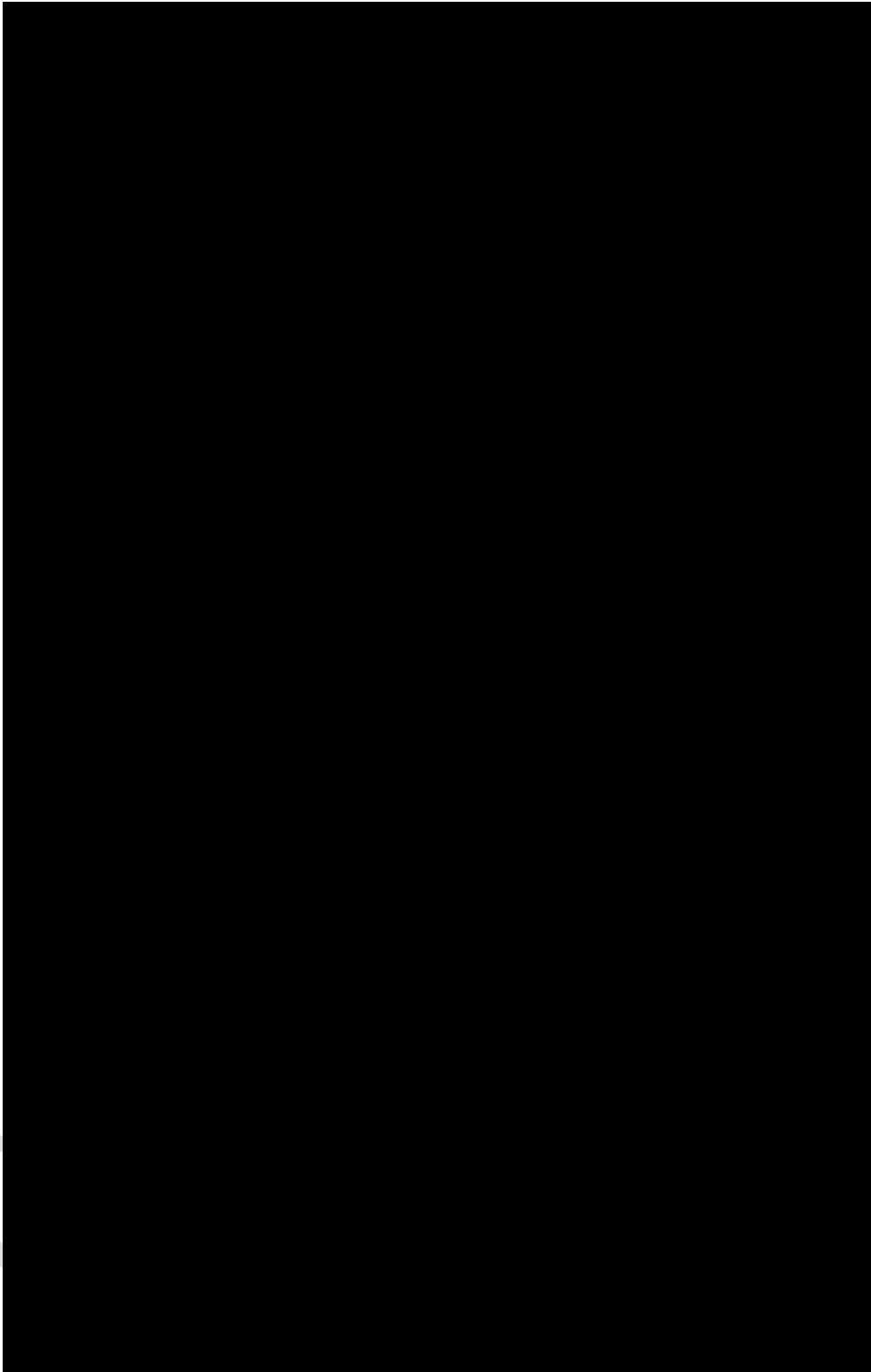


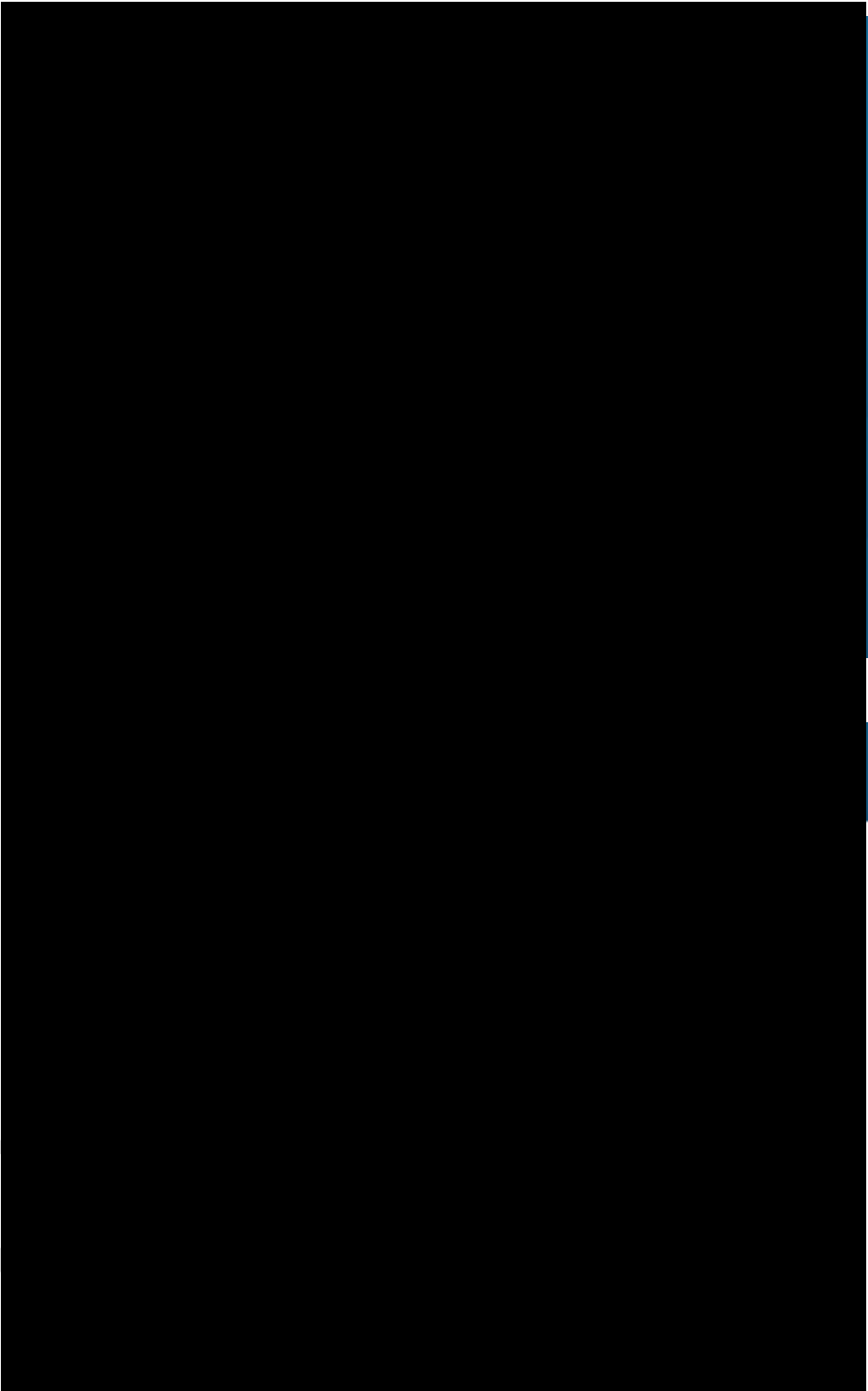


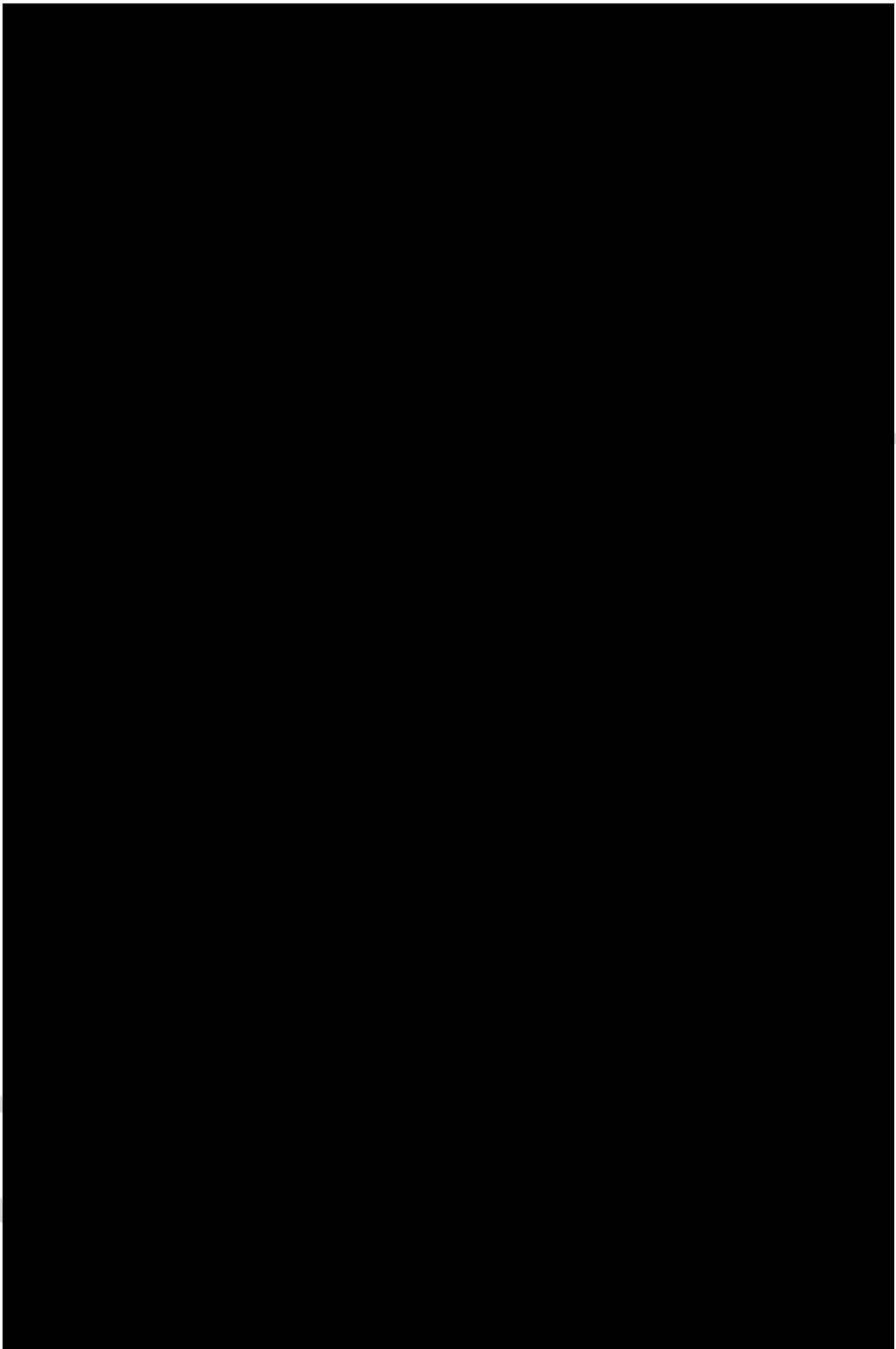


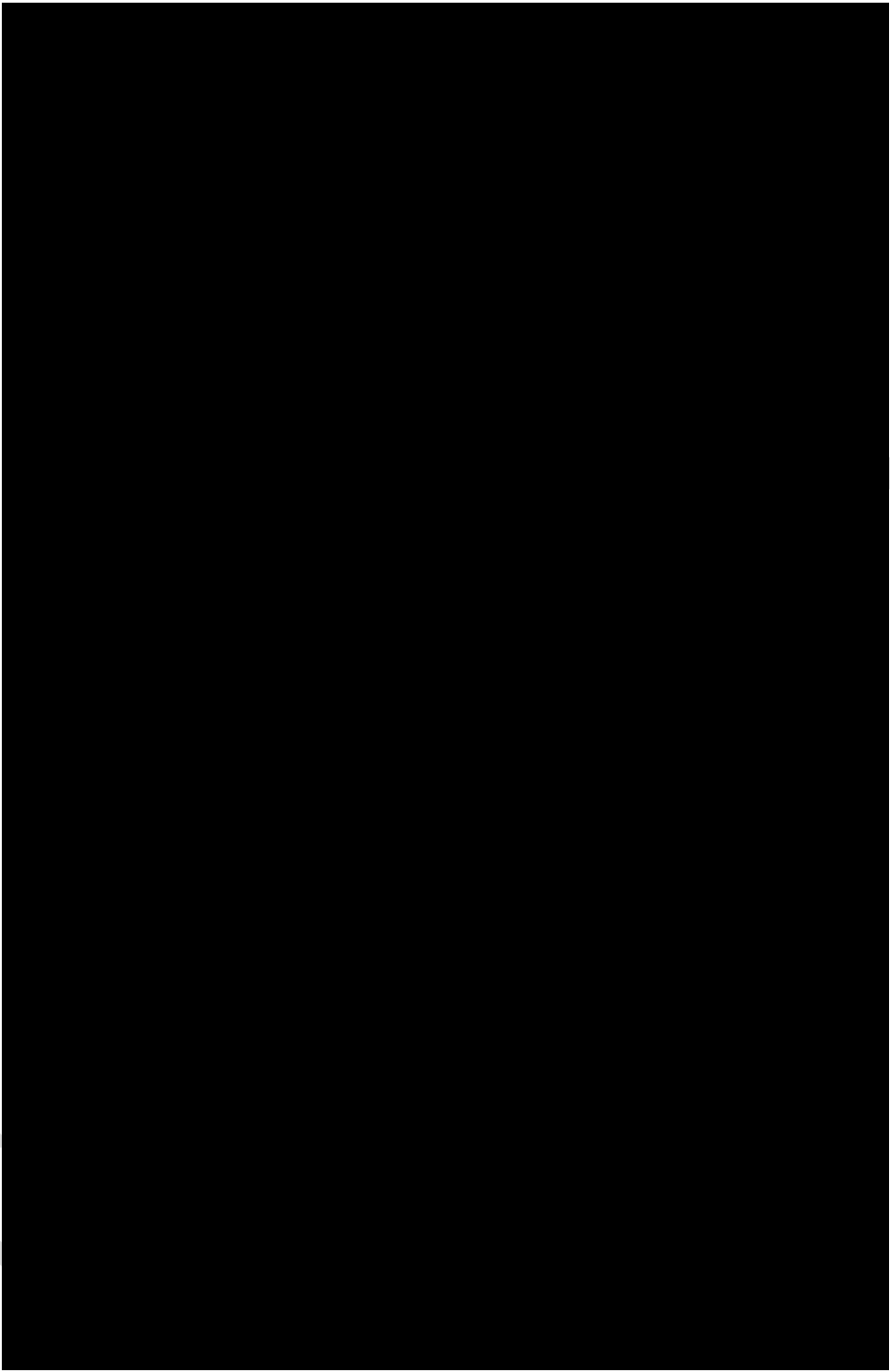


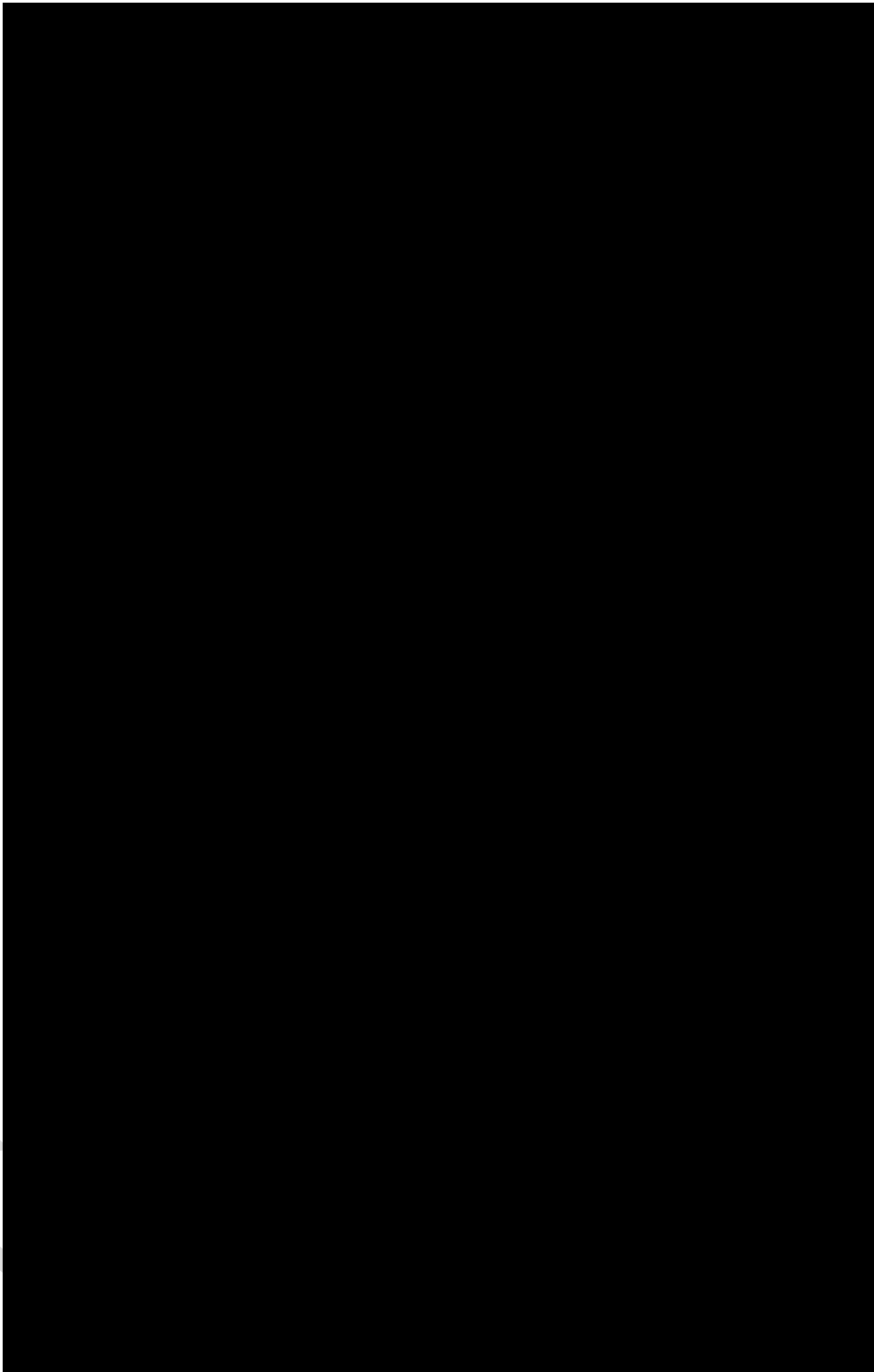


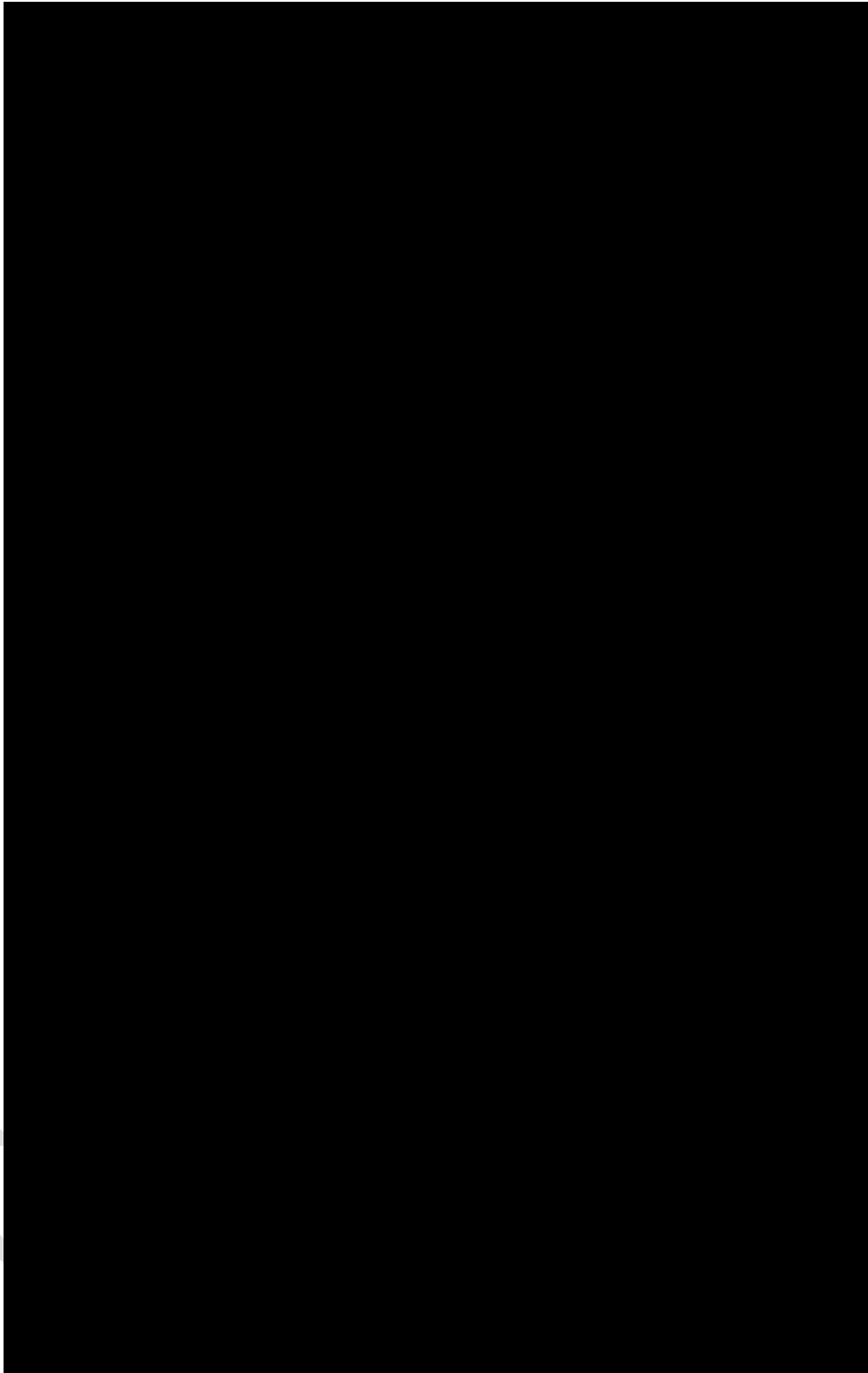


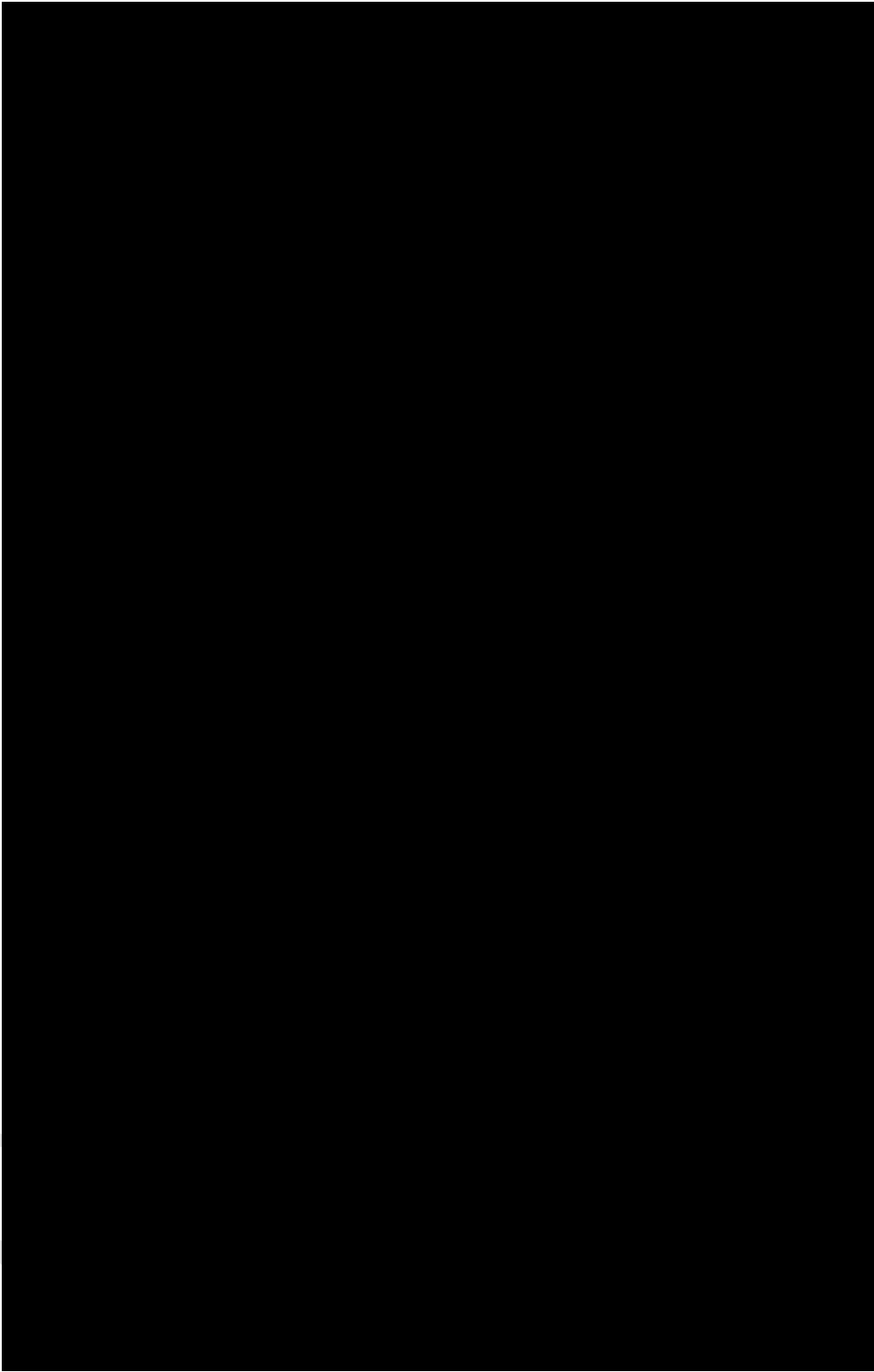








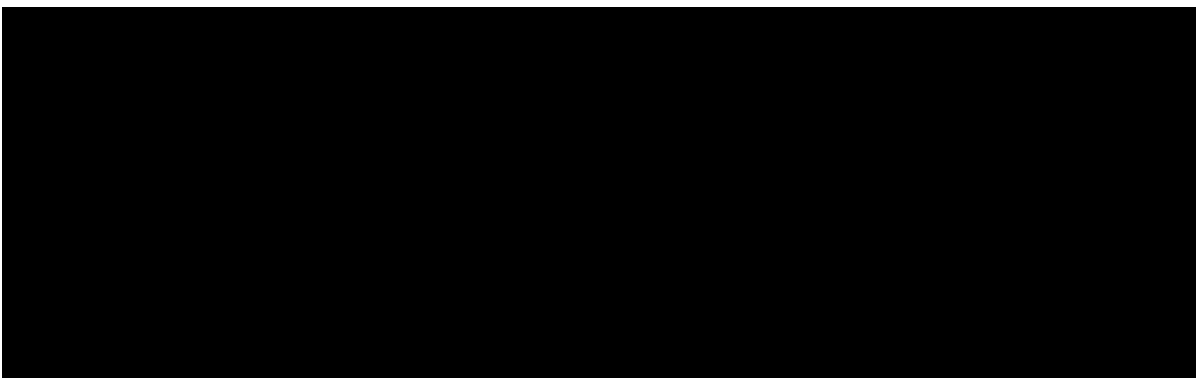




## **PRICING TABLE**

### **Part 01: Day Rate Card (For Information Purposes)**

Tenderers are requested to complete the Day Rate Card Table below, detailing the Day Rates for a range of roles which are anticipated to have involvement in the delivery of work packages under the contract.



**Tenderers are instructed that the rates provided above should represent the maximum day rates chargeable under the Framework, and these rates are to hold firm for the duration of the Framework.**

### **Part 02: Pricing Table**

For the purposes of costing please cost on the basis of an Inpatient Survey. Please refer to the full details outlined in Section 7 of the Lot 3 Specification and specifically assume that:

#### **Sampling:**

- This survey would cover 149 acute and acute specialist trusts and sample size of 1,250 inpatients per provider. It assumed that you would support trusts to do this to an agreed quality and within appropriate timescales.
- A full set of quality assurance checks are completed (including against demographic splits for age, gender etc.).

#### **Questionnaire and information dissemination:**

- Your organisation will print and send the following (unless materials are supplied by CQC as stated) for the following:
  - A questionnaire (colour on front page only), a cover letter (two pages including two colours), a translation sheet and a CQC flyer (this flyer will be produced for you centrally) will be sent to all participants at the start of field work. This will also include a FREEPOST envelope.
  - A reminder letter (two colours) to prompt non-respondents to 65% of all people identified within the overall sample.
  - A questionnaire (colour on front page only), a cover letter (colour as in first mailing), a translation sheet and a CQC flyer (again produced centrally) to prompt



non-respondents. This will be sent to 55% of all people identified within the overall sample. This will also include a FREEPOST envelope.

- We would receive a final response rate of 40%.
- Your organisation provides a free helpline to trusts and logs calls appropriately.

### **Analysis, reporting and publicising:**

The collection, logging and scanning of all questionnaire returns along with appropriate quality assurance.

