

GB-Shrewsbury: DONV 011 - Viability and Deliverability Study

Competitive Contract Notice

1. Title: GB-Shrewsbury: DONV 011 - Viability and Deliverability Study

2. Awarding Authority:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. 01743 252992, Fax. 01743 253910, Email: procurement@shropshire.gov.uk, URL:

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

3. Contract Type: Services

Sub Type: Management consultant services and related services.

4. Description: Project management consultancy services. The purpose of the commission is to inform:

- The ongoing Local Plan Review;
- The application of appropriate Affordable Housing policy and contribution rates; and
- Following the completion of the Local Plan Review, the preparation of an updated Community Infrastructure Levy (CIL) Charging Schedule.

The assessment should ensure that the draft Local Plan is viable and deliverable. Specifically, it should ensure that:

- The draft Local Plan vision, objectives, policies and proposals (individually and cumulatively) are viable and the plan is deliverable.
- The scale and distribution of development identified in the plan is viable and deliverable within the draft Local Plan period, informed by an assessment of market capacity.
- The sites/types of sites identified in the plan are viable within the plan period (individually and cumulatively) and determine whether there is potential for further developer contributions to infrastructure (other than that necessary to make the development suitable in planning terms); and/or further contributions to the provision of affordable housing.

Shropshire Council is looking to appoint a suitable contractor to complete the Viability and Deliverability Assessment by the 31st January 2020.

5. CPV Codes:

72224000 - Project management consultancy services.

6. NUTS Codes :

UKG22 - Shropshire CC

7. Main Site or Location of Works, Main Place of Delivery or Main Place of Performance: Shropshire CC,

8. Reference Attributed by the Awarding Authority: DONV 011

9. Estimated Value of Requirement: Category J: 25K to 50K

Currency: GBP

10. Deadline for Expression of Interest: 05/11/2019 12:00:00

11. Address to which they must be sent:

Shropshire Council

Shirehall, Abbey Foregate, Shrewsbury, SY2 6ND, United Kingdom

Tel. 01743 252992, Fax. 01743 253910, Email: procurement@shropshire.gov.uk, URL:

www.shropshire.gov.uk

Contact: Procurement, Attn: Procurement

12. Other Information:

Other Information: For more information about this opportunity, please visit the Delta eSourcing portal at:

<https://www.delta-esourcing.com/tenders/UK-GB-Shrewsbury:-DONV-011---Viability-and-Deliverability-Study/Q985V8WWB6>

To respond to this opportunity, please click here:

<https://www.delta-esourcing.com/respond/Q985V8WWB6>

Suitable for VCO: Yes

Procedure Type:OPEN

Period of Work Start date: 11/11/2019

Period of Work End date: 31/01/2020

Is this a Framework Agreement?: no

**Commissioning Development & Procurement
Finance Governance & Assurance**

Shirehall, Abbey Foregate
Shrewsbury, SY2 6ND



Tel: [REDACTED]

Please ask for: [REDACTED]

Email: [REDACTED]

Dear Tenderer

**DONV 011- VIABILITY AND DELIVERABILITY STUDY
SHROPSHIRE COUNCIL**

You have been invited to tender for the above requirement. With this letter please find copies of the following documents:

- Instructions for Tendering (for completion and return)
- Tender Response Document (for completion and return)
- Viability Brief
- Draft Contract

Tenders should be made on the enclosed Tender Response Document. Your Tender must be completed, signed and returned along with a signed copy of the instructions for tendering through our Delta Tenderbox. Please pay particular attention to the points below concerning the returning of tenders.

Returning of Tenders

- The deadline for returning tenders is **noon on 5th November 2019**, any tenders received after this time will not be accepted
- Tenders are to be submitted through Delta, our electronic tender portal
 - **Please ensure that you allow yourself at least two hours when responding prior to the closing date and time**, especially if you have been asked to upload documents. If you are uploading multiple documents you will have to individually load one document at a time or you can opt to zip all documents in an application like WinZip. Failure to submit by the time and date or by the method requested will not be accepted.
 - **Once you upload documentation ensure you follow through to stage three and click the 'response submit' button. Failure to do so, will mean the documents won't be viewable by the Council.**

Tenders **cannot** be accepted if:

- Tenders are received by post, facsimile or email
- Tenders are received after **12 noon on the given deadline**

Freedom of Information

Under the provisions of the Freedom of Information Act 2000 from 1 January 2005, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. Information about your organisation, which Shropshire Council may receive from you may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

Therefore if you provide any information to Shropshire Council in the expectation that it will be held in confidence, you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.

Other Details

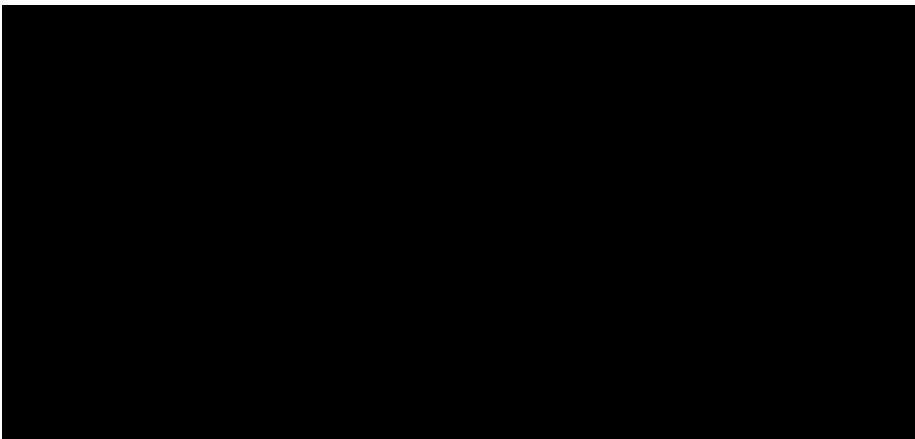
Please note that if supplementary questions are raised by any tenderer prior to the closing of tenders and Shropshire Council decides that the answers help to explain or clarify the information given in the Tender Documents, then both the questions and the answers will be circulated to all enterprises invited to submit a tender. Please raise all clarification questions before the deadline of **29th October 2019**.

Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council's involvement

Please also note that Shropshire Council is committed to achieving Social Value outcomes through maximising the social, economic and/or environmental impact of all its procurement activity. Specific requirements for this contract are set out within the Tender Response Document and in addition for your further information the council's Social Value Framework guidance can be found at www.shropshire.gov.uk/doing-business-with-shropshire-council.

If you have any queries relating to this invitation to tender, please contact us through the Delta e-tendering portal.

Yours faithfully



Shropshire Council

Viability and Deliverability Assessment: Project Tender Brief

1. Introduction

- 1.1. The purpose of the commission is to inform:
 - The ongoing Local Plan Review;
 - The application of appropriate Affordable Housing policy and contribution rates; and
 - Following the completion of the Local Plan Review, the preparation of an updated Community Infrastructure Levy (CIL) Charging Schedule.
- 1.2. The assessment should ensure that the draft Local Plan is viable and deliverable. Specifically, it should ensure that:
 - The draft Local Plan vision, objectives, policies and proposals (individually and cumulatively) are viable and the plan is deliverable.
 - The scale and distribution of development identified in the plan is viable and deliverable within the draft Local Plan period, informed by an assessment of market capacity.
 - The sites/types of sites identified in the plan are viable within the plan period (individually and cumulatively) and determine whether there is potential for further developer contributions to infrastructure (other than that necessary to make the development suitable in planning terms); and/or further contributions to the provision of affordable housing.
- 1.3. The assessment methodology should conform with the National Planning Policy Framework (NPPF) requirements for viability assessment and the best practice guidance provided within the National Planning Practice Guidance (NPPG) on how to undertake a viability assessment for both planning purposes and Community Infrastructure Levy (CIL) purposes. The assessment methodology should also be informed by any other relevant guidance and best practice.
- 1.4. The resultant assessment should be clear, transparent and informed by appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers. Where appropriate, experience should be drawn from and reference made to comparable case studies.

2. Purpose of the Viability and Deliverability Assessment

- 2.1. The purpose of the commission is to inform:
 - The ongoing Local Plan Review;
 - The application of appropriate Affordable Housing policy and contribution rates; and
 - Following the completion of the Local Plan Review, the preparation of an updated Community Infrastructure Levy (CIL) Charging Schedule.

3. Work required

- 3.1. Primarily, the work will involve:
 - Development of an appropriate methodology for the assessment.
 - Determination of the inputs to the viability assessment (excluding those arising from draft planning policies and site-specific infrastructure requirements). This process should be informed by appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers in order to establish appropriate standardised inputs to the viability assessment. These inputs include:
 - Gross development value (GDV).
 - Costs (excluding those arising from planning policies and site-specific infrastructure requirements).
 - Land value.

- Landowner premium.
- Developer return.
- Determination of the costs arising from draft planning policies and standard site/site-specific infrastructure requirements. This process should also be informed by appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers.
- Assessment of the draft Local Plan vision, objectives, policies and proposals (individually and cumulatively) to ensure they are viable, and the plan is deliverable. This should also encompass the viability of any proposed changes to developer contributions following the review of sites/types of sites.
- Assessment of the scale and distribution of development identified in the plan to ensure that proposals are viable and deliverable within the Plan period, including an assessment of market capacity.
- Recommendations on the ratio of median earnings to median house prices that are considered affordable.
- Assessment of the sites/types of sites identified in the plan to ensure they are viable within the Plan period (individually and cumulatively).
- **Preparation of the evidence base document to support the soundness of Shropshire’s planning framework.**
- **Provision of technical support at the Local Plan Review Examinations in Public (EiP), as required.**
- **Provision of technical support at a subsequent CIL EiP.**

4. Undertaking the Assessment

4.1. The key stages of assessment can be summarised as follows:

Stage 1 – assessment methodology

4.2. The first stage involves the development and finalisation of the methodology for undertaking the Viability and Deliverability Assessment.

4.3. The assessment methodology should conform with the National Planning Policy Framework (NPPF) requirements for viability assessment and the best practice guidance provided within the National Planning Practice Guidance (NPPG) on how to undertake a viability assessment for both planning purposes and Community Infrastructure Levy (CIL) purposes. The assessment methodology should also be informed by any other relevant guidance and best practice.

4.4. The outputs from Stage 1 include:

- A robust assessment methodology.
- A component of the report should summarise this methodology in a clear and transparent way.

Stage 2 – determining inputs and stakeholder engagement

4.5. The NPPG on viability stipulates that the key principles for carrying out viability assessment includes “looking at the key elements of gross development value, costs, land value, landowner premium, and developer return”.

4.6. It also stipulates that “any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers and “follow the government’s recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available”.

4.7. As such, the second stage of the Viability and Deliverability Assessment involves consideration of these ‘key elements’, and determination of appropriate ‘standardised costs and values’ to input into the assessment. These costs and values should reflect

the diverse scope and geography of assessment and should be informed by appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers.

- 4.8. Work is currently ongoing to prepare the draft policies and finalise preferred site allocations for inclusion within the draft Local Plan. The intention is that these draft policies and preferred sites will be finalised towards the end of 2019. To allow work to progress on the Viability and Deliverability Assessment whilst these draft policies and preferred site allocations are finalised, stage 2 of the exercise should be divided into two components.
- 4.9. Specifically:
- Component 1: should address all inputs excluding those arising from draft planning policies and site-specific infrastructure requirements, including:
 - Gross development value (GDV).
 - Costs (excluding those arising from planning policies and site-specific infrastructure requirements).
 - Land value.
 - Landowner premium.
 - Developer return.
 - Component 2: should address inputs arising from draft planning policies and site-specific infrastructure requirements.
- 4.10. The outputs from Stage 2 include:
- Attendance at the Council's Developer and Agent Forums to inform/verify assumptions within each of the components of this element of the assessment.
 - Robust assumptions on the key elements of gross development value, costs (excluding those arising from planning policies and site-specific infrastructure requirements), land value, landowner premium, and developer return, to input into the wider assessment.
 - Robust assumptions on the costs arising from planning policies and site-specific infrastructure requirements, to input into the wider assessment.
 - A component of the report should summarise the assumptions utilised and how stakeholder involvement has informed them, in a clear and transparent way.

Stage 3 – viability and deliverability of vision, objectives, policies and proposals

- 4.11. The NPPF stipulates that “plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan”.
- 4.12. Reflecting this requirement, the third stage of the assessment involves a review of the costs resulting from the vision, objectives, policies and proposals of the draft Local Plan, alongside other relevant local and national policy, to ensure they do not undermine deliverability of the plan.
- 4.13. This will be directly informed by stages 1 and 2 of the assessment and will in turn directly inform latter stages of the assessment.
- 4.14. The outputs from Stage 3 include:
- Conclusions on the viability and deliverability of the draft Local Plan.
 - A component of the report should summarise this assessment and the conclusions reached in a clear and transparent way.

Stage 4 - viability and deliverability of the scale and distribution of development

- 4.15. The fourth stage of the assessment focuses on market capacity, to ensure that the scale and distribution of development proposed within the draft Local Plan is viable and deliverable within the Local Plan Review period.
- 4.16. Whilst Shropshire is considered to represent a single and self-contained housing market area (HMA), recognising that variation exists within the HMA, the following geographies are suggested for this exercise:
- *Settlement specific assessments for each of the proposed Strategic, Principal and Key Centres of:*
 - *Strategic Centre: Shrewsbury.*
 - *Principal Centres: Bridgnorth, Ludlow, Market Drayton, Oswestry and Whitchurch.*
 - *Key Centres: Albrighton, Bishop's Castle, Broseley, Church Stretton, Cleobury Mortimer, Craven Arms, Ellesmere, Highley, Much Wenlock, Shifnal and Wem.*
 - *Assessment of the rural area, using three catchments – north, central and south.*
- 4.17. It should be noted that the assessment undertaken for each of these geographies should recognise and consider any interaction with areas beyond the immediate geography, including where appropriate beyond the Local Authority boundary.
- 4.18. The outputs from Stage 4 include:
- Information on the capacity of the market over agreed assessment geographies.
 - Summary of the viability and deliverability of the scale and distribution of development proposed.
 - A component of the report should summarise this assessment and the conclusions reached in a clear and transparent way.

Stage 5 - Shropshire-wide viability and deliverability assessment

- 4.19. The fifth stage of the assessment involves consideration of the viability of potential development sites, using a site typology. Specifically, a series of factors will be used to group potential development sites into categories which will then be used to assess their viability.
- 4.20. The factors to be used to categorise potential development sites will include:
- **Location;**
 - **Existing use and context of the site,**
 - **Development proposed;**
 - **Scale of development;**
 - **Scale of units proposed; and**
 - **Method of disposal.**

Location:

- 4.21. The assessment should consider development viability by the following geographies:
- *Proposed Strategic, Principal and Key Centres of:*
 - *Strategic Centre: Shrewsbury.*
 - *Principal Centres: Bridgnorth, Ludlow, Market Drayton, Oswestry and Whitchurch.*
 - *Key Centres: Albrighton, Bishop's Castle, Broseley, Church Stretton, Cleobury Mortimer, Craven Arms, Ellesmere, Highley, Much Wenlock, Shifnal and Wem.*
 - *The rural area, as three catchments – north, central and south*

Please note: This should include a recognition of the distinction between designated rural areas where a lower affordable housing threshold can be applied and non-designated rural areas.

As part of this assessment recommendations should also be provided on the ratio of median earnings to median house prices that are considered affordable for each of the relevant geographies.

Existing use and context:

- 4.22. The assessment should reflect existing uses and the sites context. Existing use/context groupings should be agreed with Shropshire Council before undertaking the assessment and be defined using the following characteristics:
- *Whether the site is greenfield or brownfield.*
 - *Current land use(s).*
 - *Site context (whether it is within an existing settlement, adjacent to the existing settlements development boundary or detached from the existing settlements development boundary).*

Development proposed:

- 4.23. The assessment should consider the viability of development by proposed use. Proposed uses should be linked to the Use Class Order.

Scale of development:

- 4.24. Where relevant, identified use classes should also consider viability and deliverability by different scales of development. For instance:
- *Classes C2/C3/Sui Generis: Residential Institutions¹; C3: Residential Dwellings; and C4: Houses in Multiple Occupation:*
 - *0-1 units (reflecting the implications of self-build development and associated relief);*
 - *2-5 units (reflecting implications of affordable housing contribution threshold in areas designated as 'rural');*
 - *6-9 units (reflecting implications of affordable housing contribution threshold outside of areas designated as 'rural');*
 - *10-50 units;*
 - *51-100; and*
 - *101+*

Scale of units:

- 4.25. Where relevant, identified use classes should also consider viability and deliverability by different scales of units (Gross Internal Area). For instance:
- *For Use Class C3: Residential Dwellings:*
 - *Dwellings up to 106m² (reflecting the minimum Gross Internal Area for a 4 bedroom, 6 person, 2 storey dwelling identified within the MHCLG Technical housing standards – nationally described space standard (2015)).*
 - *Dwellings between 107m² and 250m².*
 - *Dwellings of 251m² or more.*
 - *For A1: Retail:*
 - *0-1,000m² (this category incorporates the average size for a convenience store (450m²));*
 - *1,001m²+ (this category incorporates most supermarket style convenience stores (1,500m² and above)).*

Method of disposal (only applies to residential development):

- 4.26. The assessment should reflect that the economics of build to rent schemes differ from build for sale, as they depend on long term income streams.

¹Distinction may be required between different forms of Residential Institution, for example traditional care homes and extra-care accommodation.

The term 'extra care accommodation' can be applied to a range of accommodation types intended to meet the needs of those who need assistance (primarily but not necessarily the elderly). These include 'assisted living', 'extra'; 'very sheltered housing'; 'close care'; 'continuing care retirement communities (more than 50 units) and 'retirement villages'. The use-class description of this accommodation can vary significantly and is not necessarily a reflection of accommodation provided.

4.27. Shropshire Council is seeking an indication of any variations in viability across residential development based on the floorspace / number of bedrooms per dwelling, whether the units are self-build or not; and whether the units are for sale or represent a purpose build rental scheme, to determine whether there is differing viability, dependent on these factors.

Assessment methodology

4.28. When assessing the viability of site typologies, account should be taken of:

- All relevant policies (local and national - individually and cumulatively).
- Local and national standards.
- Design requirements.
- Site-specific considerations (including on/off site infrastructure provision (or equivalent commuted sums) necessary to make the development suitable in planning terms).
- Other currently applied developer contributions.

4.29. A range of representative sample sites should be utilised to inform this work.

Assessment Structure

4.30. This stage of assessment should be comprehensive but proportional. Therefore, it should be undertaken in three components.

4.31. **Component 1:** will involve an initial consideration undertaken across all development site typologies. This stage should indicate the ability of each to comply with relevant policies (local and national - individually and cumulatively); design requirements; local and national standards; site specific considerations (including on/off site infrastructure provision (or equivalent commuted sums), necessary to make the development suitable in planning terms); and other currently applied developer contributions. Reference should be made to comparable case studies where possible.

4.32. If there are forms of development that are either not viable or only marginally viable, recommendations should be made as to how viability could be improved whilst maintaining quality of development.

4.33. **Component 2:** will involve provision of recommendations on the ratio of median earnings to median house prices that are considered affordable for each of the relevant geographies within the assessment.

4.34. **Component 3:** will involve a more detailed focus on those development site typologies with sufficient viability (headroom) to provide further developer contributions to infrastructure (other than that necessary to make the development suitable in planning terms); and/or further contributions to the provision of affordable housing (these conclusions should have due regard to the conclusions reached regarding the viability of the draft Local Plan vision, objectives, policies and proposals).

4.35. The assessment should then provide recommendations on the headroom available and the extent to which current developer contributions could be increased. This should include illustration of how this headroom can be applied to CIL, affordable housing (where appropriate) or a combination of the two. These recommendations should include maps indicating viability zones by development site typologies.

4.36. *A particular focus for this exercise is a consideration of the opportunity to require affordable housing contributions on smaller residential schemes within designated*

rural areas – what is the minimum site size that it is viable to require a contribution to affordable housing.

- 4.37. Recommendations should reflect national criteria and thresholds; the total contributions **likely** as a result of these recommendations; and crucially the balance between securing funding for necessary infrastructure and maintaining the viability of development and the ability to achieve the Local Plan's aspirations for growth (as such this will need to reflect/update conclusions reached within Stage 3 of the assessment).
- 4.38. Viability should not compromise the quality of development. But it is important to ensure that the total cumulative cost of relevant policies, local and national standards, design requirements, any site-specific considerations and development contributions are not of a scale that will make development unviable.

Stage 5 Outputs:

- 4.39. The outputs for stage 5 include:
1. Attendance at the Council's Developer and Agent Forums in order to verify assumptions; findings and recommendations of the viability modelling. Consider the necessity of revising conclusions and recommended developer contribution rates in the light of the stakeholder input.
 2. Recommendations on the ratio of median earnings to median house prices that are considered affordable for each of the relevant geographies.
 3. A viability model for Shropshire which provides an indication of the viability of development, based on sample sites, using the specific typologies identified; and these typologies in combination.
 4. Production of a tabular and geographical summary of the various viability areas / combinations across Shropshire, by location; existing use and context of the site; development proposed; scale of development; scale of units proposed; and method of disposal.
 5. A component of the report should summarise this assessment and the conclusions reached in a clear and transparent way.
 6. An assessment of the overall viability of the achievement of the Local Plan in Shropshire, if maximum or recommended developer contribution rates were applied. This should link/update the assessment undertaken at Stage 3.

Stage 6 – strategic sites viability and deliverability assessment²

- 4.40. This stage of the assessment will involve consideration of the viability of potential strategic sites. In the context of this study and consistent with the NPPG guidance on viability, strategic sites are those which are considered critical to delivering the strategic priorities of the plan, considering such factors as site size; site capacity; site location; sites that unlock other development sites; and sites within priority regeneration areas.
- 4.41. The strategic sites are to be confirmed, but are likely to be focused in the following settlements:
- Shrewsbury;
 - Bridgnorth;
 - Market Drayton;
 - Ludlow;
 - Oswestry; and
 - Whitchurch.

² Please Note: Consistent with the NPPG, this assessment will consider both sites associated with existing settlements which are considered key to delivery of the Local Plan and those strategic sites identified within the recent Local Plan Review consultation on strategic sites which focused on "large sites of more than 25ha in size, which are not associated with meeting the growth needs of any particular settlement and contribute to achieving the aspirations of the Economic Growth Strategy for Shropshire".

- 4.42. Outside these settlements, potential strategic sites include:
- Clive Barracks, Tern Hill;
 - The Former Ironbridge Power Station;
 - RAF Cosford; and
 - Land North of Junction 3 of the M54 – this site is currently subject to consideration but is **not** currently a preferred strategic site.
- 4.43. The methodology for identifying strategic sites for consideration will be confirmed at the inception meeting. Please Note: This assessment will consider both sites associated with existing settlements which are key to delivery of the Local Plan and strategic sites identified within the recent strategic sites consultation.
- 4.44. For each strategic site a comprehensive assessment will be undertaken to ensure the sites ability to comply with relevant policies (local and national - individually and cumulatively); design requirements; local and national standards; site specific considerations (including on/off site infrastructure provision (or equivalent commuted sums), necessary to make the development suitable in planning terms); and other currently applied developer contributions. Reference should be made to comparable case studies where possible.
- 4.45. If any of the potential strategic sites are either not viable or only marginally viable, recommendations should be made as to how viability could be improved whilst maintaining quality of development.
- 4.46. The assessment should then provide recommendations on the headroom available on potential strategic sites and the extent to which current developer contributions could be increased. This should include illustration of how this headroom can be applied to CIL, affordable housing (where appropriate) or a combination of the two.
- 4.47. Recommendations should reflect national criteria and thresholds; the total contributions **likely** as a result of these recommendations; and crucially the balance between securing funding for necessary infrastructure and maintaining the viability of development and the ability to achieve the Local Plan's aspirations for growth (as such this will need to reflect/update conclusions reached within Stage 3 of the assessment).
- 4.48. Viability should not compromise the quality of development. But it is important to ensure that the total cumulative cost of relevant policies, local and national standards, design requirements, any site-specific considerations and development contributions are not of a scale that will make development unviable.
- 4.49. The outputs for stage 6 include:
1. Attendance at the Council's Developer and Agent Forums in order to verify assumptions; findings and recommendations of the viability modelling. Consider the necessity of revising conclusions and recommended developer contribution rates in the light of the stakeholder input.
 2. Production of an assessment of the viability of the identified strategic sites for Shropshire.
 3. A component of the report should summarise this assessment and the conclusions reached in a clear and transparent way.
 4. An assessment of the overall viability of the achievement of the Local Plan in Shropshire, if maximum or recommended developer contribution rates were applied. This should link/update the assessment undertaken at Stage 3.

5. The Draft Report(s)

- 5.1. This stage of the assessment involves the production of draft report(s), summarising the draft findings of the assessment for review. The draft report(s) should include a clear and transparent information regarding:
- The methodology used for the assessment;
 - The appropriate and constructive engagement undertaken with stakeholders and a summary of how this has informed the assessment.
 - The assumptions used regarding the key elements of gross development value, costs, land value, landowner premium and developer return; how they have input into the assessment; and the process utilised to establish them.
 - Where relevant, appropriate references to example case studies.
 - How the assessment provides flexibility to its consideration of gross development value; costs; land value; landowner premium, and developer return.
 - Conclusions on the viability and deliverability of the draft Local Plan.
 - The viability and deliverability of the scale and distribution of development proposed.
 - Conclusions on the capacity of the market in Shropshire over agreed assessment geographies (recognising the interaction between them and the interaction with areas beyond Shropshire).
 - How the site typologies were identified and why they are appropriate.
 - The strategic sites considered.
 - The viability exercise undertaken for site typologies/strategic sites.
 - Why the exercise undertaken for site typologies/strategic sites is justified and robust.
 - How the site typologies/strategic sites assessment complies with the requirements of the NPPF and is consistent with best practice guidance in the NPPG on undertaking viability assessments to inform Local Plans and CIL.
 - Recommendations on the ratio of median earnings to median house prices that are considered affordable for each of the relevant geographies.
 - The overall viability of site typologies Shropshire, reflecting distinctions in viability by:
 - Geographical distribution across Shropshire;
 - Existing use/context;
 - Development proposed;
 - Scale of development;
 - Scale of units; and
 - Method of disposal.
 - Viability zones for different site typologies and combinations of these typologies (tabular and map format).
 - The overall viability of the strategic sites in Shropshire, taking account all policy requirements; local and national standards; site specific considerations (including on/off site infrastructure provision (or equivalent commuted sums), necessary to make the development suitable in planning terms); and other currently applied developer contributions.
 - If relevant, how the viability of any unviable or marginally viable site typologies or strategic sites could be increased, whilst maintaining the quality of development.
 - The opportunity to require affordable housing contributions on smaller residential schemes within designated rural areas.
 - The site typologies/strategic sites with sufficient viability (headroom) to make further developer contributions and the potential additional developer contributions that could be applied to site typologies/strategic sites using this headroom.

- An indication of the cost of each of these contributions as a proportion of site value and development cost and confirmation of the likely landowner and development profit that would be allowed with these contributions and confirmation that this is competitive.
 - Recommendations on the maximum rates to be applied in order to maintain viability.
 - Confirmation that conclusions will remain viable up to at least 2036 and provision of recommendations on the circumstances within which site-specific viability assessments at the decision-making stage may be required.
 - Provision of recommendations of the types of development and circumstances within which review mechanisms may be included in S106 Agreements. This will provide more certainty through economic cycles (both increases and decreases). Mechanisms could include:
 - Re-apportioning or changing timescales of contributions towards different items of infrastructure and affordable housing;
 - Specifying how significant increases in the overall value of a large or multi-phased development will be apportioned between the Local Authority and developer.
- 5.2. The report should be accompanied by a viability model for Shropshire which provides an indication of the viability of development, based on sample sites, using the specific typologies identified; and these typologies in combination.
- 5.3. Costings should allow for appropriate review of the draft report(s).

6. *The Final Report*

- 6.1. Production of a final report summarising the assessment undertaken and the conclusions reached. The resultant assessment should be clear, transparent and informed by appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers. Where appropriate, experience should be drawn from and reference made to comparable case studies.
- 6.2. The report should be accompanied by a viability model for Shropshire which provides an indication of the viability of development, based on sample sites, using the specific typologies identified; and these typologies in combination.
- 6.3. If necessary, as an additional service, appropriate representatives of the appointed Contractor will be expected to appear at the Examination in Public (EiP) of the Local Plan Review and/or CIL Charging Schedule, to provide expert input and justification of the viability assessment / rates informed by it.

7. *Provision of information*

- 7.1. Shropshire Council staff will, within reason, be able to supply information held by the Council or check data using local knowledge to inform the assessment process.
- 7.2. Appropriate and constructive engagement with stakeholders, including: landowners, developers, infrastructure providers and affordable housing providers will also represent a key source of information for the project.

8. *Further Requirements*

- 8.1. The completed study will form part of the evidence base for the Local Plan Review which will be subject to examination in public (EiP) to confirm its soundness. The conclusions reached within this Assessment may need to be explained/defended during this process

by relevant personnel from the successful Contractor. This requirement would form the basis of a separate contract if required.

9. **Project Management and Timescales**

- 9.1. Shropshire Council is intending to undertake pre-submission consultation on the draft Local Plan in March 2020. The Viability and Deliverability study is required sufficiently in advance of this consultation point to allow due consideration of its findings. As such a final report is required by the end of January 2020.
- 9.2. Recognising the ambitious timescales involved, Shropshire Council has proposed a structure to the assessment which will allow work to commence following the appointment of the Contractor for the project, whilst the draft policies and preferred sites are being finalised, towards the end of 2019.
- 9.3. The project can then further progress following the completion of the drafting of policies and identification of preferred sites, leading through to completion towards the end of January 2020.
- 9.4. A Steering Group comprising of Shropshire Council Officers will oversee the contract. Shropshire Council is looking to appoint a suitable contractor to complete the Viability and Deliverability Assessment by the 31st January 2020.

9.5. The key milestones are as follows:

15 th October 2019	Invitations to tender
12:00 on the 5 th November 2019	Deadline for receipt of tender
The week commencing 11 th November 2019	Successful contractor appointed
The week commencing 18 th November 2019 (confirmed on appointment)	Inception meeting
Date to be agreed at Inception Meeting	Attendance at the Council's Developer and Agent Forums
Date to be agreed at Inception Meeting	Attendance at the Council's Developer and Agent Forums
Date to be agreed at Inception Meeting	Progress Meeting: Review information collected to date and any further requirements. Discuss outline of report and other deliverables. Address any unforeseen issues.
Date to be agreed at Inception Meeting	Attendance at the Council's Developer and Agent Forums
31 st January 2020.	Study Completed: Report and maps submitted.

- 9.6. As part of the tender, the Contractor should provide details of the information to be provided for the progress meeting.

10. **Appointment**

- 10.1. Contractors are invited to submit a tender for the Shropshire Viability and Deliverability Assessment. This should explain how the work will be undertaken to meet the requirement of this brief. Submissions should include:
- Details of the cost of the project, including travel and subsistence.
 - Background information on the contractor, project lead and key personnel to be involved, including the amount of time they will devote to the project and an organisation chart where appropriate.
 - A project plan with timescales and milestones, including any contingency measures.

- Provide CVs and a summary of related experience for each person involved in the project with case studies as appropriate, including experience of defending similar work at EiP. Provide references where appropriate.
- Details of any information required from Shropshire Council and/or any third parties to inform the project.
- Details of how effective stakeholder engagement will be undertaken.
- A clear methodology, reflecting the key outputs of the study documented within the brief.
- An explanation of how the study will support the Shropshire Local Plan Review, establishment of appropriate affordable housing policies and contributions, a future review of the CIL charging schedule and inform the Development Management process.
- The extent of professional indemnity cover.

11. Budget

- 11.1. Shropshire Council cannot give any guarantee in relation to the value of this contract.
- 11.2. The Contractors tendering for this project should present a total fixed cost for its undertaking. This cost should be broken down into specific categories, including those associated with assessment; attendance at stakeholder meetings and production of the report.
- 11.3. The Contractors tendering for the project should also provide an indication of day rates for any additional work following the conclusion of the viability assessment, such as but not limited to, the attendance of EiP for the Local Plan Review and/or CIL Charging Schedule.
- 11.4. Shropshire Council will not be bound to accept the lowest or any price tendered. In particular, tenders must demonstrate how they will robustly consider all of the issues and expectations as set out in this brief. The aim is to ensure that the contract represents 'best value'.



INSTRUCTIONS FOR TENDERING

DONV 011- Viability and Deliverability Study

Shropshire Council Instructions for tendering

Contract Description:

The purpose of the commission is to inform:

- The ongoing Local Plan Review;
- The application of appropriate Affordable Housing policy and contribution rates; and
- Following the completion of the Local Plan Review, the preparation of an updated Community Infrastructure Levy (CIL) Charging Schedule.

The assessment should ensure that the draft Local Plan is viable and deliverable.

Specifically, it should ensure that:

- The draft Local Plan vision, objectives, policies and proposals (individually and cumulatively) are viable and the plan is deliverable.
- The scale and distribution of development identified in the plan is viable and deliverable within the draft Local Plan period, informed by an assessment of market capacity.
- The sites/types of sites identified in the plan are viable within the plan period (individually and cumulatively) and determine whether there is potential for further developer contributions to infrastructure (other than that necessary to make the development suitable in planning terms); and/or further contributions to the provision of affordable housing.

Shropshire Council is looking to appoint a suitable contractor to complete the Viability and Deliverability Assessment by the 31st January 2020.

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1.0 Invitation to Tender

- 1.1** You are invited to tender for the provision of Viability and Deliverability Study as detailed in the Tender Response Document. The contract will be commencing on the 11th November 2019 and ends on 31st January 2020.
- 1.2** Tenders are to be submitted in accordance with the Terms and Conditions of Shropshire Council and the instructions outlined within this document.
- 1.3** Tenders must be submitted in accordance with the following instructions. Tenders not complying in any particular way may be rejected by Shropshire Council (the Council) whose decision in the matter shall be final. Persons proposing to submit a Tender are advised to read the Invitation to Tender documentation carefully to ensure that they are fully familiar with the nature and extent of the obligations to be accepted by them if their Tender is accepted.
- 1.4** The Invitation to Tender documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Invitation to tender document other than on an “in confidence” basis to those who have a legitimate need to know or who they need to consult for the purpose of preparing the tender as further detailed in these Instructions for Tendering.
- 1.5** Tenderers shall not at any time release information concerning the invitation to tender and/or the tender documents for publication in the press or on radio, television, screen or any other medium without the prior consent of the Council.
- 1.6** The fact that a Tenderer has been invited to submit a tender does not necessarily mean that it has satisfied the Council regarding any matters raised in the pre-tender questionnaire submitted. The Council makes no representations regarding the Tenderer’s financial stability, technical competence or ability in any way to carry out the required services. The right to return to any matter raised in any pre-tender questionnaire submitted as part of the formal tender evaluation is hereby reserved by the Council.
- 1.7** The Invitation to Tender is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a tenderer to submit a tender or enter into a Contract or any other contractual agreement.
- 1.8** Shropshire Council is purchasing on behalf of itself and any wholly owned local authority company or other entity that is deemed to be a contracting authority by virtue of the Council’s involvement.
- 1.9** Tendering is required by Shropshire Council’s procurement processes that ensure that the Council is adhering to Managing Public Money guidelines. The Council anticipates that one company will be the lead consultant of a consortium of partners who provide the range of expertise needed for the project.

2.0 Terms and Conditions

2.1 Every Tender received by the Council shall be deemed to have been made subject to the General Terms and Conditions and these Instructions for Tendering unless the Council shall previously have expressly agreed in writing to the contrary.

2.2 The Tenderer is advised that in the event of their Tender being accepted by the Council, they will be required to undertake the required services.

3.0 Preparation of Tenders

3.1 Completing the Tender Response Document

3.1.1 Tenders should be submitted using the 'Tender Response Document' following the instructions given at the front of the document. The Tenderer's attention is specifically drawn to the date and time for receipt of Tenders and that no submission received after the closing time will be considered.

3.1.2 All documents requiring a signature must be signed;

- a) Where the Tenderer is an individual, by that individual;
- b) Where the Tenderer is a partnership, by two duly authorised partners;
- c) Where the Tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.

3.1.3 The Invitation to Tender Documents are and shall remain the property and copyright of the Council

3.2 Tender Preparation and Costs

3.2.1 It shall be the responsibility of Tenderers to obtain for themselves at their own expense all information necessary for the preparation of their Tender. No claim arising out of want of knowledge will be accepted. Any information supplied by the Council (whether in the Tender Documentation or otherwise) is supplied only for general guidance in the preparation of tenders.

3.2.2 Any Tenderer considering making the decision to enter into a contractual relationship with the Council must make an independent assessment of the Tender opportunity after making such investigation and taking such professional advice as it deems necessary.

3.2.3 Tenderers will be deemed for all purposes connected with their Tender submission where appropriate to have visited and inspected the Council, its assets, all the locations in respect of the delivery of the services/supplies/works and to have satisfied themselves sufficiently as to the nature, extent and character of the services supplies/works sought, and the human resources, materials, software, equipment, machinery, and other liabilities and other matters which will be required to perform the contract.

3.2.4 The Council will not be liable for any costs incurred by Tenderers in the preparation

or presentation of their tenders.

- 3.2.5** Tenderers are required to complete all pricing schedules in the Invitation to tender documents. The terms “Nil” and “included” are not to be used but a zero or figures must be inserted against each item. Unit rates and prices must be quoted in pounds sterling and whole new pence.
- 3.2.6** It shall be the Tenderer’s responsibility to ensure that all calculations and prices in the Tender documentation are correct at the time of submission.
- 3.2.7** The Tenderer is deemed to have made him/herself acquainted with the Council’s requirements and tender accordingly. Should the Tenderer be in any doubt regarding the true meaning and intent of any element of the specification he is invited to have these fully resolved before submitting his Tender. No extras will be allowed for any loss or expense involved through any misunderstanding arising from his/her failure to comply with this requirement.
- 3.2.8** Any Tender error or discrepancy identified by the Council shall be drawn to the attention of the Tenderer who will be given the opportunity to correct, confirm or withdraw the Tender.
- 3.2.9** The Tender Documents must be treated as private and confidential. Tenderers should not disclose the fact that they have been invited to tender or release details of the Tender document other than on an In Confidence basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing the Tender.

3.3 Parent Company Guarantee

It is a condition of contract that if the tendering company is a subsidiary then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company if requested to do so by the Council. Where the direct parent company cannot provide an adequate guarantee in the opinion of the Council, the Council will look to another group or associate company, with adequate assets, to be the guarantor. In cases where the contract is with a Joint Venture Company (JVC) or a Special Purpose Vehicle (SPV) company, which may have two or more parent companies and which may not be adequately capitalised or have sufficient financial strength on its own to support the risk and obligations it has under the contract, ‘joint and several’ guarantees / indemnities from the parent companies of the JVC or SPV may be sought.

3.4 Warranty

The Tenderer warrants that all the information given in their Tender and if applicable their Request to Participate Questionnaire is true and accurate. The information provided will be deemed to form part of any contract formed under this contract.

The Tenderer warrants that none of their current Directors have been involved in liquidation or receivership or have any criminal convictions

4.0 Tender Submission

- 4.1 Tenders must be submitted strictly in accordance with the letter of instruction accompanying this Invitation to Tender. Tenders must be submitted by the deadline of **noon, 5th November 2019**
- 4.2 No unauthorised alteration or addition should be made to the Specification and Tender Response Document, or to any other component of the Tender document. If any such alteration is made, or if these instructions are not fully complied with, the Tender may be rejected.
- 4.3 Qualified tenders may be submitted, but the Council reserves the right not to accept any such tender. The Council's decision on whether or not a Tender is acceptable will be final.
- 4.4 Tenderers should note that their Tender must remain open and valid and capable of acceptance for a period of at least 90 days.
- 4.5 Tenderers should note that Tenders and supporting documents must be written in English and that any subsequent contract, which may or may not be entered into, its formation, interpretation and performance, shall be subject to and in accordance with the laws of England and subject to the jurisdiction of the Courts of England and Wales.
- 4.6 Where Tender submissions are incomplete the Council reserves the right not to accept them.

5.0 Variant Bids

- 5.1 The Council is interested in alternative solutions which would provide and develop opportunities for savings in service costs, service improvement or other financial benefits. In particular, the Council wishes to encourage solutions which also deliver benefits and added value to the local economy, residents and the business community.
- 5.2 Tenderers may submit, at their discretion, a Tender offering a different approach to the project as a "Variant Bid". However, to permit comparability, at least one bid must be submitted strictly in accordance with the Invitation to Tender Documents (the "Compliant Tender"). Any Tender variant proposed must clearly state how it varies from the requirements of the Compliant Tender Documents, and be explicit in demonstrating the benefits that will accrue to the Council from adopting this approach. Tenderers will be required to identify which submission, in their view, demonstrates best value to the Council.
- 5.3 Variant Bids must contain sufficient financial and operational detail to allow any Variant Bid to be compared with the standard Tender, permitting its considerations in written form.

6.0 Tender Evaluation

- 6.1 The Tenderers may be called for interview to seek clarification of their tender or additional or supplemental information in relation to their tender. The presentations will not carry any weighting to the final score achieved by Tenderers, but will be

used to clarify and moderate issues raised in the Tenderer's submissions. Any areas of discrepancy between submissions and information gained from the presentations will be reviewed and scores previously awarded will be amended if necessary.

6.2 If the Council suspects that there has been an error in the pricing of a Tender, the Council reserves the right to seek such clarification, as it considers necessary from the Tenderer in question.

7.0 Clarifications

7.1 Tenderers are responsible for clarifying any aspects of the tendering process and/or the Invitation to Tender documents in the manner described below.

7.2 If you are unsure of any section and require further clarification, please contact via our Delta Tenderbox.

7.3 Where appropriate, the Authorised Officer named above may direct the Tenderer to other officers to deal with the matter.

7.4 All queries should be raised as soon as possible (in writing), in any event not later than **29th October 2019**.

7.5 All information or responses that clarify or enhance the tendering process will be supplied to all Tenderers on a uniform basis (unless expressly stated otherwise). These responses shall have the full force of this Instruction and where appropriate the Conditions of Contract. If a Tenderer wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and will seek to act fairly between the Tenderers, whilst meeting its public law and procurement duties in making its decision.

7.6 Shropshire Council reserves the right to issue amendments or modifications to this tender during the tender stage. These will be amended on the procurement portal where the tender was originally advertised and bids will be assumed to take account of any such modifications and amendments.

7.7 Except as directed in writing by the Authorised Officer, and confirmed in writing to a Tenderer, no agent or officer or elected Member (Councillor) of the Council has any express or implied authority to make any representation or give any explanation to Tenderers as to the meaning of any of the Tender Documents, or as to anything to be done or not to be done by a Tenderer or to give any warranties additional to those (if any) contained in the ITT or as to any other matter or thing so as to bind the Council in any way howsoever.

8.0 Continuation of the Procurement Process

8.1 The Council shall not be committed to any course of action as a result of:

- i) issuing this Invitation to Tender;
- ii) communicating with a Tenderer, a Tenderer's representative or agent in respect of this procurement exercise;
- iii) any other communication between the Council (whether directly or through its agents or representatives) and any other party.

8.2 The Council reserves the right at its absolute discretion to amend, add to or withdraw all, or any part of this Invitation to Tender at any time during the tendering stage of this procurement exercise.

8.3 At any time before the deadline for receipt of tender returns the Council may modify the Invitation to Tender by amendment. Any such amendment shall be numbered and dated and issued by the Council to all participating tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing its Tender return, the Council may in its sole discretion, extend the deadline for submission of the tender returns. The Council reserves the right to amend, withdraw, terminate or suspend all or any part of this procurement process at any time at its sole discretion.

9.0 Confidentiality

9.1 All information supplied by the Council in connection with or in these Tender Documents shall be regarded as confidential to the Council unless the information is already within the public domain or subject to the provisions of the Freedom of Information Act 2000.

9.2 The Contract documents and publications are and shall remain the property of the Council and must be returned upon demand.

9.3 Tenderers shall ensure that each and every sub-contractor, consortium member and/or professional advisor to whom it discloses these papers complies with the terms and conditions of this ITT.

9.4 The contents of this Invitation to Tender are being made available by the Council on condition that:

9.4.1 Tenderers shall at all times treat the contents of the Invitation to tender and any related documents as confidential, save in so far as they are already in the public domain and Tenderers shall not, subject to the provisions relating to professional advisors, sub-contractors or other persons detailed below, disclose, copy, reproduce, distribute or pass any of the contents of the Invitation to tender to any other person at any time or allow any of these things to happen;

9.4.2 Tenderers shall not use any of the information contained in this Invitation to tender for any purpose other than for the purposes of submitting (or deciding whether to submit) the tender; and

- 9.4.3** Tenderers shall not undertake any publicity activity within any section of the media.
- 9.5** Tenderers may disclose, distribute or pass this Invitation to tender to their professional advisors, sub-contractors or to another person provided that:
- 9.5.1** this is done for the sole purpose of enabling an Invitation to tender to be submitted and the person receiving the Information undertakes in writing to keep the Invitation to Tender confidential on the same terms as if that person were the Tenderer; or
- 9.5.2** the Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of the Invitation to Tender; or
- 9.5.3** the disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract(s) which may arise from it; or
- 9.5.4** the Tenderer is legally required to make such a disclosure.
- 9.6** The Council may disclose detailed information relating to the Invitation to Tender to its officers, employees, agents, professional advisors or Governmental organisations and the Council may make any of the Contracts and procurement documents available for private inspection by its officers, employees, agents, professional advisors, contracting authorities or Governmental organisations.
- 9.7** As a responder to this tender, the tenderer is reminded of the need for confidentiality and the need not to divulge its actual or intended tender price or an approximation of that price to any other person or body until the Council notifies the tenderer that the contract has been awarded.

9.8 Transparency of Expenditure

Further to its obligations regarding transparency of expenditure, the Council may be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

10.0 Freedom of Information

- 10.1** Please note that from 1 January 2005 under the provisions of the Freedom of Information Act 2000, the public (included in this are private companies, journalists, etc.) have a general right of access to information held by public authorities. One of the consequences of those new statutory responsibilities is that information about your organisation, which Shropshire Council may receive from you during this tendering process may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.
- 10.2** In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the Act, Shropshire Council may consider it appropriate to ask you for your views as to the release of any information before we make a decision as to how to respond to a request. In dealing with requests for information under

the Act, Shropshire Council has to comply with a strict timetable and it would therefore expect a timely response to any such consultation within five working days.

- 10.3** If, at any stage of this tendering process, you provide any information to Shropshire Council in the expectation that it will be held in confidence, then you must make it clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as “commercial in confidence” will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be given.
- 10.4** Shropshire Council will not be able to accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.
- 10.5** In certain circumstances where information has not been provided in confidence, Shropshire Council may still wish to consult with you as to the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party. However the decision as to what information will be disclosed will be reserved to Shropshire Council.

For guidance on this issue see: <http://www.ico.gov.uk>

11.0 Disqualification

- 11.1** The Council reserves the right to reject or disqualify a Tenderer’s Tender submission where:
- 11.1.1** The tenderer fails to comply fully with the requirements of this Invitation to Tender or is in breach of clause 15 of the Council’s General Terms and Conditions relating to Bribery and Corruption or is guilty of a serious or intentional or reckless misrepresentation in supplying any information required; or
- 11.1.2** The tenderer is guilty of serious or intentional or reckless misrepresentation in relation to its tender return and/or the procurement process.
- 11.1.3** The tenderer directly or indirectly canvasses any member, official or agent of the Council concerning the award of the contract or who directly or indirectly obtains or attempts to obtain information from any such person concerning any other Tender or proposed Tender for the services. The Canvassing Certificate must be completed and returned as instructed.
- 11.1.4** The Tenderer :
- a) Fixes or adjusts the amount of his Tender by or in accordance with any agreement or arrangements with any other person; or
 - b) Communicates to any person other than the Council the amount or approximate amount of his proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for preparation of the Tender for insurance purposes); or

- c) Enters into an agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any Tender to be submitted; or
- d) Offers or agrees to pay or give or does pay or gives any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any Tender or proposed Tender for the services any act or omission.

11.2 Any disqualification will be without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Tenderer may attract. The Non-Collusive Tendering Certificate must be completed and returned as instructed.

11.3 The Council reserves the right to disqualify an Applicant from further participating in this procurement process where there is a change in the control or financial stability of the Tenderer at any point in the process up to award of a contract and such change of control or financial stability has a materially adverse effect on the Tenderer's financial viability or ability to otherwise meet the requirements of the procurement process.

11.4 This tender is not a purchase order or an offer to contract and does not constitute an offer capable of acceptance. This tender does not commit Shropshire Council or any official of it to any specific course of action. The issue of this tender does not bind the Council or any official of it to accept any proposal, in whole, or in part, whether it includes the lowest priced proposal, nor does it bind any officials of the Council to provide any explanation or reason for its decision to accept or reject any proposal. Moreover, while it is the intention of Shropshire Council to enter contract negotiations with the selected tenderer, the fact that the Council has given acceptance to a specific tenderer does not bind it or any official of it in any manner to the tenderer. Acceptance of a proposal neither commits Shropshire Council to award a contract to any tenderer, even if all requirements stated in this tender are satisfied, nor does it limit Shropshire Council's right to negotiate in their best interest. Shropshire Council reserves the right to contract with a bidder for reasons other than the lowest price. Contract award will be post the tender process and may be awarded without discussions or negotiations.

12.0 E-Procurement

As part of its procurement strategy Shropshire Council is committed to the use of technology that can improve the efficiency of procurement. Successful Tenderers may be required to send or receive documents electronically. This may include purchase orders, acknowledgements, invoices, payment advices, or other procurement documentation. These will normally be in the Council's standard formats, but may be varied under some circumstances so as not to disadvantage small and medium suppliers.

13.0 Award of Contract

13.1 Award Criteria

The Award Criteria has been set out within the Tender Response Document accompanying this invitation to tender. The Council is not bound to accept the

lowest or any Tender.

13.2 Award Notice

The Council will publish the name and addresses of the successful Tenderers in the Official Journal of the European Union (OJEU) where appropriate. The Contracting Authority reserves the right to pass all information regarding the outcome of the Tendering process to the Office of Fair Trading to assist in the discharge of its duties. Additionally, the Council will adhere to the requirements of the Freedom of Information Act 2000 and Tenderers should note this statutory obligation.

13.3 Transparency of Expenditure

Further to its obligations regarding transparency of expenditure, the Council may also be required to publish information regarding tenders, contracts and expenditure to the general public, which could include the text of any such documentation, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act to be determined at the absolute discretion of the Council.

14.0 Value of Contract

Shropshire Council cannot give any guarantee in relation to the value of this contract.

15.0 Acceptance

15.1 Tenders must be submitted strictly in accordance with the terms of the Council's Invitation to Tender documentation and acceptance of the tender shall be conditional on compliance with this Tender Condition.

15.2 The Tender documentation including, the General and Special Terms and Conditions of Contract, the Tender Response document, these Instructions to Tender, together with the formal written acceptance by the Council will form a binding agreement between the Contractor and the Council.

15.6 The Tenderer shall be prepared to commence the provision of the supply and services on the start date of the contract being the week commencing 28th October 2019.

16.0 Payment Terms

Tenderers should particularly note that the principles governing public procurement require that, as far as is reasonably possible, payments for Goods, Works or Services are made after the provision. Therefore any indication of a pricing strategy within a Tender which provides for substantial payments at the outset of the Contract will be examined carefully to decide whether or not a Tender in such form can be accepted. If in the opinion of the Council such substantial payments appear excessive in relation to the requirements of the Contract the Council reserves, without prejudice to any other right to reject any Tender it may have, the right to require the Tenderer to spread such proportion of the costs as are considered excessive over the duration of the Contract.

17.0 Liability of Council

- 17.1** The Council does not bind himself to accept the lowest or any tender.
- 17.2** The Council does not accept any responsibility for any pre-tender representations made by or on its behalf or for any other assumptions that Tenderers may have drawn or will draw from any pre-tender discussions.
- 17.3** The Council shall not be liable to pay for any preparatory work or other work undertaken by the Tenderer for the purposes of, in connection with or incidental to this Invitation to Tender, or submission of its Tender response or any other communication between the Council and any other party as a consequence of the issue of this Invitation to Tender.
- 17.4** The Council shall not be liable for any costs or expenses incurred by any Tenderer in connection with the preparation of a Tender return for this procurement exercise, its participation in this procurement whether this procurement is completed, abandoned or suspended.
- 17.5** Whilst the Tender Documents have been prepared in good faith, they do not purport to be comprehensive nor to have been formally verified. Neither the Council nor any of its staff, agents, elected Members, or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any information given, nor do they make any representation or given any warranty, express or implied, with respect to the Tender Documents or any matter on which either of these is based (including, without limitation, any financial details contained within the Specification and Contract Documentation). Any liability is hereby expressly disclaimed save in the event of fraud, or in the event of specific warranties provided within the Contract Documentation.
- 18.0** The Contractor agrees that where requested in writing during the term of any Agreement for the supply Goods Works or Services it will ensure that an appropriately authorised representative of the Contractor shall attend a Committee meeting of the Council upon being invited to do so by the Council

19.0 Declaration

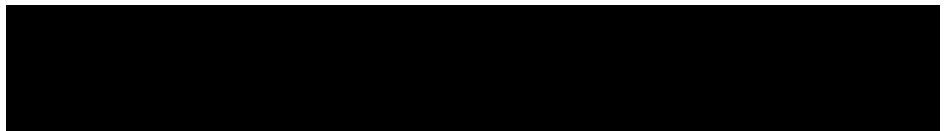
We, as acknowledged by the signature of our authorised representative, accept these Instructions to Tender as creating a contract between ourselves and the Council. We hereby acknowledge that any departure from the Instructions to Tender may cause financial loss to the Council.



Tender Response Document

DONV 011- Viability and Deliverability Study

Name of TENDERING ORGANISATION
(please insert)



Please also add your company name to the footer of each page of the returned document

Shropshire Council Tender Response Document

Contract Description/Specification:

The purpose of the commission is to inform:

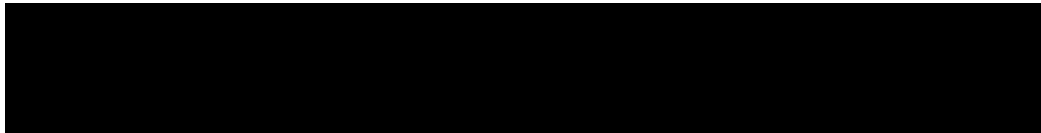
- The ongoing Local Plan Review;
- The application of appropriate Affordable Housing policy and contribution rates; and
- Following the completion of the Local Plan Review, the preparation of an updated Community Infrastructure Levy (CIL) Charging Schedule.

The assessment should ensure that the draft Local Plan is viable and deliverable.

Specifically, it should ensure that:

- The draft Local Plan vision, objectives, policies and proposals (individually and cumulatively) are viable and the plan is deliverable.
- The scale and distribution of development identified in the plan is viable and deliverable within the draft Local Plan period, informed by an assessment of market capacity.
- The sites/types of sites identified in the plan are viable within the plan period (individually and cumulatively) and determine whether there is potential for further developer contributions to infrastructure (other than that necessary to make the development suitable in planning terms); and/or further contributions to the provision of affordable housing.

Shropshire Council is looking to appoint a suitable contractor to complete the Viability and Deliverability Assessment by the 31st January 2020.



Instructions for the completion of this document

1. This document must be completed in its entirety with responses being given to all questions. If you are unsure of any section/question and require further clarification, please contact us via our Delta Tenderbox. You are recommended to keep a copy of all tender documents and supporting documents for your own records.
2. Tenderers must also complete and sign the four certificates in Sections A1 to A4. These must be signed;
 - a) Where the tenderer is an individual, by that individual;
 - b) Where the tenderer is a partnership, by two duly authorised partners;
 - c) Where the tenderer is a company, by two directors or by a director and the secretary of the company, such persons being duly authorised for the purpose.
3. All questions require specific responses from you relating to the organisation named in Section B Part 1 Question 1.1 (a). All information supplied must be accurate and up to date. The Council reserves the right to refuse to consider your application if the Tender Response Document is not fully completed or is found to be inaccurate.
4. Where copies of certificates and other details are requested a **copy must** accompany your tender response.

Contents

Section	Description	Page
A1	Form of Tender	7
A2	Non-Canvassing Certificate	8
A3	Non-Collusive Tendering Certificate	9
A4	Declaration of Connection with Officers or Elected Members of the Council	10
You must sign all 4 certificates in sections A1 to A4		
B Part 1	Supplier Information– For information only	11
B Part 2	Grounds for Discretionary Exclusion	12
Section C	Tender and Pricing Schedule	15

Evaluation Criteria

Tenders will be evaluated on the answers provided in this 'Tender Response Document'. The following criteria is made up of 'pass/fail' (selection criteria) questions and 'weighted marked' (award criteria) questions and shows how each section is to be marked.

Selection Criteria Pass/Fail Questions (Section B)

This information will be provided for proof of compliance and will be judged on a pass or fail basis. Applicants must comply with these issues to demonstrate their proven competency, financial stability, resources and other arrangements. Questions marked 'For information only' will not be assessed; however they must still be answered in full.

Section / Question No.	Selection Criteria
Section B Part 1	Supplier Information– For information only
Section B Part 2	Grounds for Discretionary Exclusion

In relation to discretionary exclusion grounds :

Financial viability: Responses will be analysed and evaluated by the Authority's Audit sections and will include checks via an independent agency (currently Equifax).

If the financial analysis of the Applicant (please note financial information provided by consortium members will be evaluated to assess the Applicant consortium as a whole) gives cause for concern as to its ability to deliver the Contract, the Applicant will fail this section.

If the financial analysis of the Applicant does not give any cause for concern as to its ability to deliver the Contract – it shall be deemed to have passed the section.

Please note the Contracting Authority reserves the right to further check the Financial Stability and Capacity of an applicant prior to any award of contract in the manner set out above in order to ensure that they still pass that requirement.

For other Discretionary exclusion grounds: If in the opinion of the Contracting Authority the responses provided casts serious doubt on the Tenderer's ability to perform this contract, they may be excluded.

Award Criteria – Weighted Marked Questions

Tenders will be evaluated on the answers provided in this Tender Response Document and judged against the criteria shown in the table below. The following award criteria is made up of 'Quality' and 'Price' and shows how each criteria is to be weighted against each other.

Section / Question No.	Award Criteria	Weighting / Max Marks Available
Price 40% (400 marks)		
Section C / Q 1	Price	400 marks
Total for price		400 marks
Quality 60% (600 marks)		
Section C / Q 2.1	Organisational Resource	1 / 10 max marks
Section C / Q 2.2	Project Plan	2 / 20 max marks
Section C / Q 2.3	Research preparation and Resources	2 / 20 max marks
Section C / Q 2.4	Information and support	1 / 10 max marks
Section C / Q 2.5	Stakeholder Engagement	4 / 40 max marks
Section C / Q 2.6	Methodology for determining appropriate 'standardised costs and values'	8 / 80 max marks
Section C / Q 2.7	Methodology for assessing the viability and deliverability of the draft Local Plan vision, objectives, policies and proposals	8 / 80 max marks
Section C / Q 2.8	Methodology for assessing the	8 / 80 max marks

	viability and deliverability of the scale and distribution of development identified in the draft Local Plan, within the Plan period.	
Section C / Q 2.9	Methodology for undertaking an assessment of market capacity across Shropshire.	8 / 80 max marks
Section C / Q 2.10	Methodology for identifying and assessing the viability and deliverability of development site typologies	8 / 80 max marks
Section C / Q 2.11	Methodology for identifying and assessing the viability and deliverability of development strategic sites.	8 / 80 max marks
Section C / Q 2.12	Shropshire Viability and Deliverability Assessment in support of Local Plan Review	2 / 20 max marks
Total for quality		60 / 600 max marks

Quality Questions/ Scoring Scheme

Questions within the quality sections shown above will be scored using the following scoring scheme. Each answer from the questions identified below will be given a mark between 0 and 10 with the following meanings:

Assessment	Mark	Interpretation
Excellent	10	<i>Exceeds the requirement. Exceptional demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	9	
Good	8	<i>Satisfies the requirement with minor additional benefits Above average demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures. Response identifies factors that demonstrate added value, with evidence to support the response.</i>
	7	
Acceptable	6	<i>Satisfies the requirement. Demonstration by the Tenderer of how they will meet this requirement by their allocation of skills and understanding, resources and quality measures, with evidence to support the response.</i>
	5	
Minor Reservations	4	<i>Satisfies the requirement with minor reservations Some minor reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with limited evidence to support the response.</i>

	3	
Serious Reservations	2	<i>Satisfies the requirement with major reservations. Considerable reservations regarding how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>
	1	
Unacceptable	0	<i>Does not meet the requirement Does not comply and/or insufficient information provided to demonstrate how the Tenderer will meet this requirement by their allocation of skills and understanding, resources and quality measures, with little or no evidence to support the response.</i>

The use of odd numbers indicates an answer's allocated mark lies between definitions.

The tender receiving the highest initial mark for Quality Criteria overall will receive the full 600 marks available for Quality. Other tenders will receive a final mark that reflects the final % difference in the initial marks between those tenders and the tender receiving the highest initial mark for Quality overall.

Price Evaluation and scoring

The most competitively priced tender will receive the maximum mark for price being **400**. **Less competitive tenders** will receive a % of the maximum mark that represents the difference in cost between that tender and the most competitively priced tender.

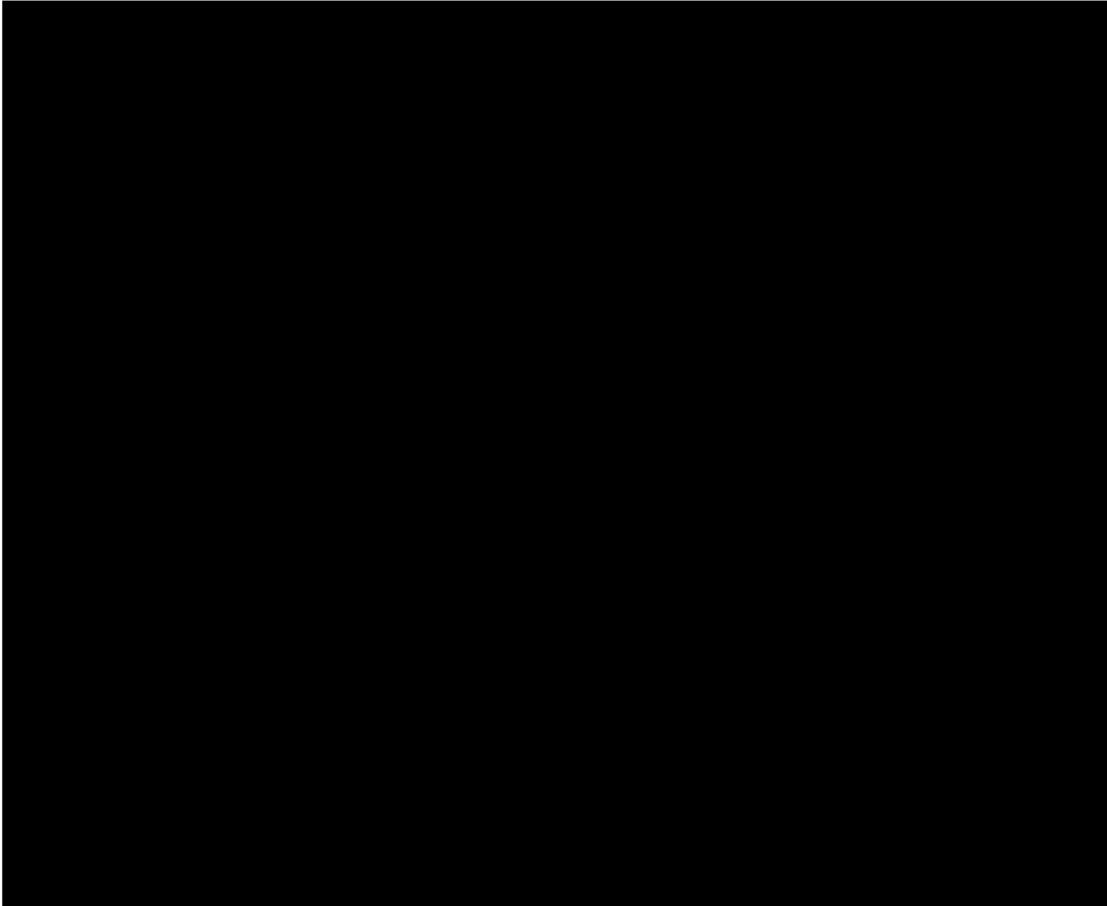
Section A:
1. Form of Tender

Form of Tender

Shropshire Council

Tender for Viability and Deliverability Study

We confirm that this, our tender, represents an offer to Shropshire Council that if accepted in whole, or in part, will create a binding contract for the Viability and Deliverability Study at the prices and terms agreed and subject to the terms of the invitation to tender documentation and the Terms and Conditions, copies of which we have received.



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Section A:
2. Non – Canvassing Certificate

Non-Canvassing Certificate

To: Shropshire Council (hereinafter called “the Council”)

I/We hereby certify that I/We have not canvassed or solicited any member officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/We will not in the future canvass or solicit any member officer or employee of the Council in connection with the award of this Tender or any other Tender or proposed Tender for the Services and that no person employed by me/us or acting on my/our behalf will do any such act.



Non-collusive Tendering Certificate

To: Shropshire Council (hereinafter called “the Council”)

The essence of selective tendering is that the Council shall receive bona fide competitive Tenders from all persons tendering. In recognition of this principle:

I/We certify that this is a bona fide Tender, intended to be competitive and that I/We have not fixed or adjusted the amount of the Tender or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other person.

I/We also certify that I/We have not done and undertake that I/We will not do at any time any of the following acts:-

- (a) communicating to a person other than the Council the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender for insurance); or
- (b) entering into any agreement or arrangement with any other person that he shall refrain from Tendering or as to the amount of any Tender to be submitted; or
- (c) offering or agreeing to pay or give or paying any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender for the Services any act or omission.

4. Declaration of Connection with Officers or Elected Members of the Council

Are you or any of your staff who will be affected by this invitation to tender related or connected in any way with any Shropshire Council Elected Councillor or Employee?

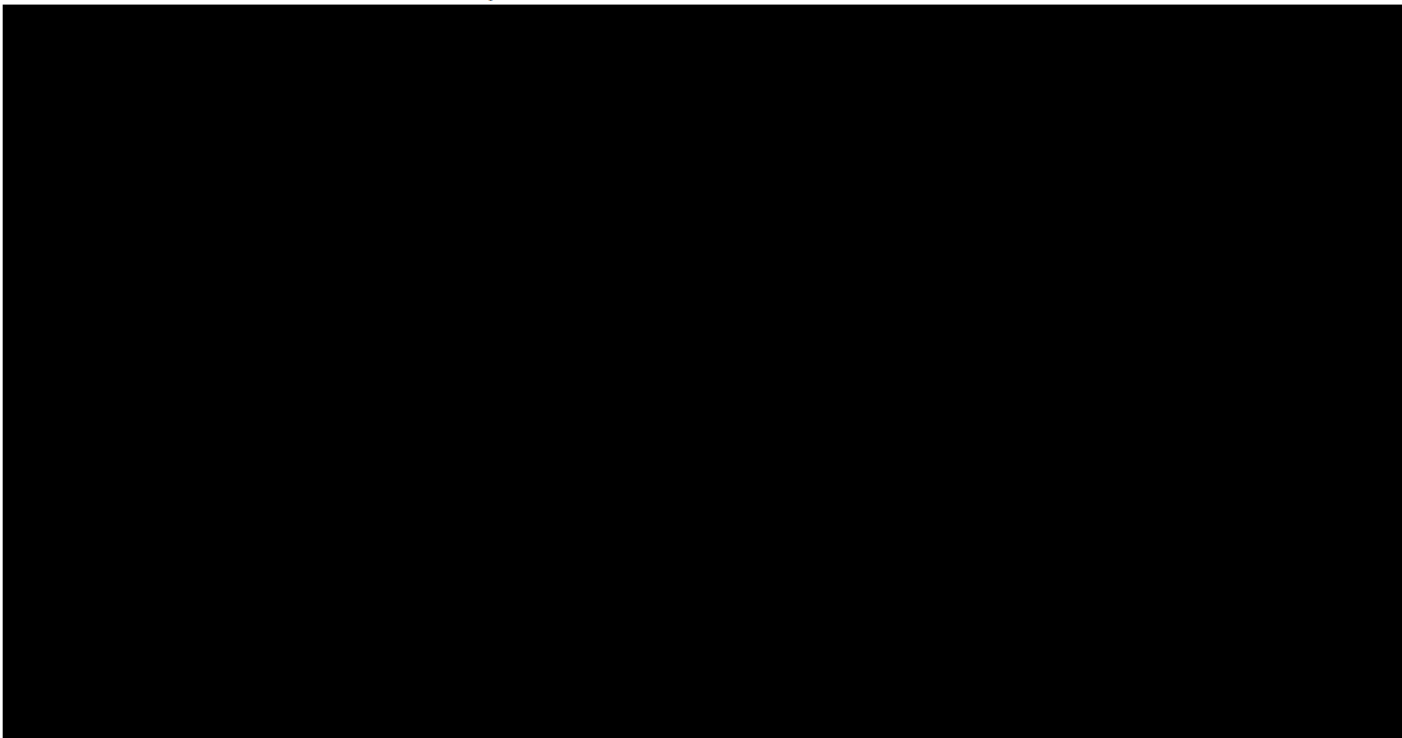
~~Yes~~ / No

If yes, please give details:

Name	Relationship

Please note:

This information is collected to enable the Council to ensure that tenders are assessed without favouritism. Whether or not you have a connection with elected members or employees will have no bearing on the success of your tender, but your tender will not be considered unless this declaration has been completed.



Part 1: Potential supplier Information

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	
1.1(b) – (i)	Registered office address (if applicable)	
1.1(b) – (ii)	Registered website address (if applicable)	
1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	
1.1(d)	Date of registration in country of origin	
1.1(e)	Company registration number (if applicable)	
1.1(f)	Charity registration number (if applicable)	
1.1(g)	Head office DUNS number (if applicable)	
1.1(h)	Registered VAT number	
1.1(i)	Are you a Small, Medium or Micro Enterprise (SME)2?	

Contact details and declaration

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation’s suitability to be invited to participate further in this procurement.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question Number	Question	Response
1.3(a)	Contact name	
1.3(b)	Name of organisation	
1.3(c)	Role in organisation	
1.3(d)	Phone number	
1.3(e)	E-mail address	
1.3(f)	Postal address	
1.3(g)	Signature (electronic is acceptable)	
1.3(h)	Date	

Part 2: Exclusion Grounds

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 2	Grounds for discretionary exclusion	
Question number	Question	Response
2.1	Do you have any conflicts of interest which should be considered in relation to other current or future work being undertaken by the tenderer or their team.	
2.2	If you have answered yes to question 2.1 please provide an explanation	

	Economic and Financial Standing	
Question number	Question	Response
3.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide one of the following: answer with Y/N in the relevant box.	
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of	

	Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	
3.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.	

Question number	Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015	
4.1	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	
4.2	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	

Additional Questions

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

Question number	Additional Questions	
5.1	Insurance	
	Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:	
	*It is a legal requirement that all companies hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders.	

5.2 – Compliance with equality legislation


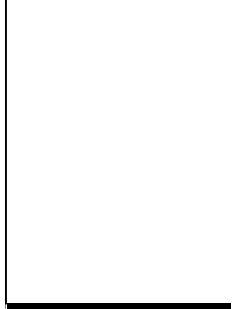

For organisations working outside of the UK please refer to equivalent legislation in the country that you are located.	
1.	In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in any jurisdiction other than the UK)?
2.	<p>In the last three years, has your organisation had a complaint upheld following an investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in any jurisdiction other than the UK), on grounds or alleged unlawful discrimination?</p> <p>If you have answered “yes” to one or both of the questions in this module, please provide, as a separate Appendix, a summary of the nature of the investigation and an explanation of the outcome of the investigation to date.</p> <p>If the investigation upheld the complaint against your organisation, please use the Appendix to explain what action (if any) you have taken to prevent unlawful discrimination from reoccurring. You may be excluded if you are unable to demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination reoccurring.</p>
3.	If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?

5.3 – Environmental Management

1.	<p>Has your organisation been convicted of breaching environmental legislation, or had any notice served upon it, in the last three years by any environmental regulator or authority (including local authority)? If your answer to the this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial action or changes you have made as a result of conviction or notices served.</p> <p>The Authority will not select bidder(s) that have been prosecuted or served notice under environmental legislation in the last 3 years, unless the Authority is satisfied that appropriate remedial action has been taken to prevent future occurrences/breaches.</p>
2.	If you use sub-contractors, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of environmental legislation?

5.4 – Health & Safety

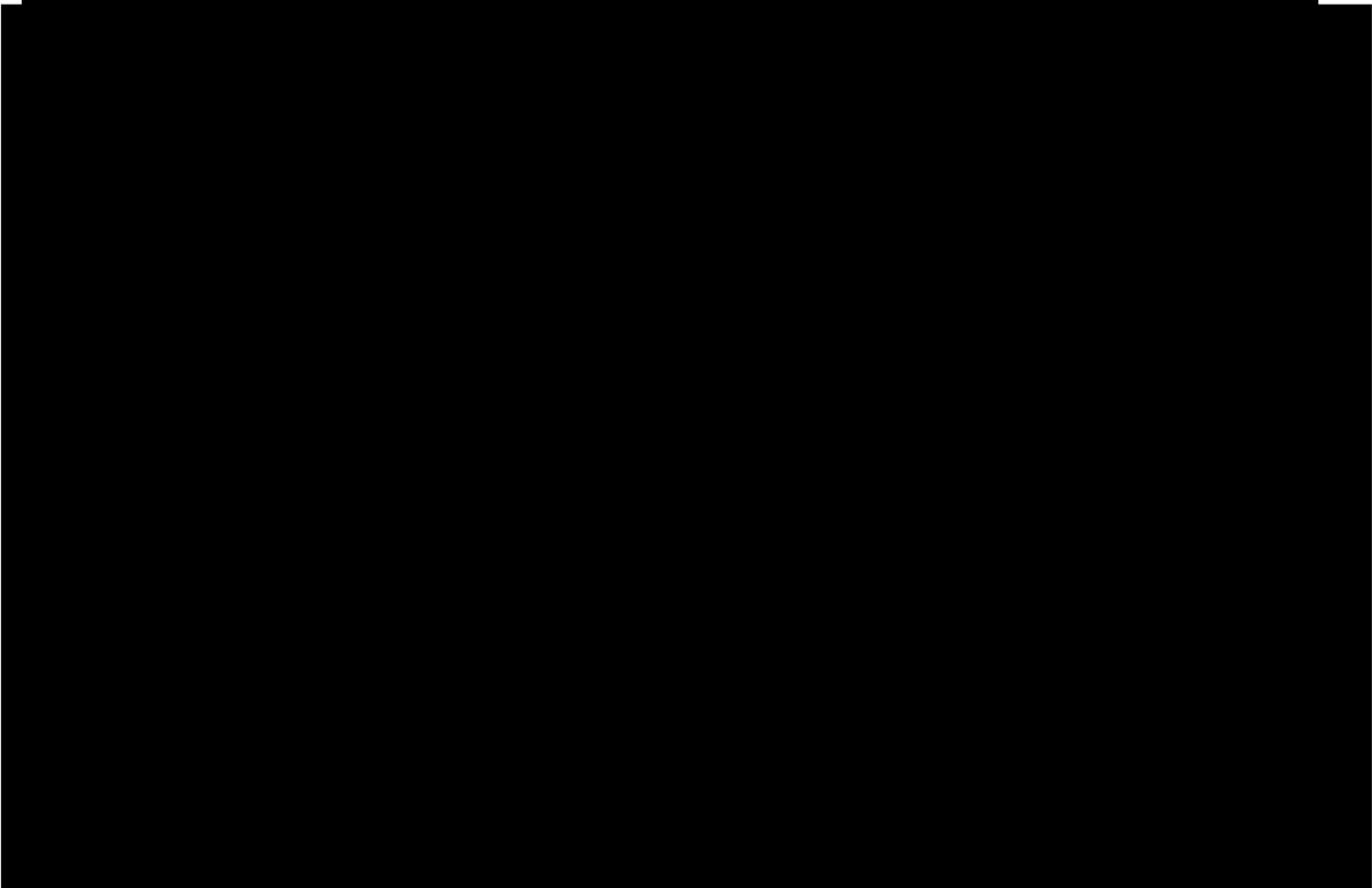
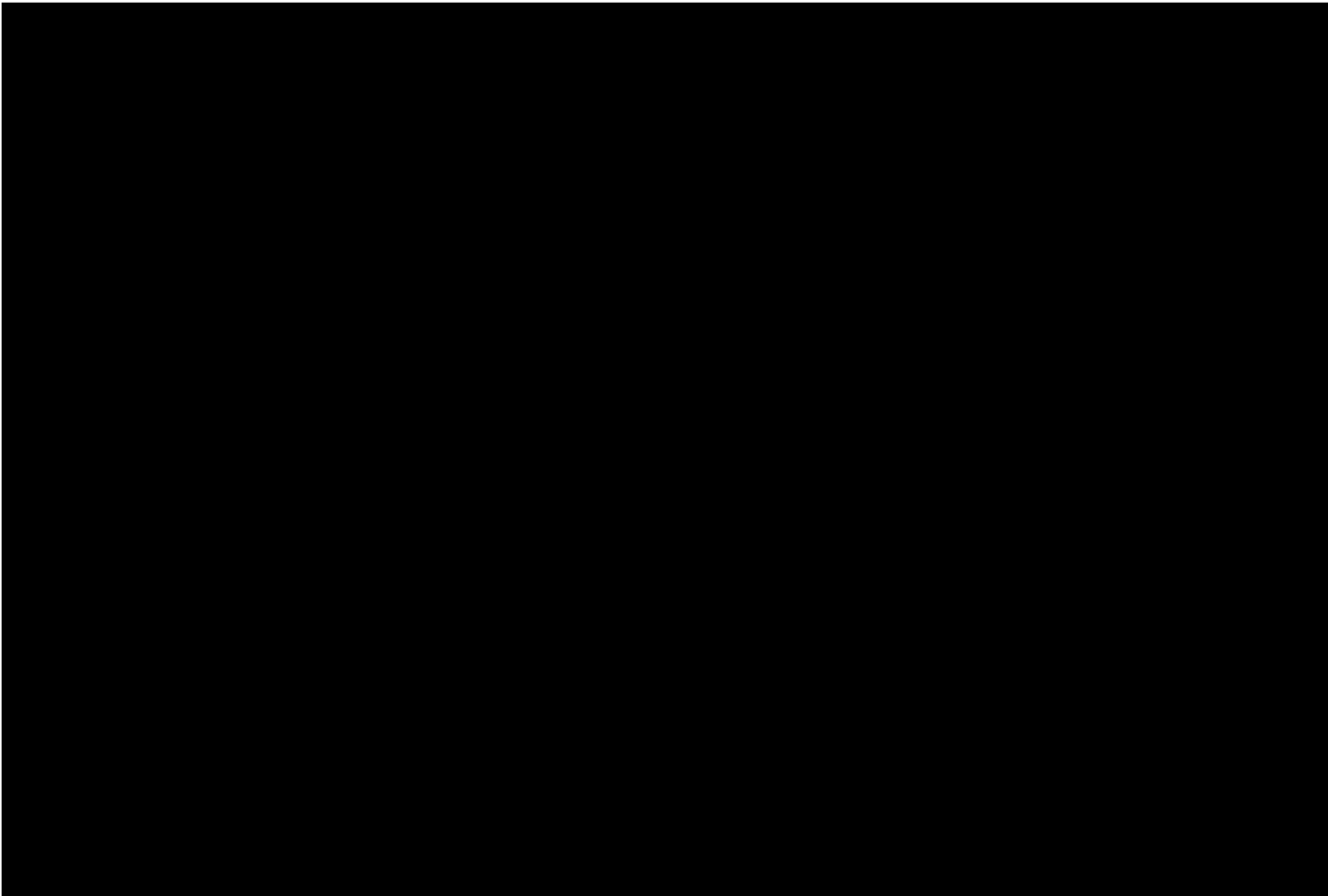
1.	Please self-certify that your organisation has a Health and Safety Policy that complies with current legislative requirements.
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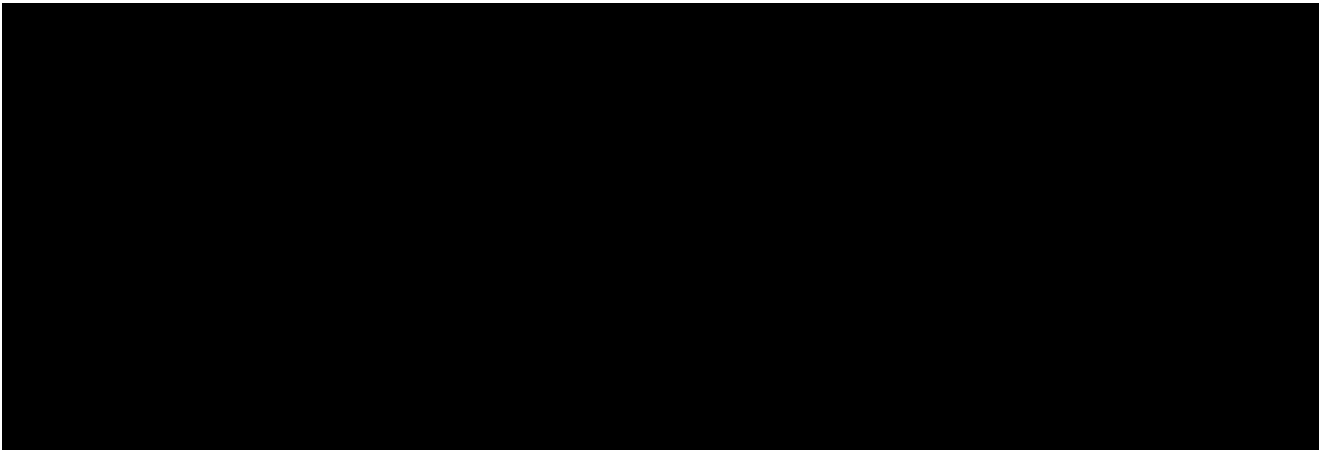
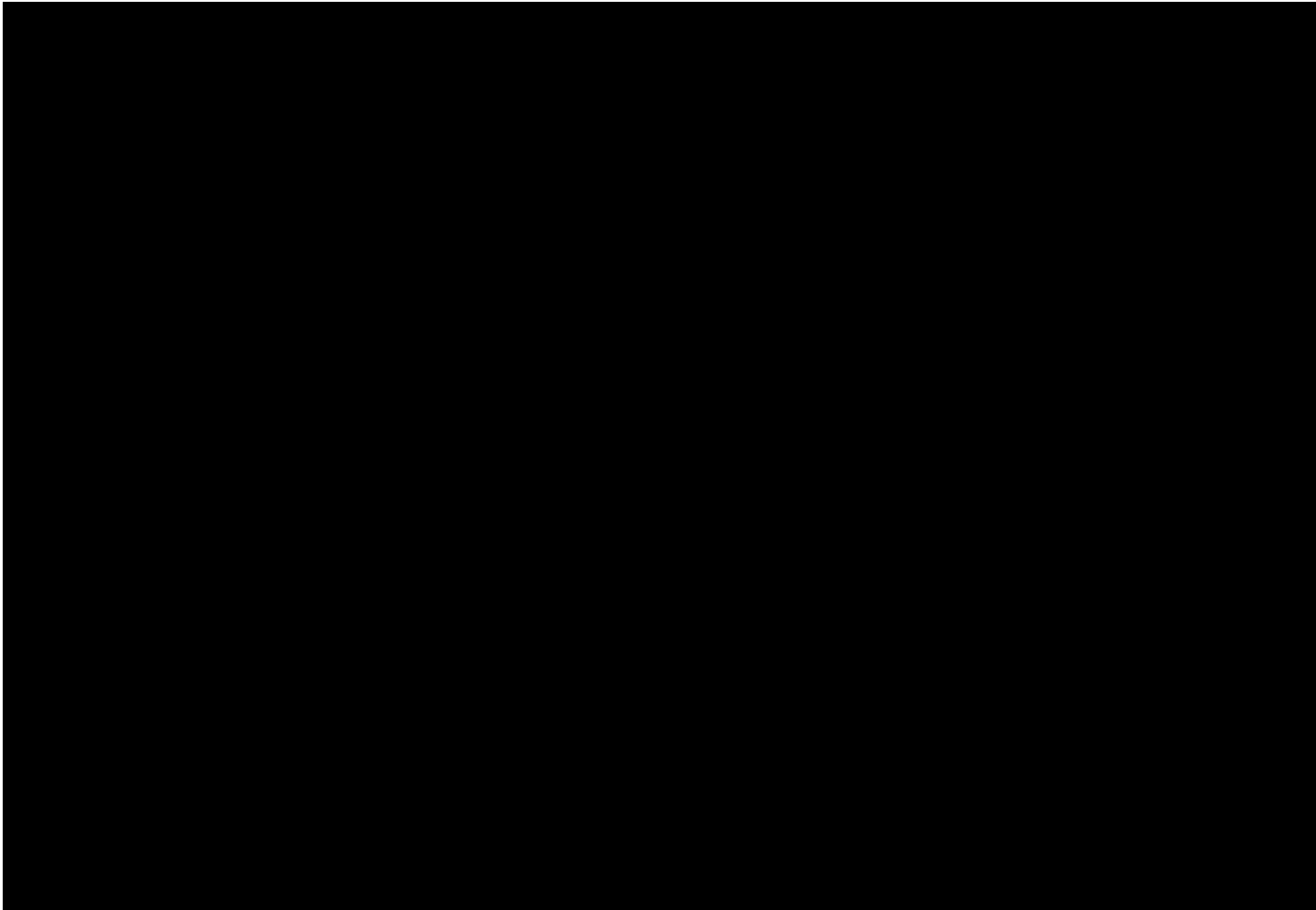
2.	<p>Has your organisation or any of its Directors or Executive Officers been in receipt of enforcement/remedial orders in relation to the Health and Safety Executive (or equivalent body) in the last 3 years?</p> <p>If your answer to this question was “Yes”, please provide details in a separate Appendix of any enforcement/remedial orders served and give details of any remedial action or changes to procedures you have made as a result.</p> <p>The Authority will exclude bidder(s) that have been in receipt of enforcement/remedial action orders unless the bidder(s) can demonstrate to the Authority’s satisfaction that appropriate remedial action has been taken to prevent future occurrences or breaches.</p>	 
3.	<p>If you use sub-contractors, do you have processes in place to check whether any of the above circumstances apply to these other organisations?</p>	