- Only basic analysis is required by the trust such that they are able to see their own data for the one year of the survey. Please do not assume any trend or comparative analysis is required or any analysis and use of qualitative information.

### **Governance:**

- Your organisation would attend one briefing meeting lasting 2 hours.
- Your organisation would attend one performance meeting lasting 2 hours having supplied appropriate details of the volume and scope of contracts with providers.
- Your organisation identifies one free text comment that includes a safeguarding risk which it escalates to the trust, local authority or police as necessary.

**Please note: Tenderers must detail their prices as inclusive of VAT**

Activity	
<b>7.1.1: Support</b> The Approved Contractor must provide practical support and advice in the undertaking of surveys of people's experiences of care. This must be in line with any guidance provided by CQC or its Co-ordination Centre or best practice where such guidance is not provided.	
<b>7.1.2: Sampling</b> The Approved Contractor must work with and support providers of care to draw a survey sample.	

**7.1.3: Questionnaire and information dissemination**

The Approved Contractor must work with, and support, providers of care to ensure that questionnaires and appropriate information are delivered to all potential respondents.

**7.1.4: Receipt of information, cleaning and transfer**

The Approved Contractor must receive, log and capture all responses to questionnaires as outlined in guidance issued by the commissioner or its Co-ordination Centre. Data must be checked and cleaned as necessary by the Approved Contractor or, as where stated in guidance to the Approved Contractor, raw data must be transferred to the commissioner or its Co-ordination Centre as required.

**7.1.5: Analysis, reporting and publicising**

The Approved Contractor must undertake any appropriate analysis or reporting requested by registered providers as part of its contract with the Approved Contractor or separately requested by the commissioner or its Co-ordination Centre. Such analysis should be in line with best practice to ensure the integrity of the programme overall.

**7.1.6: Governance**

The Approved Contractors must work with the commissioner and its Co-ordination Centre to support, develop and deliver the programme as required.

**GRAND TOTAL**

## ANNEXE 4 – MANAGEMENT INFORMATION

- 1.1 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information (“MI”) to the Authority in accordance with the provisions of this Framework Agreement.