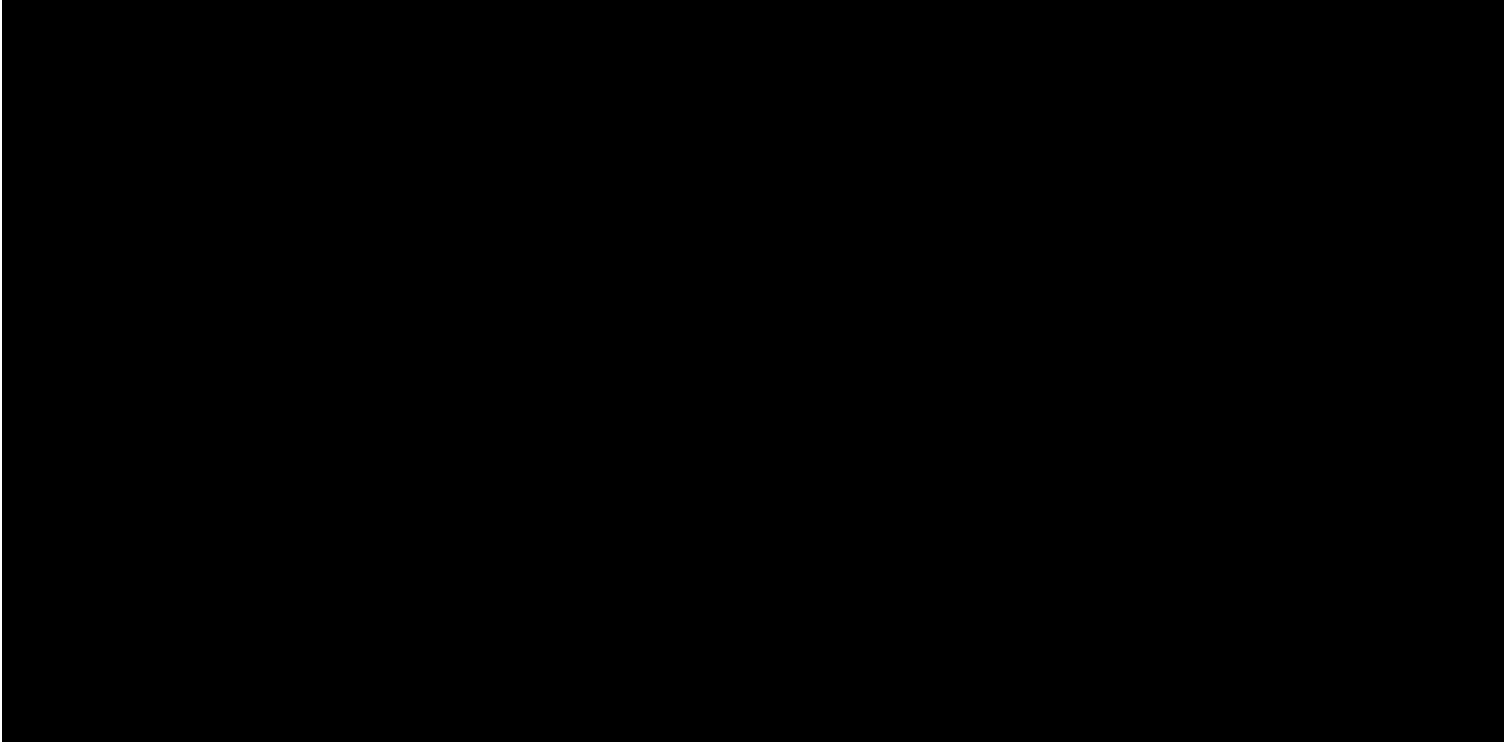
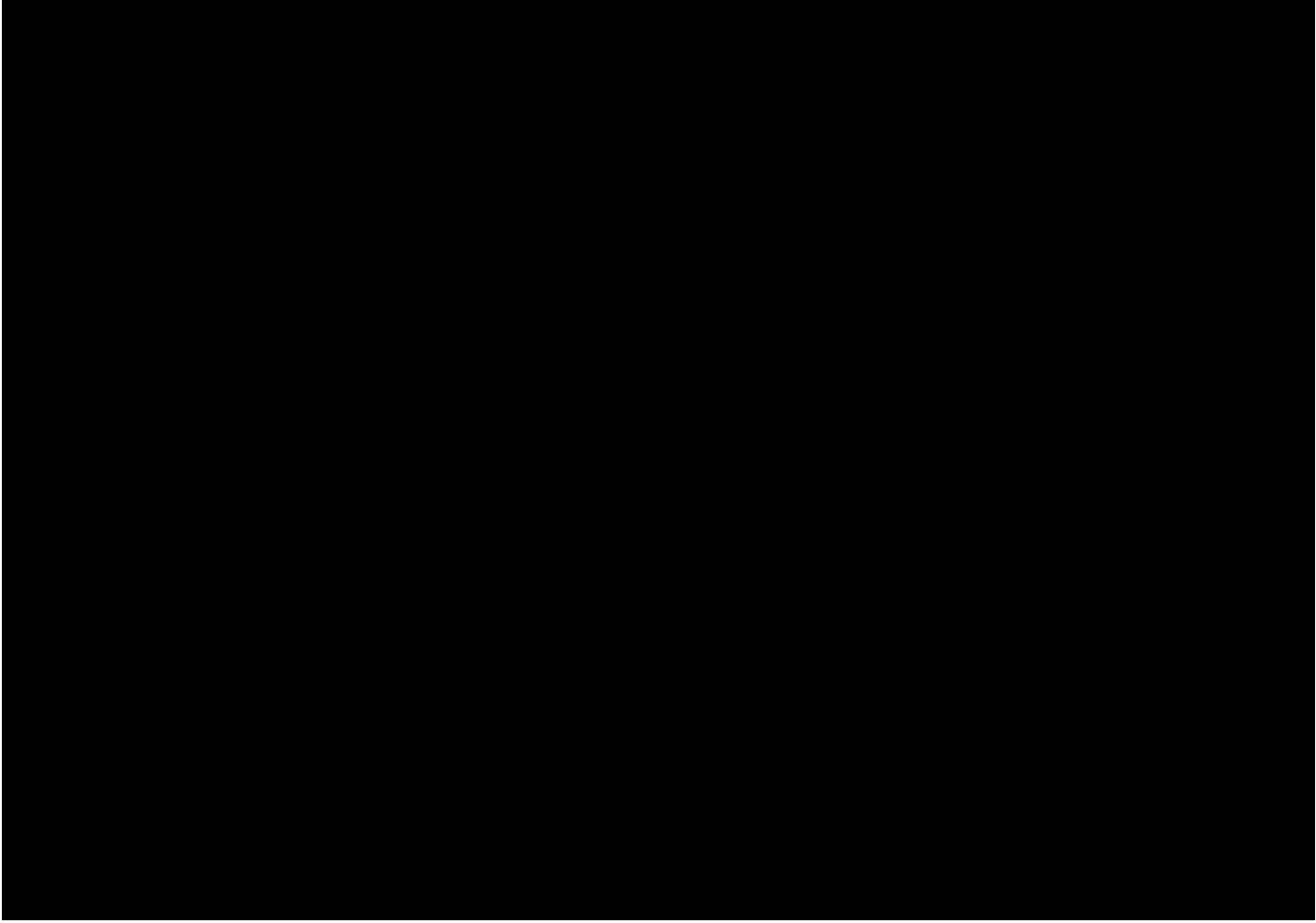
SECTION C – TENDER SCHEDULE

	Pricing Schedule	
1.	<p>Provide a total fixed cost fee proposal for the preparation of the Viability and Deliverability Assessment.</p> <p>This cost should be broken down into specific categories, including those associated with assessment; attendance at stakeholder meetings and production of the report.</p> <p>This cost should also include a breakdown of hourly rates for proposed personnel and their expenses, including travel and accommodation (by person if likely to differ).</p> <p>Value for money is a key consideration and scoring will be awarded proportionally.</p>	400 max marks

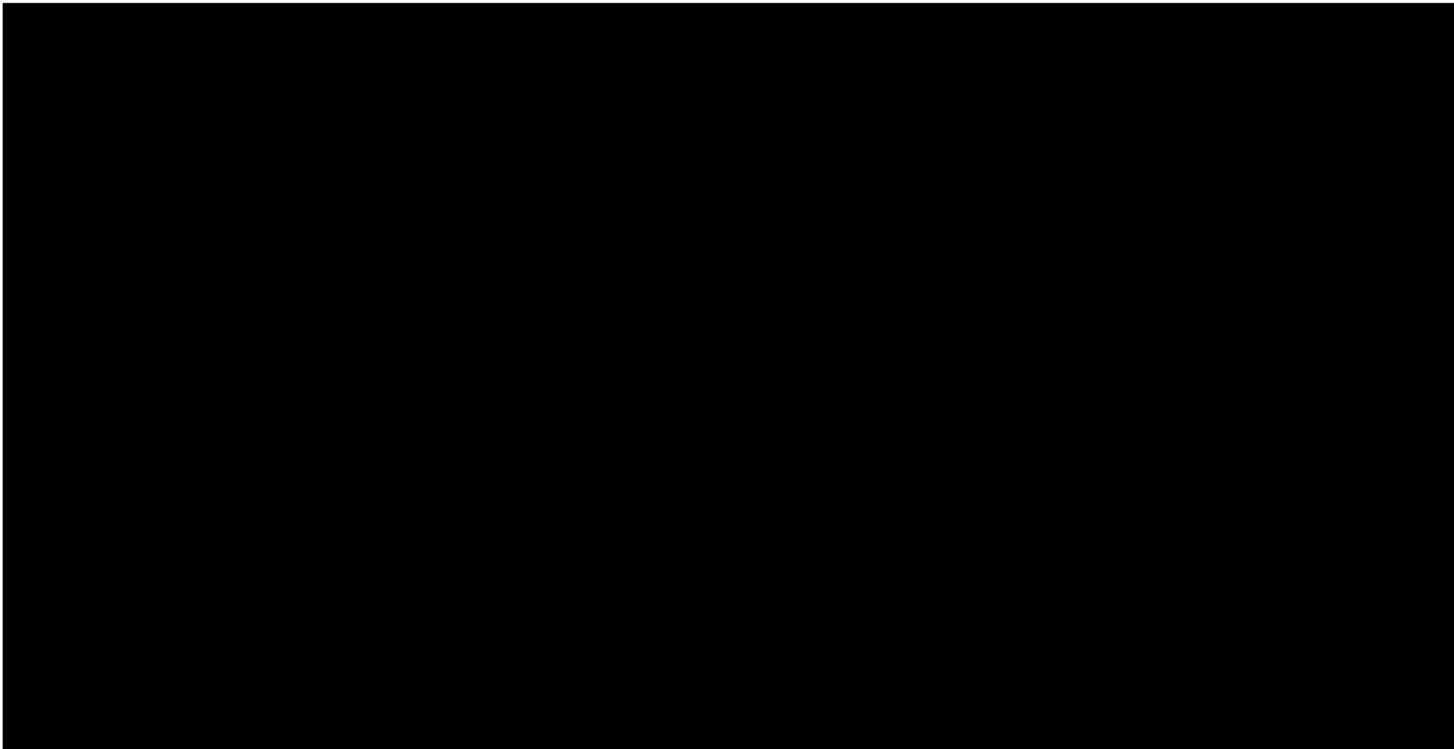




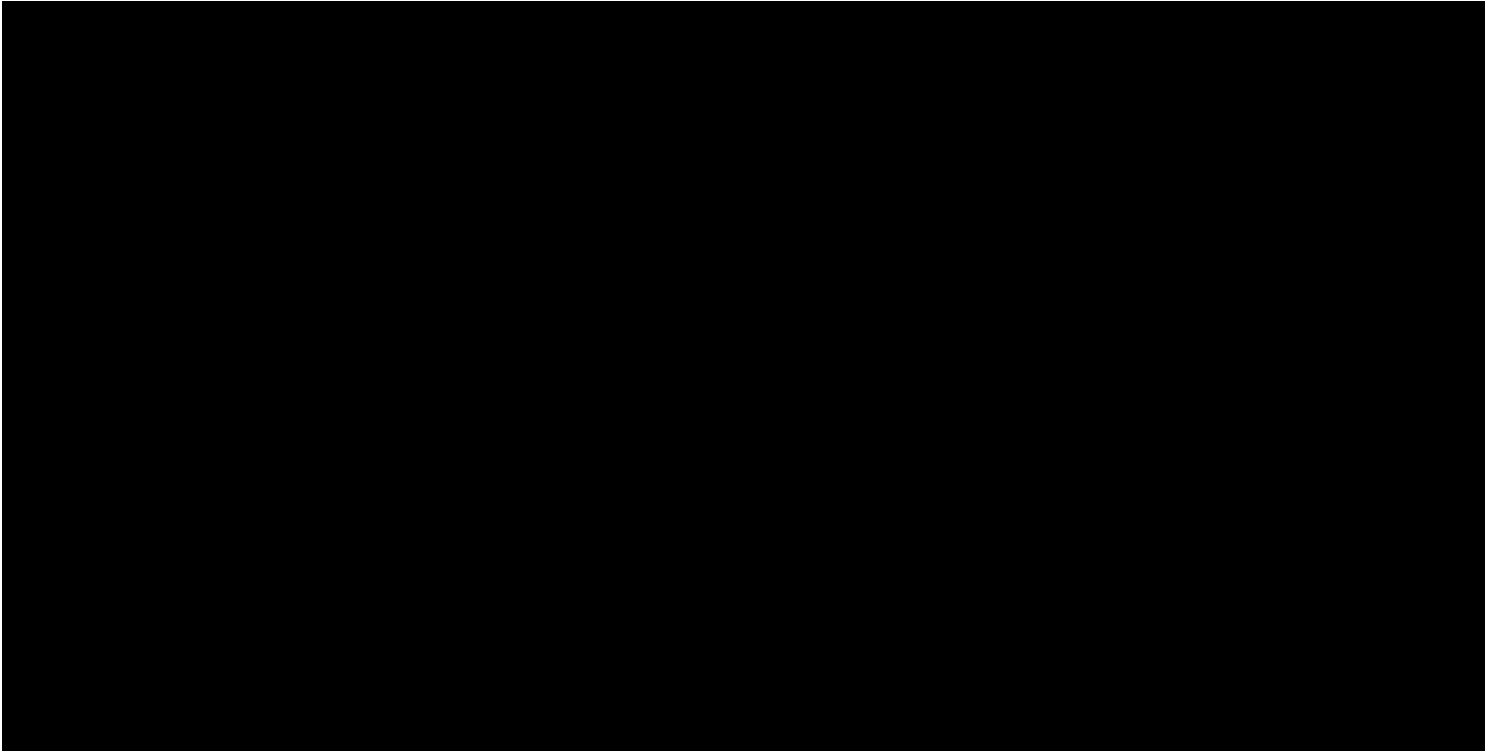
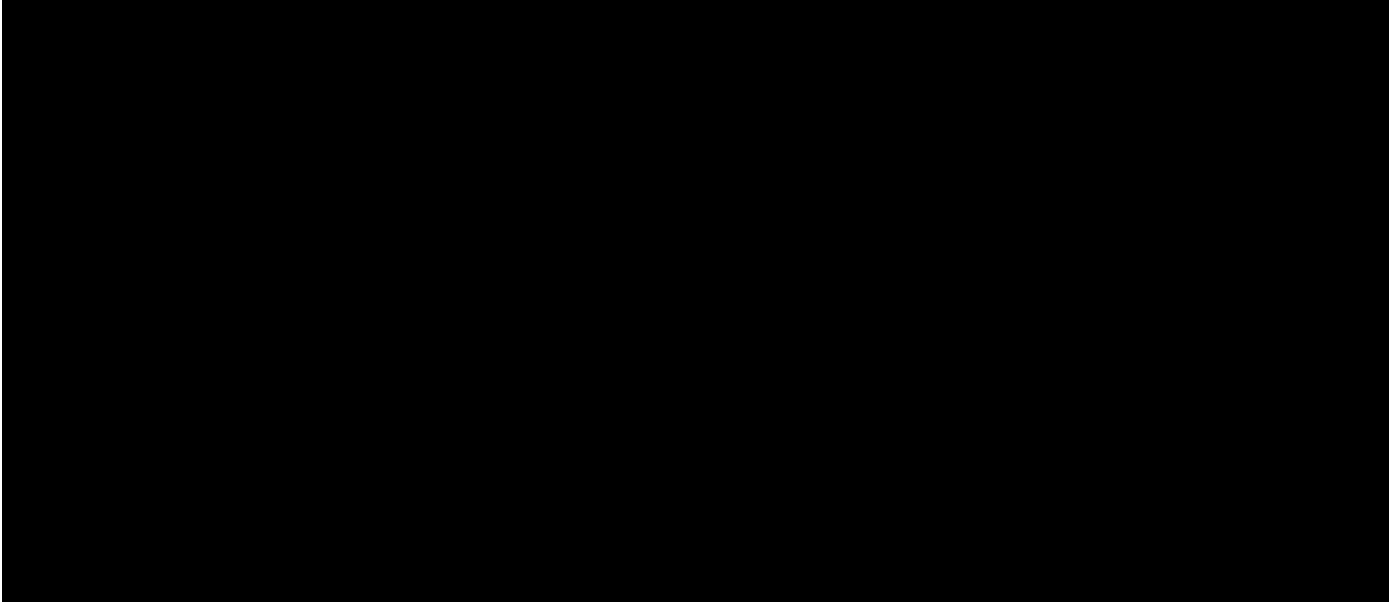


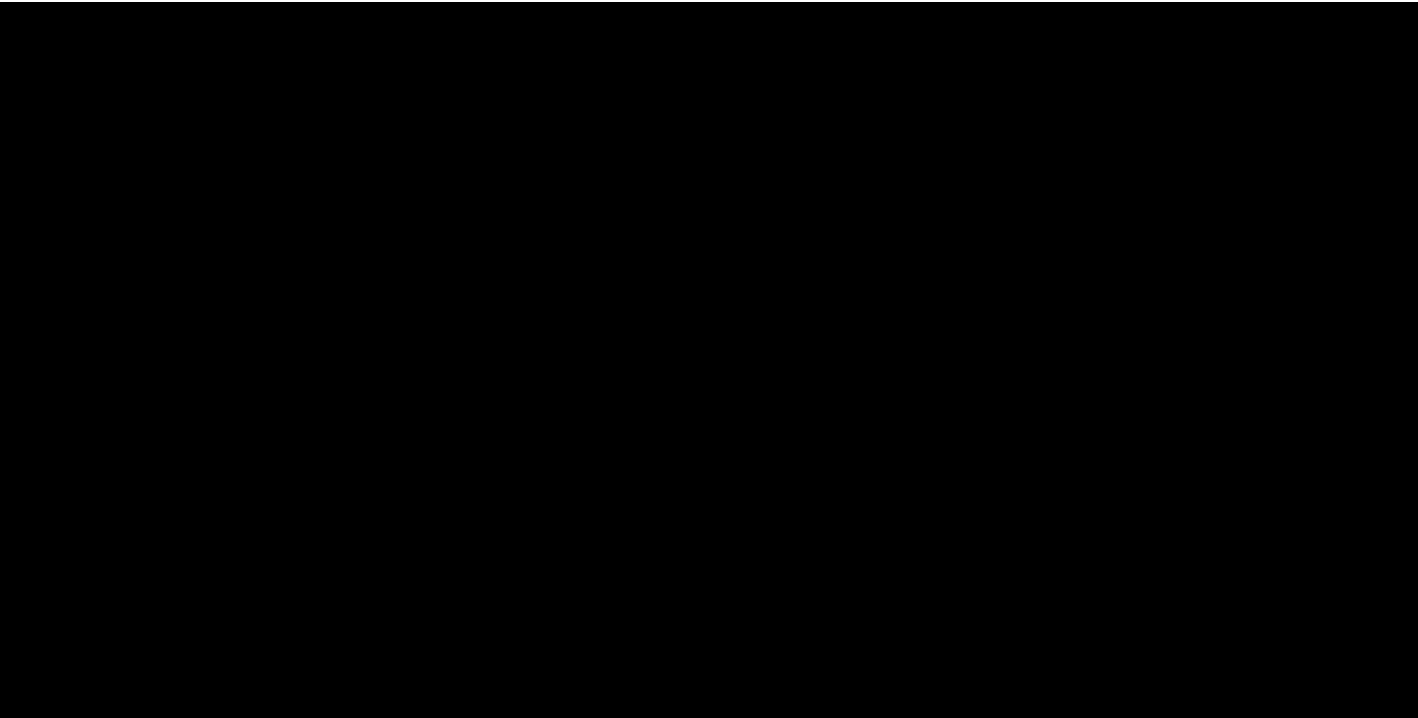
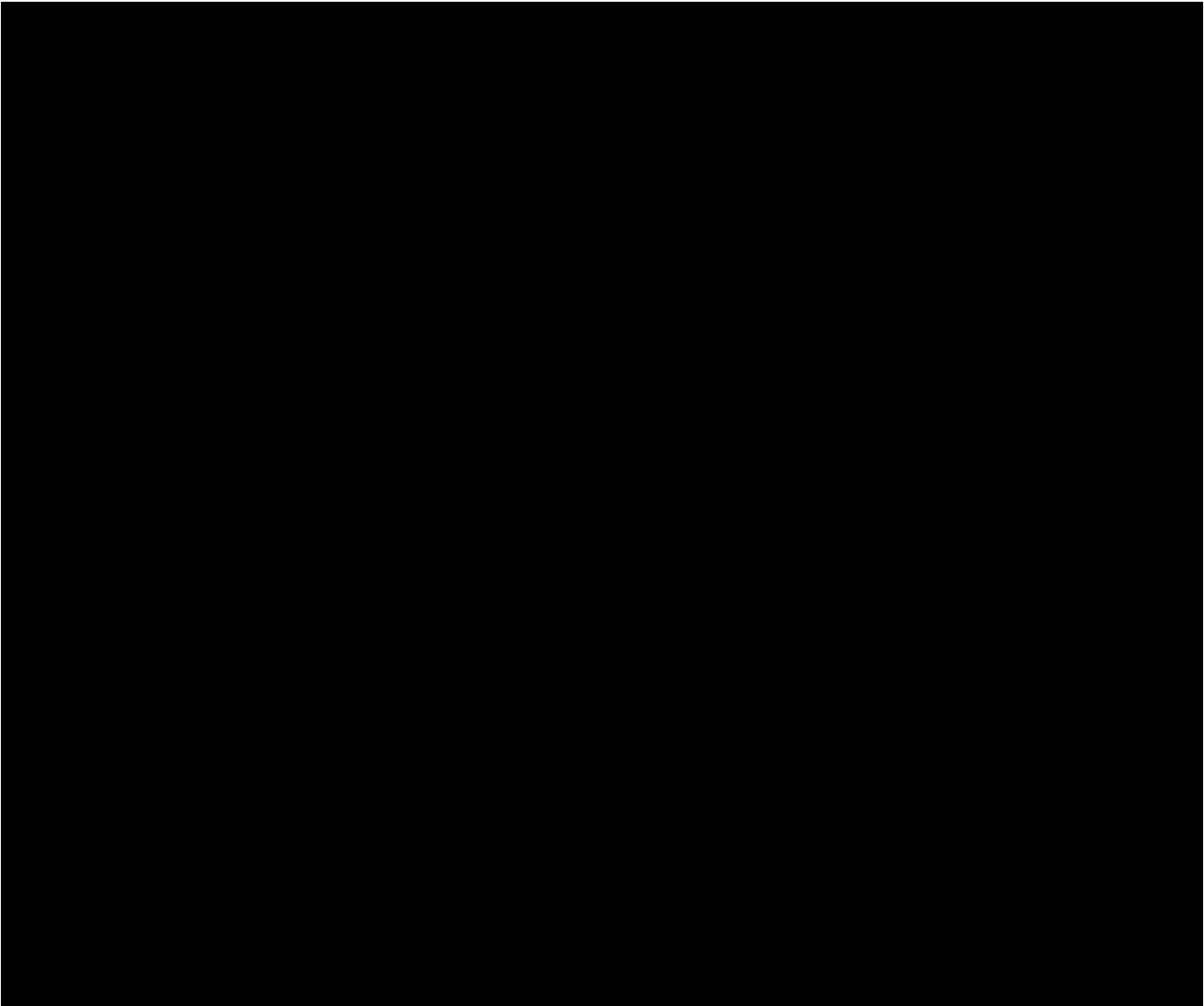


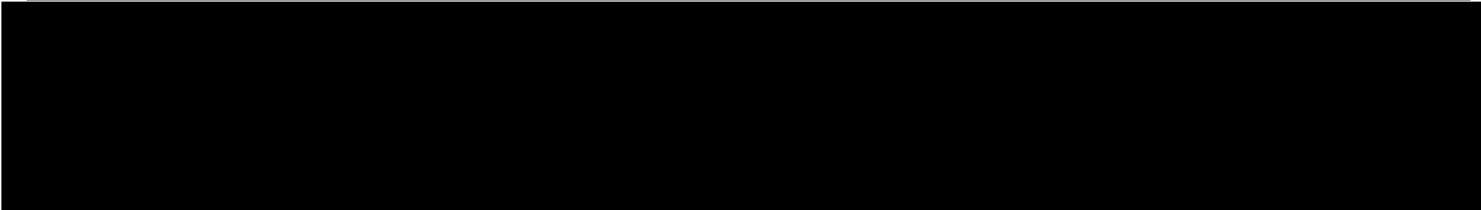
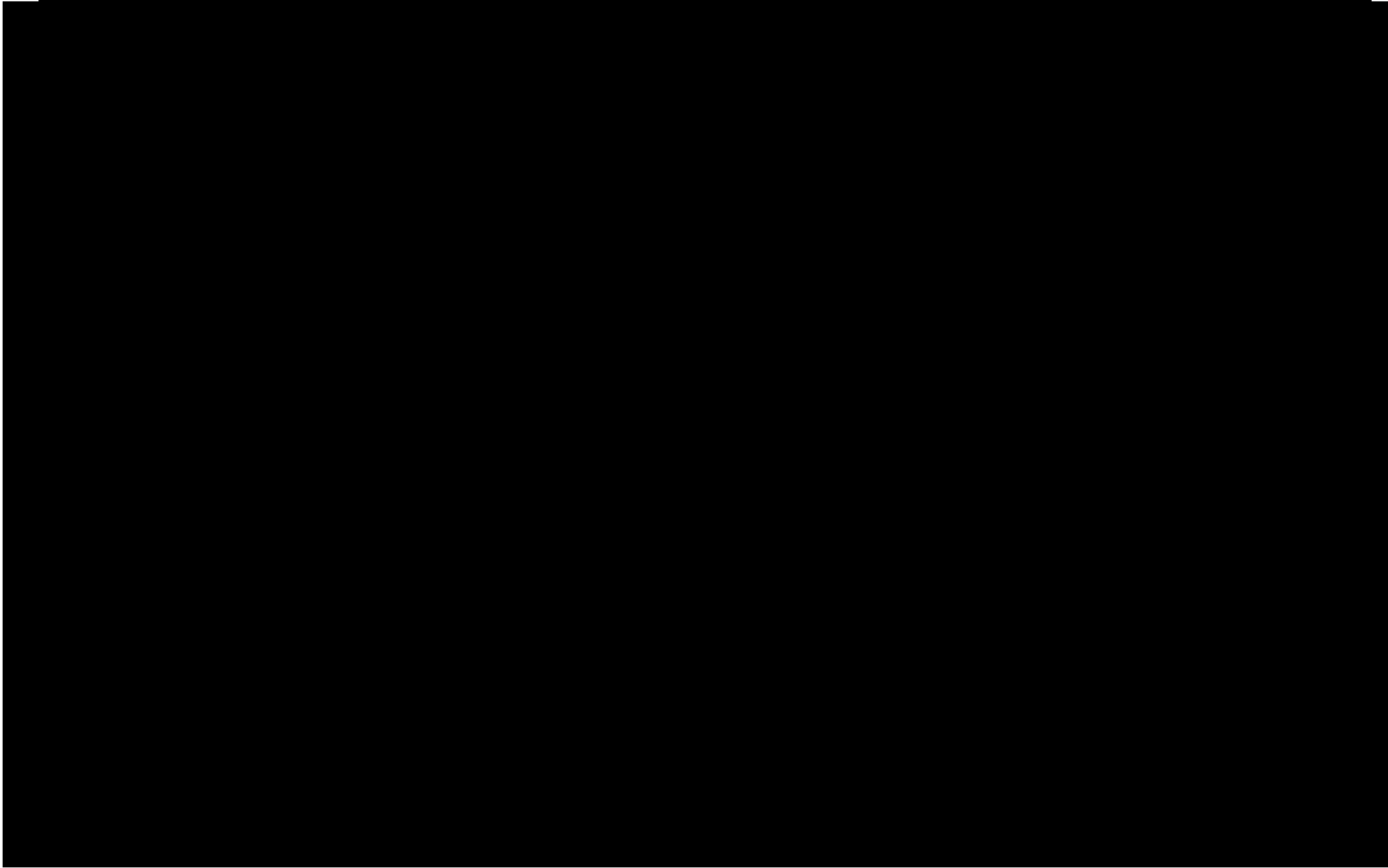
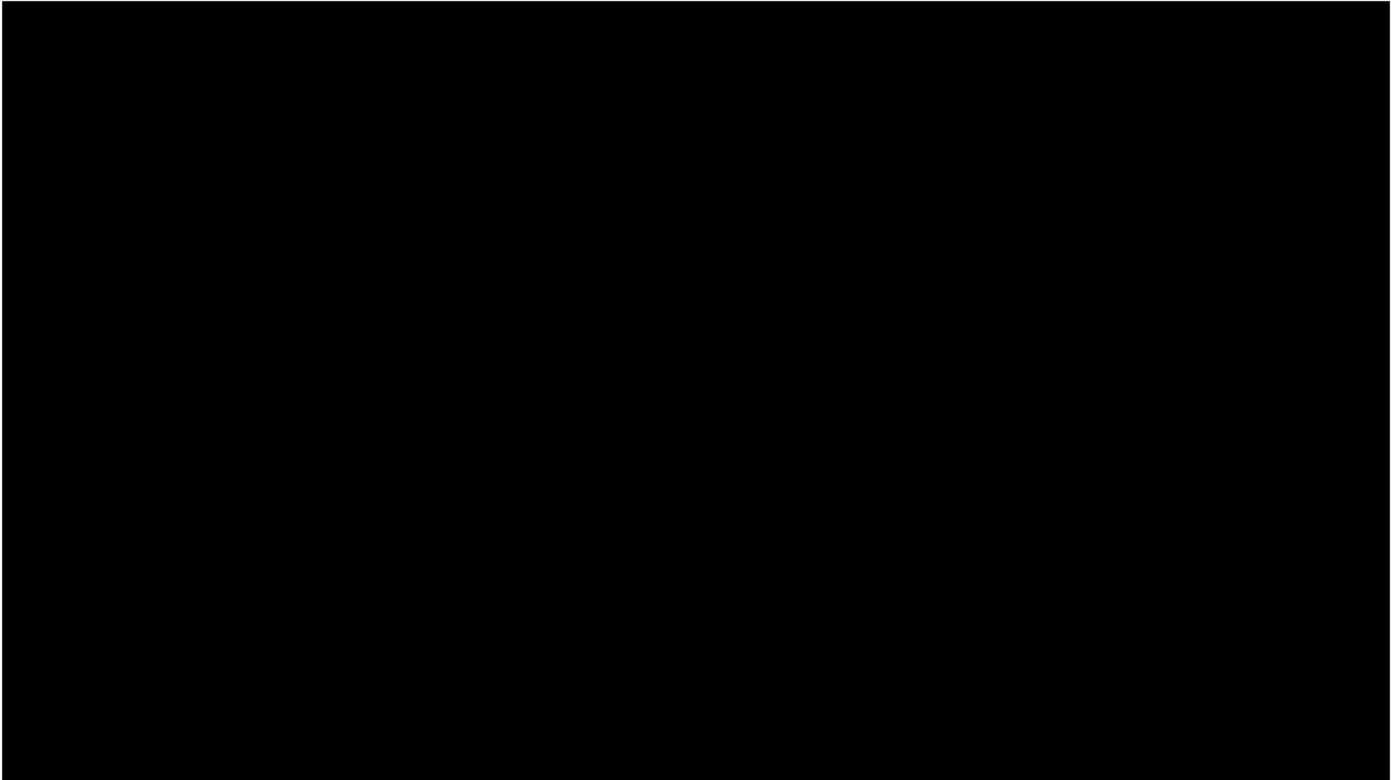
	Tender Specification Response Please respond to all the following questions and create sufficient space for your responses by expanding the table.	Weighting / Max Marks
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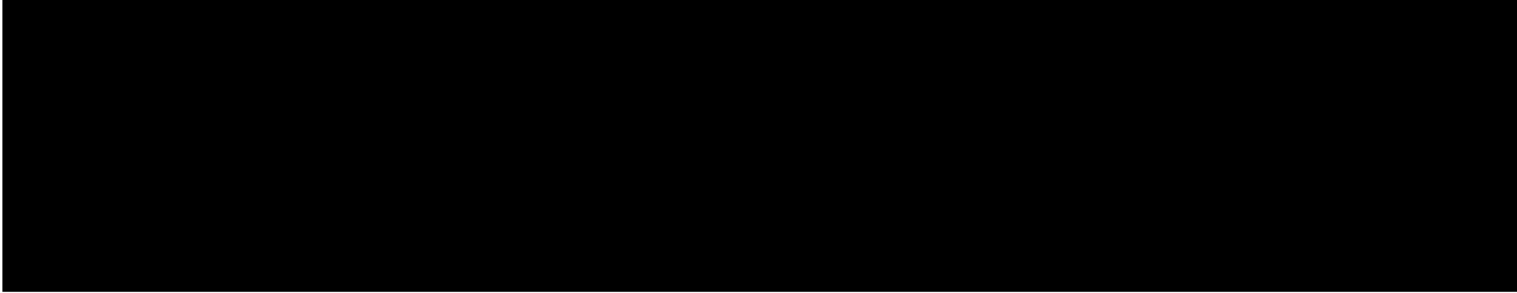
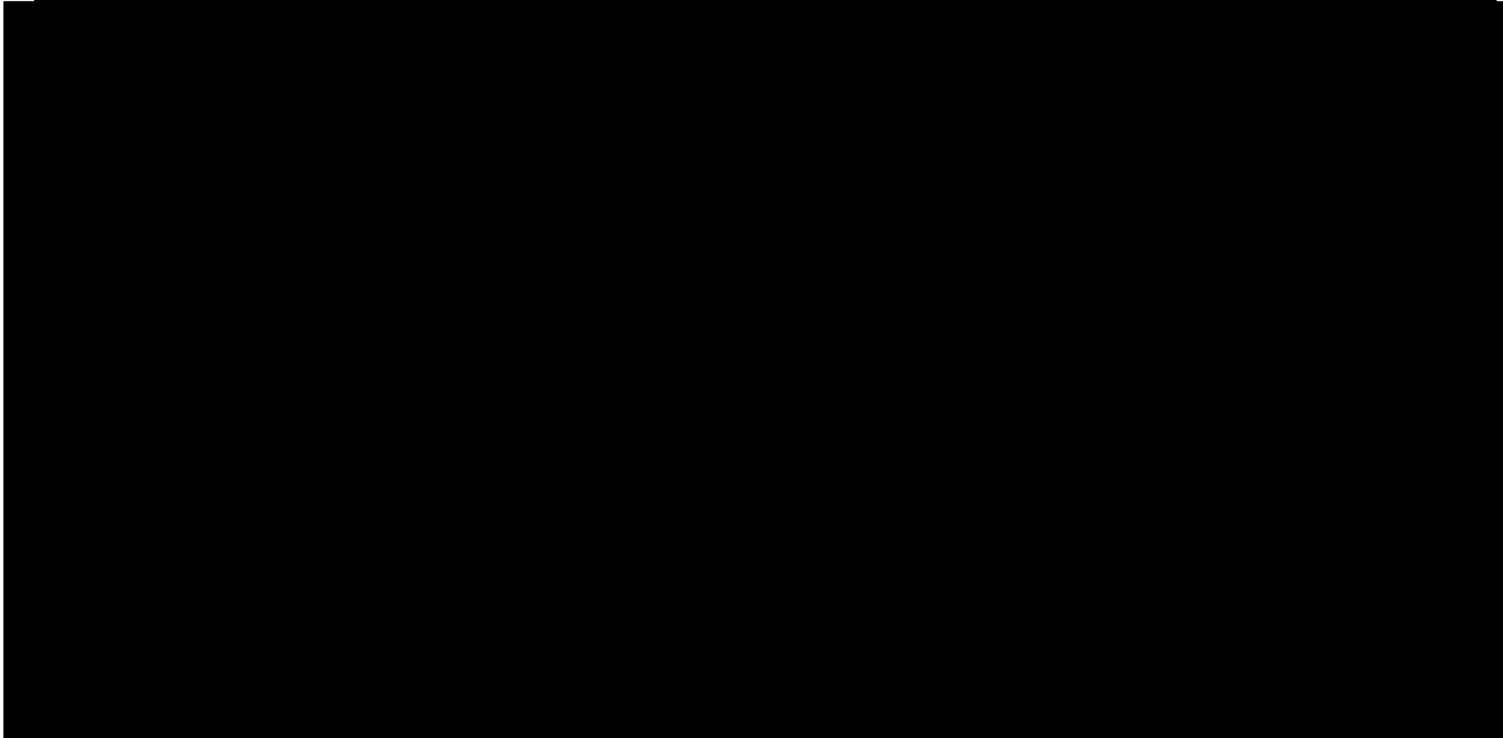
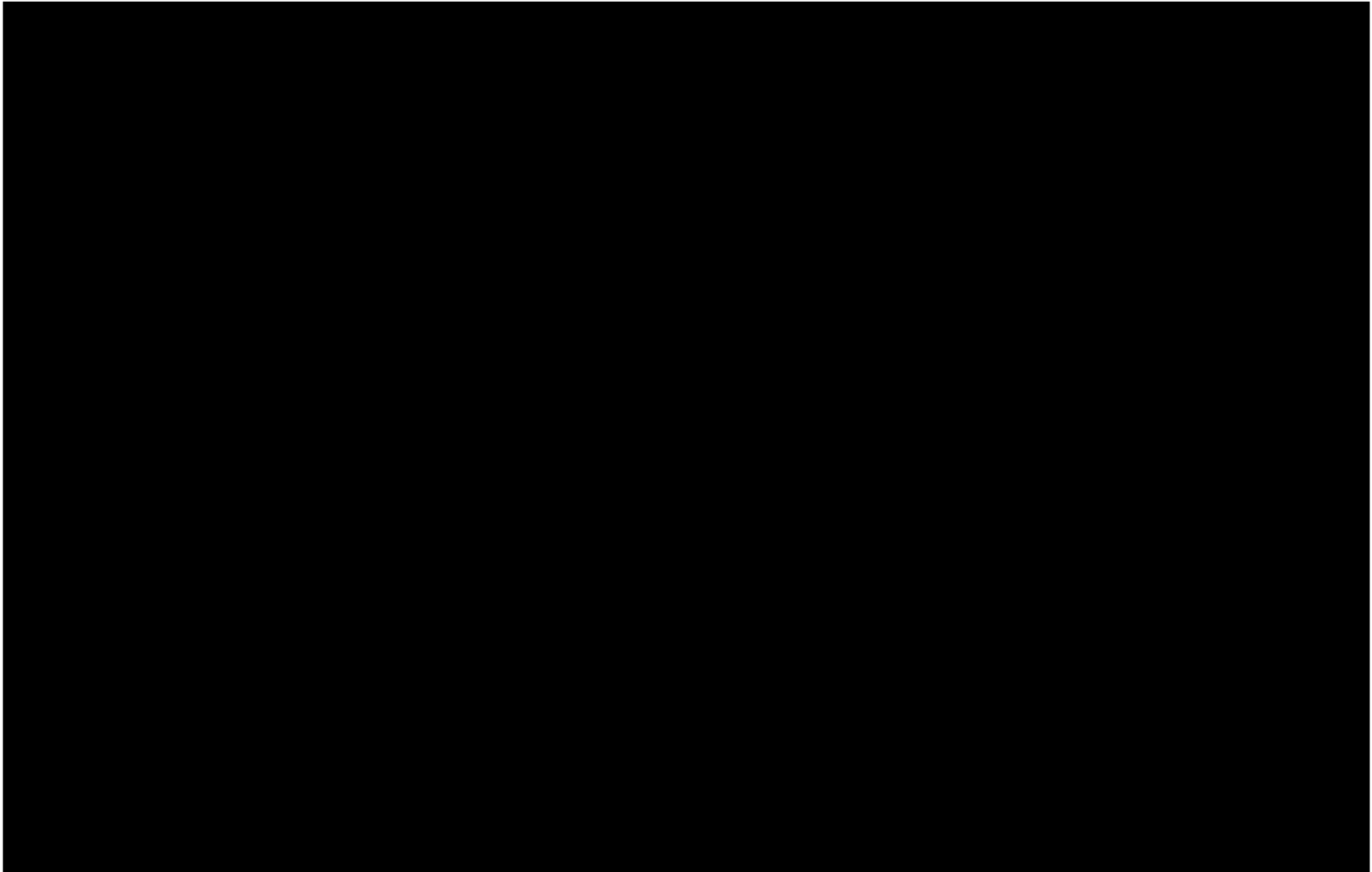