- 1.2 The Contractor shall also supply such Management Information as may be required by the Authority in accordance with the terms of a Call-Off Contract.
- 2. MANAGEMENT INFORMATION AND FORMAT**
  - 2.1 The Contractor agrees to provide to the Authority:
    - 2.1.1 timely, full, accurate and complete MI Reports which incorporate the data, in the correct format, required by the MI Reporting Template (imbedded document); and
    - 2.1.2 to the extent requested by the Authority, timely, full, accurate and complete data, in such format as the Authority may specify from time to time, in respect of the Services and Call-Off Contracts.
  - 2.2 The initial MI Reporting Template is set out in the Annexe 4 of this Framework Agreement. The Authority may from time to time make changes to the MI Reporting Template, including to the data required or format of MI Reports, and issue a replacement version of the MI Reporting Template to the Contractor. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
  - 2.3 If the MI Reporting Template is amended by the Authority at any time, then the Contractor agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
  - 2.4 The Authority may provide the Contractor with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Contractor agrees to complete each MI Reporting Template in accordance with any such guidance.
  - 2.5 The Contractor may not make any amendment to the current MI Reporting Template without Approval.

### **3. FREQUENCY AND COVERAGE**

- 3.1 All MI Reports must be returned to the Authority on or prior to the Reporting Date every Month during the Term and thereafter, until all transactions relating to Call-Off Contracts have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report Orders received and transactions occurring during the Month to which the MI Report relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the Contractor must report the invoice in October's MI Report and not September's. Each Order received by the Contractor must be reported only once when the Order is received.
- 3.3 The Contractor must provide the Authority with an MI Report for each Month even where there are no orders (including Orders) or transactions to report in the relevant Month; referred to as a "Nil Return".
- 3.4 The Contractor must inform the Authority of any errors or corrections to the Management Information:
  - 3.4.1 in the next MI Report due immediately following discovery of the error by the Contractor; or
  - 3.4.2 as a result of the Authority querying any data contained in an MI Report.