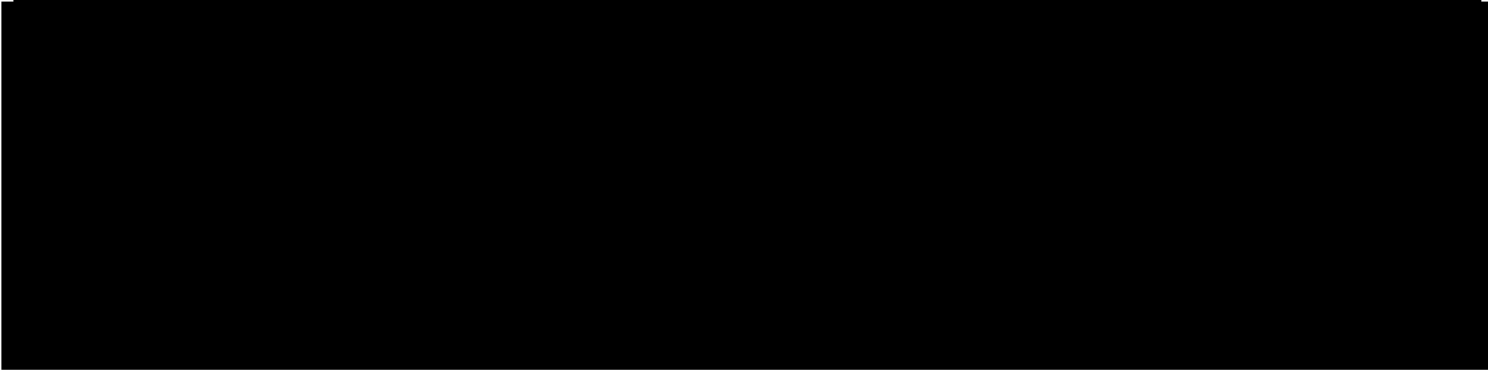
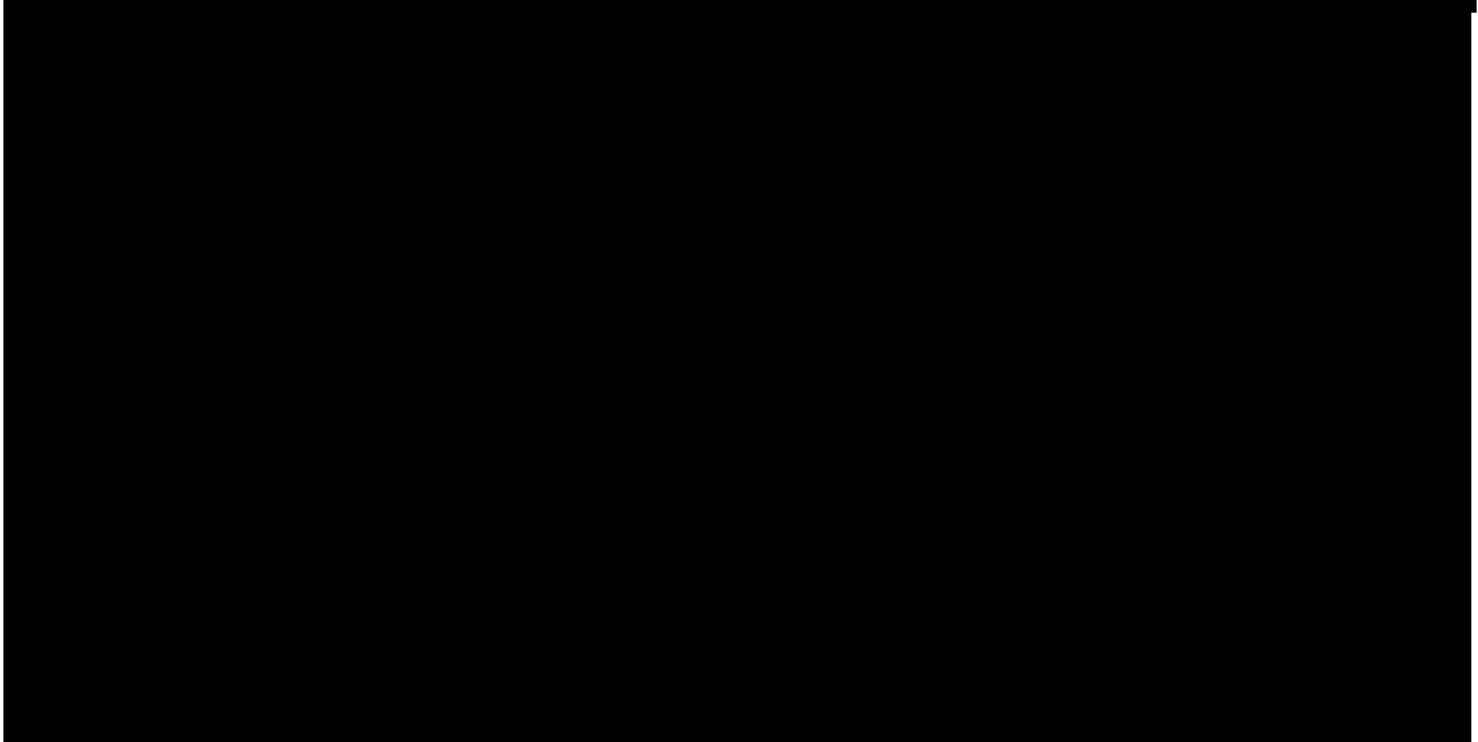
2.1	Provide background information on the contractor, project lead and key personnel to be involved, including the amount of time they will devote to the project and an organisation chart where appropriate.	1 / 10 marks
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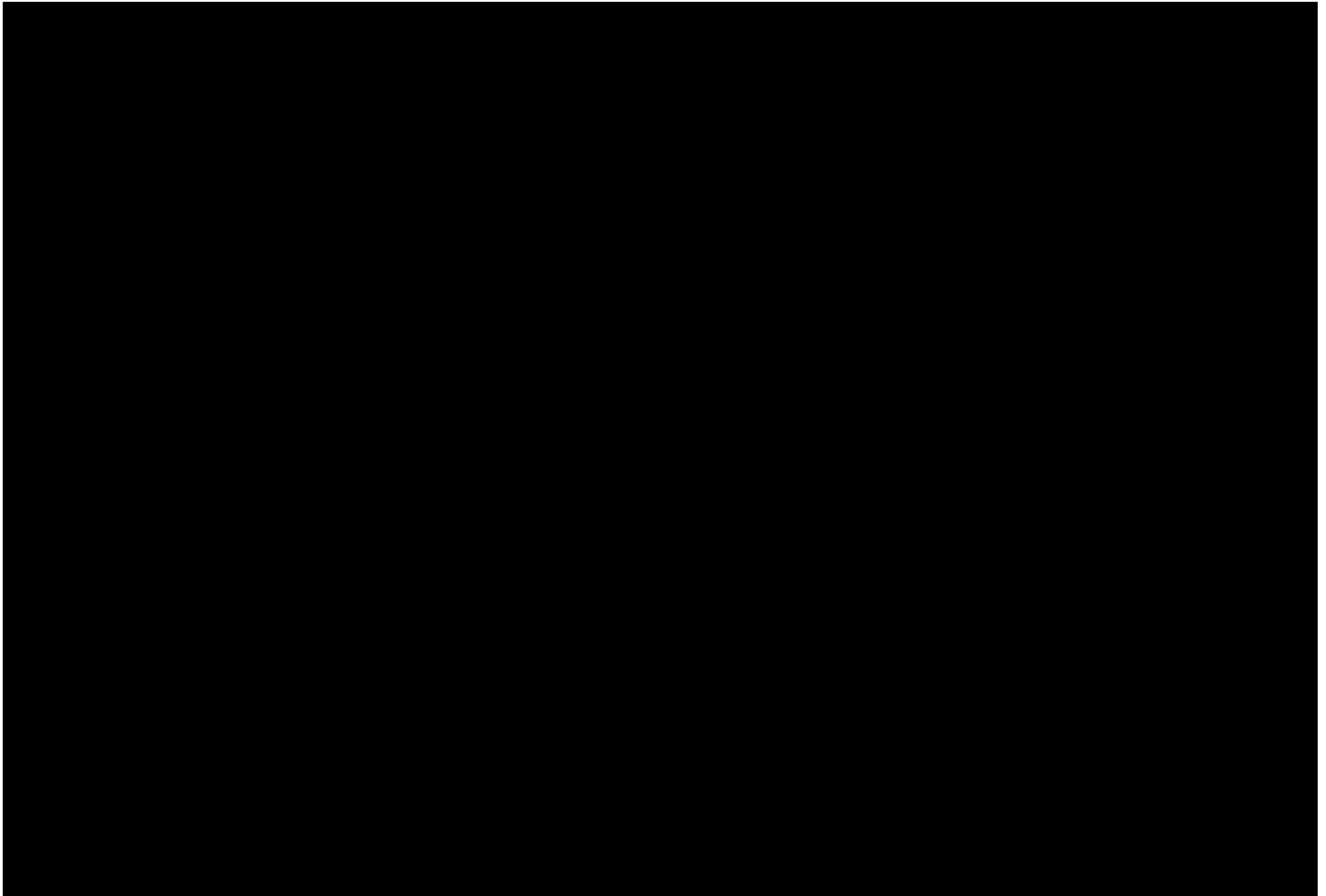




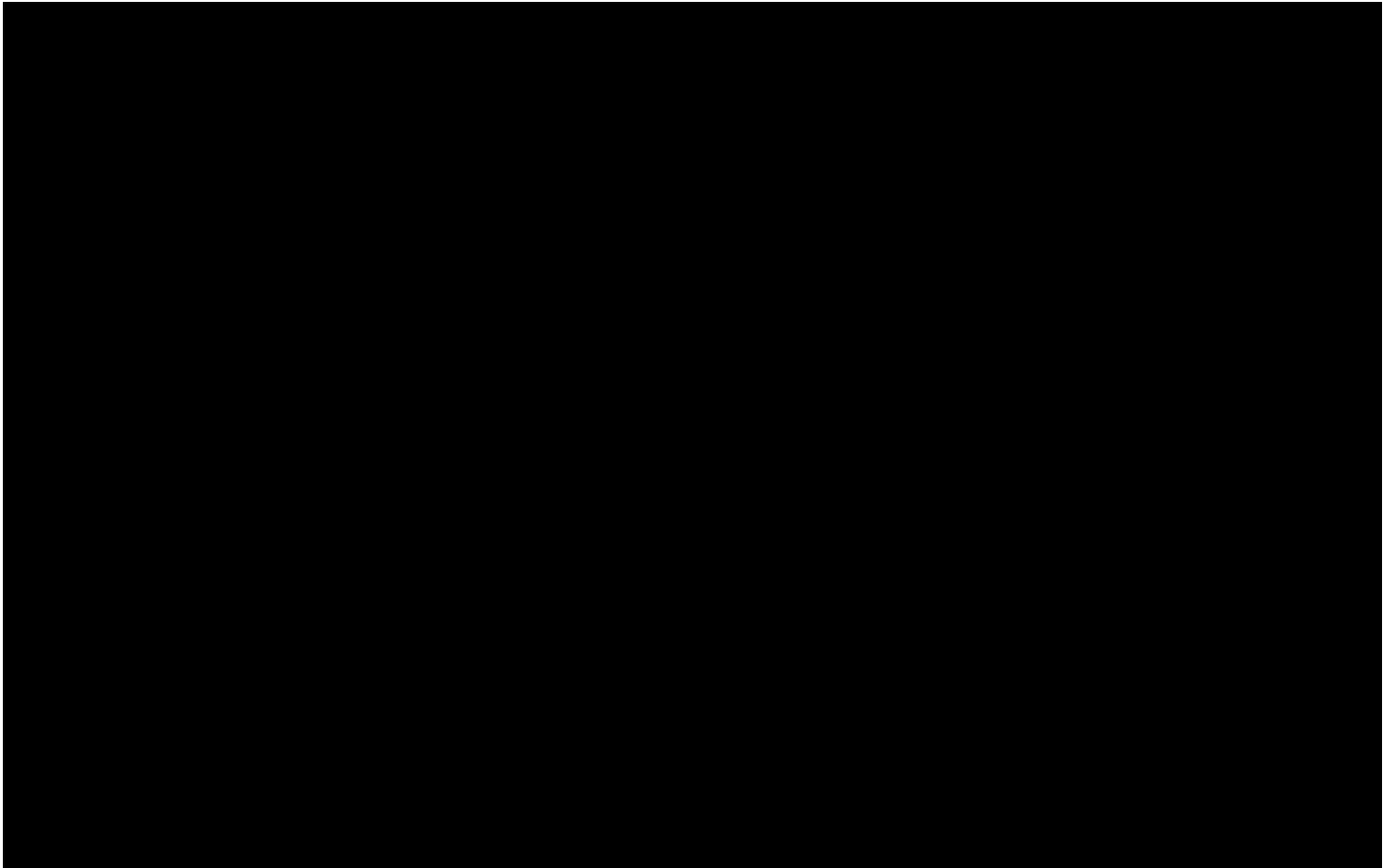


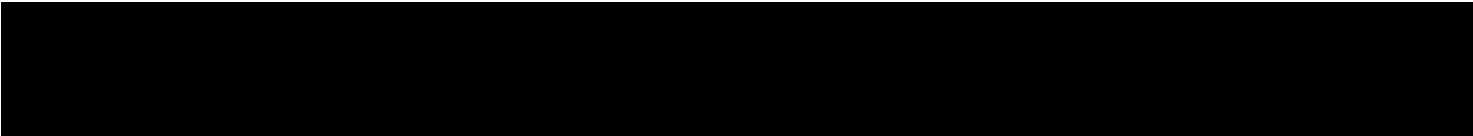
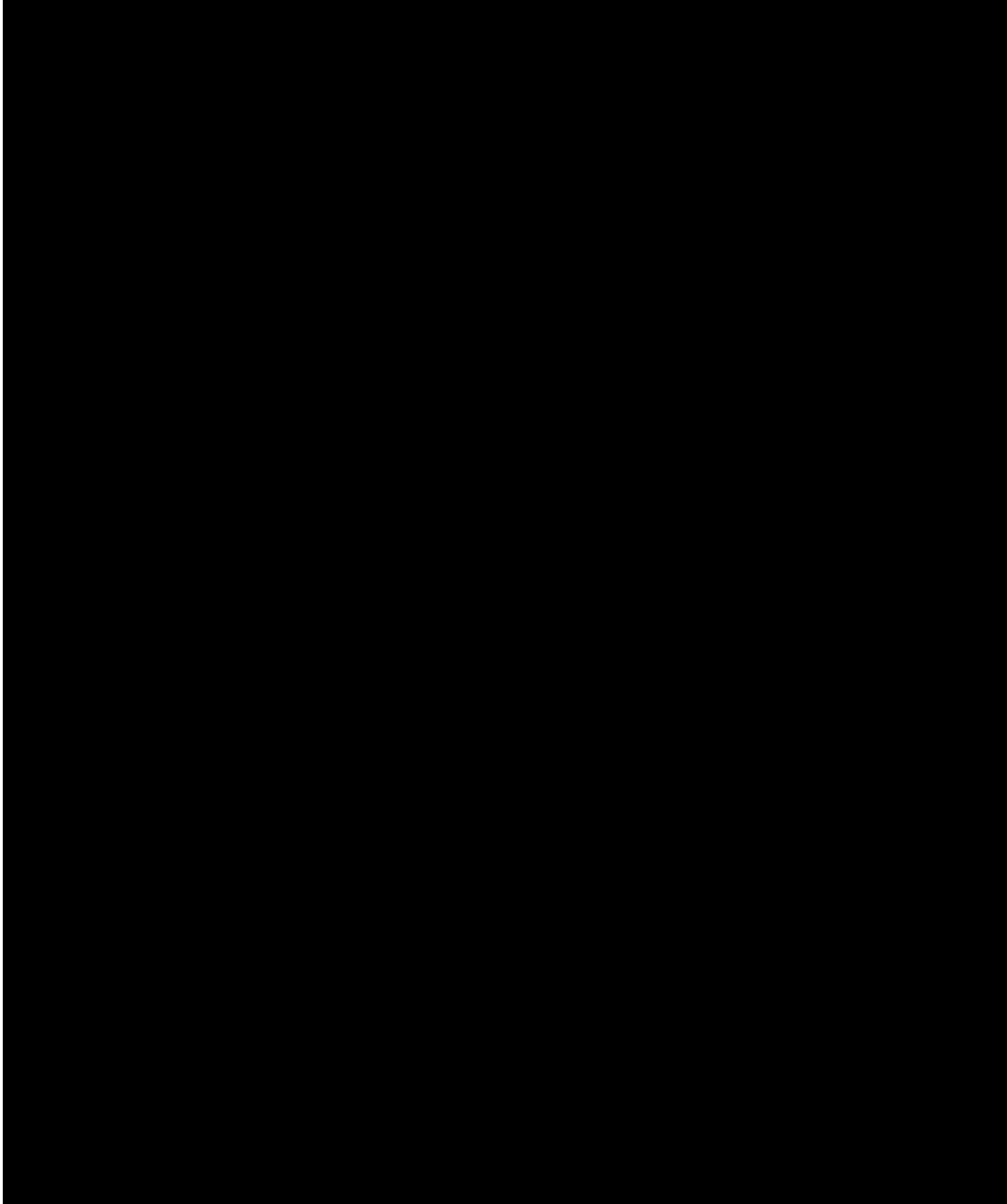




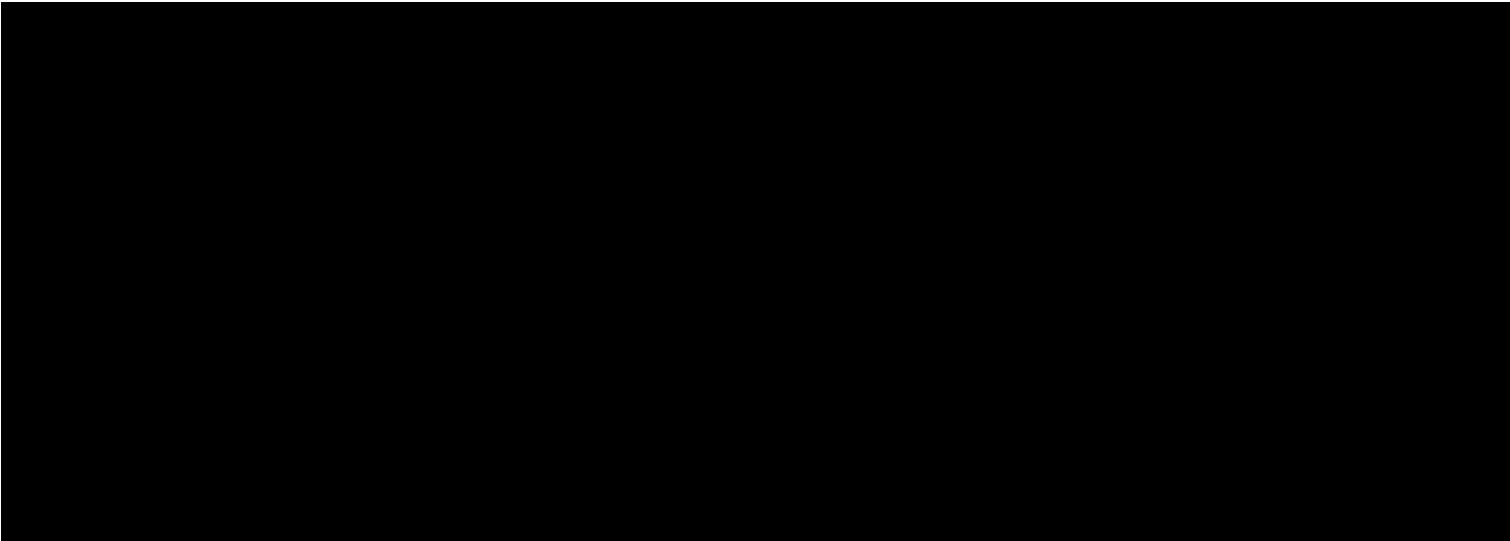
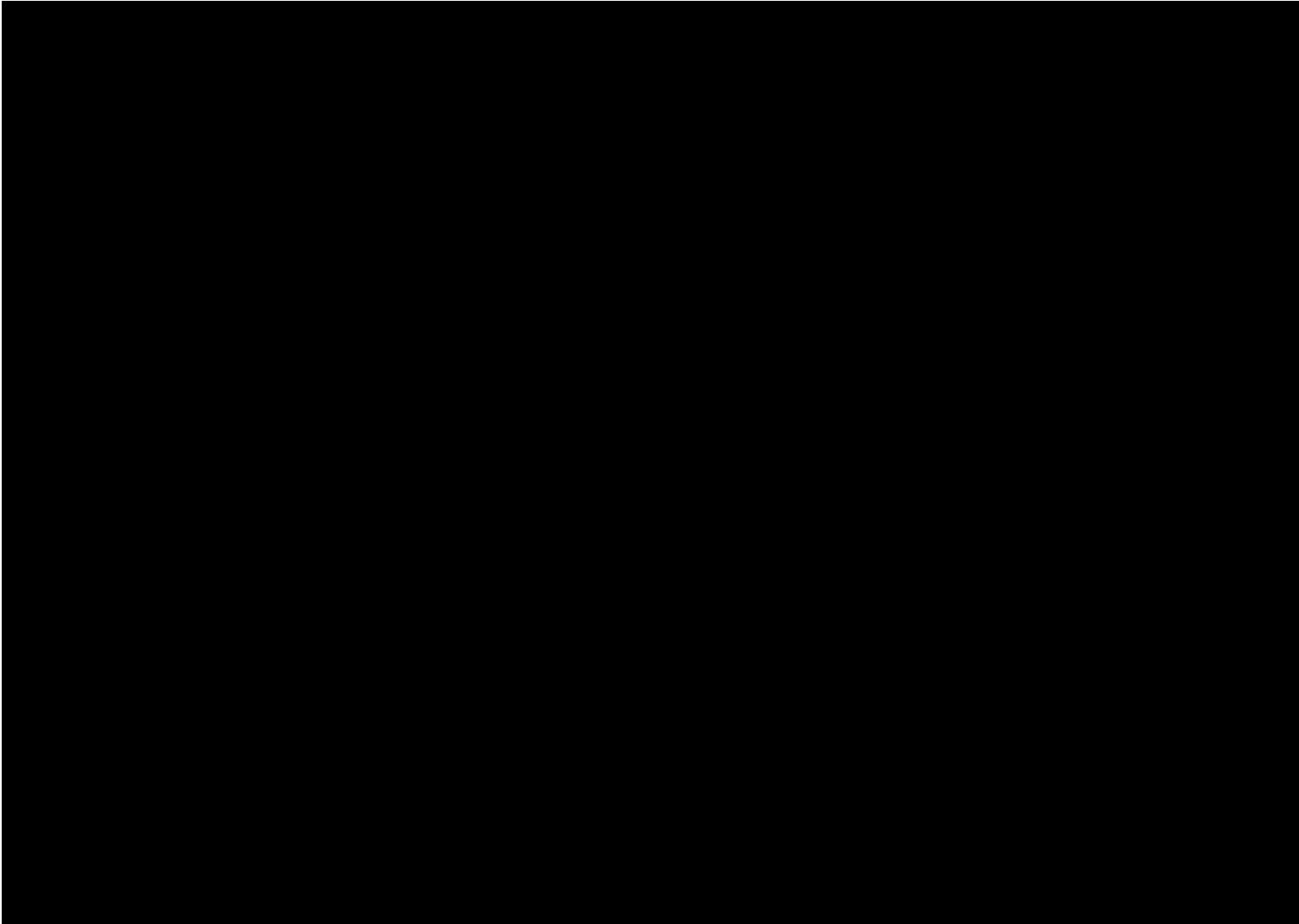


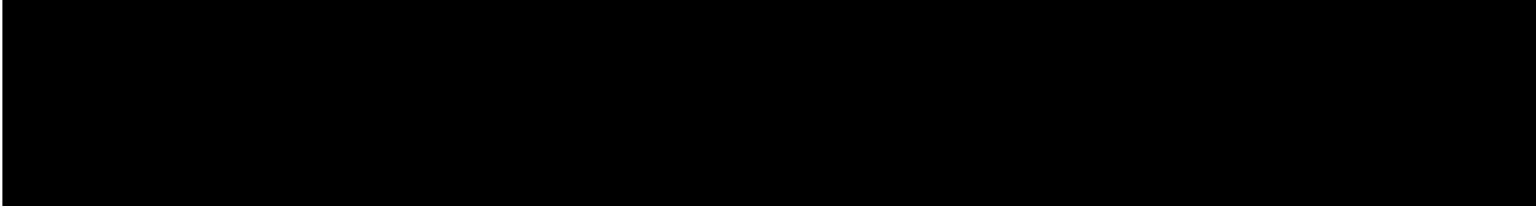
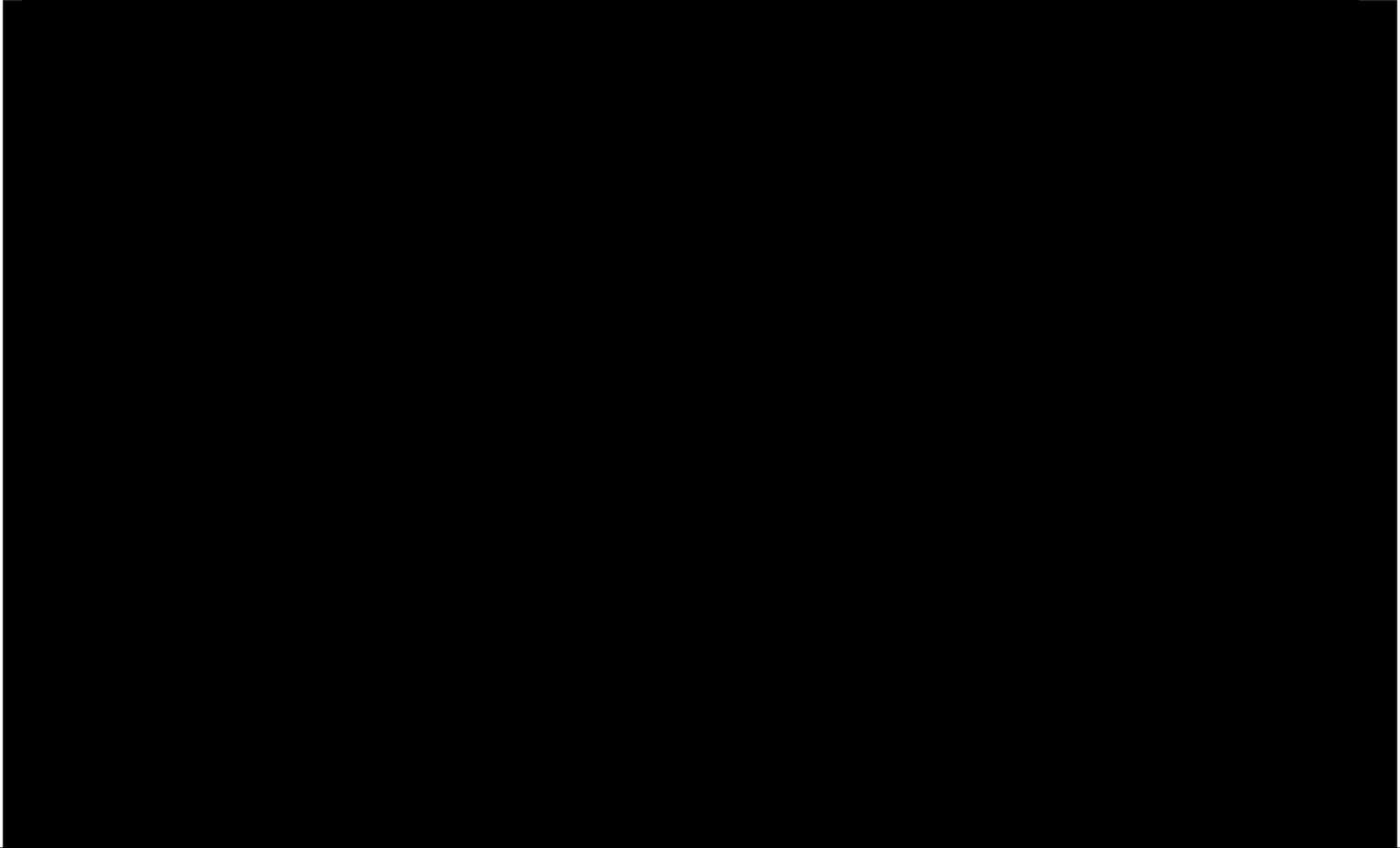
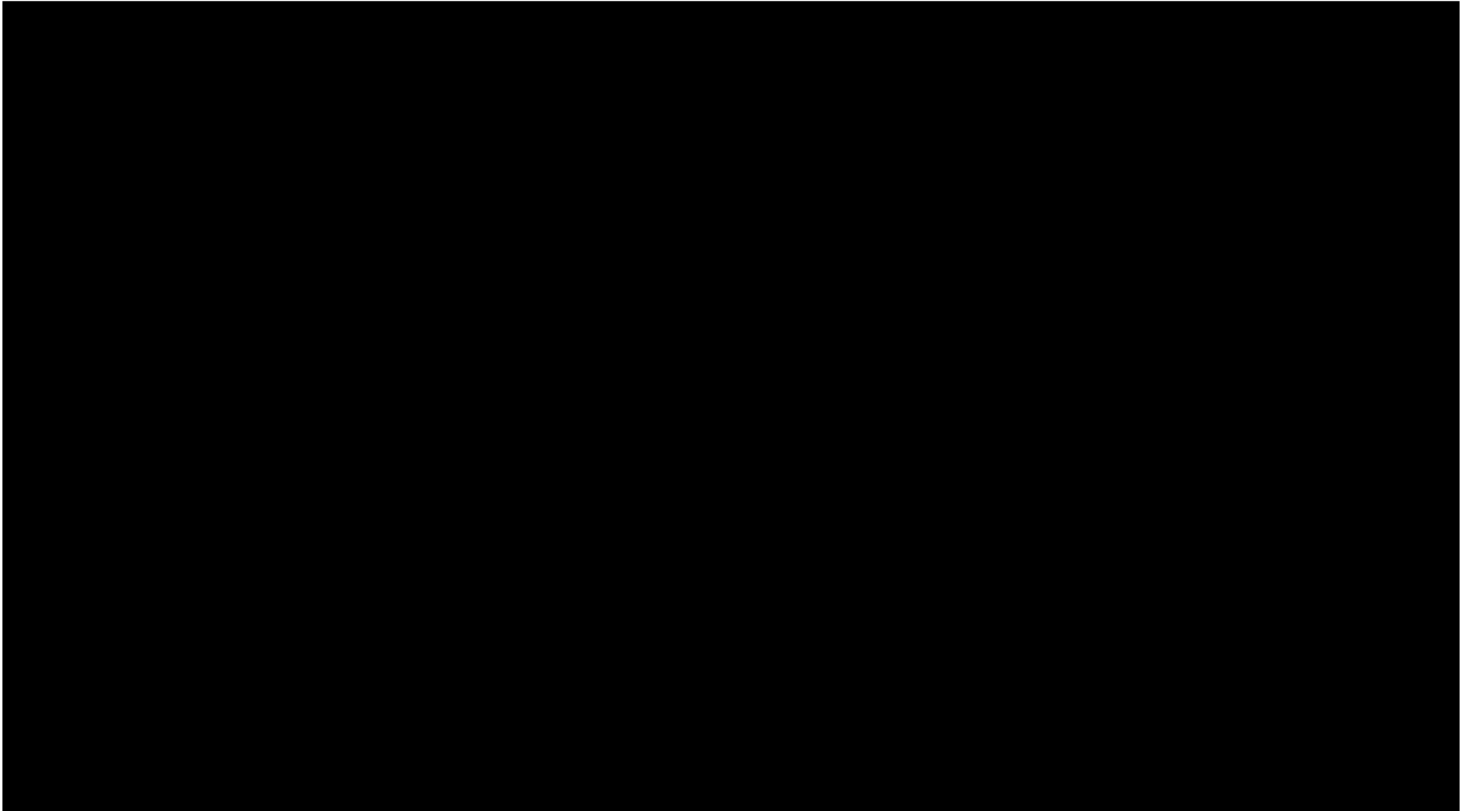
2.2	Provide a project plan with timescales and milestones, including contingency measures. This should include details of frequency of progress meetings, how these will be structured, and progress communicated.	2 / 20 marks
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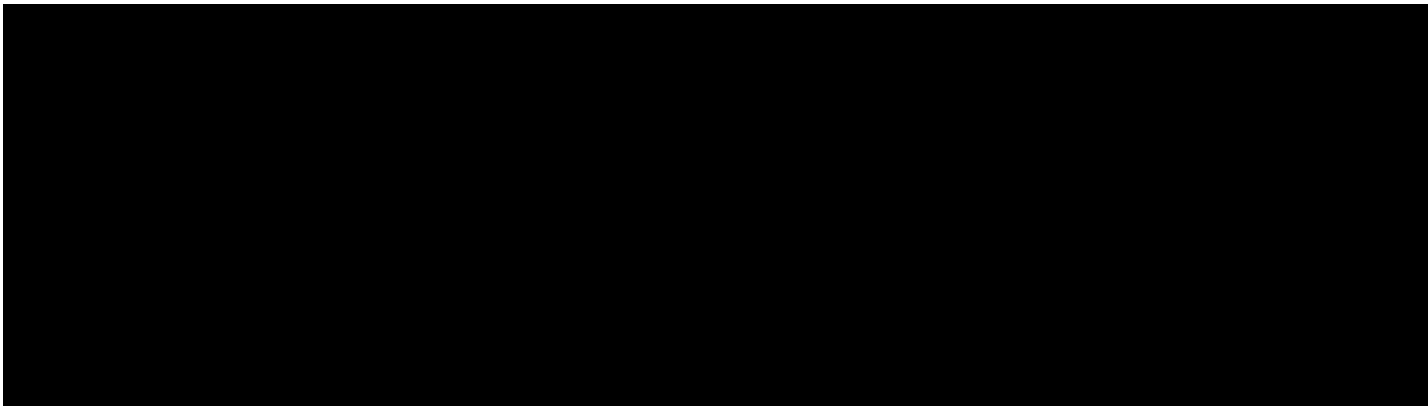
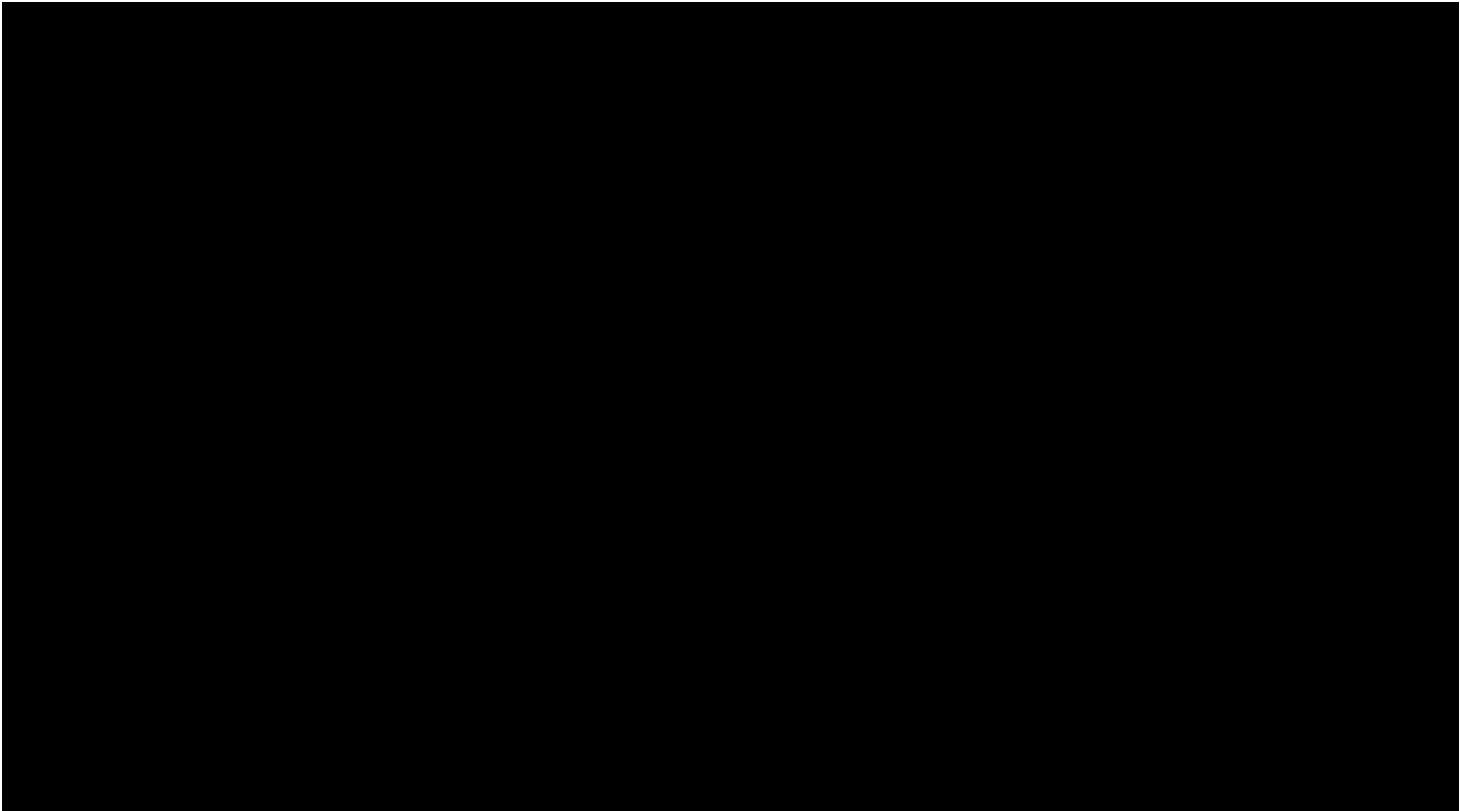
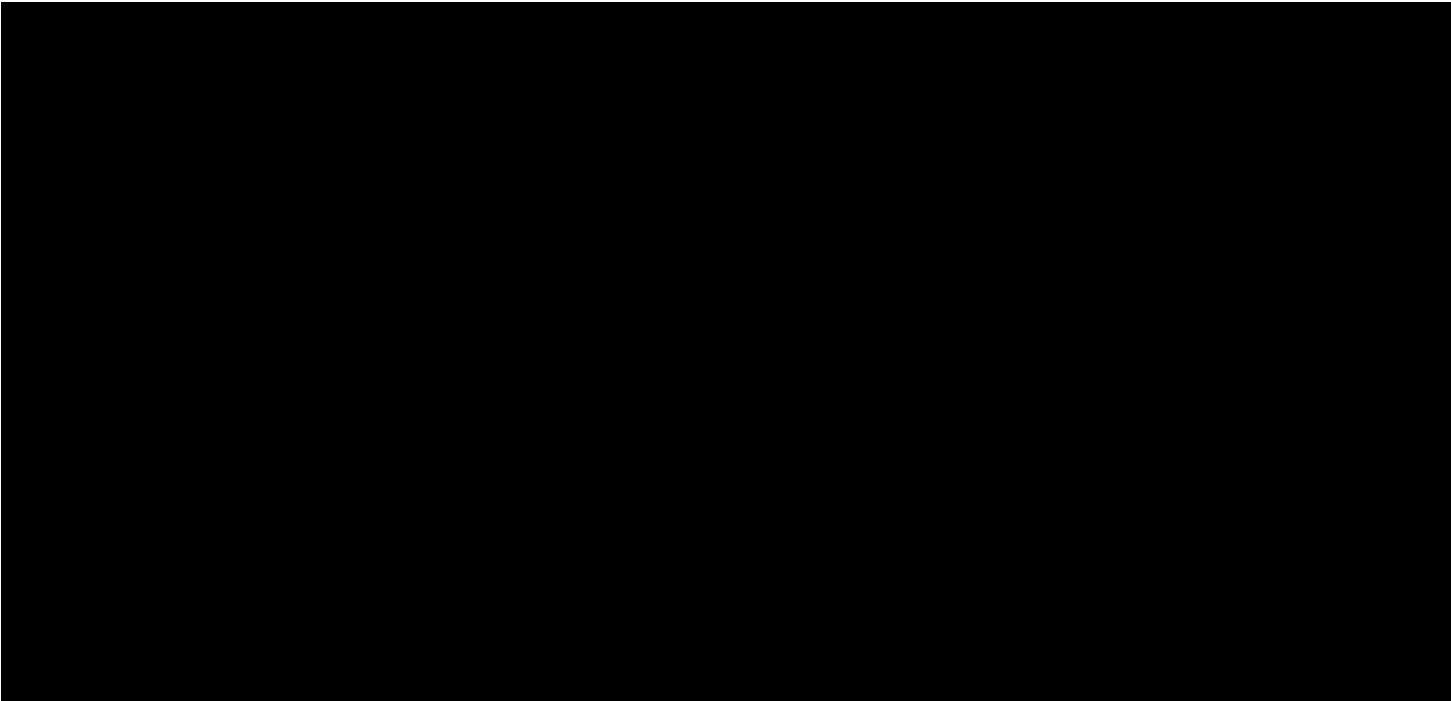


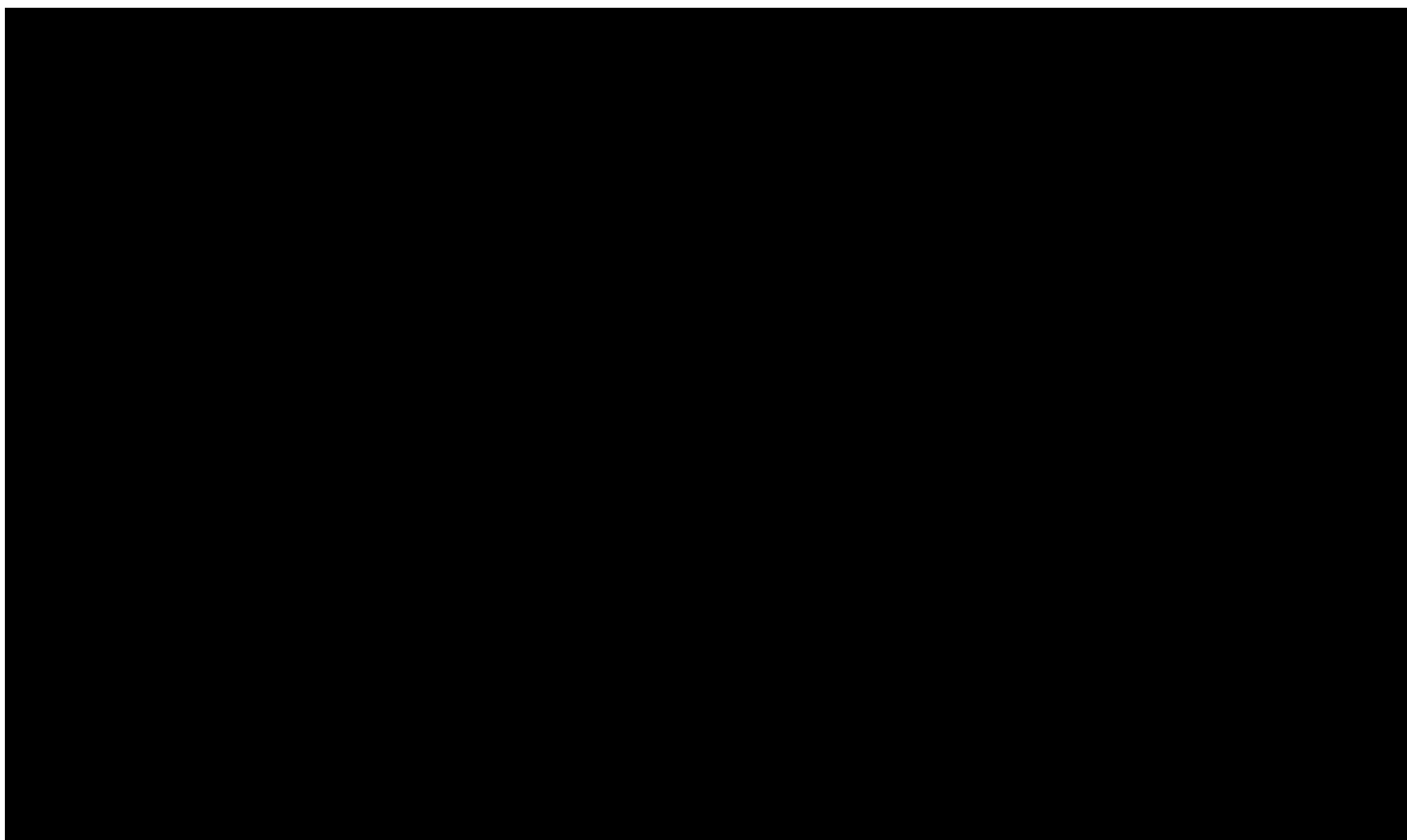
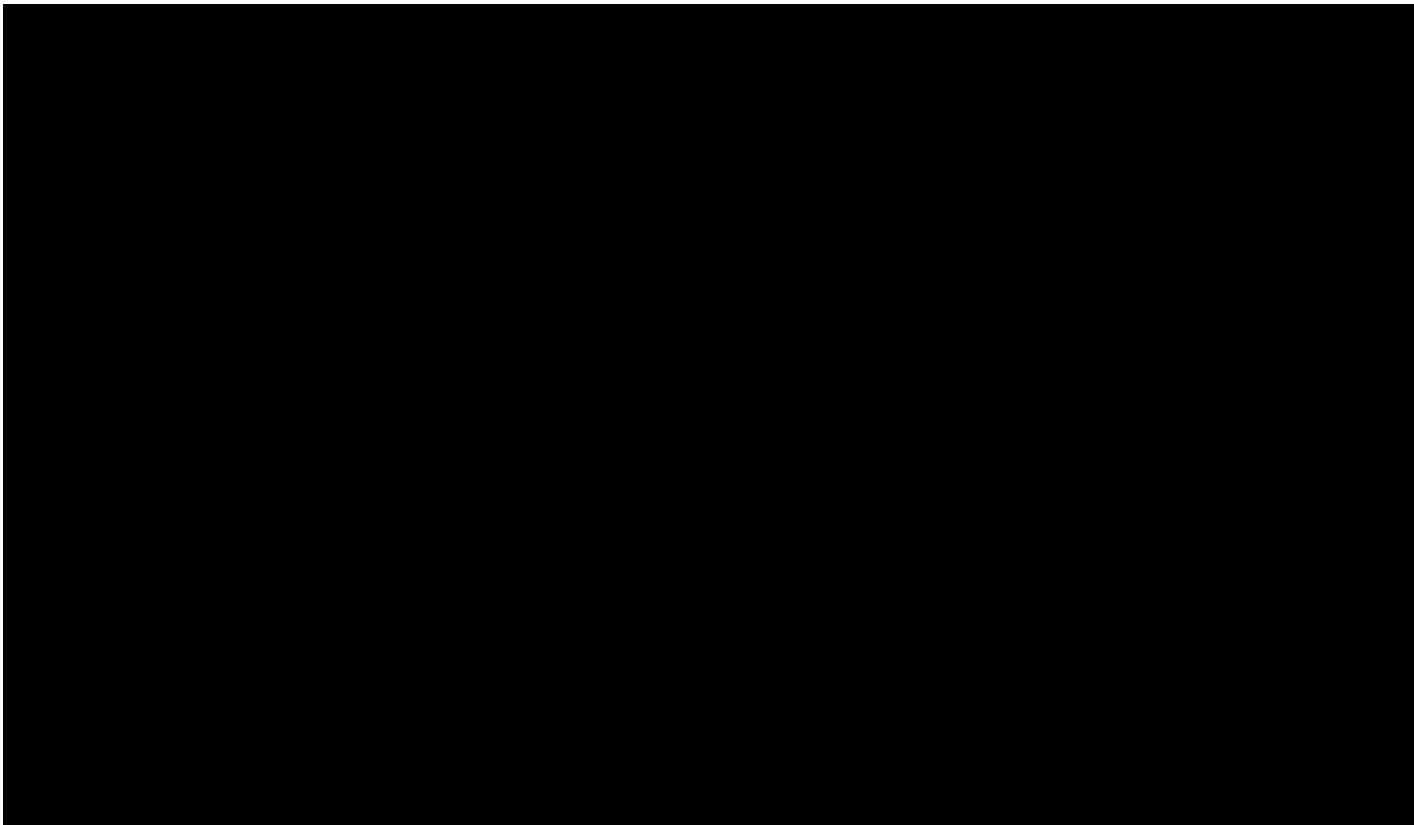


2.3	Demonstrate an ability to research and prepare documents that meet the objectives and outcomes of the project brief. Provide CVs and a summary of related experience for each person involved in the project with case studies as appropriate, including experience of defending similar work at EiP. Provide references where appropriate.	2 / 20 marks
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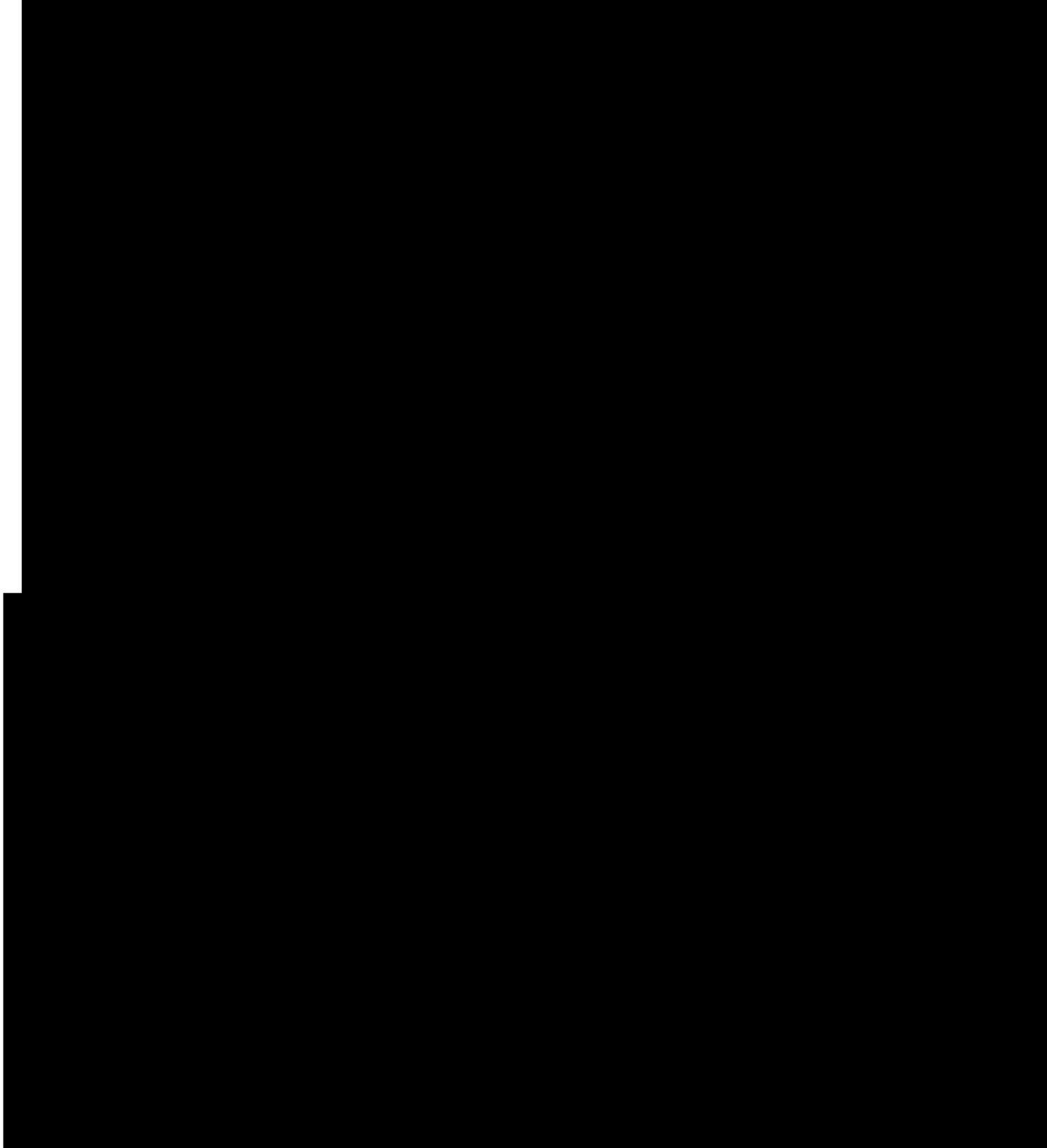


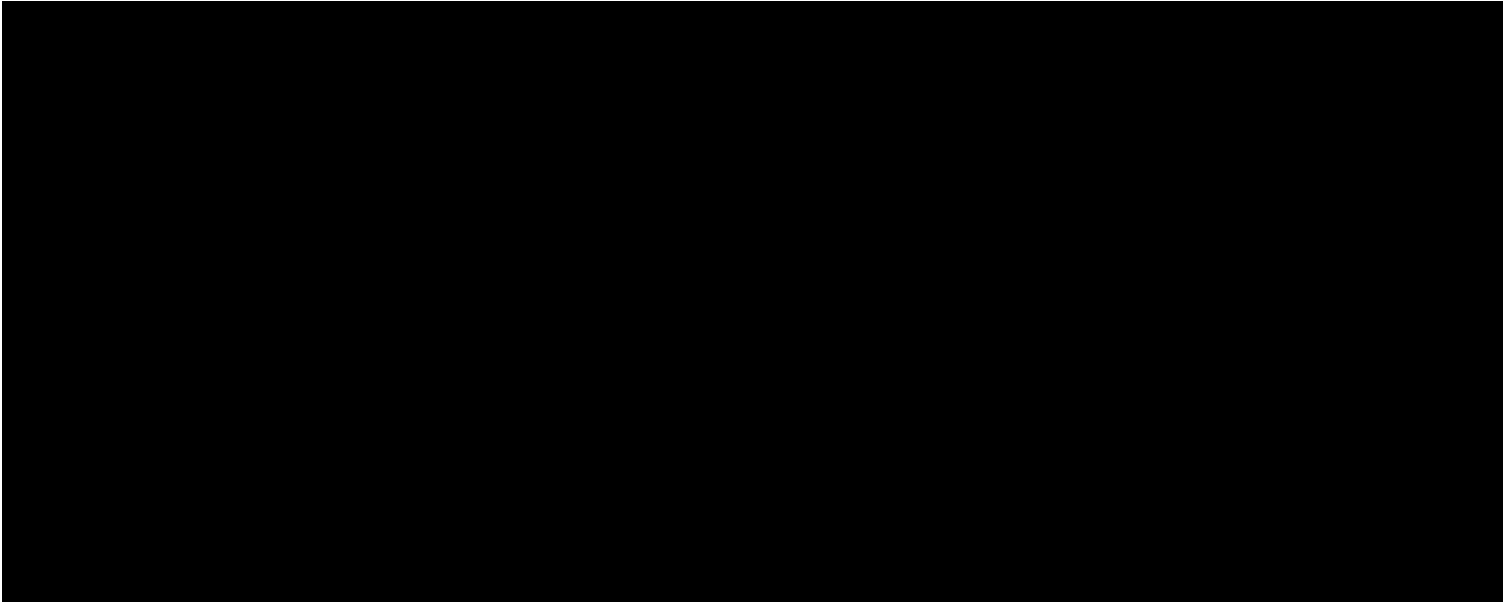


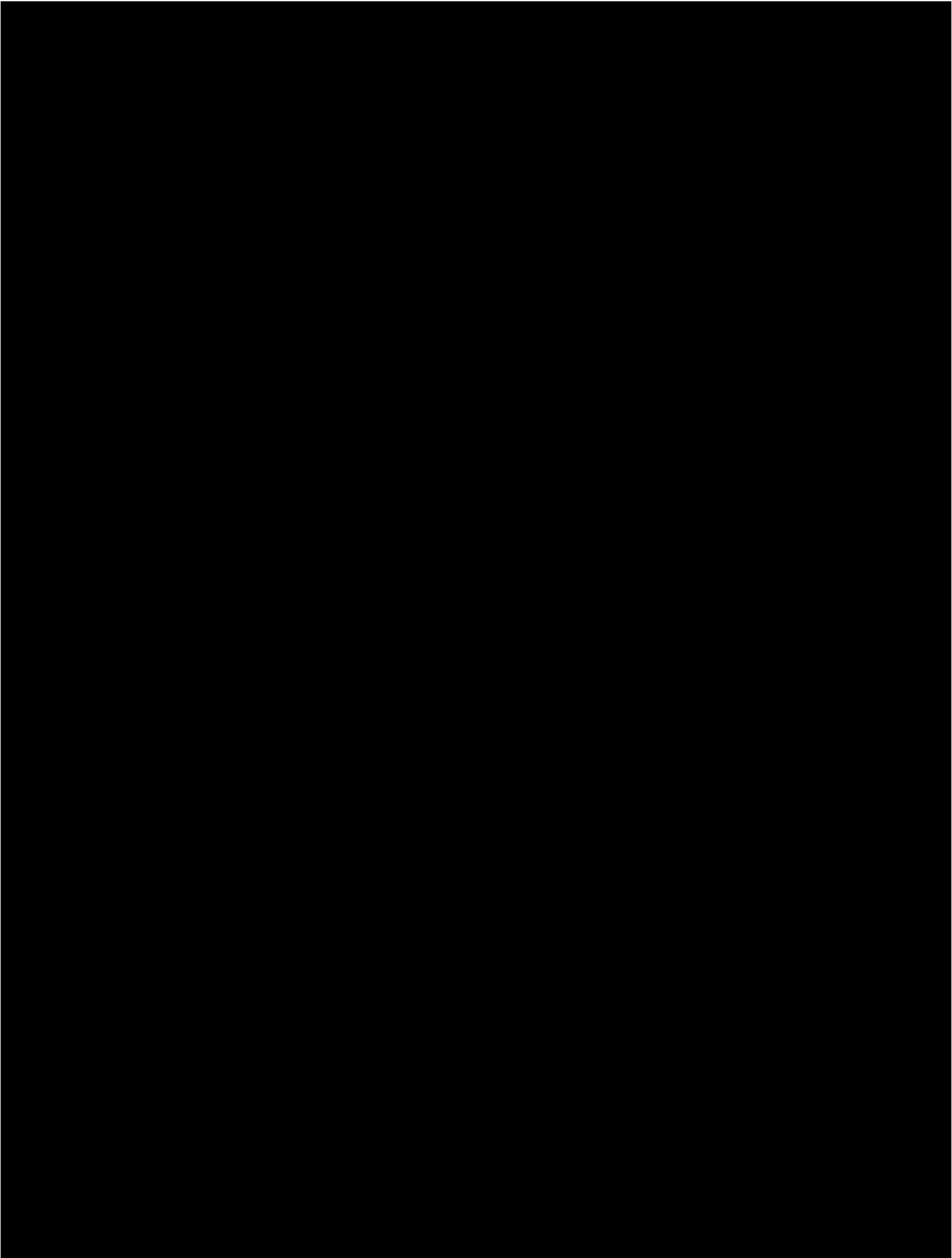
2.4	Provide details of any known information and support required from Shropshire Council and/or any third parties to inform the project.	1 / 10 marks
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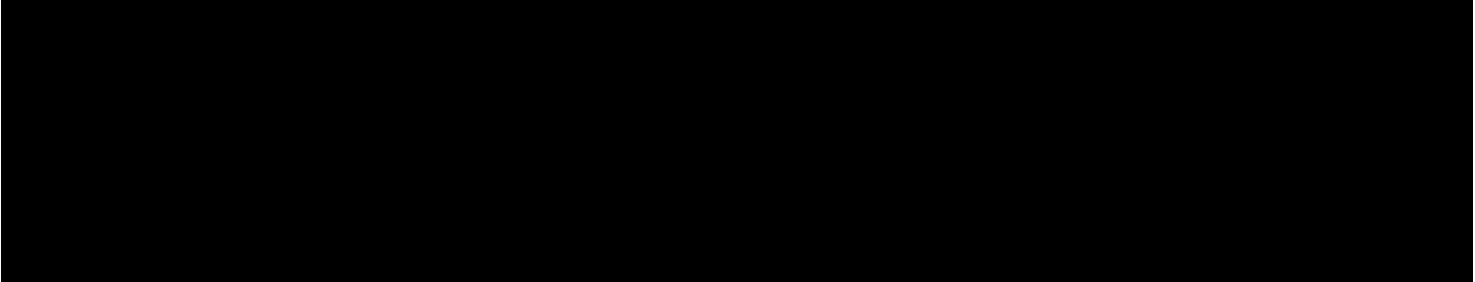
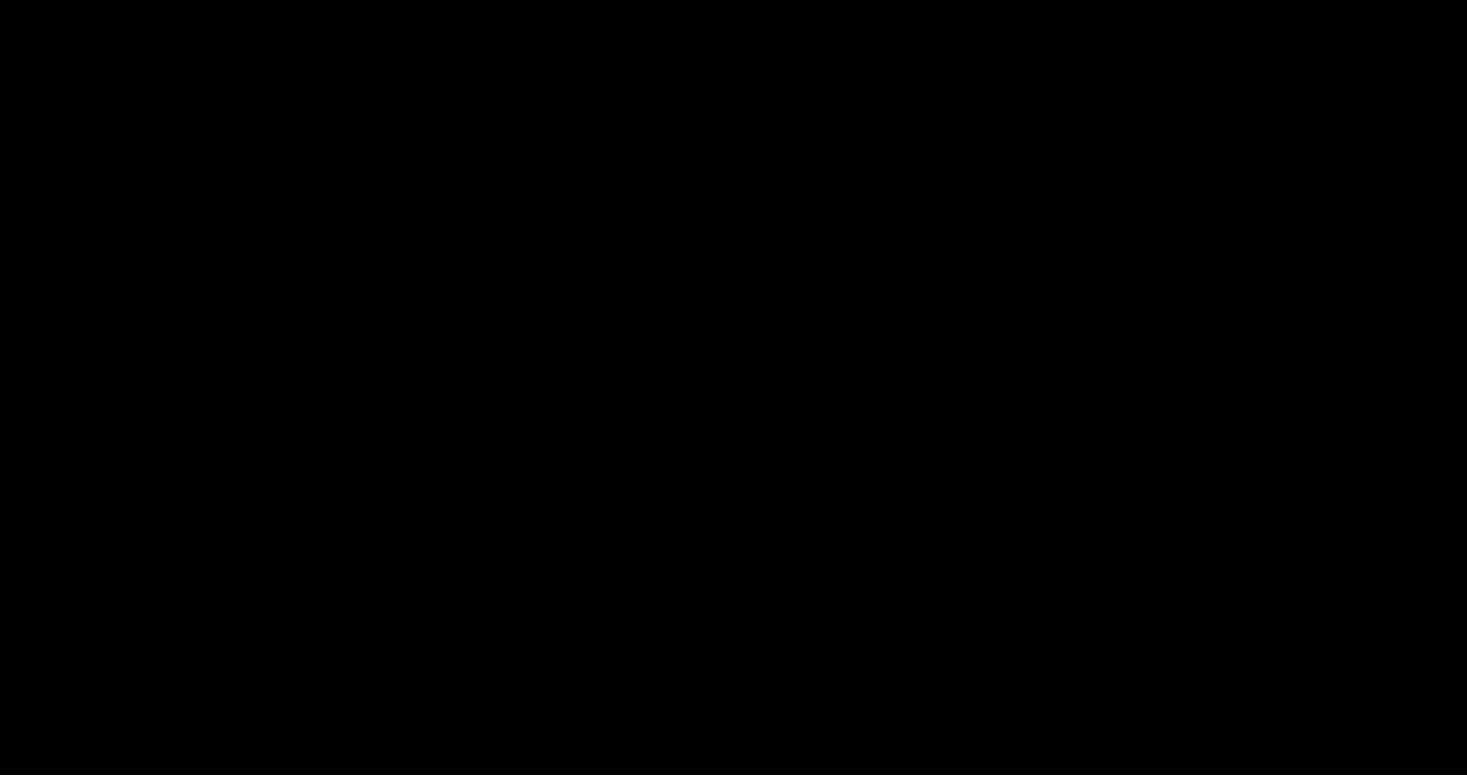
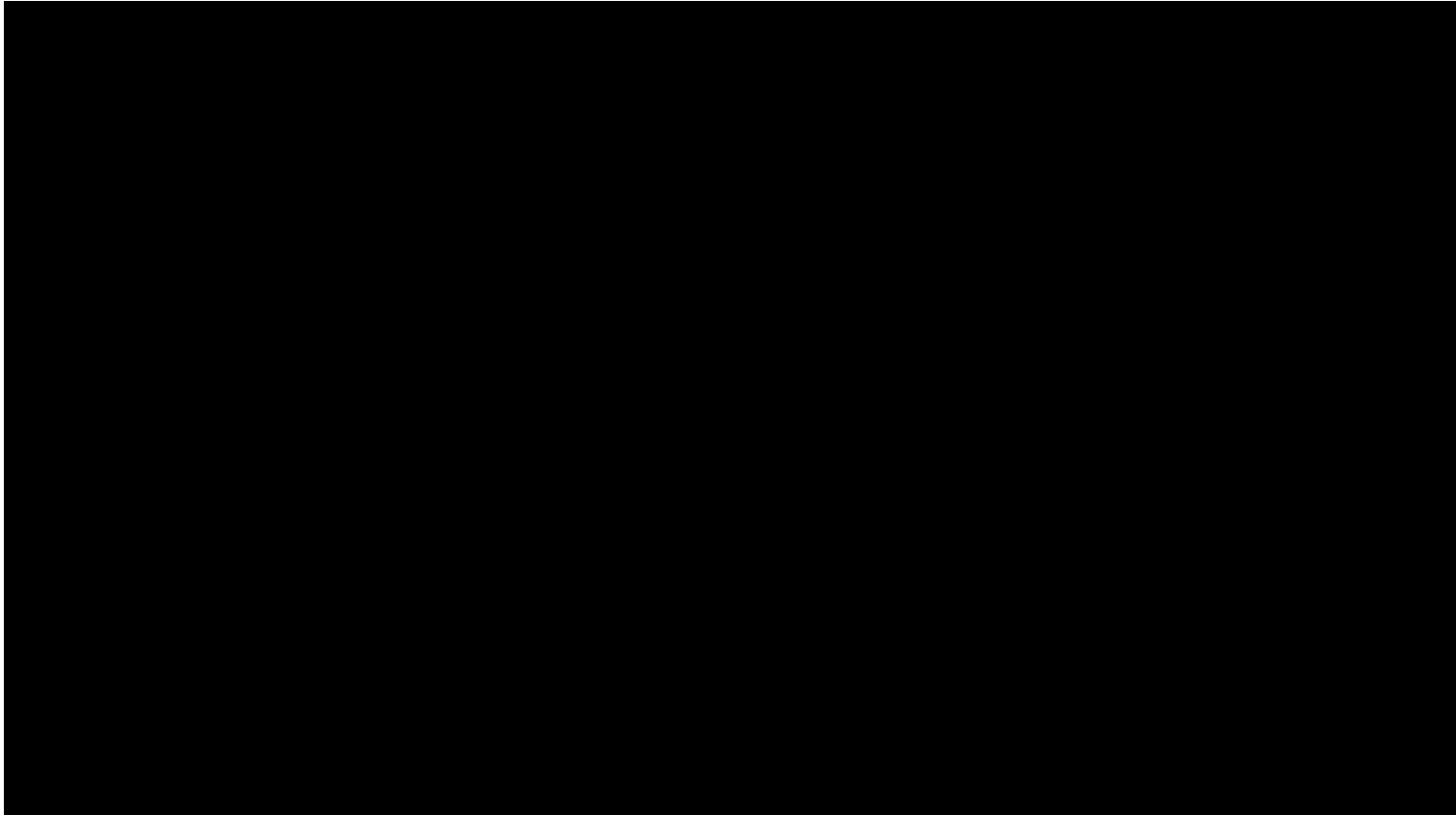


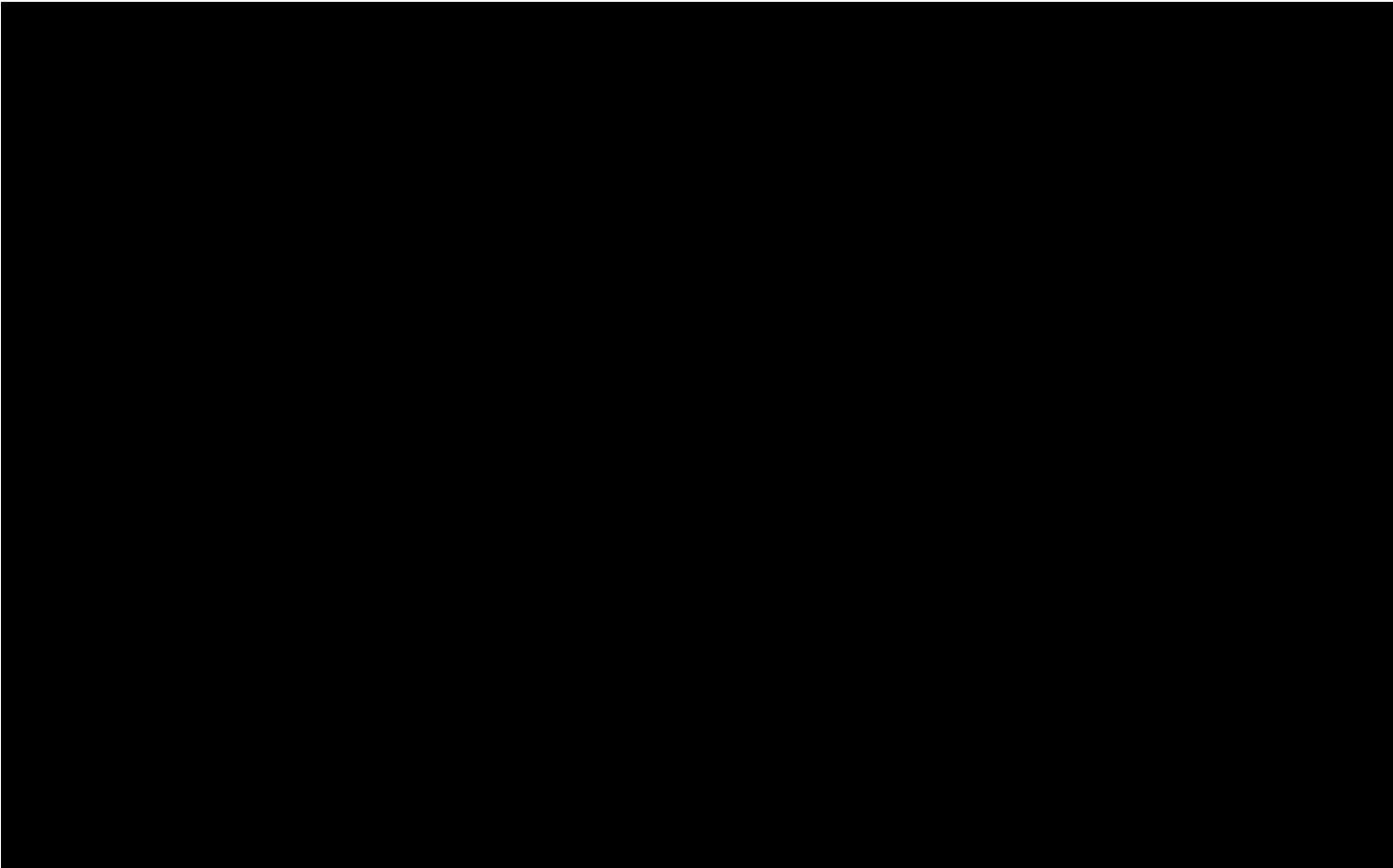
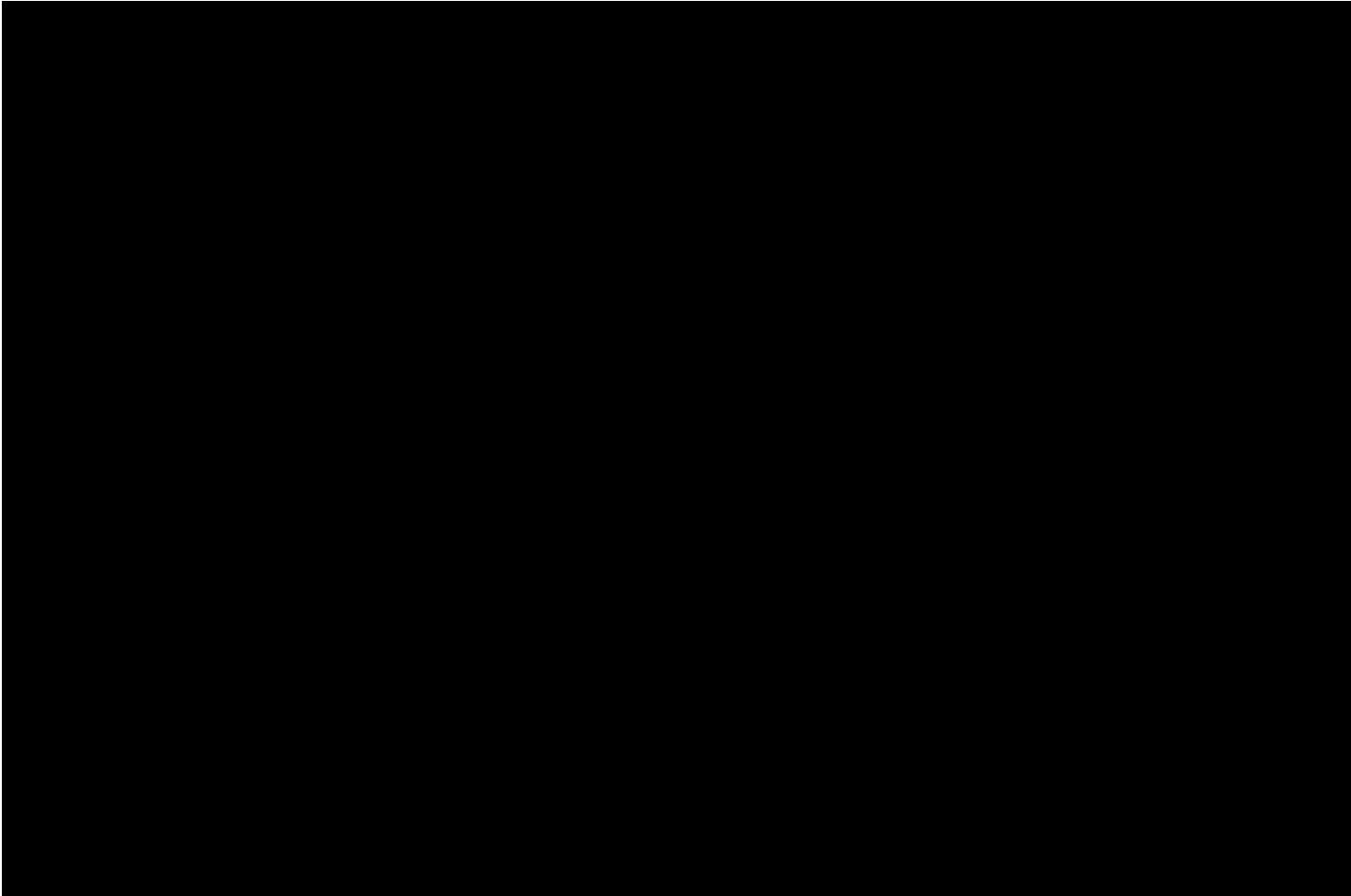
2.5	Provide details of how appropriate and constructive engagement with stakeholders will be undertaken. This should include specification of measures/contingency measures to ensure appropriate levels of stakeholder involvement.	4 / 40 marks
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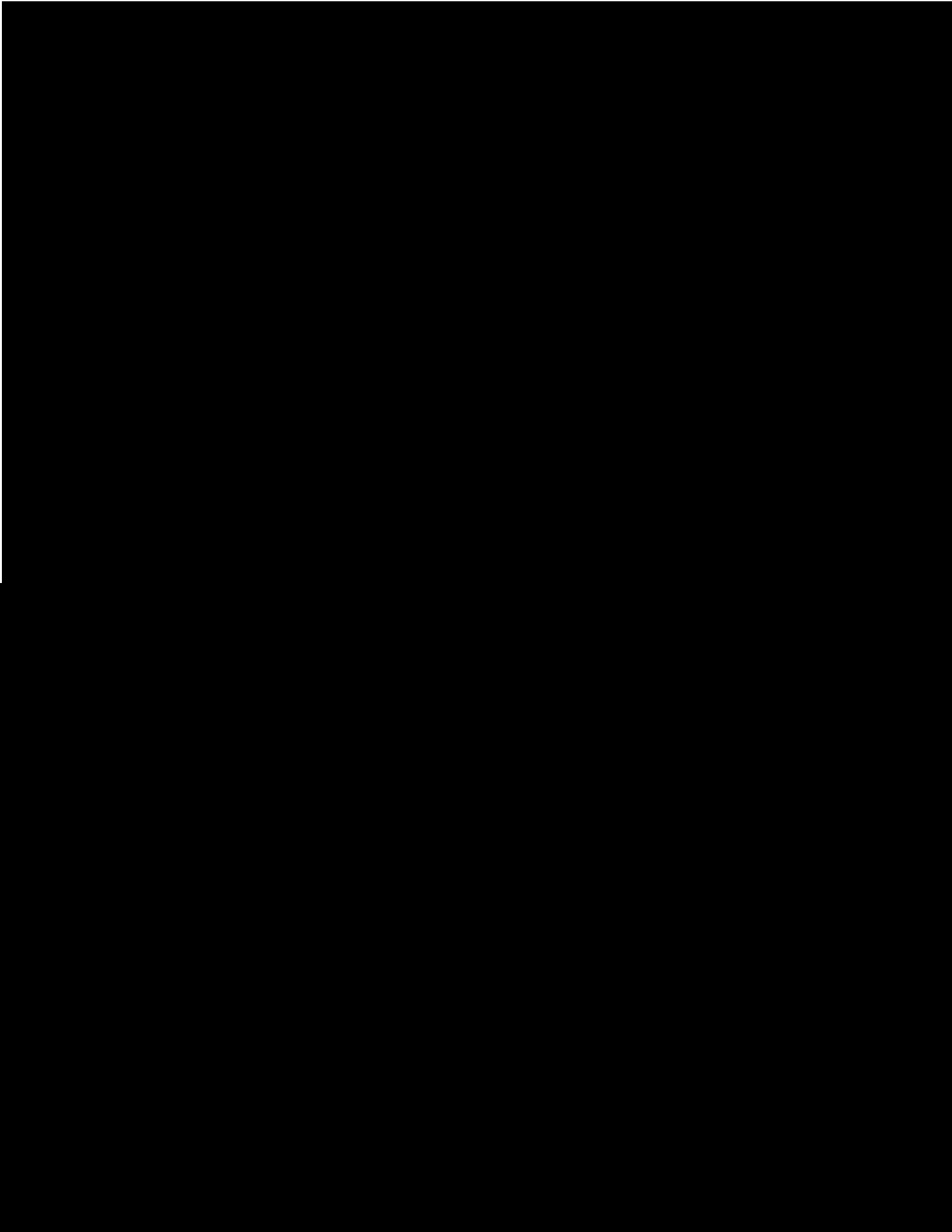