### **4. SUBMISSION OF THE MONTHLY MI REPORT**

- 4.1 To the extent the MI Report is contained in the MI Reporting Template, the completed MI Report shall be completed electronically and returned to the Authority. All other information required to be included in an MI Report shall be returned to the Authority in such manner as the Authority may notify to the Contractor from time to time.
- 4.2 The Authority reserves the right (acting reasonably) to specify that all or any part of an MI Report be submitted by the Contractor using an alternative means of communication to that specified in paragraph 4.1 such as email.

### **5. DEFECTIVE MANAGEMENT INFORMATION**

- 5.1 The Contractor acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Framework Agreement because Management Information will be used by the Authority to inform strategic decision making.

#### **MI Failures**

- 5.2 When an MI Report:
  - 5.2.1 contains any material errors or material omissions or a missing mandatory field; or

5.2.2 is submitted in an incorrect format, for example by using an incorrect MI Reporting Template; or

5.2.3 is not submitted by the Reporting Date (including where a Nil Return should have been filed), then the Authority may deem the failure to submit an MI Report correctly as an **"MI Failure"**.

- 5.3 Following an MI Failure the Authority may issue reminders to the Contractor or require the Contractor to rectify defects in the MI Report provided to the Authority. The Contractor shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

### **Meetings**

- 5.4 The Contractor agrees at the request of the Authority to attend meetings with the Authority in person to discuss the circumstances of any MI Failure(s) (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Contractor shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The parties shall document these measures and continue to monitor the Contractor's performance.

### MI REPORTING TEMPLATE – EXAMPLE

Report Type	What we require		Why do we need this information	Required for the following lots:	Frequency
	Throughout the duration of the framework, there will be some specific Management Information (MI) requirements regarding the work contracted. There may also be ad hoc MI requirements throughout the duration of the contract. (Note: Ad hoc MI requirements are irregular requests for additional information).		To provide granular detail of how activity on the framework from the customers	All	Ad hoc
Core MI	The following specific MI must be provided to the CQC by email on the second Friday of each month:			All	Monthly
	Ref Number	Field Requirement			
	MI 01	Number of tasks awarded in the past month.			
	MI 02	List Task References and Descriptions			
	MI 03	Tasking Authority name (eg. named individual within CQC with contact details).			
	MI 04	Task start date(s).			
	MI 05	Task finishes date(s), (planned and actual).			
	MI 06	Total man hours for task (per grade).			
	MI 07	Overall task value(s).			

	MI 08	Whether task was won via Direct Award or Competition.			
	MI 09	Task value invoiced in Month per each Task No			
	MI 10	Applicable Broad Capability Areas.			
	MI 11	Not Used			
	MI 12	Not Used			
	MI 13	Whether task was performed at the Supplier's premises or Customer's premises.			

# ANNEXE 5 – TERMS AND CONDITIONS OF CALL-OFF CONTRACT

## A DEFINITIONS AND INTERPRETATION

### A1 Definitions and Interpretation

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

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

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

**“Agreement”** means this framework agreement together with its Annexes;

**“Approval”** and **“Approved”** means the prior written consent of the Customer;

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

**“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 Contractor by or on behalf of the Customer; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Customer is the Data Controller;

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

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

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



**“Award Criteria”** means the criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

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

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

**“Call-Off Contract”** means a legally binding agreement (made pursuant to the provisions of the Agreement) for the provision of Services between a Customer and the Contractor comprising an Order Form and the Call-Off Terms;

**“Call-Off Terms”** means the terms and conditions set out in Annexe 5;

**“CCN”** means a change control notice in the form set out in Schedule 4;

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

**“Commercially Sensitive Information”** means the information listed in Schedule 5:

- (c) which is provided by the Contractor to the Customer in confidence for the period set out in Schedule 5; and/or
- (d) that constitutes a trade secret;

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

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

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

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

- (c) the End Date; or
- (d) following an Extension, the end date of the Extension

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

**“Contracting Customer”** means any contracting Customer (other than the Customer) as defined in regulation 2 of the Regulations;

**“Contractor Personnel/Staff”** means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7;

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

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

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

**“Customer”** means any contracting Customer listed as a potential customer of the Contractor in the OJEU Notice;

**“Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer”** shall each have the same meaning given in the GDPR;

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to the processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;

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

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

**“Default”** means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or

any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Agreement and in respect of which such Party is liable to the other;

**“Direct Award Criteria”** means the award criteria set out in Part B of Annexe 1 to be used in the award of Call-Off Contracts;

**“Direct Ordering Procedure”** means the ordering procedure set out in Part C of Annexe 1 to be used in the award of Call-Off Contracts;

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

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

**“DPA”** means the Data Protection Act 2018 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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

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

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

**“Further Competition Award Criteria”** means the criteria in set out Part B of Annexe 1 to be used in the award of Call-Off Contracts;

**“Further Competition Award Procedure”** means the procedure in set out Part C of Annexe 1 to be used in the award of Call-Off Contracts;

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

**“General Anti-Abuse Rule”** means:

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

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

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

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

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

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

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

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

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

**“Key Performance Indicators”** means the key performance indicators listed in the Schedule 4 and a Key Performance Indicator (“KPI”) shall mean any one of them;

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

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

**“LED”** means Law Enforcement Directive (*Directive (EU) 2016/680*);

**“Loss”** means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **“Losses”** shall be construed accordingly;

**“Lot”** means the lot in respect of which Services may be ordered from the Contractor;

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

**“Management Information”** means the management information specified in Annexe 4;

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

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

**“Month”** means calendar month;

**“NAO”** means the National Audit Office;

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

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

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

**“OJEU Notice”** means the contract notice [insert reference] published in the Official Journal of the European Union;

**“Order”** means an order for Services sent by a Customer to the Contractor in accordance with the award procedure set out in clause 5.

**“Order Form”** means a document setting out details of an Order substantially in the form set out in Annexe 2 or as otherwise agreed in accordance with clause 5;

**“Personal Data”** personal data (as defined in the Data Protection Legislation) which is Processed by the Contractor or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Contract;

**“Potential Contractors”** mean the parties appointed to be potential contractors under the Agreement;

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

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

**“Pricing Matrix”** means the pricing matrix set out in Annexe 3;

**“Price”** means the price (excluding any applicable VAT) payable to the Contractor by the Customer under the Call-Off Contract for the full and proper performance by the Contractor of its obligations under the Contract;

**“Pricing Schedule”** means Schedule 3 containing details of the Price;

**“Processing”** has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

**“Prohibited Act”** means:

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

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Customer or a Customer in connection with the Agreement;

**“Protective Measures”** means appropriate technical and organisational measures which 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;

**“Purchase Order”** means the document in which the Customer or a Customer specifies the Services which are to be supplied by the Contractor under the Contract;

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

**“Receipt”** means the physical or electronic arrival of the invoice at the address given by the Customer or a Customer to the Contractor for the submission of invoices from time to time;

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

**“Regulator Correspondence”** means any correspondence from the Information Commissioner’s Office, or any successor body, in relation to the Processing of Personal Data under this Contract;

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

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

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

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

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

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

**“Restricted Countries”** means

- (a) any country outside the European Economic Area; and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

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

**“Security Policy”** means ISO/IEC 27001 Information Security Management;

**“Services”** means the services set out in Annexe 1 including any modified or alternative services;

**“Services Requirement”** means the requirements of the Customer or any Customer (as appropriate) for the Services from time to time;

**“Statement of Requirements”** means a statement issued by the Customer or any Customer detailing its Services Requirements as set out in Annexe 1 and issued in accordance with the Direct Ordering Procedure in detailed in Part C of Annex 1;

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

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

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

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

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

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

**“Supplier Code of Conduct”** means HM Government Supplier Code of Conduct dated September 2017

**“Tender”** means the Customer’s invitation to supply to contractors consisting of the Specification, these clauses and form of Letter of Engagement;

**“Tender Response”** means the document submitted by the Contractor to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 2;

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

**“TFEU”** means the Treaty on the Functioning of the European Union;



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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7;

**“Treaties”** means the Treaty on European Union and the TFEU;

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

**“TUPE Information”** means the information set out in clause B17.1;

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

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

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

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

**“Year”** means a calendar year.

*In the Contract, unless the context implies otherwise:*

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

## **A2 The Customer's Obligations**

- A2.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, and the exercise by the Customer of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Customer to the Contractor.

## **A3 Contractor's Status**

- A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Customer.

## **A4 Notices and Communications**

- A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.
- A4.2 If it is not returned as undelivered a notice served:
- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
  - (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

- (a) For the Customer:

Contact Name	
Address	
E-Mail	

(b) For the Contractor:

Contact Name	
Address	
E-Mail	

## **A5 Mistakes in Information**

- A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Contractor in connection with the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A6 Conflicts of Interest**

- A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract. The Contractor will notify the Customer without delay giving full particulars of any such conflict of interest which may arise.
- A6.2 The Customer may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Customer's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

# **B. THE SERVICES**

## **B1 Specification**

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price by the Customer.
- B1.2 The Contractor shall comply fully with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligations in relation to the quality, performance and provision of the Services).
- B1.3 In the event that this Agreement or any Purchase Order terminates or expires, the Contractor shall, if requested to do so by the Customer, continue to provide the Services commenced prior to the date of such termination or expiry at no extra cost to the Customer other than the continued payment of the Price for such Services. The

Contractor shall comply with its obligations in accordance with all agreed Exit Management processes included within this Agreement.

## **B2 Provision and Removal of Equipment**

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Customer and shall on request be delivered to the Customer as directed by the Customer. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Customer on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove immediately from the Premises Equipment which is, in the Customer's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein

## **B3 Manner of Carrying Out the Services**

- B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been

specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

- B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.
- B3.3 If the Specification includes installation of equipment the Contractor shall notify the Customer in writing when it has completed installation. Following receipt of such notice, the Customer shall inspect the installation and shall, by giving notice to the Contractor:
- (a) accept the installation; or
  - (b) reject the installation and inform the Contractor why, in the Customer's reasonable opinion, the installation does not satisfy the Specification.
- B3.4 If the Customer rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Customer's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Customer may terminate the Contract with immediate effect by notice.
- B3.5 The installation shall be complete when the Contractor receives a notice issued by the Customer in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Customer of the installation.
- B3.6 During the Contract Period, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
  - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
  - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B3.7 The Contractor and Contractor Personnel shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/supplier-code-of-conduct>).

## **B4 Key Personnel**

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.

- B4.2 The Contractor shall designate a Key Personnel to act on behalf of the Contract as the Contract manager to oversee the provision of the Services and liaise and report to the representatives of the Customer.
- B4.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Customer shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.
- B4.5 The Customer may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Customer's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

## **B5 Contractor's Staff**

- B5.1 The Customer may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Customer's reasonable opinion, be undesirable or if not suitably qualified to carry out the Services.