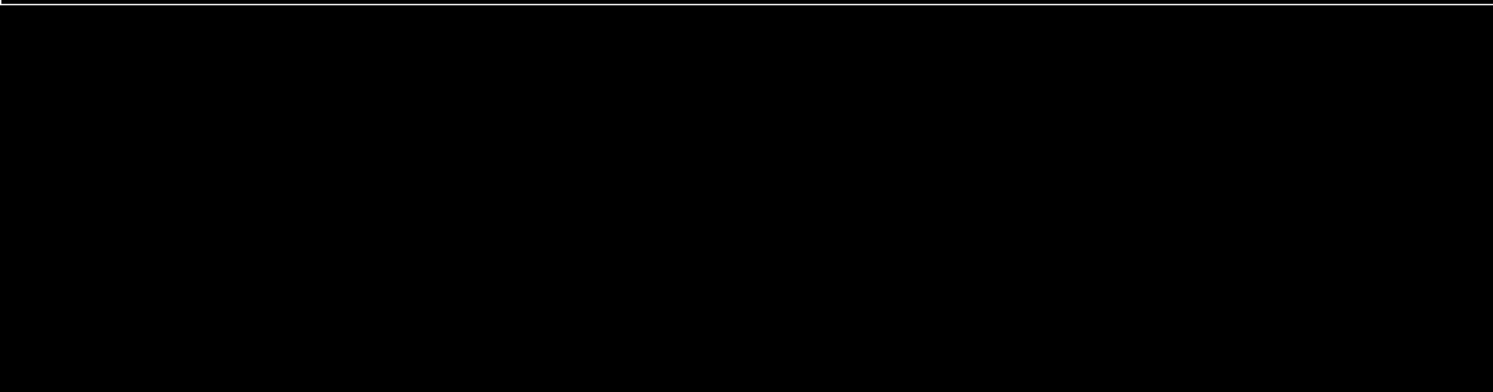
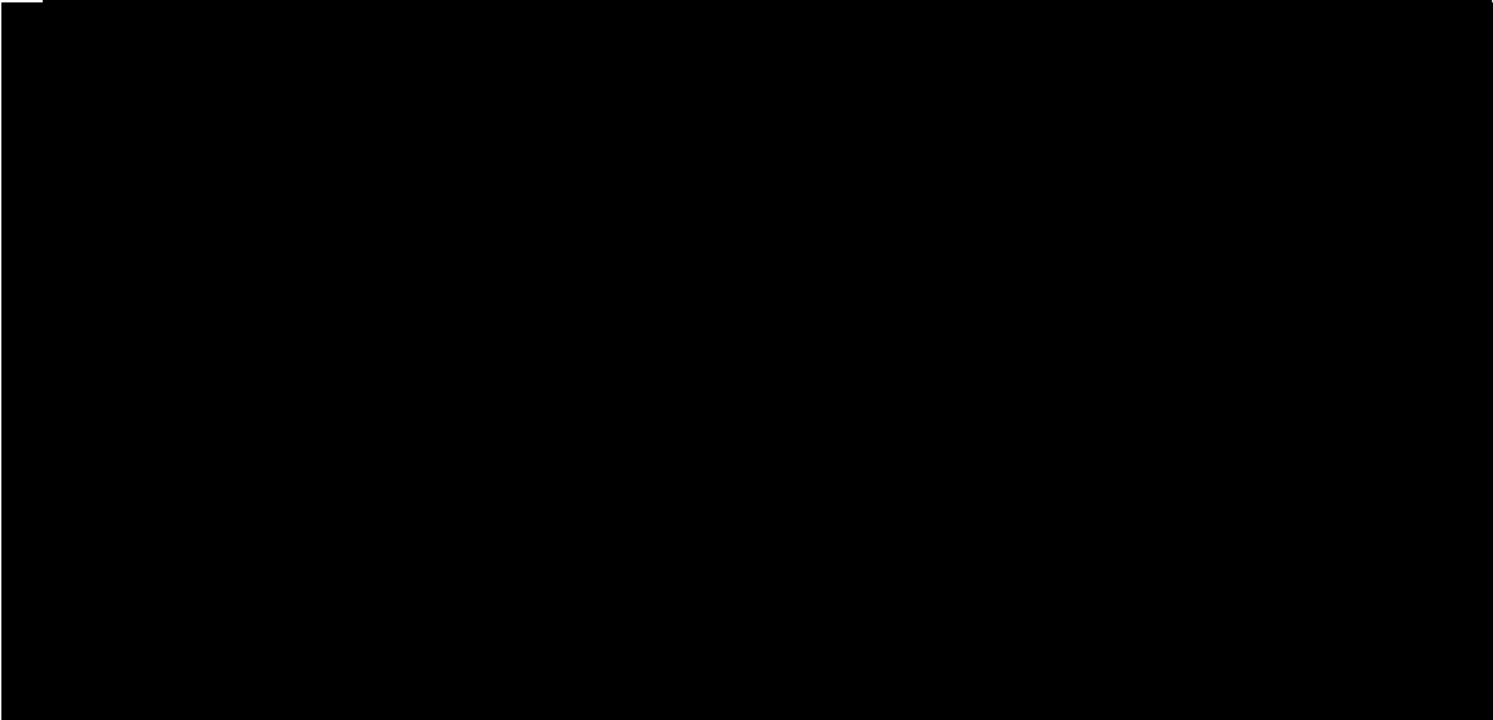
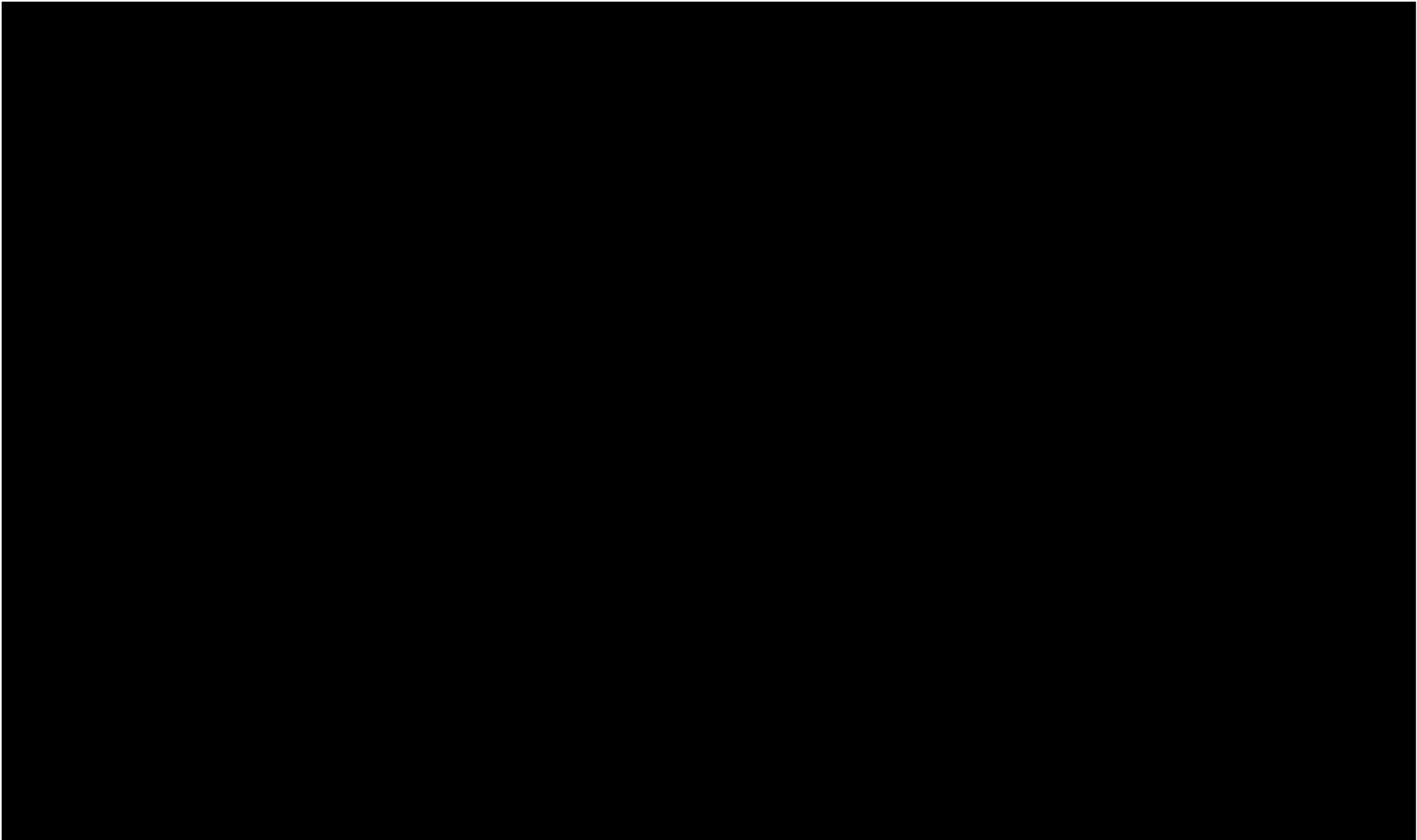


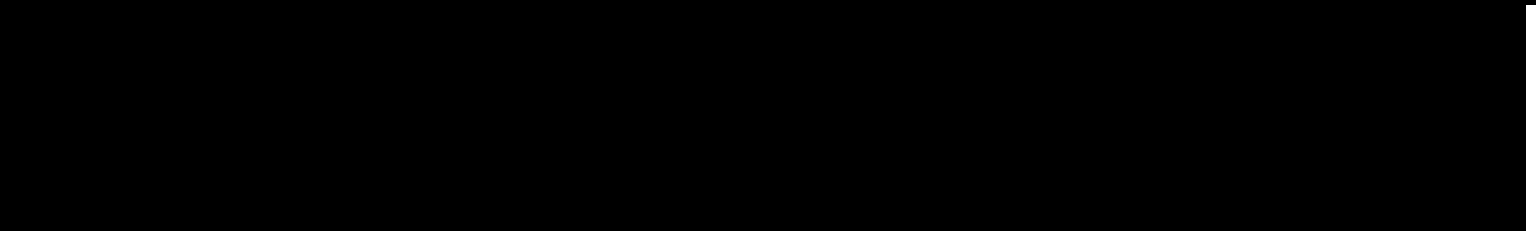
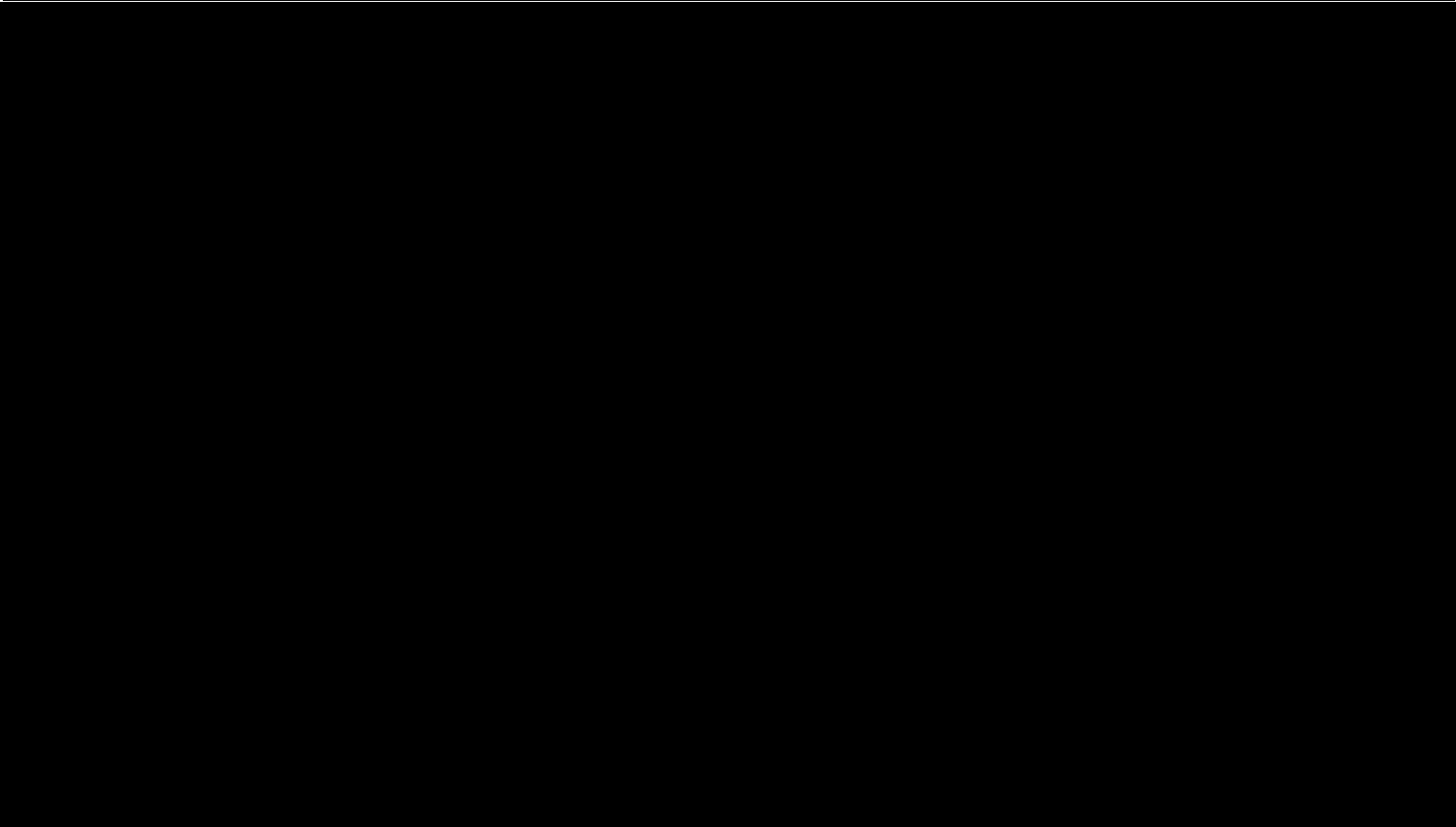
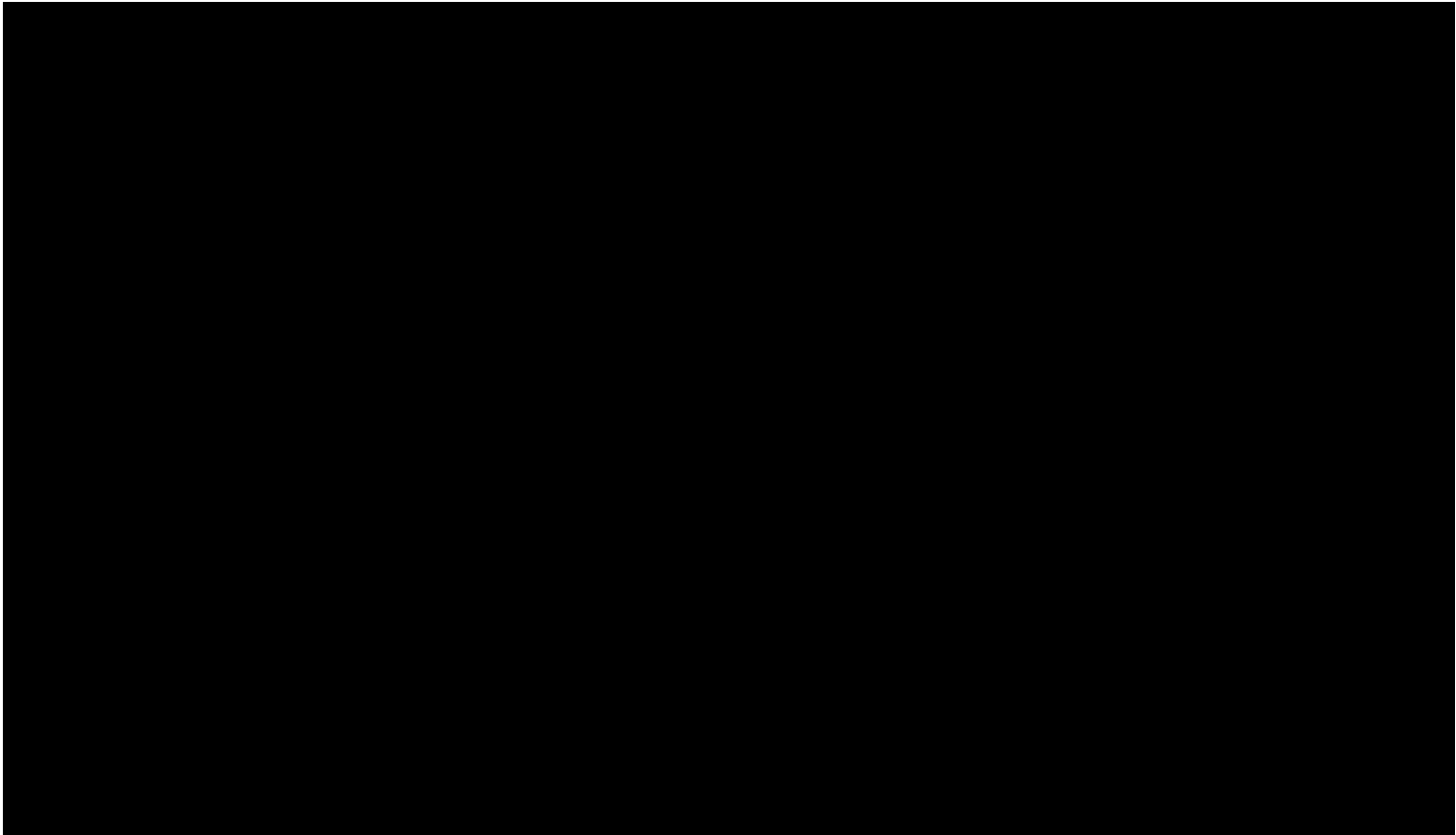


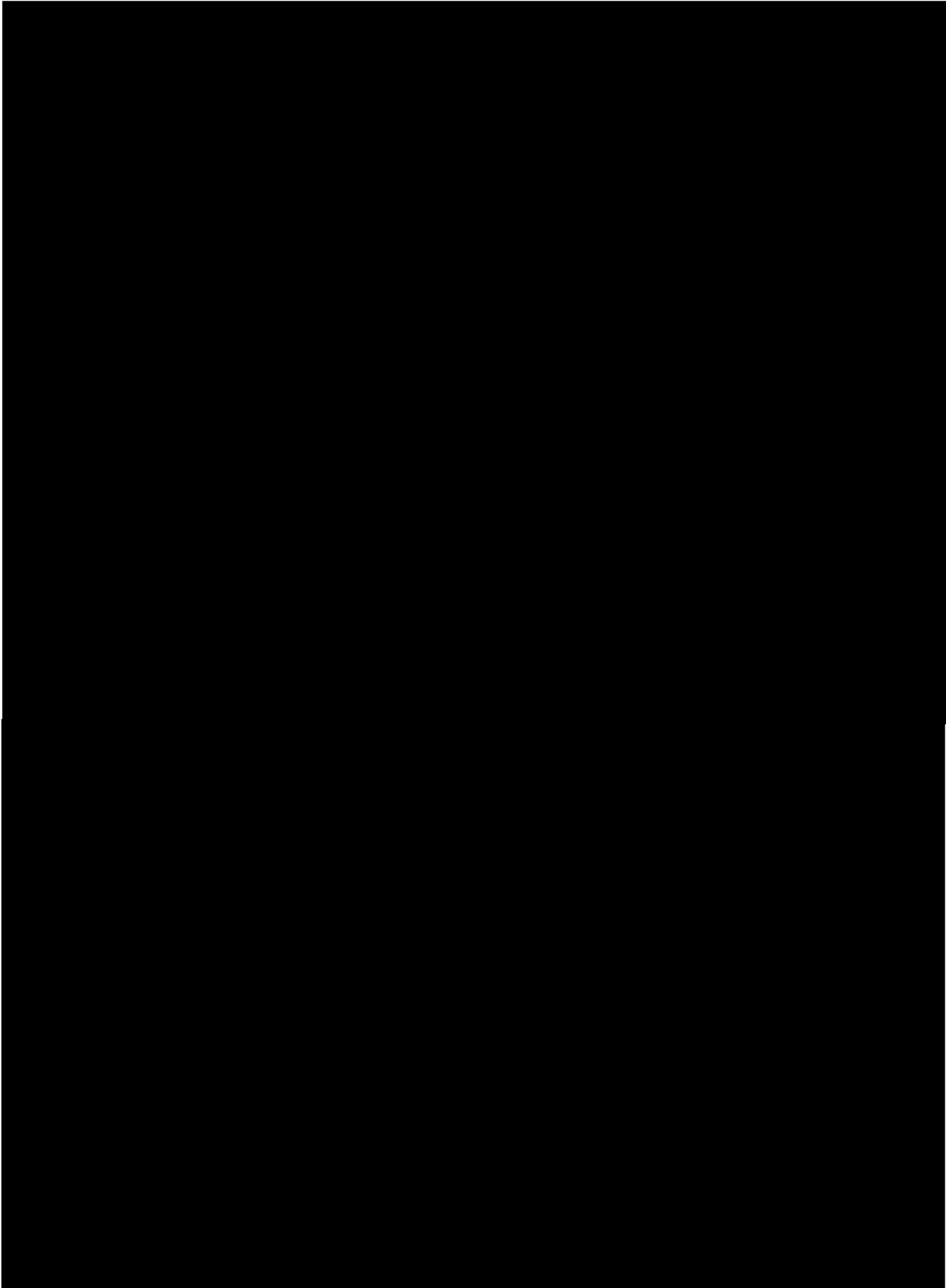


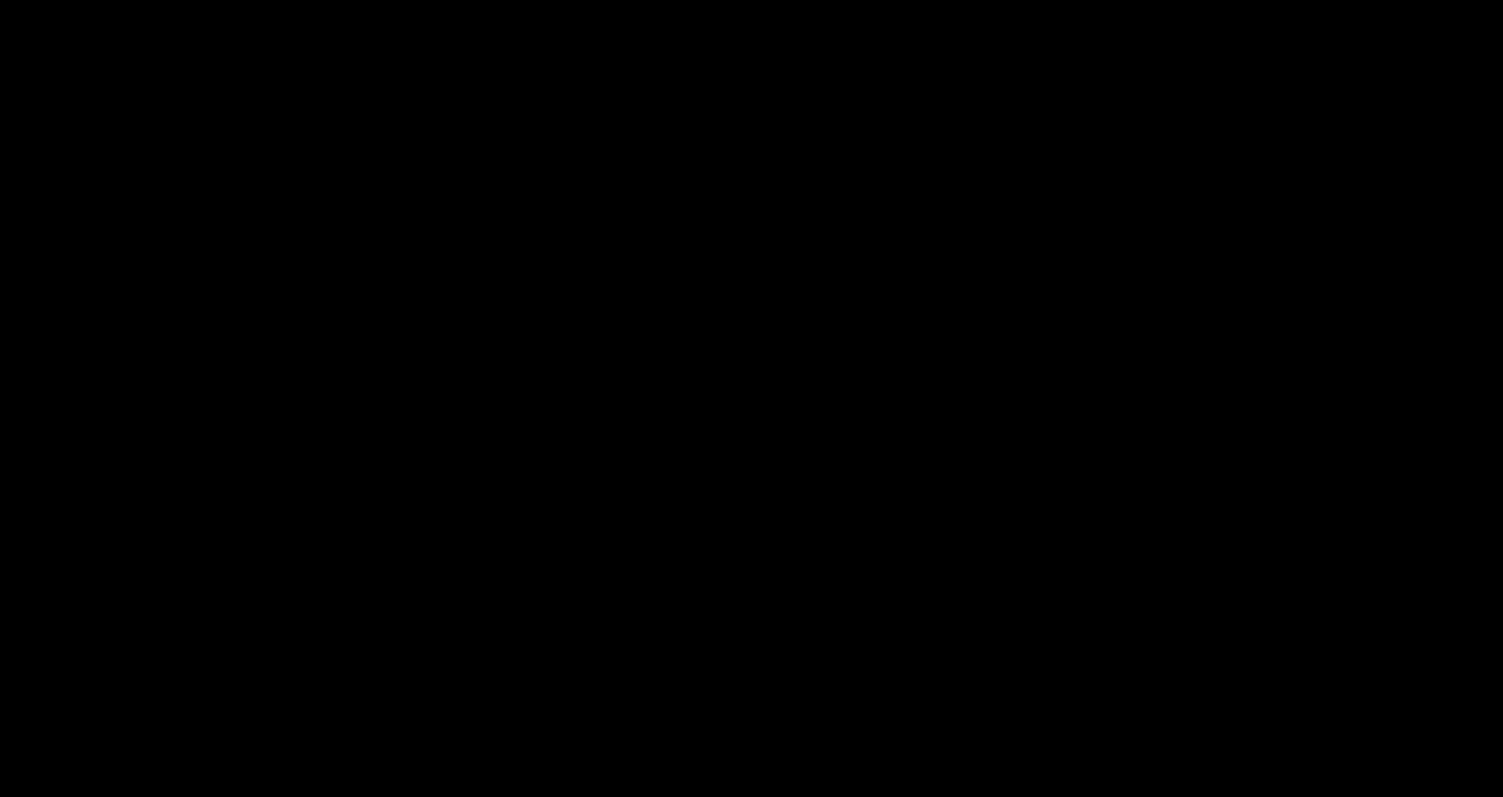
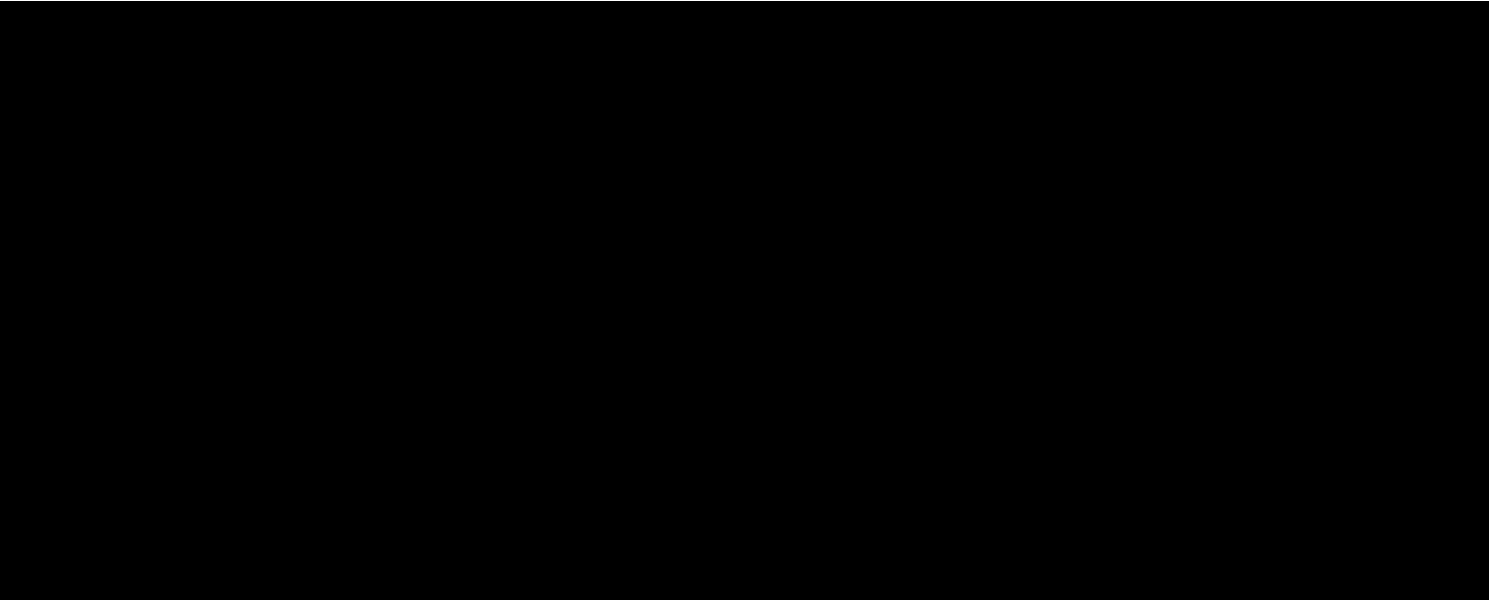


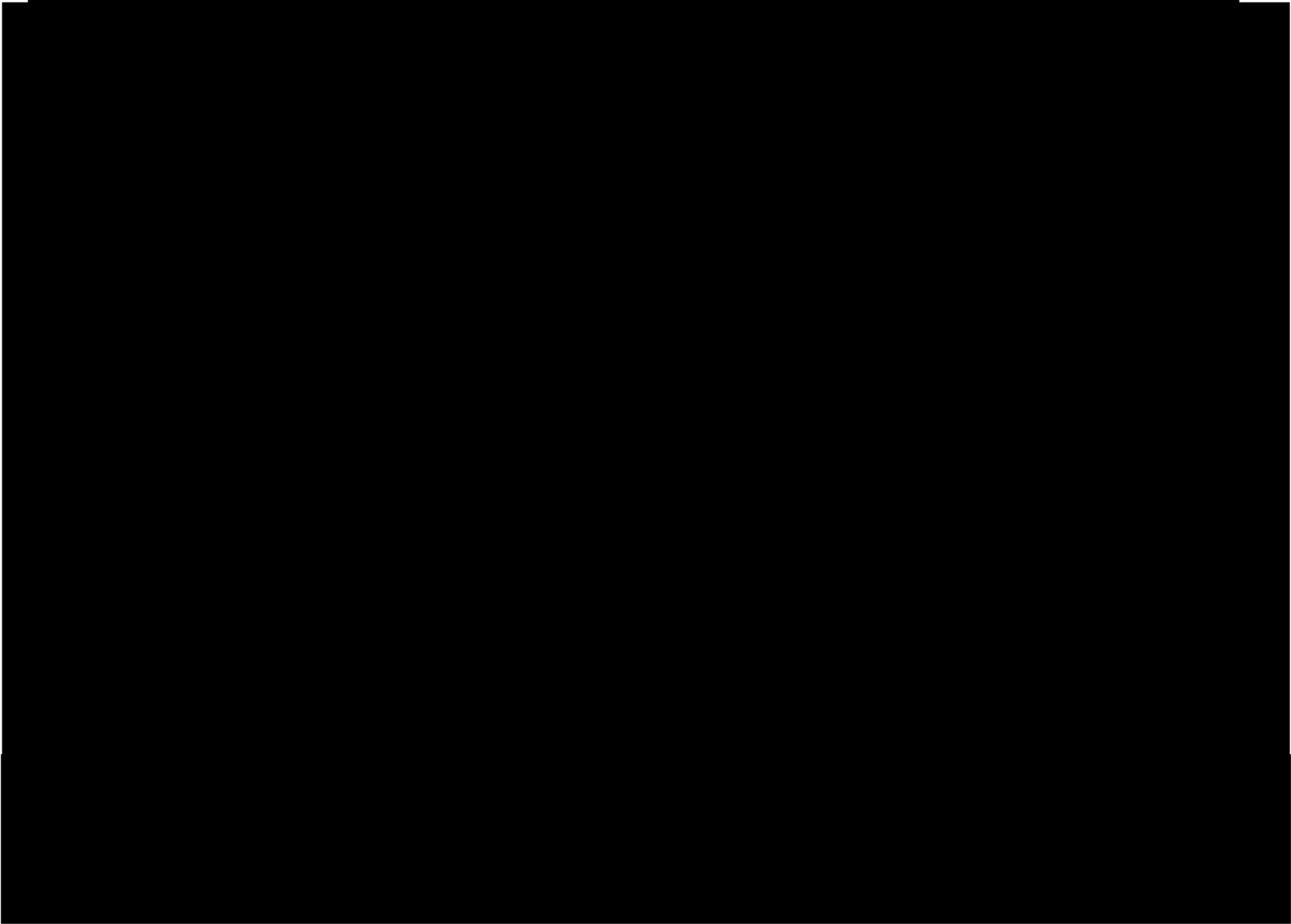
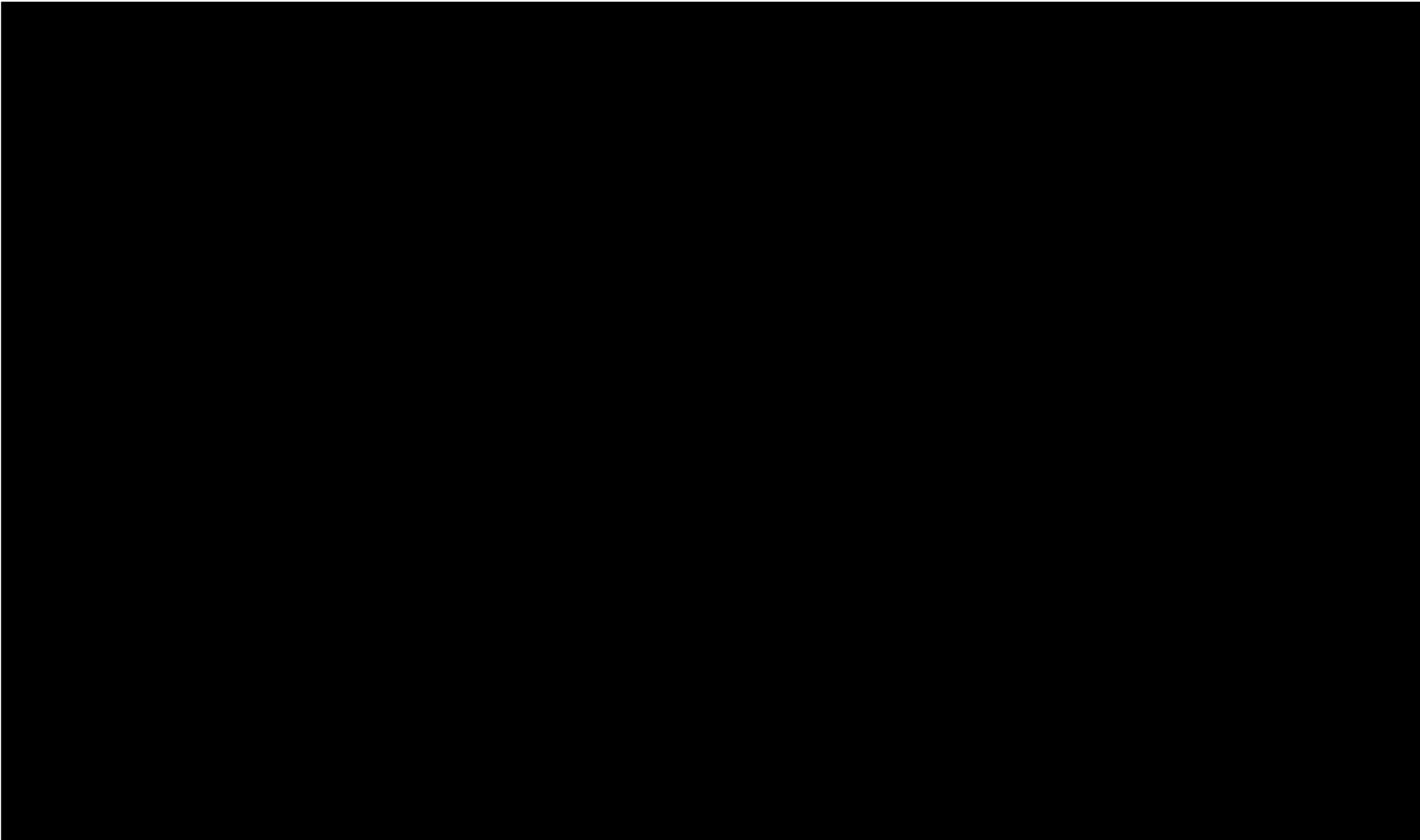


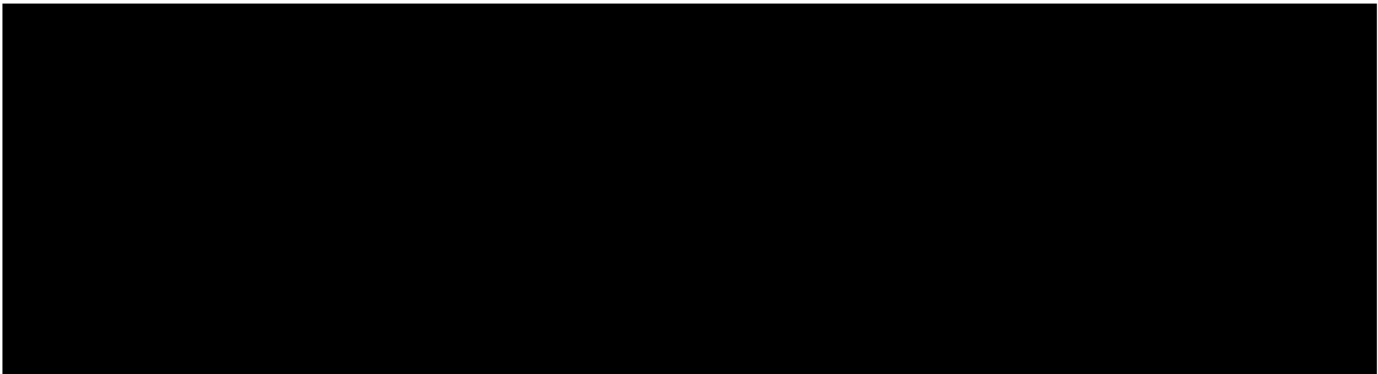
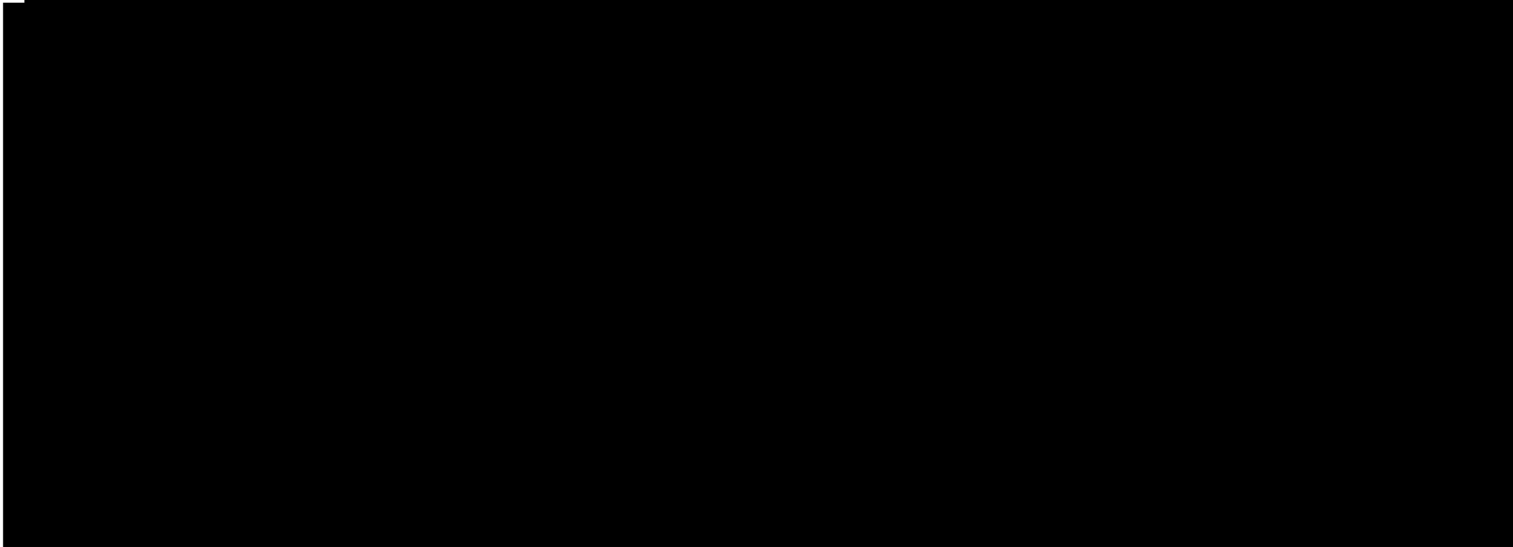
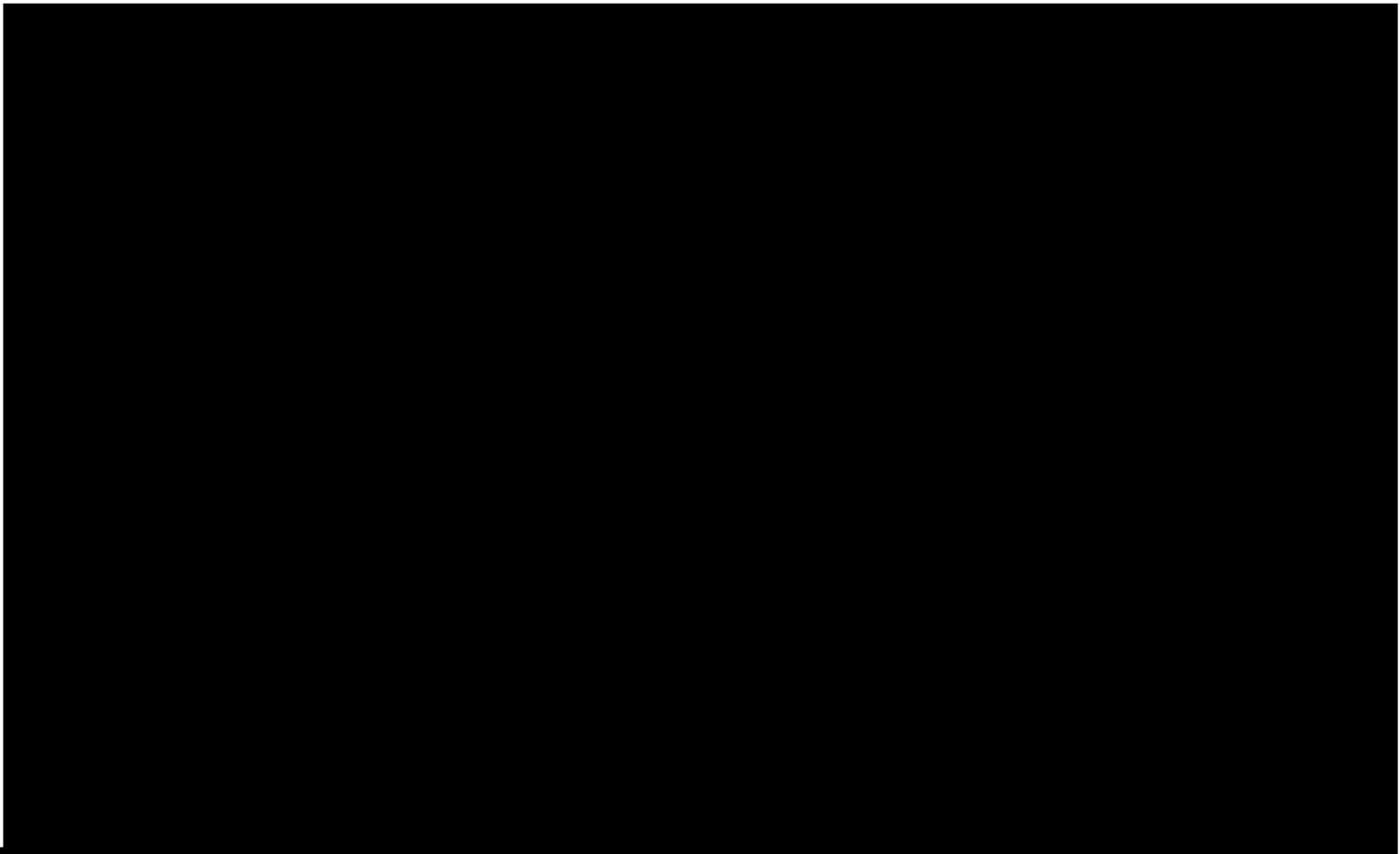






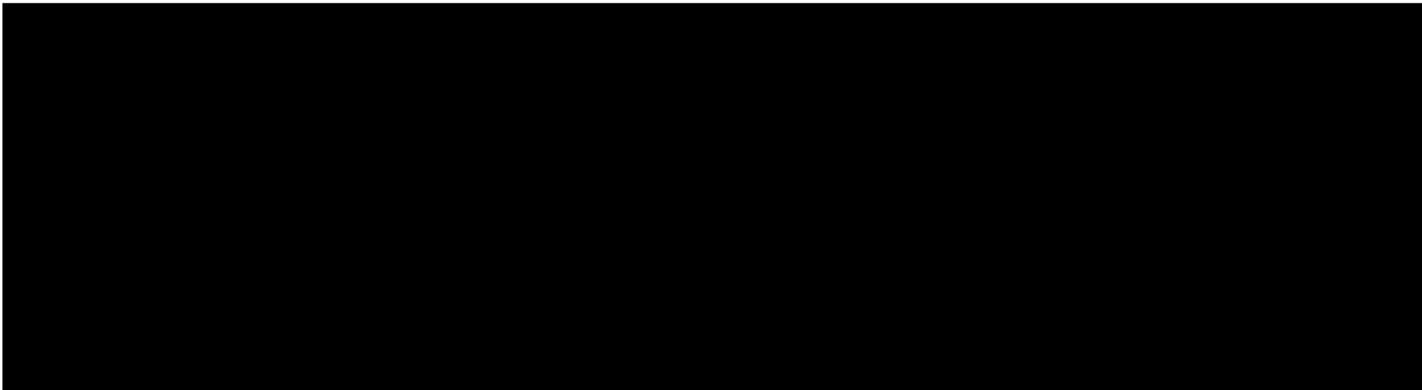
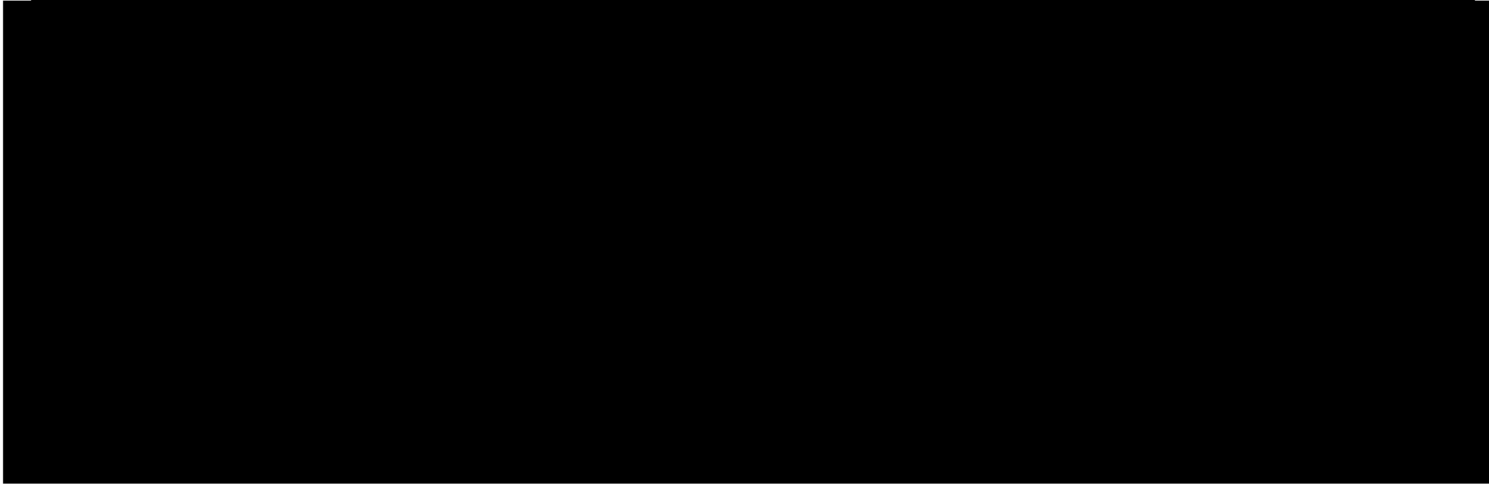
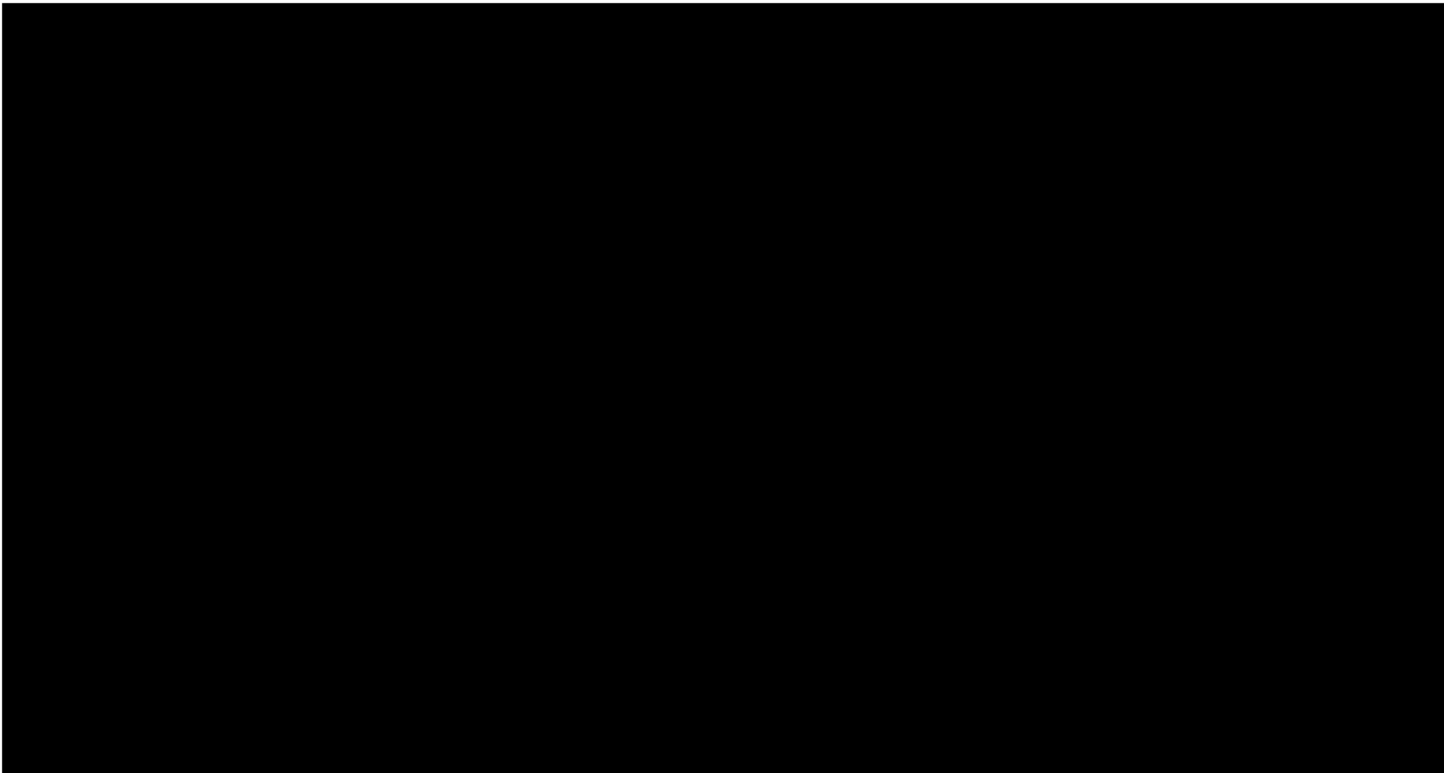


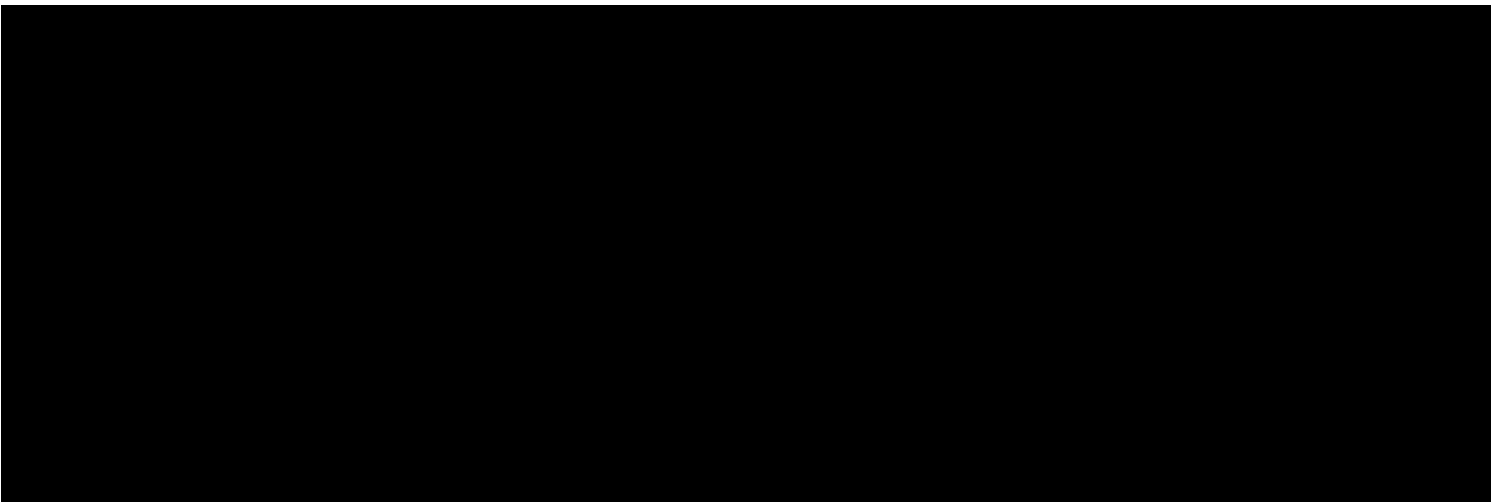
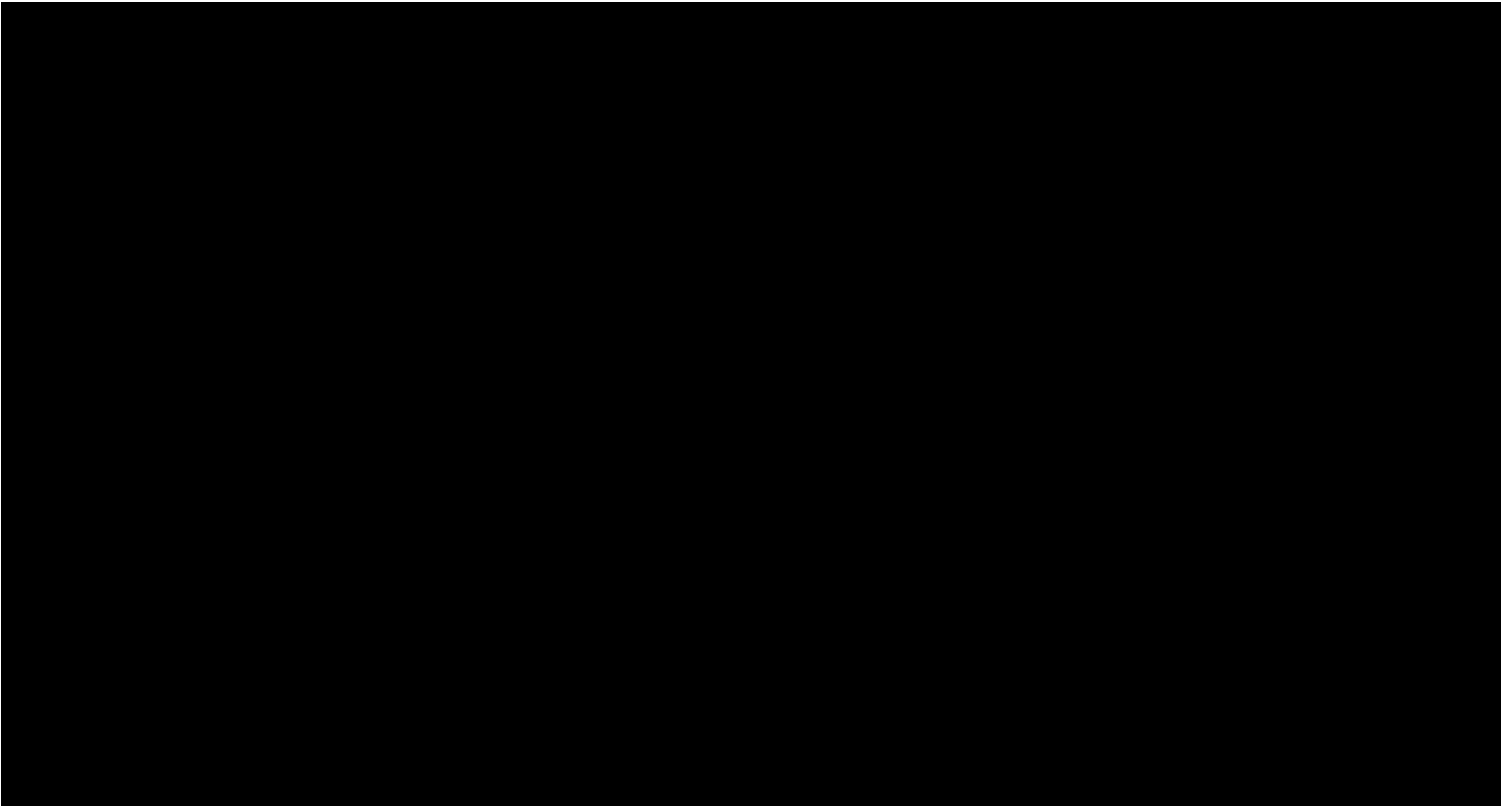


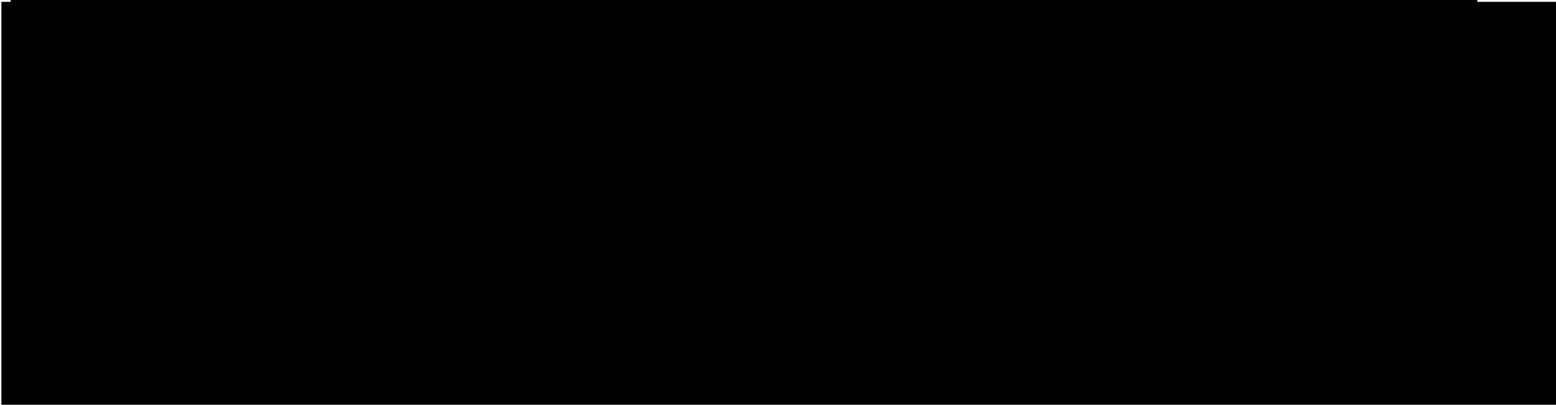
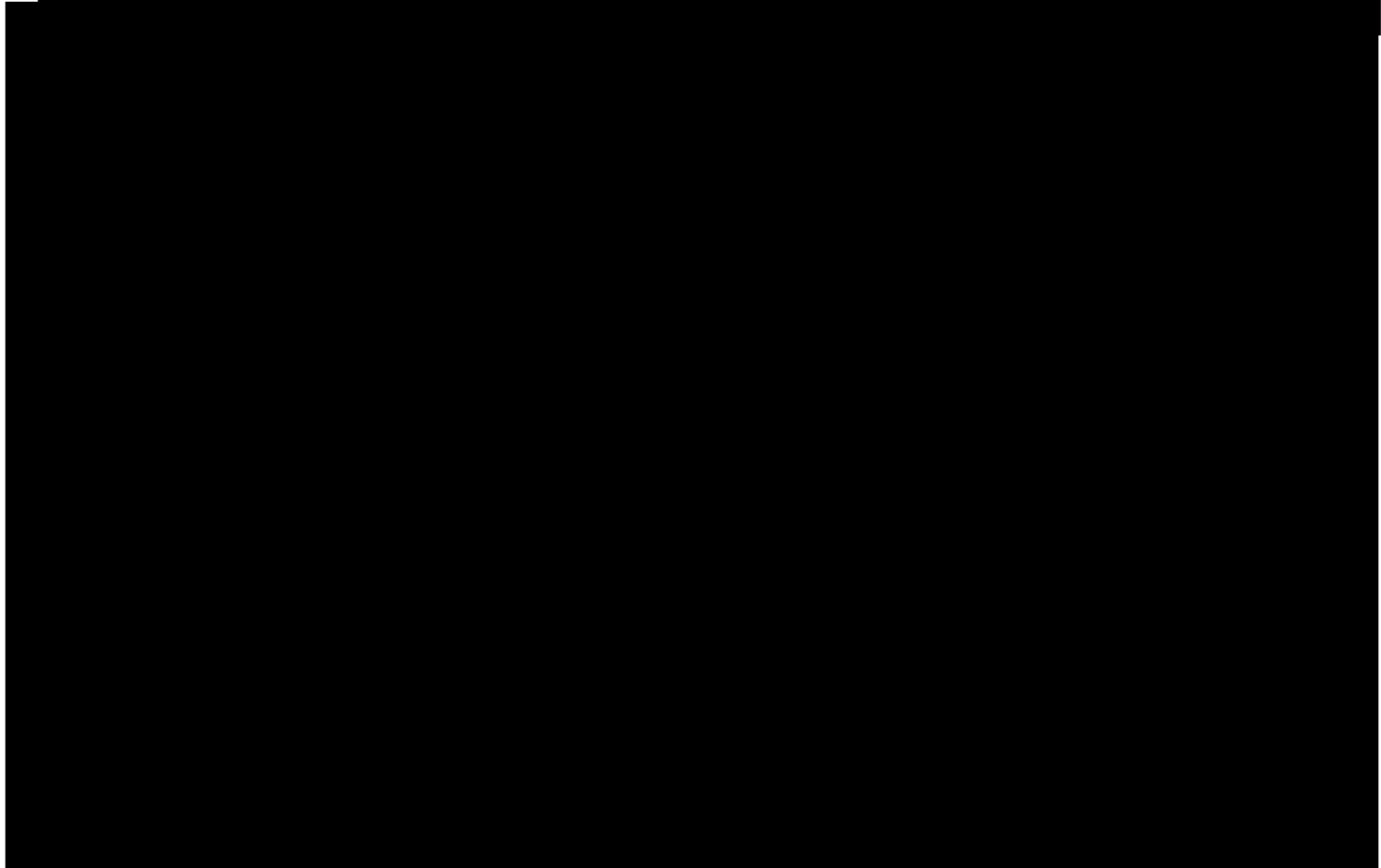
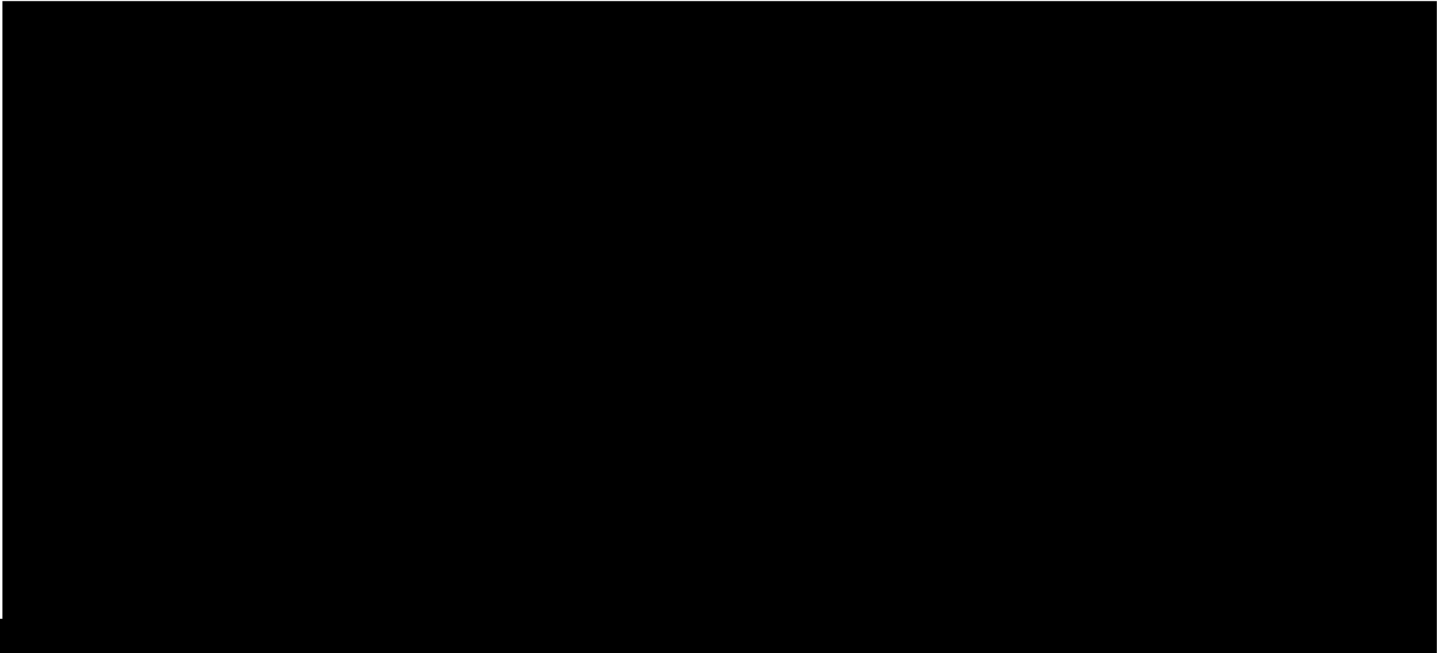


Name of tendering organisation:

HDH Planning & Development Ltd







[REDACTED]

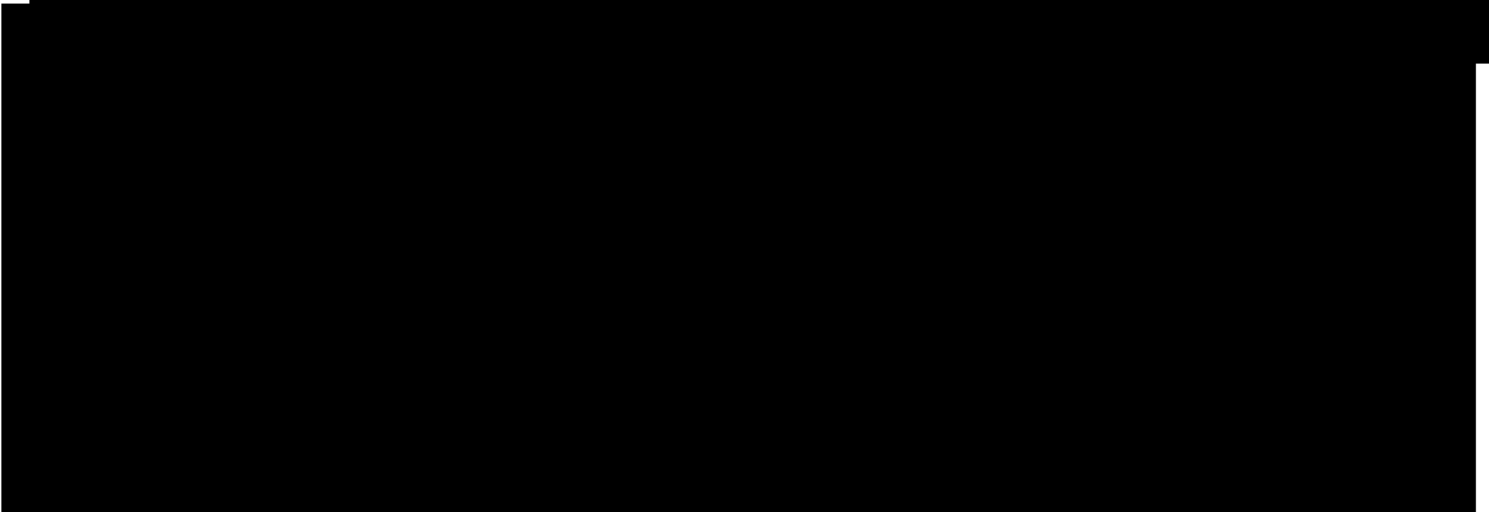
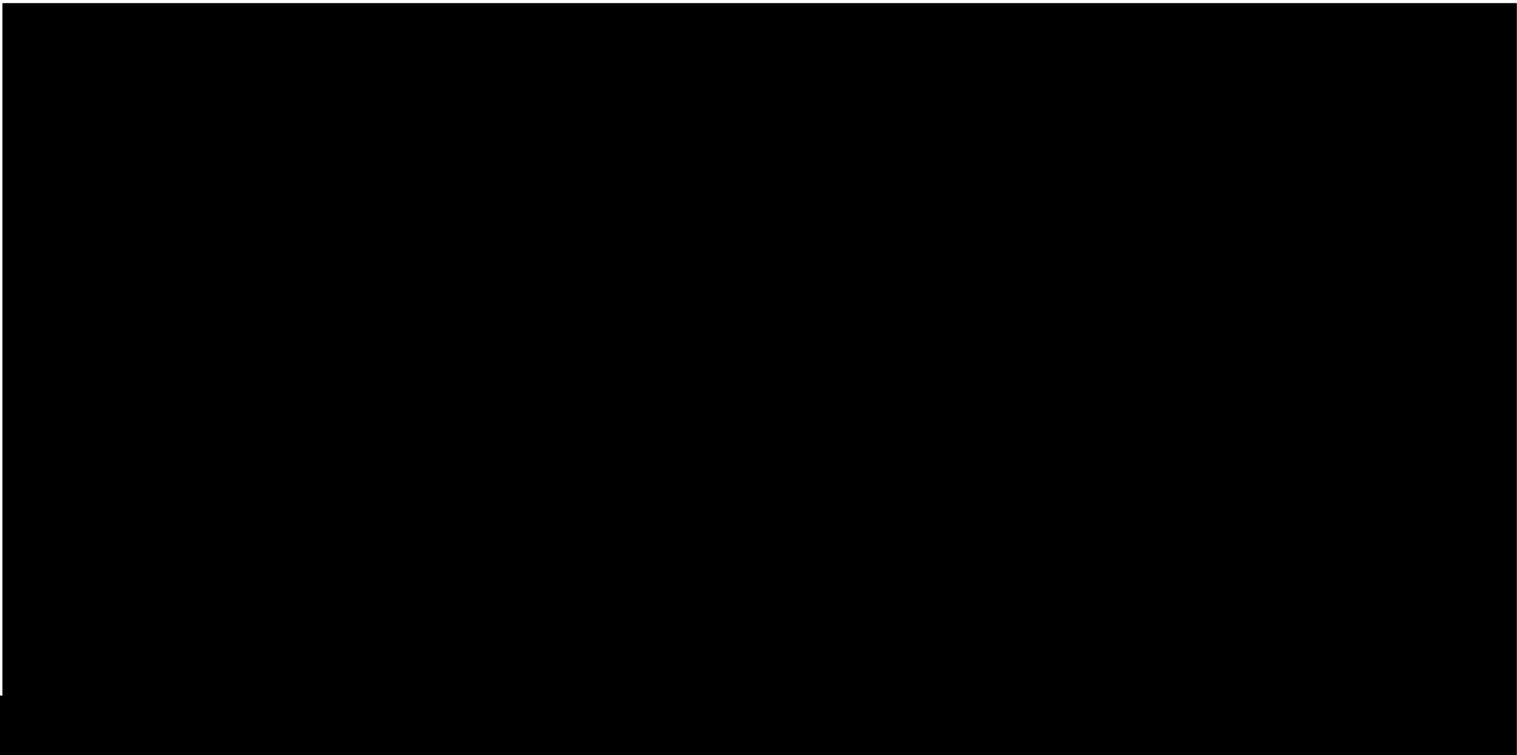
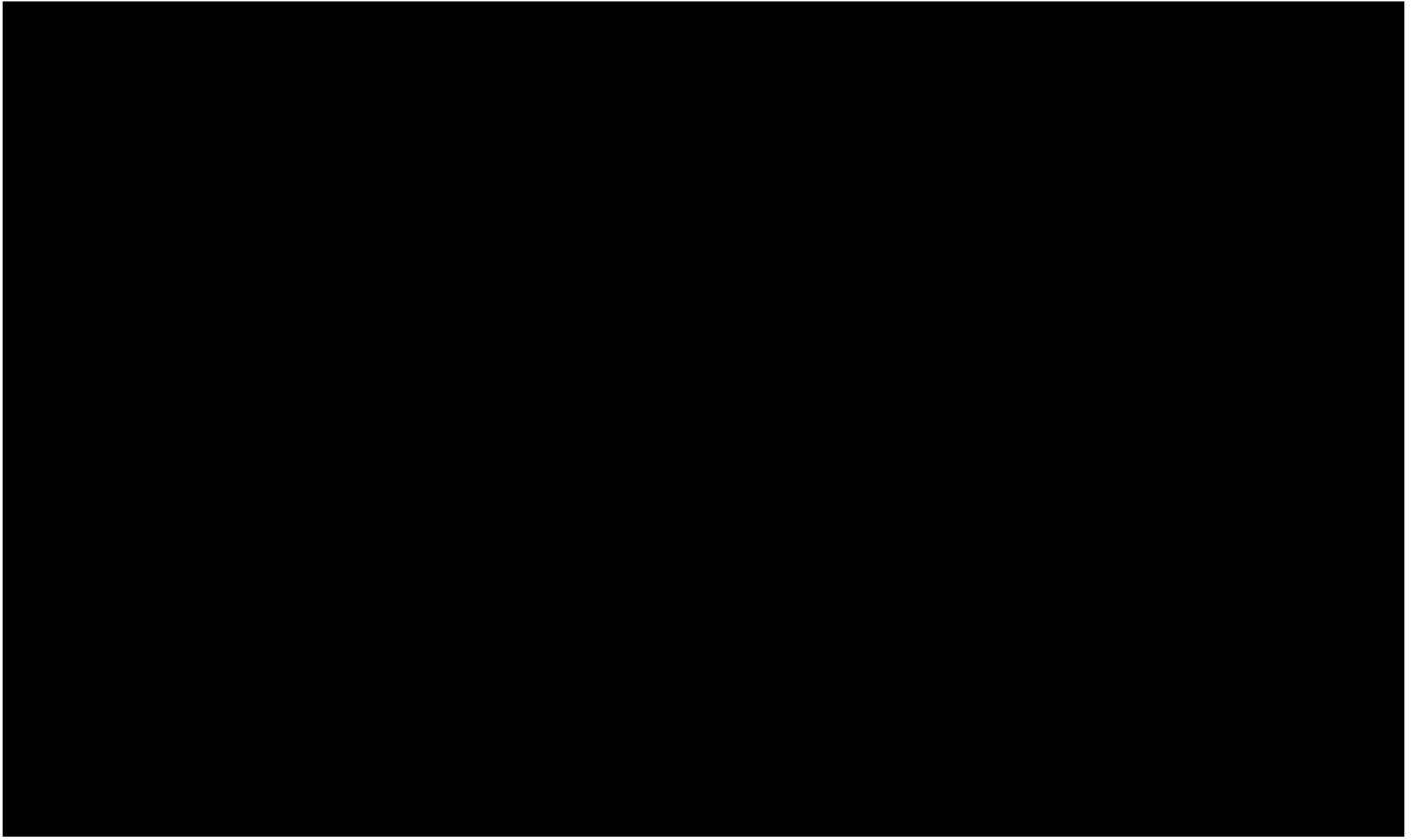
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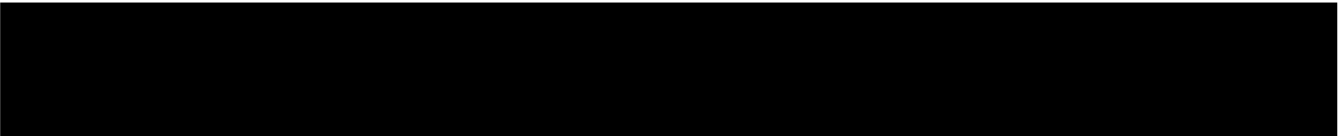
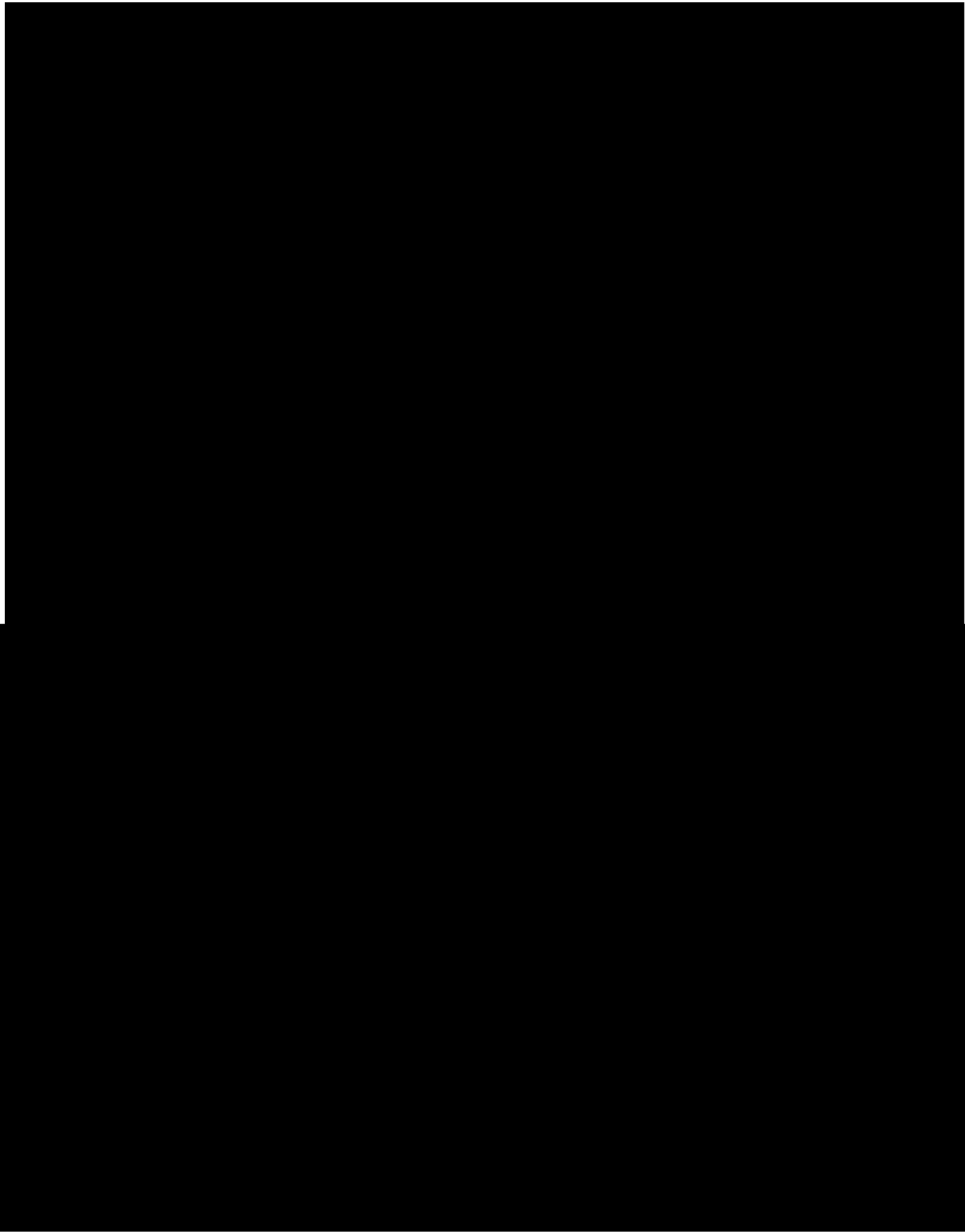