- B5.2 The Contractor shall ensure that all Staff who have access to the Customer's Premises, the Customer System or the Customer Data have been cleared in accordance with the BPSS.
- B5.3 The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- B5.4 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Customer's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- B5.5 If the Contractor fails to comply with clause B5.4 within two Months of the date of the request and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, then the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- B5.6 The decision of the Customer as to whether any person is to be refused access to the Customer's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.
- B5.7 The Contractor shall provide all necessary training on a continuing basis for all its Staff employed or engaged in the provision of the Services in compliance with the Specification, the Security Policy and the Security Plan.
- B5.8 The Contractor shall ensure that:
- (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Act 2010 ("the Equality Legislation"); and
  - (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

## **B7 Licence to Occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Contractor by the Customer in connection with the Call-Off Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Call-Off Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Call-Off Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Call-Off Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- B7.3 Should the Contractor require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake approved modification work without undue delay.
- B7.4 The Contractor shall (and shall ensure that any Staff on the Customer's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Customer's Premises as determined by the Customer

- B7.5 The Call-Off Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Call-Off Contract, the Customer retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B8 Property**

- B8.1 All Property is and shall remain the property of the Customer and the Contractor irrevocably licenses the Customer and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.
- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Customer's negligence. The Contractor shall inform the Customer immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B9 Offers of Employment**

- B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter neither party shall employ or make an offer employment to the other party's staff who have been associated with the Services and/or the Call-Off Contract without consent of the other Party.

## **B10 Employment Provisions**

- B10.1 Not later than 12 Months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;



- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B10.1 (a);
  - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B10.1 (a), their job titles and qualifications;
  - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (e) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B10.2 At intervals determined by the Customer (which shall not be more frequent than once every 30 days) the Contractor shall give the Customer updated TUPE Information.
- B10.3 Each time the Contractor supplies TUPE Information to the Customer it shall warrant its completeness and accuracy and the Customer may assign the benefit of this warranty to any Replacement Contractor.
- B10.4 The Customer may use TUPE Information it receives from the Contractor for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- B10.5 If TUPE applies to the transfer of the Services on termination of the Contract, the Contractor shall indemnify and keep indemnified the Customer (both for themselves and any Replacement Contractor) against all Losses and other liabilities which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
  - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period;
  - (c) any failure by the Contractor or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under regulation 13 of TUPE;
  - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and

- (e) any claim by any person who is transferred by the Contractor to the Customer and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- B10.6 If the Contractor becomes aware that TUPE Information it provided has become inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date TUPE Information.
- B10.7 This clause B10 applies during the Contract Period and indefinitely thereafter.
- B10.8 The Contractor undertakes to the Customer that, during the 12 Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
  - (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services);
  - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
  - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.
- B10.9 The Contractor acknowledges that the Customer has made no assurance about the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("TUPE") and has formed its own view on whether TUPE applies before submitting its Tender Response to supply the Services. The Contractor agrees that the Price shall not be varied on the grounds that TUPE does or does not apply irrespective of the belief of the Customer or the Contractor prior to execution of the Contract.
- B10.10 The Customer does not accept any responsibility for and gives no warranty in respect of the TUPE information that has been supplied to the Customer by the present Contractor.

## **C PAYMENT**

### **C1 Price**

- C1.1 In consideration of the Contractor's performance of its obligations under the Call-Off Contract, the Customer shall pay the Price in accordance with clause C2 (Payment and VAT).
- C1.2 NOT USED

### **C2 Payment and VAT**

- C2.1 Not used.
- C2.2 The Contractor shall submit invoices to the Customer on the dates set out in the Order Form.
- C2.3 The Customer shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Customer will not, at any later date, be liable to pay the Contractor any additional VAT.
- C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Customer in writing.
- C2.5 Valid Invoices shall include:
- (a) the Contractor's full name, address and title of the Call-Off Contract;
  - (b) the Purchase Order number
- and, if requested by the Customer:**
- (c) timesheets for Staff engaged in providing the Services signed and dated by the Customer's representative on the Premises on the day;
  - (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
  - (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
  - (f) the date on which work was undertaken;
  - (g) the time spent working by the individuals concerned;
  - (h) details of the type of work undertaken by the individuals concerned;
  - (i) separate identification of time spent travelling and/or meal or rest breaks; and

- (j) where appropriate, details of journeys made and distances travelled.
- C2.6 The Customer shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.7 The Customer shall not pay for plant which is not in use during a meal or rest break.
- C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.
- C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Customer shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Customer and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C2.11 NOT USED
- C2.12 The Customer shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Customer shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Customer's instructions).
- C2.14 The Customer shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts. DN: Please use above clause if the Contractor is required to provide plant.
- C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.
- C2.16 If the Customer pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Customer may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Customer to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

- C2.18 The Customer shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

Address	
Postcode	

- C2.19 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.
- C2.20 The Contractor shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Customer not less than 5 Working Days before the date upon which the tax or other liability is payable by the Customer.
- C2.21 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.22 Any late payment of undisputed invoices by the Customer will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.23 The Customer shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Customer (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Customer under the Contract or under any other agreement with the Customer or the Crown.
- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- C3.3 The Contractor shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4 Price during Extension**

- C4.1 Subject to Subject to any terms set out in section 2 of the Order Form and/or any Call-Off Contract variations, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

#### **C5 Euro**

- C5.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Customer.
- C5.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause C5.1.

## **D. STATUTORY OBLIGATIONS**

### **D1 Prevention of Fraud and Bribery**

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Customer or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Contractor shall, during the Contract Period:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Customer on request.
- D1.4 The Contractor shall immediately notify the Customer in writing if it becomes aware that any breach of clauses D1.1 and/or D1.2 has occurred or is likely to occur, or has reason to believe that it has or any of the Staff have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

- D1.5 If the Contractor notifies the Customer pursuant to clause D1.4, the Contractor shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.
- D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Customer may by notice:
- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; or
  - (c) recover in full from the Contractor any other Loss sustained by the Customer in consequence of any breach of those clauses.
- D1.7 Any notice served by the Customer under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Customer believes has committed the Prohibited Act and the action that the Customer has taken (including, where relevant, the date on which the Contract shall terminate).
- D1.8 The Contractor shall not offer or give, or agree to give, to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Customer or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.9 The Contractor warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body in connection with the Contract.

## **D2 Discrimination**

- D2.1 The Contractor shall:
- (a) perform its obligations under the Contract in accordance with:
    - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
    - ii) the Customer's equality and diversity policy as given to the Contractor from time to time;



- iii) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Customer of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **D3 Rights of Third Parties**

- D3.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

### **D4 Environmental Requirements**

- D4.1 The Contractor 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 Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender. Without prejudice to the generality of the foregoing, the Contractor shall:
- (a) comply with all Policies and/or procedures and requirements set out in the Specification and Tender in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Contractor's supply chain;
  - (b) maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the Services being supplied and as proportionate to the nature and scale of the Contractor's business operations; and
  - (c) maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in Clause D4.1 (b).
- D4.2 The Contractor shall meet reasonable requests by the Customer for information evidencing the Contractor's compliance with the provisions of this Clause D.

### **D5 Business Continuity and Disaster Recovery Plan**

- D5.1 The Contractor shall comply at all times with the relevant provisions of the Business Continuity and Disaster Recovery Plan to be appended hereto in Schedule 12.
- D5.2 The Business Continuity and Disaster Recovery Plan shall be compliant with the current British Standard (BS25999) code of practice and specification for business continuity management or equivalent. In particular the Business Continuity and Disaster Recovery Plan must show that the Contractor is able to maintain the Services throughout the terms of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.

- D5.3 The Customer further reserves the right to undertake or commission an independent audit of the Business Continuity Plan that is put in place by the Contractor in respect of Services supplied to or on behalf of the Customer.
- D5.4 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:
- (a) implement the Disaster Recovery Plan
  - (b) continue to provide the affected Services to the Customer in accordance with the Disaster Recovery Plan; and
  - (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- D5.5 To the extent that the Contractor complies fully with the provisions of this clause D5 (and the reason for the declaration of a Disaster was not a breach of any of the other terms of this Contract on the part of the Contractor), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in Schedule 11 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

## **D6 Health and Safety**

- D6.1 The Contractor shall perform its obligations under the Contract in accordance with:
- (a) all applicable Law regarding health and safety (including Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety); and
  - (b) the Customer's health and safety policy while at the Customer's Premises.
- D6.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Customer's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **E PROTECTION OF INFORMATION**

### **E1 Customer Data**

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- E1.3 To the extent that Customer Data is held and/or Processed by the Contractor, the Contractor shall supply Customer Data to the Customer as requested by the Customer in the format specified in the Specification.

- E1.4 The Contractor shall preserve the integrity of Customer Data and prevent the corruption or loss of Customer Data.
- E1.5 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Customer immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy Framework.
- E1.7 If Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
  - (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data and the Contractor shall do so promptly; and/or
  - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor 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 Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

## **E2 Data Protection & Privacy**

- E2.1 The Contractor shall (and shall procure that its entire Staff) comply with any notification requirements under Data Protection Legislation and both Parties will duly observe all their obligations under Data Protection Legislation which arise in connection with the Contract.
- E2.2 The Contractor will, in conjunction with the Customer, in its own right and in respect of the Services, shall ensure it will be compliant with the provisions of the GDPR and Data Protection Legislation.
- E2.3 The Contractor shall designate and will provide the Customer with the contact details of its data protection officer where this position is required by the Data Protection Legislation or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause E2.
- E2.4 Notwithstanding the obligations in clause E2.1 if the Contractor is Processing Personal Data as a Data Processor for the Customer, the Contractor shall:
  - (a) Prior to the processing of any Personal Data under this Contract and where requested by the Customer provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment ("DPIA"). Such assistance may, at the discretion of the Customer include (but not be limited to):
    - i. A systematic description of the envisaged processing operations and the purpose of the processing;

- ii. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in Clause E1 (Customer Data) and Clause E7 (Security) and Schedule 8 (Security Requirements, Policy and Plan).
- (c) Process the Personal Data only in accordance with Schedule 14 and/or written instructions from the Customer (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Customer unless the Contractor is required to do so otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
- (e) Keep a record of all categories of processing activities carried out on behalf of the Customer, containing;
  - i) the categories of processing carried out on behalf of the Customer;
  - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- (f) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (g) take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:
  - a. do not process Personal Data except in accordance with this Agreement ( and in particular Schedule 14);
  - b. are aware of and comply with the Contractor's duties under this Clause E2 and Clauses E1 (Customer Data) and E4 (Confidentiality);

- c. are subject to appropriate confidentiality undertakings with the Contractor or any relevant Sub-contractor;
  - d. 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
  - e. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- (h) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (i) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or the Contractor 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;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor 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
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (j) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data;
- (k) notify the Customer within 48 hours if it:
  - a. receives from a Data Subject (or third party on their behalf):
    - i. a Data Subject Access Request (or purported Data Subject Access Request);
    - ii. a request to rectify, block or erase any Personal Data; or
    - iii. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - b. considers that any of the Customer's instructions from the Customer infringe the Data Protection Legislation;
  - c. receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory Customer in connection with Personal Data processed under this Contract; or
  - d. 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

- e. is required by Law to commit an act or omission to that would, but for Clause E2.10, constitute a breach of this Clause E2;
    - f. becomes aware of a Data Loss Event
  - (l) The Contractor's obligation to notify under Clause E2.4(k) shall include the provision of further information to the Customer in phases, as details become available.
- E2.4A Notwithstanding the provisions of clauses E2.1 and E2.4, where the Contractor is Processing Personal Data for the Customer, the parties acknowledge that the Customer is the Data Controller and the Contractor is the Data Processor. The Authority shall set out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and the categories of Data Subject in the form appended hereto in Schedule 10 – Processing, Personal Data and Data Subject.
- E2.5 Taking into account the nature of the processing, the Contractor shall provide the Customer with full co-operation and assistance (within the timescales reasonably required by the Customer) in relation to either Party's obligations under Data Protection Legislation or any complaint, communication or request made as referred to in Clause E2.4(k), including by promptly providing:
- f. the Customer with full details and copies of the complaint, communication or request;
  - g. where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; and
  - h. the Customer, on its request, with any Personal Data it holds in relation to a Data Subject;
  - i. assistance as requested by the Customer following any Data Loss Event; and
  - j. assistance as requested by the Customer with respect to any request from the Information Commissioner's Office (ICO), or any consultation by the Customer with the Information Commissioner's Office;
- E2.6 The Contractor shall, if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause E2 and provide to the Customer copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.
- E2.7 The Contractor shall allow the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Contractor's Data Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- E2.8. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Customer's prior written consent. If, after the Effective

Date, the Contractor or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Contractor shall, in seeking consent, submit such information as the Customer's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Contractor's cost and expense using the Change Control Procedure.

E2.9 The Contractor will notify the Customer immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the notification will be made regardless as to whether or not the Contractor has established any unauthorised access or other harm has actually arisen from the event. Notification must not be delayed for the purpose of establishing the effects of an identified Data Loss Event. In particular the Contractor will;

- iv) when notifying the Customer of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
- v) Cooperate fully with any Customer investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
- vi) [provide immediate access to the Contractor's premises and systems for the purposes of any Customer investigation under [Clause E2.4 ii] above]
- iv) Take all necessary actions to remedy the causes or adverse effects of the Data Loss Event and to ensure the protection of Personal Data from any further loss. Where the contractor reasonably considers that immediate action is required to ensure the protection of personal data, or to prevent or mitigate a serious risk of harm, damage or loss to data subjects arising from a Data Loss Event, they may take such action without requiring prior authorisation from the Customer circumstances where it is not reasonably possible to seek or obtain such authorisation in a timely manner;
- v) Not make any public statement of any kind without the prior Approval of the Customer;
- vi) Where appropriate, provide all assistance necessary to enable the Customer to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event; and
- vii) notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

- E2.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause E2. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Customer determines that the processing is not occasional;
  - (b) 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
  - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- E2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- E2.13 The Customer may, at any time on not less than 30 Working Days' notice, 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 Agreement).
- E2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E2.15 At the end of the Term or earlier termination of this Contract, at the Customer's request, the Contractor shall delete or return all Personal Data to the Customer and delete any copies of such Personal Data except where required to retain any copies by Law.
- E2.16 The Contractor shall comply at all times with Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- E2.17 The Contractor shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- E2.18 The Contractor shall indemnify the Customer on a continuing basis against any and all Losses incurred by the Customer arising from the Contractor's Default under this



Clause E2 and/or any failure by the Contractor or any Sub-Contractor to comply with their respective obligations under Data Protection Legislation.

- E2.19 Nothing in this Clause E2 shall be construed as requiring the Contractor or any relevant Sub-contractor to be in breach of any Data Protection Legislation.
- E2.20 The provision of this clause E2 applies during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

- E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
  - (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.
- E3.2 The Contractor shall not remove from the Customer's premises any classified or privacy marked material without the Customer's express agreement. The Contractor must keep any such material so removed under conditions approved by the Customer for the housing of such classified or privacy marked material.
- E3.3 In the event that the Contractor or its Staff fails to comply with this clause, the Customer reserves the right to terminate the Call-Off Contract by giving notice in writing to the Contractor.

### **E4 Confidential Information**

- E4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Call-Off Contract is Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Call-Off Contract is exempt from disclosure in accordance with the provisions of FOIA.
- E4.2 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Call-Off Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E4.3 Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives its consent for the Customer to publish the whole Contract (but with any information which is Confidential Information belonging to the Customer redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.4 The Customer may consult with the Contractor to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- E4.5 The Contractor shall assist and cooperate with the Customer to enable the Customer to publish this Call-Off Contract.

- E4.6 If required by the Customer, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.7 If requested by the Customer, the Contractor shall give the Customer a copy of the list and, subsequently upon request by the Customer, copies of such of the listed non-disclosure agreements as required by the Customer. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.8 The Contractor may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.9 The Contractor shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- E4.10 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.11 Nothing in clause E4.1 shall prevent the Customer disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Customer's accounts;
  - (b) for the purpose of 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;
  - (c) to any Crown Body or any Contracting Customer and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments 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 government department or any Contracting Customer;

(d) to any consultant, contractor or other person engaged by the Customer

provided that in disclosing information under clauses E4.8 (c) and (d) the Customer discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.12 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.13 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Customer, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Customer's obligations of confidentiality.
- E4.14 If the Contractor does not comply with clauses E4.1 to E4.6 the Customer may terminate the Contract immediately on written notice to the Contractor.
- E4.15 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.16 The Contractor will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Customer in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.17 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Customer's request if the Customer reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- E5.2 The Contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and the Contractor shall and shall procure that any Sub-Contractors shall:
- (a) give the Customer a copy of all Information in connection with the Contract in its possession or control in the form that the Customer requires within 5 Working

Days (or such other period as the Customer may specify) of the Customer's request;

- (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIR;
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Customer.

E5.3 The Customer shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E5.4 The Contractor acknowledges that (notwithstanding the provisions of clause E4) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ('Code'), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services in certain circumstances:

(a) without consulting the Contractor; or

(b) following consultation with the Contractor and having taken their views into account;

provided always that where E5.4(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E5.5 The Contractor shall ensure that all information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

## **E6 Publicity, Media and Official Enquiries**

E6.1 Without prejudice to the Customer's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

E7.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Customer while on the Customer's Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

- E7.3 The Contractor shall comply, and shall procure compliance of its Staff, with the Security Plan and Security Policy.
- E7.4 The Customer shall notify the Contractor of any changes or proposed changes to the Security Policy.
- E7.5 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.6 Notwithstanding clause E7.5, 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 the Customer Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency and the Contractor shall immediately take all reasonable steps necessary to:
- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
  - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
  - (c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
  - (d) as soon as reasonably practicable provide the Customer with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.
- E7.7 Any cost arising out of the actions of the Parties taken in compliance with clause E7.6 shall be borne by the Parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third-Party Software or the Customer Data (whilst the Customer Data was under the control of the Contractor); and
  - (b) by the Customer if the Malicious Software originates from the Customer Software or Customer Data (whilst the Customer Data was under the control of the Customer).
- E7.7A The Contractor controlled architecture and environment used to process or store Customer Data will be certified to the NCSC Cyber Essentials Plus certification scheme.
- E7.8 The Contractor shall be liable for, and shall indemnify the Customer against all Losses suffered or incurred by the Customer and/or any third party arising from

and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Customer).

## **E8 Intellectual Property Rights**

- E8.1 Save as granted elsewhere under this Call-Off Contract, neither the Customer or the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. If Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:
- (a) furnished to or made available to the Contractor by or on behalf of the Customer;
  - (b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
  - (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the **"IP Materials"**)
- shall vest in the Customer and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.
- E8.2 The Contractor hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.
- E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.
- E8.4 The Contractor shall ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Customer.
- E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Customer and the Crown from and against all Losses and other liabilities which the Customer or the Crown may suffer or incur as

a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:

- (a) items or materials based upon designs supplied by the Customer; or
- (b) the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Contract.

E8.6 The Customer shall notify the Contractor in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Customer.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Customer or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:

- (a) consult the Customer on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Customer; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.8 The Customer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Contractor shall indemnify the Customer for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Customer under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).

E8.9 The Customer shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

E8.10 If any Third-Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Customer under clauses E8.4 and G2.1(g)) use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Customer of the Contractor's notification the Customer may terminate the Contract immediately by notice to the Contractor.

- E8.11 The Contractor grants to the Customer a royalty-free, perpetual, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Customer reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

#### **E8A Use of Documents and Information**

- E8.1 Except with the consent in writing of the Customer, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- E8.2 Except with the consent in writing of the Customer the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Customer otherwise than for the purpose of the Contract.
- E8.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Customer for the purposes of the Contract remain the property of the Customer and must be returned on completion of the Contract.
- E8.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- E8.5 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- E8.6 To the extent that Customer Data is held and/or processed by the Contractor the Contractor shall supply that Customer Data to the Customer as requested by the Customer in the format specified in the Specification Schedule [and/or the Exit Management Strategy].
- E8.7 The Contractor shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- E8.8 The Contractor shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster



- E8.9 Recovery Plan. The Contractor shall ensure that such back-ups are available to the Customer at all times upon request and are delivered to the Customer at no less than [three] monthly intervals.
- E8.10 The contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- E8.11 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than [ten calendar days]; and/or
  - (b) itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.
- E8.12 If at any time the Contractor 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 Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

## **E9 Audit**

- E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records and processes as may be requested by the Customer in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Customer, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.
- E9.3 The Contractor shall permit duly authorised representatives of the Customer and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably

require for the purposes of his financial audit of the Customer and for carrying out examinations into the economy, efficiency and effectiveness with which the Customer has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E10 Tax Compliance**

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Customer in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Customer:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Customer may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Customer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

## F. CONTROL OF THE CONTRACT

### F1A Monitoring of Contract Performance

F1A.1 The Contractor shall comply with the monitoring arrangements set out in the KPI Schedule and the Specification including, but not limited to:

- (a) reporting performance of the Services against the KPIs;
- (b) providing all management and reporting information listed in the Specification at such intervals as specified; and
- (c) providing such other performance data and information as the Contractor may be required to produce by the Customer under the Specification or otherwise under the Contract from time to time.

F1A.2 The Contractor shall measure its performance against the KPIs, and within 7 days of submitting of its claim for payment each Month, the Contractor shall provide the Customer with a performance report setting out the Contractor's performance against all KPIs and the Overall KPI Performance Score in respect of the immediately preceding Month. Where KPI's are only measured Quarterly or Half Yearly they shall be reported in the Month immediately following the relevant Quarterly or Half Yearly performance report date.

### F1 Failure to meet Requirements

F1.1 If the Customer informs the Contractor in writing that the Customer reasonably believes that any part of the Services do not meet the requirements of the Call-Off Contract or differs in any way from those requirements, and this is not as a result of a default by the Customer, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Call-Off Contract within such reasonable time as may be specified by the Customer.

### F2 Monitoring of Contract Performance

F2.1 The Contractor shall immediately inform the Customer if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.

F2.2 At or around 6 Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "**Review Date**"), the Customer shall carry out a review of the performance of the Contractor ("**Checkpoint Review**"). Without prejudice to the generality of the foregoing, the Customer may in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Customer; whether the Services provide the Customer with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

- F2.3 The Contractor shall provide at its own cost any assistance reasonably required by the Customer to perform such Checkpoint Review including the provision of data and information.
- F2.4 The Customer may produce a report (a "**Checkpoint Review Report**") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Customer's expectations and the Contractor's obligations under this Call-Off Contract.
- F2.5 The Customer shall give the Contractor a copy of the Checkpoint Review Report (if applicable). The Customer shall consider any Contractor comments and may produce a revised Checkpoint Review Report.
- F2.6 The Contractor shall, within 10 Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Customer with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- F2.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Call-Off Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Customer's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Customer.

### **F3 Remedies for inadequate performance**

- F3.1 If the Customer reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Customer's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) withhold or reduce payments to the Contractor in such amount as the Customer reasonably deems appropriate in each particular case; and/or
  - (d) terminate the Contract in accordance with clause H2.
- F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Customer may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

- F3.3 If the Customer reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Customer may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Customer may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Customer and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Customer within the specified timescale; and/or
  - (b) withhold or reduce payments to the Contractor in such amount as the Customer deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Customer.
- F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Customer and to prevent such failure from recurring; and
  - (b) immediately give the Customer such information as the Customer may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Customer.
- F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Customer, the Customer may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

#### **F4 Transfer and Sub-Contracting**

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, novate, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Customer on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Customer on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Customer access to the records then the Customer shall have no obligation to pay any claim or

invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

- F4.4 If the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Contractor to the Customer immediately.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (the **"Assignee"**) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Customer incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:
- (a) reduction of any sums in respect of which the Customer exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Customer receiving notification under both clauses F4.6 and F4.7.
- F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- F4.7 The Contractor shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment at least [5] Working Days prior to submission of the relevant invoice.
- F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval of the Customer.
- F4.9 Subject to clause F4.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Customer;
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
  - (c) any private sector body which substantially performs the functions of the Customer
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.10 Any change in the legal status of the Customer such that it ceases to be a Contracting Customer shall not, subject to clause F4.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Customer.
- F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Customer or if there is a change in the legal status of the Customer such that it ceases to be a

Contracting Customer (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- (a) the rights of termination of the Customer in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee;
- (b) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F4.12 The Customer may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F4.14 The Customer shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Customer.

F4.15 Provided that the Customer has given prior written consent, the Contractor shall be entitled to novate the Contract where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Contract;

(b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

## **F5 Waiver**

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

- F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F6 Variation**

- F6.1 If, after the Commencement Date, the Customer's requirements change, the Customer may request a Variation subject to the terms of this clause F6.
- F6.2 The Customer may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Customer. If the Contractor accepts the Variation it shall confirm it in writing.
- F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Customer may:
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
  - (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).
- F6.4 Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 4 and approved in writing by the Customer.
- F6.5 The provisions of clause F6.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Customer. However, the Authorised Representative shall have the right to review such a Variation and require a Change of Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

- F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F8 Remedies Cumulative**

- F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or



separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

## **F10 Counterparts**

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# **G LIABILITIES**

## **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Customer and keep the Customer indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property,

financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

- G1.2A Liability under Clauses E2.18 and E7.8 shall be unlimited.
- G1.3 Subject to clause G1.1 and G1.2A the Contractor's aggregate liability in respect of the Contract shall not exceed the sum set out in Section 5 of the Order Form.
- G1.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- G1.5 The Customer may recover from the Contractor the following losses incurred by the Customer to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - (d) any compensation or interest paid to a third party by the Customer; and
  - (e) any fine or penalty incurred by the Customer pursuant to Law and any costs incurred by the Customer in defending any proceedings which result in such fine or penalty.
- G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:
- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
  - (b) indirect, special or consequential loss.
- G1.7 Unless otherwise specified by the Customer, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.
- G1.8 The Contractor shall hold:

- (a) employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
  - (b) public liability with the minimum cover per claim of five million pounds (£5,000,000);
  - (c) product liability with the minimum cover per claim of one million pounds (£1,000,000);
- and
- (d) professional indemnity with the minimum cover per claim of one million pounds (£1,000,000),  
or any sum as required by Law unless otherwise agreed with the Customer in writing. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- G1.9 The Contractor shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and Customer and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract, it has not committed any fraud;
  - (c) as at the Commencement Date, all information contained in the Tender Response or other offer made by the Contractor to the Customer remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and in addition, that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Customer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
- (l) (if an individual) he is regarded by HM Revenue & Customs as self- employed and accordingly shall indemnify the Customer against tax, national insurance contributions or similar impost for which the Customer may be liable in respect of the Contractor by reason of this Contract.

### **G3 Force Majeure**

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under

this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

- G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to continue to perform its obligations under the contract and prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

- (c) either Party is prevented from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

- H1.1 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:
  - (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
  - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
  - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
  - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
  - (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
  - (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Customer immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or

- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction.

H1.5 The Customer may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;



- (h) a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
  - (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.
- H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **H2 Termination on Default**

- H2.1 The Customer may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:
  - (a) the Contractor has not remedied the Default to the satisfaction of the Customer within 25 Working Days or such other period as may be specified by the Customer, after issue of a notice specifying the Default and requesting it to be remedied;
  - (b) the Default is not, in the opinion of the Customer, capable of remedy; or
  - (c) the Default is a Material Breach.
- H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.3 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Customer of its failure to pay. If the Customer fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

## **H3 Non- Default Termination or Change of Government Policy**

- H3.1 The Customer may terminate the Contract at any time by giving 30 days' notice to the Contractor.
- H3.2 The Customer may terminate the Contract by giving to the Contractor at least 1 Months' notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Customer acting reasonably, the Services are no longer required or are no longer affordable to the Customer.

## **H4 Not Used**

## **H5 Consequences of Expiry or Termination**

- H5.1 If the Customer terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.
- H5.2 If Contract is terminated under clauses H2 or H4 the Customer shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Customer terminates the Contract under clause H3 the Customer shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Customer.
- H5.4 Save as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E7 (Security), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- H6.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Contract may be terminated with immediate effect by the Customer by notice.

- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Customer's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Customer will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H7 Recovery upon Termination**

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Customer all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
  - (c) immediately vacate any Customer Premises occupied by the Contractor;
  - (d) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
  - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Customer and/or the Replacement Contractor to conduct due diligence.
- H7.2 **Not Used**
- H7.3 If the Contractor does not comply with clauses H7.1(a) and (b), the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
- H7.4 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H7.1(d) and (e) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H8 Retendering and Handover**

- H8.1 Within 21 days of being requested by the Customer, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue tender documents for the future provision of the Services.

- H8.2 The Customer shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- H8.3 The Customer shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- H8.4 The Contractor shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.
- H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Customer has selected to tender for the future provision of the Services.
- H8.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, the Customer shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- H8.7 The Contractor shall co-operate fully with the Customer during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.8 Within 10 Working Days of being requested by the Customer, the Contractor shall transfer to the Customer, or any person designated by the Customer, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Customer.

## **H9 Exit Management**

- H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

## **H10 Exit Procedures**

- H10.1 Where the Customer requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Customer and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

- H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
  - (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price.
- H10.3 When requested to do so by the Customer, the Contractor shall deliver to the Customer details of all licences for software used in the provision of the Services including the software licence agreements.
- H10.4 Within one Month of receiving the software licence information described above, the Customer shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Customer a plan for licence transfer.

## **H11 Knowledge Retention**

- H11.1 The Contractor shall co-operate fully with the Customer in order to enable an efficient and detailed knowledge transfer from the Contractor to the Customer on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Customer free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Customer. The Contractor shall comply with the Customer's request for information no later than 15 Working Days from the date that that request was made.

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

- I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Customer to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Finance Director (or equivalent) of the Contractor and the Commercial Director (or equivalent) of the Customer.

- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Customer considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 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 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
  - (b) the Parties shall within 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. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, 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;
  - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - (f) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.
- 12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Customer of its intentions and the Customer shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and
- (c) the Contractor may request by notice to the Customer that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Customer may consent as it sees fit.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

- 2 (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Customer shall give a notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- 3 (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Customer under clause I2.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## SCHEDULE 1 - CHANGE CONTROL

<b>Contract Change Note Number</b>	
<b>Contract Reference Number &amp; Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of \_\_\_\_\_ dated \_\_\_\_\_ (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

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

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

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

SIGNED ON BEHALF OF THE CUSTOMER:	SIGNED ON BEHALF OF THE CONTRACTOR:
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:



## SCHEDULE 2 – NON-DISCLOSURE AGREEMENT

THIS NON- DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [ ] (the "Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor] (the "Disclosee").

(each a "Party" and together the "Parties").

WHEREAS:

- (a) The Contractor has contracted with [insert name] (the "Customer") to provide services to the Customer in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Customer in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Customer which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Customer or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Customer together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

### Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Customer in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Customer which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Customer data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person,

intellectual property rights or know-how of the Customer and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

- b) "Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.
2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Customer.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Customer or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Customer from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall

institute and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.

11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Customer and notified to the Disclosee, to the Customer, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
  - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
  - 14.3 Disclosure authorised in writing by the Customer;
  - 14.4 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
  - 14.5 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Customer.
15. The Disclosee shall: notify the Contractor and the Customer promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Customer or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).
17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and

whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.

18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach or non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Customer.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Customer. The Parties shall only with the prior written consent of the Customer be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:

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SIGNED by the Disclosee:

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CONFIDENTIAL

## SCHEDULE 3 - CONTRACTOR AND THIRD-PARTY SOFTWARE

### CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “**Contractor Software**” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

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

### THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, “**Third Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third-Party Software shall consist of the following items:

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

# SCHEDULE 4 – SECURITY REQUIREMENTS

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

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

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

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in Schedule 7.

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

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

**“Security Plan”** means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

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

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

**“Third Party Software”** means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in Schedule 7.

## 1. PRINCIPLES OF SECURITY

- 1.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority Data.
- 1.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:
  - 1.2.1 is in accordance with Good Industry Practice and Law;
  - 1.2.2 complies with Security Policy Framework; and
  - 1.2.3 meets any specific security threats to the Contractor System.

- 1.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):
- 1.3.1 loss of integrity of Authority Data;
  - 1.3.2 loss of confidentiality of Authority Data;
  - 1.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - 1.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
  - 1.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
  - 1.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.
  - 1.3.7 processing and storage of authority data within the UK or by exception within the EEA. Any processing outside of the UK must be subject to specific approval by the Authority.

## **2. SECURITY PLAN**

- 2.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.
- 2.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.
- 2.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 2.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 may be unreasonably withheld or delayed. However, any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.4 shall be deemed to be reasonable.
- 2.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all



processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

- 2.5.1 the provisions of this Schedule 8;
  - 2.5.2 the provisions of Schedule 1 relating to security;
  - 2.5.3 the Information Assurance Standards;
  - 2.5.4 the data protection compliance guidance produced by the Authority;
  - 2.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
  - 2.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
  - 2.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 2.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 2.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 2.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.
- 2.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

### **3. AMENDMENT AND REVISION**

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

3.1.4 changes to security policies introduced Government-wide or by the Authority; and/or

3.1.5 a reasonable request by the Authority.

3.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

3.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a CCN and shall not be implemented until Approved.

#### **4. AUDIT AND TESTING**

4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in an Approved form) as soon as practicable after completion of each Security Test.

4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to the Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services.

4.4 Where any Security Test carried out pursuant to paragraphs 5.2 or 5.3 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

#### **5. BREACH OF SECURITY**

5.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

- 5.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Contractor shall immediately take all reasonable steps necessary to:
- 5.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
  - 5.2.2 prevent an equivalent breach in the future;
  - 5.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority;
  - 5.2.4 investigate the incident and produce a detailed report for the Authority within 5 working days of the discovery of the incident.
- 5.3 Such steps shall include any action or changes reasonably required by the Authority. If such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under the Contract, then the Contractor shall be entitled to refer the matter to the CCN procedure set out in Schedule 4.
- 5.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **6. CONTRACT EXIT – SECURITY REQUIREMENTS**

- 6.1 On termination of the Contract, either via early termination or completion of the Contract then the Contractor will either return all data to the Authority or provide a certificate of secure destruction using an industry and Authority approved method. Destruction or return of the data will be specified by the Authority at the time of termination of the Contract.

## **ANNEX – BASELINE SECURITY REQUIREMENTS**

### **1. HIGHER CLASSIFICATIONS**

- 1.1 The Contractor shall not handle Authority Data and information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Contractor shall seek additional specific guidance from the Authority.

### **2. END USER DEVICES**

- 2.1 When Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group (“CESG”) to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme (“CPA”).

- 2.2 Devices used to access or manage Authority Data and services must be under the management authority of the Authority or Contractor and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Contractor devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance:

<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>

Where the guidance highlights shortcomings in a particular platform the Contractor may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Contractor wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

### **3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION**

- 3.1 The Contractor and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Contractor must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.
- 3.2 The Contractor shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority Data are only carried out offshore within:
- 3.2.1 the European Economic Area (EEA);
  - 3.2.2 in the US if the Contractor and or any relevant Sub-Contractor have signed up to the US-EU Privacy Shield Register; or
  - 3.2.3 in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has

entered into which have been defined as adequate by the EU Commission.

**3.3 The Contractor shall:**

- 3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Contractor ceasing to trade;
- 3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Authority Data held by the Contractor when requested to do so by the Authority.

**4. NETWORKING**

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

**5. SECURITY ARCHITECTURES**

- 5.1 The Contractor shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Data.
- 5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) the Contractor shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification(<http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor).

**6. PERSONNEL SECURITY**

- 6.1 Contractor Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Contractor shall agree on a case by case basis Contractor Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.

- 6.3 The Contractor shall prevent Contractor Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Contractor Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Contractor or Sub-Contractors grants increased ICT privileges or access rights to Contractor Personnel, those Contractor Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL**

- 7.1 The Contractor shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Contractor shall retain an audit record of accesses.

## **8. AUDIT AND MONITORING**

- 8.1 The Contractor shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include:
  - 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor). To the extent the design of Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Contractor) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Contractor and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
- 8.3 The Contractor shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 months.

## SCHEDULE 5 – DEED OF GUARANTEE TEMPLATE

Guarantee

This Deed is made on 20[ ]

Between

- (1) [INSERT DETAILS] (Guarantor); and
- (2) [INSERT DETAILS] (Contracting Authority) at [ ].

By an agreement (Contract) dated ..... and made between (1) the Contracting Authority and (2) the Contractor, the Contractor has agreed to provide the Services (as such term is defined under the Contract) in accordance with the terms and conditions of the Contract.

It is agreed

1 Guarantee

- 1.1 In consideration of the Contracting Authority entering into the Contract with the Contractor, as the Guarantor hereby acknowledges, the Guarantor hereby unconditionally and irrevocably guarantees to the Contracting Authority as sole and primary obligor:
  - (a) the due and punctual payment by the Contractor of all sums and liabilities payable or to be payable under or pursuant to the Contract to the Contracting Authority as and when the same fall due (with the intention that any amount not recoverable for any reason from the Guarantor under this Deed on the basis of a guarantee shall nevertheless be recoverable on the basis of an indemnity); and
  - (b) the due and punctual performance and observance by the Contractor of all other acts, covenants, warranties, duties, undertakings and obligations to be performed or observed by the Contractor under or pursuant to the Contract, and hereby undertakes to keep the Contracting Authority fully and effectually indemnified against all losses, damages, costs, claims and expenses whatsoever and howsoever arising out of or in connection with any failure on the part of the Contractor to effect due and punctual payment of any sum and/or liability as aforesaid and/or to perform or observe all or any of the other acts, covenants, warranties, duties, undertakings and obligations as aforesaid for any reason whatsoever, including the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Contractor or the termination of the Contract or the employment of the Contractor under the Contract and undertakes to pay all sums covered by this indemnity on the Contracting Authority's first written demand without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever provided always that the Guarantor's liability under or pursuant to this Deed shall not exceed the Contractor's liability under or pursuant to the Contract.

- 1.2 The obligations of the Guarantor under or pursuant to this Deed shall not be discharged except by performance or the procurement of performance by the Guarantor. The guarantee given by the Guarantor under this Deed shall be a primary obligation of the Guarantor and accordingly the Contracting Authority shall not be obliged before enforcing their rights under this Deed and the obligations of the Guarantor under or pursuant to this Deed shall not be subject to the Contracting Authority taking any steps or action against the Contractor, including, without limitation, the granting of any time or indulgence to the Contractor, the taking of any legal proceedings or action or the obtaining of any judgment against the Contractor, the making or filing of any claim in bankruptcy, liquidation, winding-up or dissolution of the Contractor or the pursuance or exhaustion of any other right or remedy against the Contractor.
- 1.3 The rights of the Contracting Authority and the obligations of the Guarantor under or pursuant to this Deed shall not be prejudiced or affected by any extension of time, indulgence, forbearance or concession given to the Contractor, or any assertion of or failure to assert any right or remedy against the Contractor, or by any modification or variation of the provisions of the Contract, or by the administration, receivership, insolvency, bankruptcy, winding-up, liquidation, dissolution, reconstruction, re-organisation, amalgamation or incapacity of the Contractor or any change in the status, function, control or ownership of the Contractor, or by the Contracting Authority holding or taking any other or further guarantees or securities or by the invalidity of any such guarantees or securities or by the Contracting Authority varying, releasing, exchanging, enforcing or omitting or neglecting to enforce any such guarantees or securities, or by any other thing which might otherwise wholly or partially discharge the Guarantor from its obligations under this Deed. Without prejudice to the generality of the foregoing nor shall the Guarantor be discharged or released (in whole or in part) from its obligations under this Deed by any of the following (notwithstanding, where relevant that any of the same may be without the consent of the Guarantor):
- (a) an assignment of the Contract or a novation of the Contract; and
  - (b) any incapacity or lack of power, authority or legal personality of the Contractor.
- 1.4 The guarantee and indemnity contained in this Deed shall be a continuing guarantee and indemnity and shall remain in full force and effect until all monies payable to the Contracting Authority by the Contractor under or pursuant to the Contract shall have been duly paid and all the Contractor's obligations under or pursuant to the Contract shall have been duly performed. If any payment received by the Contracting Authority pursuant to this Deed or the Contract shall on the subsequent insolvency of the Contractor or of the Guarantor be avoided under any laws relating to insolvency, such payment shall not be considered as having discharged or diminished the liability of the Guarantor hereunder; and the liability of the Guarantor hereunder shall continue to apply as if such payment had at all times remained owing by the Contractor and the Guarantor shall indemnify the Contracting Authority in respect thereof.
- 2 General provisions
- 2.1 This Deed is in addition to and not in substitution for any other security which the Contracting Authority may at any time hold in relation to the Services and may be enforced without first having recourse to any such security.
- 2.2 Subject to the express provisions of this Deed, the rights and remedies of the Contracting Authority under, or pursuant, to this Deed are cumulative, may be



exercised as often as the Contracting Authority considers appropriate and are in addition to its rights and remedies under general law.

- 2.3 The Guarantor agrees to be bound by decisions made pursuant to the dispute resolution procedure under the Contract.
- 2.4 Subject to clause 2.3, this Deed and any non-contractual obligations arising out of, or in connection with it, are governed by, and shall be construed in accordance with the laws of England and Wales.
- 2.5 The Courts of England and Wales shall have exclusive jurisdiction in respect of all matters relating to or arising out of this Deed and its performance (including in relation to any non-contractual obligations arising out of or in relation to this Deed).
- 2.6 If a provision of this Deed is or becomes illegal, invalid or unenforceable, such provision shall not affect the legality, validity or enforceability of any other provision of this Deed, and the parties shall negotiate in good faith and in a reasonable manner to agree the terms of a mutually acceptable and satisfactory alternative for that provision.
- 2.7 Notices hereunder shall be served on the Guarantor at its registered office.

Executed as a deed by the parties or their duly authorised representatives on the date of this Deed.

Executed as a deed by  
[GUARANTOR}  
acting by its duly authorised representative(s)

Executed as a deed by  
[INSERT NAME] acting by its duly authorised representative(s)

## SCHEDULE 6 - EXIT MANAGEMENT STRATEGY

Exit Management Strategy - To be completed as applicable

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## SCHEDULE 7 – KEY PERFORMANCE INDICATORS

Approved Contractors will be expected to deliver services in line with the Key Performance Indicators (KPIs) outlined below. These are the minimum key performance indicators which will be used to measure the success of this Contract.

No	Key Performance Indicator	Threshold
1	<b>Delivery of Survey and Feedback outputs</b> The Contractor is required to deliver good quality survey outputs for each of the defined work packages, in line with CQC's guidance, instructions or commissioning notes for any work package.	100% Critical KPI
2	<b>Resource mobilisation in line with survey programme requirements profile</b> The Contractor is required to ensure that there are sufficient personnel and other resources to deliver the work packages on time and to the quality standards required.	95% Critical KPI
3	<b>Attendance at Meetings</b> The Contractor is required to attend all planned meetings including briefing meetings for each survey and an annual contract review meeting unless otherwise agreed with the Commissioning organisation	97% Critical KPI
4	<b>Availability of Contractor</b> The Approved Contractor will be contactable to the Commissioning organisation between the hours of 9am to 5pm Monday to Friday (excluding Bank Holidays)  The Contractor is required to respond to all general queries within 24 hours.  Simple queries should be resolved within 48 hours.  Complex queries should be resolved within 5 days.	95% Critical KPI   95% Non-critical KPI  95% Non-critical KPI  95% Non-critical KPI
5	<b>Security Requirements</b> Services will be delivered in accordance with information security, data protection, GDPR, any confidentiality requirements including those agreed with the Confidentiality Advisory Group (CAG). The Approved Contractors will advise CQC or its Co-ordination Centre where any such breach occurs.	100% Critical KPI

6	<b>Delivery Timescales</b> Services will be delivered in accordance with agreed timelines and any change is raised and agreed with the commissioning authority.	95% Critical KPI
7	<b>Evaluation and learning</b> Evaluation and learning will be completed at the end of each delivered package, and any identified improvements flagged along with an action plan for development.	95% Non-critical KPI
8	<b>Quality of Expertise</b> The Approved Contractor is to ensure that individuals providing support to the survey programme are those stated in the response or an equivalently qualified individual where the stated personnel have left.	100% Critical KPI
9	<u><b>Quality Assurance Framework</b></u> The Approved Contractor is required to deliver survey and feedback outputs to a standard that is in line with CQC's quality assurance framework.	100% Critical KPI

The Authority reserves the right to use the performance data associated with this as a means to measure contract and supplier performance and these will be used to determine contract remedy to be applied.

Performance will be scored on a points system, with a failure to meet critical KPIs (3 points) and non-critical (1 point). If a breach of 3 points or more is made over two consecutive months then the supplier will be in breach of contract and remedy applied. This breach can be made up of either 1 critical breach or a number of non-critical breaches or a mixture of the two.

Numbers of points will be used to determine actions needed including a mechanism of "requires action" and or "contract action notices".

## **SCHEDULE 8 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

NOTE - To be provided by the Contractor within thirty (30) days of contract commencement

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## SCHEDULE 9 – MOBILISATION PLAN

[To be mutually agreed between the Customer and the Contractor]

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## SCHEDULE 10 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Controller's Data Protection Officer are:

Name:	
Address:	
E-mail:	

2. The contact details of the Processor's Data Protection Officer are:

Name:	
Address:	
E-mail:	

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>
Subject matter of the processing	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>
Duration of the processing	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>
Nature and purposes of the processing	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>
Type of personal data	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>

Categories of Data Subject	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>To be completed by the Commissioning Authority (Customer) as Data Controller and appended to the Call-Off Order Form</i>

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