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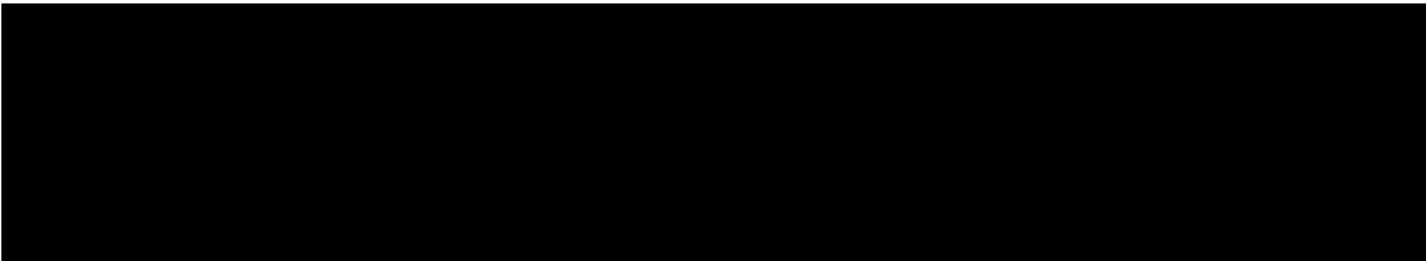
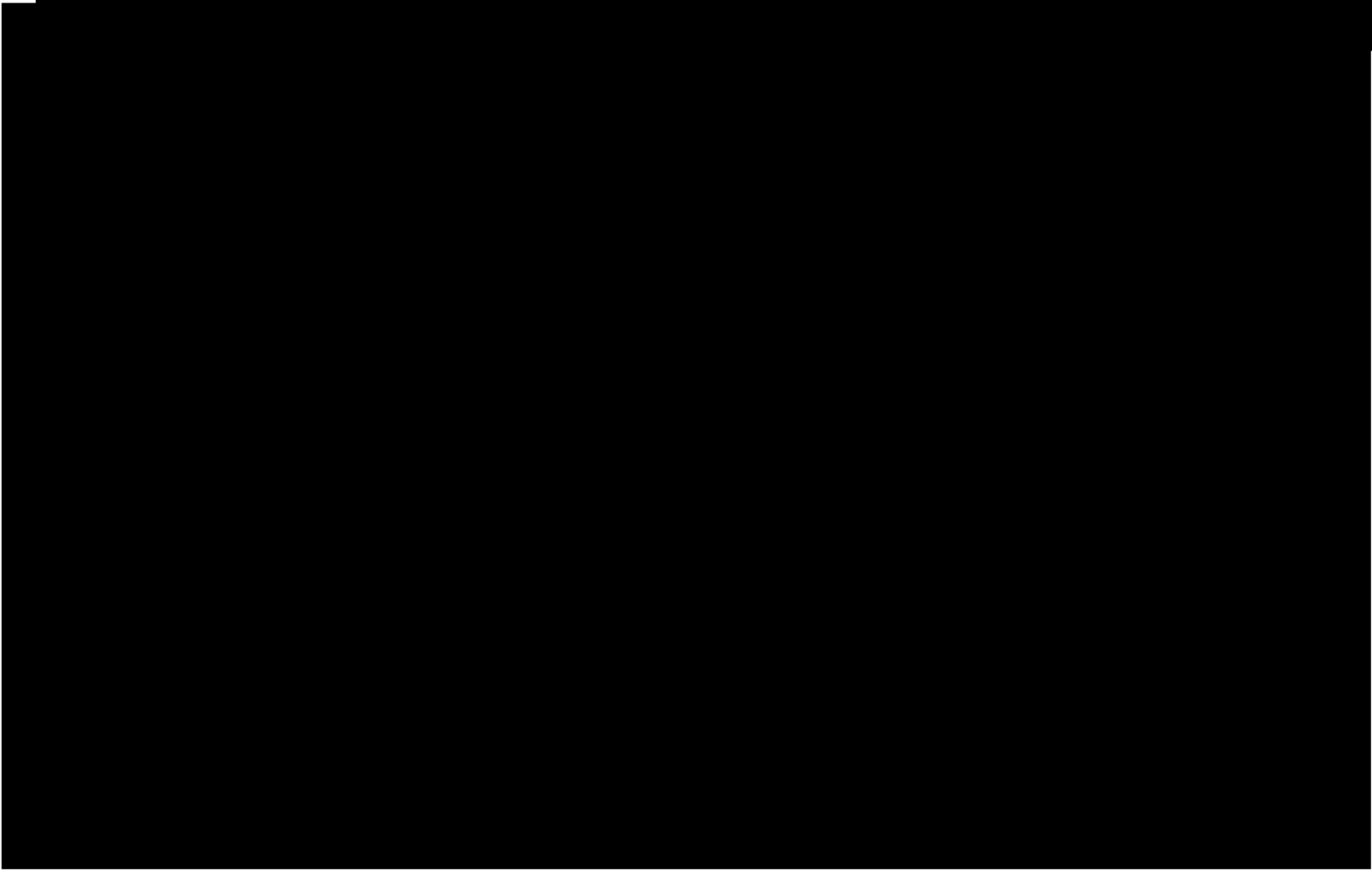
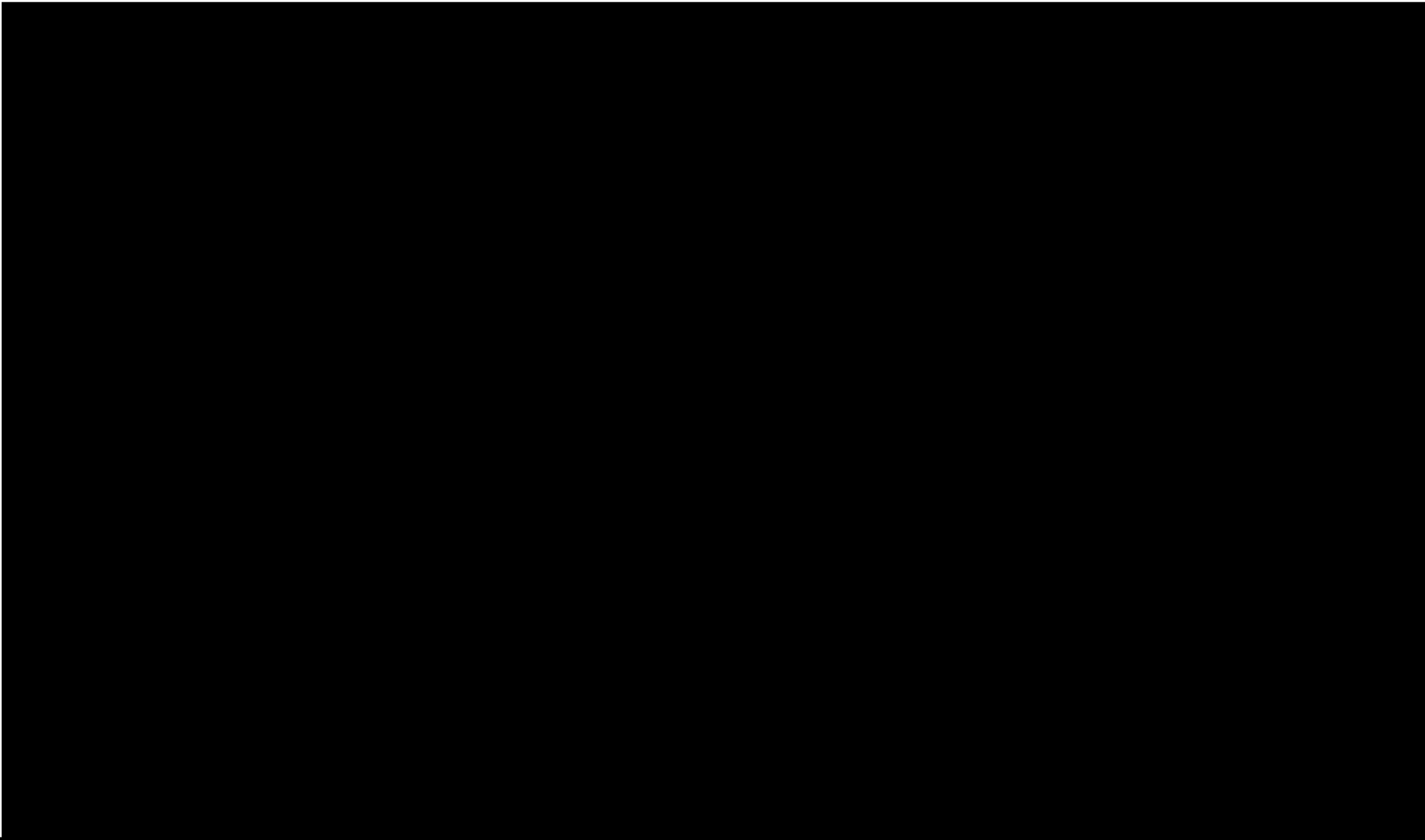


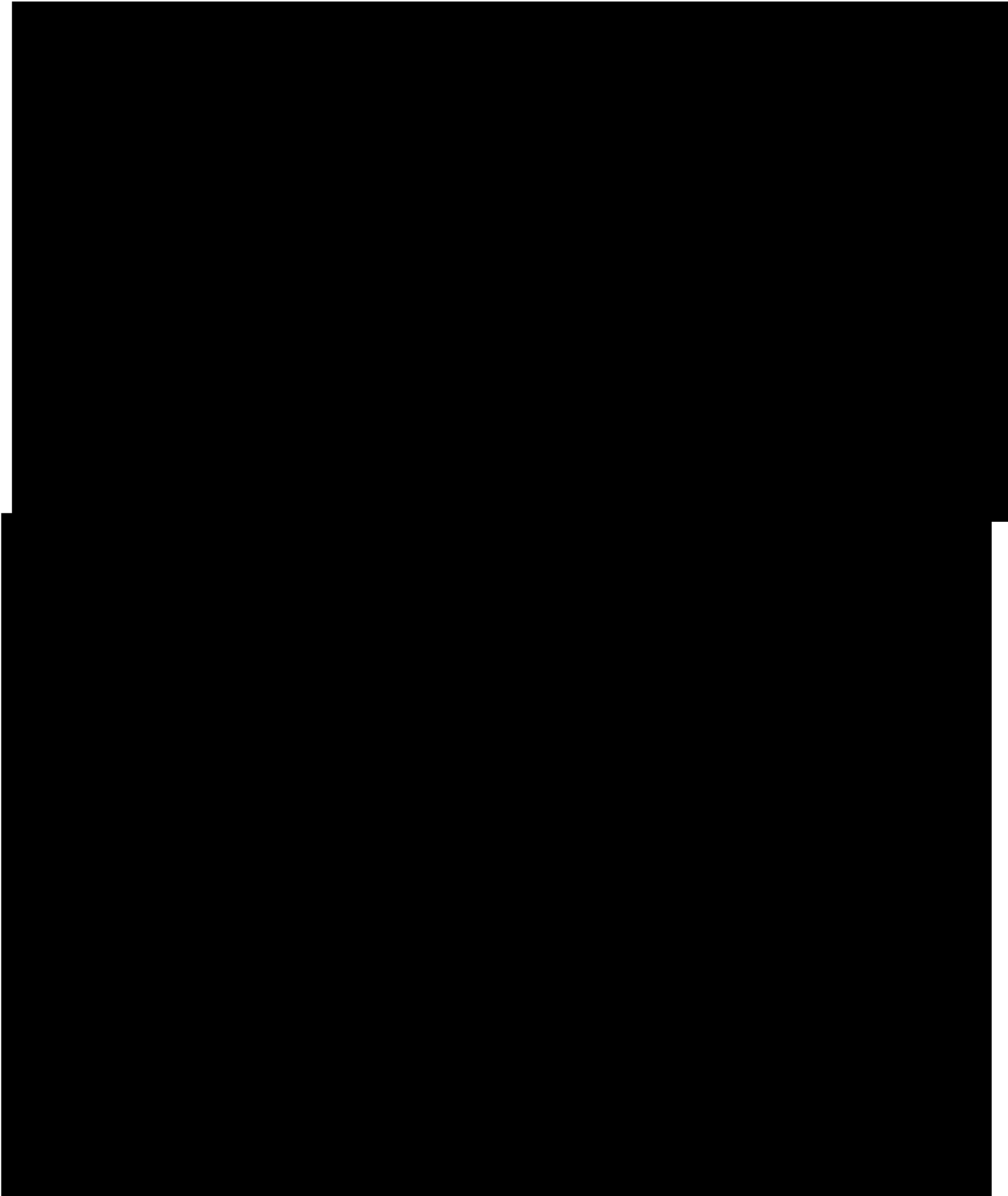
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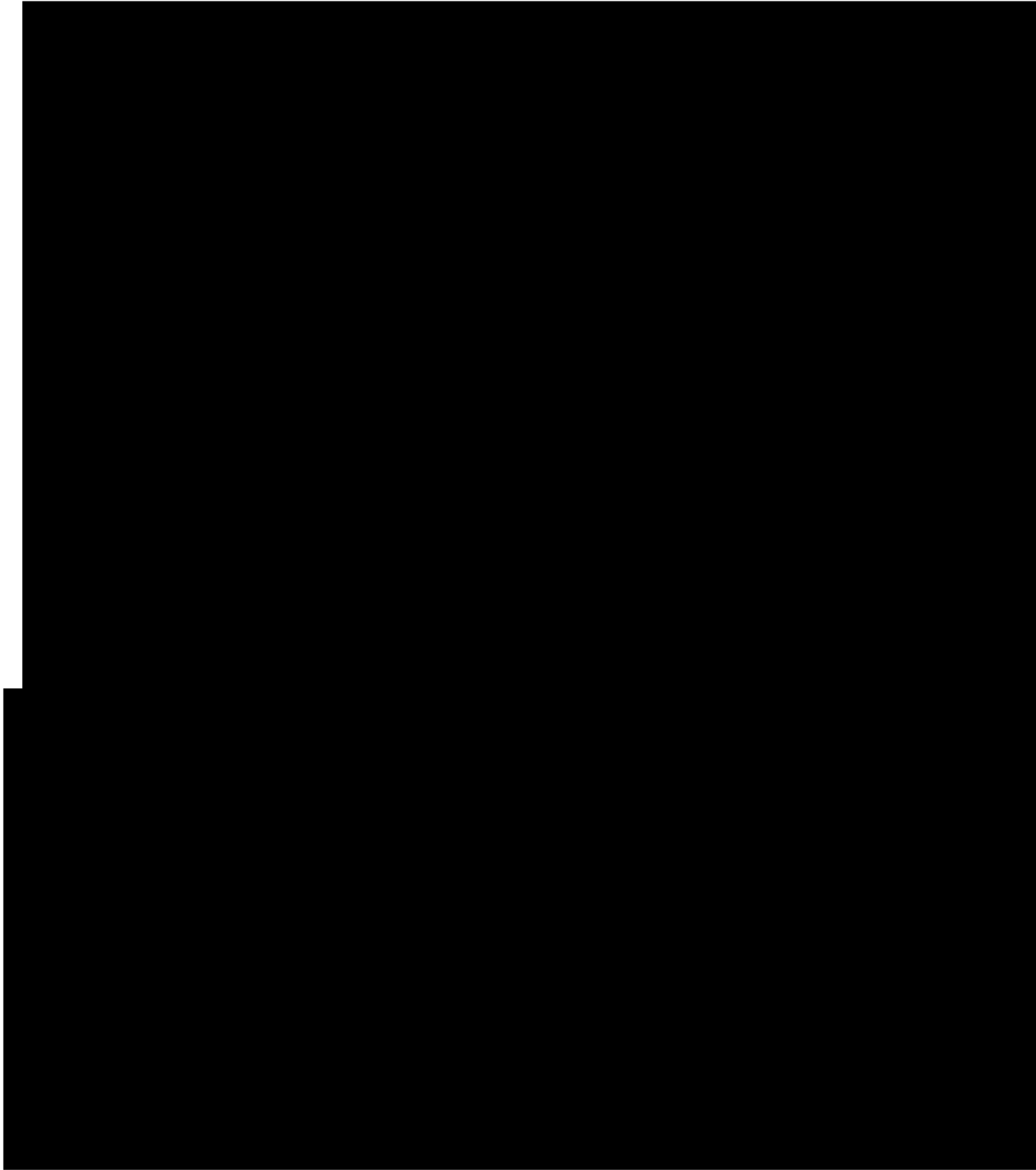
[REDACTED]







2.9	Specify the methodology for undertaking an assessment of market capacity across Shropshire. Demonstrate how this methodology conforms with the NPPF and best practice provided within the NPPG.	8 / 80 marks
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Notes to this form:

Text highlighted in yellow is where details need to be inserted

Text highlighted in green are optional clauses which require consideration as to whether or not they should be retained.

DATED: day of 20..

BETWEEN

SHROPSHIRE COUNCIL (1)

[.....] (2)¹

Contract Ref: DONV 011

Contract for Viability & Deliverability Study in connection with the Local Plan



LEGAL AND DEMOCRATIC SERVICES
The Shirehall Abbey Foregate Shrewsbury SY2 6ND
DX 702024 Shrewsbury 2

¹ Insert Contractor's name

Agreed Prices⁶

Means the prices set out in Section.....of the Tender

'Agreement'

means this Agreement

'Associated Person'

means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council. .

'Authorised Officer'

means the representative appointed by the Council to manage the Contract on its behalf

'Best Practice'

means in accordance with the best practice within the industry of the Contractor

'Bribery Act'

the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

'Commencement Date'

.....20.....⁷

⁶ Optional definition where prices have been agreed

'Commercially Sensitive Information'	comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Council in writing that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
'Confidential Information'	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Council or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including all Personal Data and the Commercially Sensitive Information;
'Contract Documents'	means all of the documents annexed to, contained and referred to within this Agreement
'Contractor'	means the party named above and includes its employees, servants and agents paid or unpaid acting on its

⁷ Insert date of when services are to start being delivered

	behalf
'Contractor Personnel'	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor paid or unpaid;
'Contractor's Representative'	the representative appointed by the Contractor to manage the contract on its behalf
'Council'	means the party named above and includes its employees, officers, servants and agents acting on its behalf
'Council Data'	<p>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:</p> <p>(a) supplied to the Contractor by or on behalf of the Council; or</p> <p>which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(b) any Personal Data for which the Council is the Data Controller;</p>
Data Controller	shall have the meaning given to the term "controller" as set out in Article 4 of the GDPR
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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 Impact Assessment:

an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

'Data Processor'

shall have the meaning given to the term "processor" as set out in Article 4 of the GDPR

'Data Protection Legislation'

means:

- i) all applicable Law about the processing of personal data and privacy; and
- ii) The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 including if applicable legally binding guidance and codes of practice issued by the Information Commissioner; and

	<p>iii) to the extent that it relates to processing of personal data and privacy, any Laws that come into force which amend, supersede or replace existing Laws including the GDPR, the (LED Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time including the DPA 2018</p>
Data Protection Officer	Shall have the meaning given in the GDPR
Data Subject	Shall have the same meaning as set out in the GDPR
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018
'EIR'	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
'Employment Checks'	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks,

'Exempt Information'	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
"Expiry Date"	shall be] ⁸
'Fees'	[specify the amount; or , refer to the Agreed Prices as set out in Schedule (?)/Specification annexed to this Agreement] ⁹ and includes all expenses, materials, labour, plant, equipment, handling of materials and plant, tools and appliances, and all other things necessary for the supply of the required services unless where specifically stated otherwise
'FOIA'	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
'FOIA notice'	means a decision notice, enforcement notice and/or an information notice

⁸ Insert date

⁹ Insert the amount of any fixed fee to be paid to the Contractor under this contract **or alternatively**, where amounts are variable, refer to Agreed Prices (if applicable)

	issued by the Information Commissioner.
GDPR	Means the General Data Protection Regulation 2016/679
'Intellectual Property Rights'	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
Law	means any law, 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 with which the Contractor is bound to comply;
LED:	Law Enforcement Directive (Directive (EU) 2016/680)
'Parties'	the Contractor and the Council and 'Party' shall mean either one of them
'Personal Data'	shall have the same meaning as set out in the GDPR
'Personal Data Breach'	means: anything which constitutes a "personal data breach" as set out in Article 4 of the GDPR;
Processor Personnel:	means all directors, officers,

employees, agents, consultants and contractors of the Data Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

'Prohibited Act'

the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract

with the Council; or

(d) defrauding, attempting to defraud or conspiring to defraud the Council.

'Project Materials'

means all reports, the Specification, documents, papers, information, data, disks, drawings, samples, patterns, in whatever form, medium or format and wherever such Project Materials are located or stored together with all copies of Project Materials

Protective Measures

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

'Public body'

as defined in the FOIA 2000

'Receiving Party'

means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response

'Regulatory Bodies'

those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to

regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;

'Relevant Transfer'

means a relevant transfer for the purposes of TUPE

'Request for Information'

means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA

'Services '

Means an assessment to ensure that the draft Local Plan is viable and deliverable as more specifically referred to in the Specification

'Specification'

The specific description of the Services as set out in Schedule 1 annexed to this Agreement

'Sub-Contract'

any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of thereof.

'Sub-Contractor'

the third parties that enter into a Sub-Contract with the Contractor.

Sub-processor	any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
'Tender' ¹⁰	means the tender dated [.....] submitted by the Contractor and accepted by the Council annexed to this Agreement in Appendix 1
'Term'	means the period commencing on the Commencement Date and expiring on the Expiry Date
'Working Day'	any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- 1.2.1 words importing any gender include every gender
- 1.2.2 words importing the singular number include the plural number and vice versa
- 1.2.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.2.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

¹⁰ Delete this definition if there is either no tender or the tender is not being annexed to this Agreement

- (i) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.2.6 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement
- 1.2.7 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule
- 1.2.8 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done
- 1.2.9 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation
- 1.2.10 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2.11 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'
- 1.2.12 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.2.13 A reference to writing or written does not include e-mail, unless otherwise specifically agreed.

2. Term:

- 2.1** It is agreed between the Parties that this Agreement will be for the Term commencing on the Commencement Date and ending on the Expiry Date.

3. Estimated Annual Contract Value: Not Used

4. Services

- 4.1 The Contractor shall provide the Services to the Council in consideration for the Council paying the Fee(s) to the Contractor, subject to the provisions of this Agreement
- 4.2 The Contractor shall provide the services in such places and locations as set out in the Specification and the Tender Response Document
- 4.3 The Contractor shall use its best endeavours to complete/deliver the Services by the or dates agreed by the Parties
- 4.4 The Services shall only be performed/delivered by the Contractor unless otherwise agreed in writing between the Parties
- 4.5 The Contractor shall provide the Services in accordance with the Specification with all due skill, care and diligence and in accordance with good industry practice.
- 4.6 The Contractor shall provide the Services in accordance with all current and relevant statutory provisions, regulations or other legislation from time to time in force relating to the provision of the Services
- 4.7 The Contractor shall during the Term ensure that every person employed by the Contractor in the provision of the Services is properly trained and instructed with regard to his/her tasks in relation to the Services
- 4.8 The Contractor shall carry out its own risk assessments relevant to the Services.
- 4.9 The Contractor shall have a written procedure for dealing with complaints about the Services in accordance with clause 33 (Complaints) hereof
- 4.10 before the Contractor engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Contractor must without limitation, complete the Employment Checks

5. Use of the [describe premises] and Facilities Not Used

6 Insurance

- 6.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of

cover, or in accordance with any legal requirement for the time being in force, in respect of all legal liability which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with the Council such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum indemnity limit of £5,000,000 (FIVE MILLION POUNDS) for each and every claim.

6.2 Not Used

6.3 **Not used**

6.3.1 The Contractor shall hold and maintain the insurances required under this Agreement for a minimum of 6 years following the expiration or earlier termination of this Agreement

6.4 The Contractor warrants that it has complied with this clause 6 and shall provide the Council with certified copies of the relevant policy documents (including any warranties or exclusions) together with receipts or other evidence of payment of the latest premiums due under those policies prior to the commencement of this Agreement and annually thereafter during the Term. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required under this clause 6, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

6.5 The Contractor shall:

- (a) do nothing to invalidate any insurance policy
- (b) notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change

6.6 For the avoidance of doubt, the terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Agreement.

6.7 Where the minimum limit of indemnity required in relation to any of the insurances is specified as being "in the aggregate":

6.7.1 if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the

quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Council:

- (i) details of the policy concerned; and
- (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

6.7.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:

- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
- (ii) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Council full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

7 Indemnity

7.1 The Contractor shall fully indemnify the Council against all liabilities, costs, expenses, damages losses and breach of its statutory duties or breach of an obligation under the Data Protection Legislation (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

- (a) The performance, defective performance or otherwise of this Agreement by the Contractor or the Contractor Personnel
- (b) Any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the provision of the Services
- (c) Any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such

claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Contractor or the Contractor Personnel; and

(d) Any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the delivery of the Services and performance of this Agreement to the extent that the defective performance is attributable to the acts or omissions of the Contractor or the Contractor Personnel

7.2 The Council shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from the Council's breach of any of its obligations under this Agreement.

7.3 Nothing in this Agreement shall limit or exclude the liability of either Party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) the indemnities given in this clause 7

8. Fee rates based on time spent Not Used

9. Payment

9.1 The Contractor shall invoice the Council for payment of the Fees at the end of each calendar month. All invoices shall be directed to the Council's Authorised Officer and shall contain such information as the Council may inform the Contractor from time to time. The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed. In the event of late payment, interest thereon shall be charged at the prevailing statutory rate further to the Late Payment of Commercial Debts (Interest) Act 1998 above the National Westminster Bank base rate.. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after Judgment.

9.2 The Contractor shall not be entitled to vary the Fee(s) during the existence of this Agreement unless with the prior written consent of the Council.

- 9.3** The Contractor shall not charge, and the Council shall not be liable, for any expenses, charges, costs, fees except the Fee(s) as set out in this Agreement
- 9.4** All amounts stated are exclusive of VAT which will be charged in addition at the rate in force at the time the Council is required to make payment
- 9.5** Unless otherwise agreed in writing by the Council, the Contractor will pay any of its appointed sub-contractors within the time period specified in the Sub-Contract but in any event no later than 30 days from receipt of an undisputed invoice.

10. The Council's Obligations

To enable the Contractor to perform its obligations under this Agreement the Council shall:

- 10.1** Co-operate with the Contractor and ensure that the Council's staff and agents co-operate with and assist the Contractor as is reasonable and appropriate
- 10.2** Provide the Contractor with any information reasonably required by the Contractor;
- 10.3** Comply with such other requirements as may be otherwise agreed between the parties.
- 10.4** Not Used
- 10.5** Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Contractor by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

11. Authorised Officer and Contractor Representative:

- 11.1** The Authorised Officer shall be appointed by the Council to act in the name of the Council for the purposes of the contract evidenced by this Agreement.
- 11.2** The Contractor shall appoint a Contractor Representative to act in the name of the Contractor for the purposes of the contract evidenced by this Agreement
- 11.3** The Parties shall notify each other in writing of any replacement

- Authorised Officer or Contractor Representative or if any person ceases to be either the Authorised Officer or Contractor Representative.
- 11.4** The Authorised Officer shall monitor on behalf of the Council, the provision of the Services supplied by the Contractor and act as liaison officer with the Contractor's Representative in respect of the operation of the Services. Any issues raised by the Authorised Officer with regard to the delivery of the Services shall in the first instance be addressed and dealt with by the Contractor's Representative on the Contractor's behalf.

12 Intellectual Property Rights

- 12.1** Any Project Materials supplied by the Council to the Contractor, or specifically produced by the Contractor for the Council in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of the Council. The Contractor, unless otherwise agreed in writing, assigns to the Council with full title guarantee all such copyright, design and other intellectual property rights.
- 12.2** The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.
- 12.3** The Project Materials created in accordance with this Agreement shall be original works created by the Contractor and shall:
- (a) not include intellectual property owned by or licensed to a third party except for intellectual property which the Contractor has the right to use (including the right to use the intellectual property for the purposes of this Agreement);
 - (b) not subject the Council to any claim for the infringement of any intellectual property rights of a third party
- 12.4** The Contractor agrees at any time and from time to time on the written

request of the Council to execute and deliver promptly to the Council any documents or instrument which the Council considers desirable, or which are required by law for obtaining the full benefits of the assignment in clause 12.1 and of the rights and powers granted by it.

- 12.5** Unless stated expressly in writing in this Agreement, neither Party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement
- 12.6** The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.
- 12.7** This provision shall survive the expiration or termination of the Agreement.

13. Confidentiality

- 13.1** All plans, drawings, designs or specifications supplied by the Council to the Contractor shall remain the exclusive property of, and shall be returned to the Council on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement.
- 13.2** No photographs of any of the Council's equipment, installations or property shall be taken without the Council's prior consent in writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by the Council in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.

- 13.3** The Contractor shall not mention the Council's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without the Council's prior consent in writing.
- 13.4** The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement.
- 13.5** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 13.5.1** treat the other party's Confidential Information as confidential; and
- 13.5.2** not disclose the other party's Confidential Information to any other person without the owner's prior written consent
- 13.6** Clause 13.5 shall not apply to the extent that:
- 13.6.1** such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to clause 25 regarding Freedom of Information;
- 13.6.2** such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 13.6.3** such information was obtained from a third party without obligation of confidentiality;
- 13.6.4** such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 13.6.5** it is independently developed without access to the other party's Confidential Information.
- 13.7** The Contractor may only disclose the Council's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

- 13.8** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement
- 13.9** Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:
- 13.9.1** to any consultant, contractor or other person engaged by the Council;
- 13.9.2** for the purpose of the examination and certification of the Council's accounts or any other form of audit of the Council;
- 13.10** The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of the Council's obligations of confidentiality.
- 13.11** Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 13.12** The provisions of this Clause shall survive the expiration or termination of this Agreement.

14. Agreement and Transparency

- 14.1** Further to the Local Government Transparency Code 2015 the Council is obliged to publish details of expenditure exceeding £500. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.2** Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Council to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to

- the Agreement, to the general public.
- 14.3** The Council may consult with the Contractor to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion.
- 14.4** The Contractor shall assist and cooperate with the Council to enable the Council to publish this Agreement and the Tender Submission.
- 15** **Council Data – NOT USED**
- 16.** **Not Used**
- 17.** **Not Used**
- 18.** **Data Protection**
- 18.1** Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner’s Office. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2** where there is any conflict, ambiguity or inconsistency between this clause (including any associated definitions) and the remainder of this Agreement, this clause 18 shall take precedence.
- 18.3** The parties acknowledge that for the purposes of the Data Protection Legislation the Council is the Data Controller and the Contractor is the Data Processor The only processing that the Data Processor is authorised to do by the Data Controller and may not be determined by the Data Processor.
- 18.4** The Data Processor shall notify the Data Controller immediately if it considers that any of the Data Controller’s instructions infringe the Data Protection Legislation.
- 18.5** The Data Processor shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the

processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

18.6 The Data Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 2 unless the Data Processor is required to do otherwise by Law. If it is so required the Data Processor shall promptly notify the Data Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures), having taken account of the

(i) the nature of the data to be protected;

(ii) the harm that might result from a Data Loss Event;

(iii) the state of technological development; and

(iv) the cost of implementing any measures;

(c) ensure that :

(i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Data Processor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Data Processor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (E) are obliged to keep the Personal Data confidential; and
 - (F) shall not store any Personal Data on any portable device or media unless that device is encrypted; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
- (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and
 - (iv) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Agreement unless the Data Processor is required by Law to retain the Personal Data.

18.7 Subject to clause 18.8, the Data Processor shall notify the Data Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject

Request);

- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

18.8 The Data Processor's obligation to notify under clause 18.7 shall include the provision of further information to the Data Controller in phases, as details become available.

18.9 Taking into account the nature of the processing, the Data Processor shall provide the Data Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 18.7 (and insofar as possible within the timescales reasonably required by the Data Controller) including by promptly providing:

- (a) the Data Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Data Controller to enable the Data Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Data Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Data Controller following any Data Loss Event;
- (e) assistance as requested by the Data Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Data Controller with the Information Commissioner's Office.

18.10 The Data Processor shall maintain complete and accurate records and

information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Data Controller determines that the processing is not occasional;
- (b) the Data Controller 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; or
- (c) the Data Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

18.11 The Data Processor shall allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.

18.12 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.

18.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Data Processor must:

- (a) notify the Data Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Data Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 18.13 such that they apply to the Sub-processor; and
- (d) provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.

18.14 The Data Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

18.15 The Data Controller 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).

18.16 The Parties agree to take account of any guidance issued by the

Information Commissioner's Office. The Data Controller may on not less than 30 Working Days' notice to the Data Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

18.17 The Contractor shall ensure that its employees and agents are aware of and comply with this clause and shall indemnify the Council against any loss or damage sustained or incurred as a result of any breach of this clause.

19. Council Data and Personal Information Audits

19.1 Except where an audit is imposed on the Council by a Regulatory body, the Council may, acting reasonably, conduct an audit for the following purposes:

19.1.1 Not Used

19.1.2 to review the Contractor's compliance with the Data Protection Legislation, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;

19.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

19.3 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

19.3.1 all information requested by the Council within the permitted scope of the audit;

19.3.2 reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

19.3.3 access to Contractor Personnel

- 19.4** The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services.
- 19.5** The Council shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 19.6** The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 19.7** This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

20. Assignment, Transfer and Sub-contracting

- 20.1** Neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party PROVIDED that the Council may,
- (a) assign any of its rights under this Agreement; or
- (b) transfer all of its rights or obligations by novation, to another person.
- without the Contractor's consent where such assignment, transfer or novation is to an Associated Person of the Council;
- 20.2** Any consent required under Clause 20.1 must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.
- 20.3** The Contractor will not, without the written consent of the Council, sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through the Contractor Personnel and using its own equipment.
- 20.4** In the event that consent is given by either Party to the other Party to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the sub-contracting Party to the consenting Party immediately it is issued
- 20.5** Subject to clause 20.1, in the event that either Party wishes to assign its

rights and obligations under this Agreement, the assignor must obtain a written undertaking from the assignee to the consenting Party that it will be bound by the obligations of the assignor under this Agreement.

20.6 Notwithstanding the Contractor's right to sub-contract pursuant to this clause 20, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own and shall be responsible for the work of the Sub-Contractor whose work shall be undertaken to the same standard as stated in the Specification.

21. Public Interest Disclosure ('Whistleblowing')

The Contractor will ensure that his employees and agents are made aware of the Council's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the Council with evidence of doing so upon request.

22. Publicity NOT USED

23. Prevention of Bribery

23.1 The Contractor:

- a) shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- b) 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 the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

23.2 The Contractor shall:

- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) the Contractor shall, within 10 Working Days of a request from the Council, certify to the Council in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause

- 23 and provide such supporting evidence of compliance with this clause 23 by the Contractor as the Council may reasonably request.
- 23.3** If any breach of clause 23.1 is suspected or known, the Contractor must notify the Council immediately.
- 23.4** If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 23.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.
- 23.5** The Council may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 23.1. At the Council's absolute discretion, in determining whether to exercise the right of termination under this clause 23.5, the Council shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:
- a) with the Council; or,
 - b) with the actual knowledge;
of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
 - c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
- 23.6** Any notice of termination under clause 23.5 must specify:
- a) the nature of the Prohibited Act;
 - b) the identity of the party whom the Council believes has committed the Prohibited Act; and

c) the date on which this Agreement will terminate.

23.7 Despite clause 34 (Disputes), any dispute relating to:

a) the interpretation of this clause 23; or

b) the amount or value of any gift, consideration or commission,
shall be determined by the Council and its decision shall be final and
conclusive.

23.8 Any termination under clause 23.5 will be without prejudice to any right or
remedy which has already accrued or subsequently accrues to the
Council.

24. Warranties, liability and indemnities

The Contractor warrants, represents and undertakes that:

24.1 it will carry out the work by the Expiry Date

24.2 it will perform the Services with all due skill and diligence and in a good
and workmanlike manner, and in accordance with the Best Practice within
the industry of the Contractor and will have adequate numbers of
Contractor Personnel to provide the Service

24.3 its Contractor Personnel will have the necessary skill, professional
qualifications and experience to deliver the Services in accordance with
the Specification and Best Practice

24.4 NOT USED

24.5 it has full capacity and authority to enter into this Agreement

24.6 it has obtained all necessary and required licences, consents and permits
to provide the Services

24.7 it shall be responsible for all costs, fees, expenses and charges for training
necessary or required for the Contractor Personnel to perform the
Services

24.8 NOT USED

24.9 The Contractor shall where appropriate take account of the Human Rights
Act 1998 and shall not do anything in breach of it.

24.10 The Contractor will at all times in providing the Services to the Council
comply with the provisions of the Health and Safety at work Act 1974 and
provide evidence of doing so to the Council at any time upon request and:

24.10.1 The Contractor shall promptly notify the Council of any health and

safety hazards which may arise in connection with the performance of this Agreement.

24.10.2 .NOT USED

24.10.3 NOT USED

24.10.4 The Contractor shall report all accidents and/or injuries relating to the provision of the Services to the Council immediately.

24.10.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council upon request.

24.11 The Contractor warrants that none of its current Directors have been involved in liquidation or receivership or have any criminal convictions.

[24.12¹¹ If the Contractor performs the Services (or any part thereof) negligently or in breach of this Agreement, then if requested by the Council, the Contractor will re-perform the Services or relevant part thereof at no additional cost to the Council. The Council's request must be made within 6¹² months of the Expiry Date or termination of this Agreement]

24.13 the Contractor warrants that the signing of this Agreement on its behalf has been validly authorised and the obligations expressed as being assumed by the Contractor under this Agreement constitute valid legal and binding obligations of the Contractor enforceable against the Contractor in accordance with their terms.

24.14 The Contractor acknowledges and confirms that:

24.14.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;

24.14.2 it has received all information requested by it from the Council pursuant to sub-clause 24.14.1 to enable it to determine whether it is able to provide the Services in

¹¹ Optional clause. Delete if not required and replace text highlighted in green with words "not used".

¹² Insert appropriate timescale

- accordance with the terms of this Agreement;
- 24.14.3** it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to sub-clause 24.14.2;
- 24.14.4** it has raised all relevant due diligence questions with the Council before the Commencement Date; and
- 24.14.5** it has entered into this Agreement in reliance on its own diligence
- 24.14.6** as at the Commencement Date, the Contractor warrants and represents that all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement AND shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services
- 24.14.7** The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Contractor in accordance with sub-clause 24.14.6 save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not reasonably have known that the information incorrect or misleading at the time such information was provided.
- 24.15** The Contractor agrees that where requested in writing during the term of this Agreement it will ensure that an appropriately authorised representative of the Contractor shall attend a

Committee meeting of the Council upon being invited to do so by the Council

- 24.16** In performing its obligations under this Agreement, the Contractor shall and shall ensure that each of its sub-contractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 25. Freedom of Information Act 2000 & Environmental Information Regulations 2004**¹³
- 25.1** The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 25.2** The Contractor shall notify the Council of any Commercially Sensitive Information provided to the Council together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Council may be obliged to disclose such information.
- 25.3** The Contractor shall and shall procure that its Sub-contractors shall:
- 25.3.1** transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 25.3.2** provide the Council, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
 - 25.3.3** provide, at the Contractor's expense, all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for

¹³ This is the full FOI clause and should be used in most cases

compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 25.4** The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Council may consult with the Contractor prior to making any decision or considering any exemption.
- 25.5** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.6** The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 25.6.1** in certain circumstances without consulting the Contractor; or
- 25.6.2** following consultation with the Contractor and having taken their views into account;
- provided always that where sub-clause 25.6.1 above applies the Council 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.
- 25.7** The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Council to inspect such records as requested from time to time.

25.8 The Council shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.

25.9¹⁴ Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of the Council as set out above are reciprocal to the Contractor. The Council and the Contractor acknowledge and agree that:

25.9.1 as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party;

25.9.2 they are required by law to consider each and every Request for Information made under FOIA;

25.9.3 that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party.

25.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:

(a) confirm or deny that information is held by the other party, or

(b) disclose information required

to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.

25.9.5 each party shall bear its own costs of:

a) assessing the application of any exemption under FOIA and/or

¹⁴ This sub-clause may be deleted if the Contractor is not a public body

b) responding to any FOIA notice and/or

c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure

25.9.6 the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.

25.9.7 the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

26 Not Used

27. Equalities

27.1 The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age

- a) in the supply and provision of Services under this Agreement, and
- b) in its employment practices.

27.2 Without prejudice to the generality of the foregoing, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or other relevant legislation, or any statutory modification or re-enactment thereof).

27.3 In addition, the Contractor and any Sub-Contractor or person(s) employed by or under the control of the Contractor in providing Services to the Council will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it

27.4 The Contractor and any Sub-Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by Equality and

- Human Rights Commission, which give practical guidance to Councils on the elimination of discrimination.
- 27.5** In the event of any finding of unlawful discrimination being made against the Contractor and any Sub-Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Contractor and any Sub-Contractor shall inform the Council of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 27.6** The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.
- 28. Non-compliance**
- 28.1.** If the Council identifies areas of the Services which do not comply with the requirements of this Agreement (including any Schedules to this Agreement) it may send the Contractor a non-compliance notice detailing
- (i) the areas of non-compliance;
 - (ii) the action to be taken; and
 - (iii) the date by which the action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).
- 28.2** If the Contractor fails to take any or all of the necessary action by the date given in the non-compliance notice, the Council may send the Contractor a final non-compliance notice detailing
- (i) the areas of non-compliance;
 - (ii) the action to be taken; and
 - (iii) the date by which action must be taken (which for the avoidance of doubt must not be a date less than 14 days from the date of the notice).
- 28.3** If, in the reasonable opinion of the Council, the Contractor fails to undertake all of the remedial actions in the final non-compliance notice by the due date this may be considered a material breach of this Agreement and the Council shall be entitled to take either of the following steps

depending on the seriousness of the non-compliance (which in the event of dispute shall be determined in accordance with clause 34 (Disputes):

(a) to make arrangements to take its own corrective action either itself or through the appointment of another Contractor and to either:

(i) deduct all costs in connection therewith from any sums due or to become due to the Contractor under the terms of this Agreement;

or

(ii) to recover such sums from the Contractor as a debt;

And/or

(b) to terminate the Agreement in accordance with clause 38 Termination

29. Waiver

The failure by either Party to enforce at any time or for any period any one or more of the terms and conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

30. Sustainability

The Contractor will at all times use its best endeavours to assist the Council and operate themselves in a manner which meets the aims and objectives set out in the sustainable policies of the Council, copies of which are available on the Council's website

31. Audit And Monitoring

The Contractor will allow access for the Council and its officers to all relevant information for the purposes of audit and the monitoring of this Agreement.

33. Complaints Procedure

33.1 The Contractor shall operate a complaints procedure in respect of any services or works provided under this Agreement to deal with any complaint received about the standard of services or the manner in which any services have been supplied or work has been performed or any other matter connected with the performance of the Contractor's obligations under this Agreement ("the Complaints Procedure"). For the avoidance of

doubt any complaint or issue that the Council has in respect of the Contractor's performance of this Agreement shall be dealt with in accordance with the remainder of this Agreement.

33.2 The Contractor's Complaints Procedure shall comply with applicable Law and the requirements of any regulatory body to which the Contractor is subject or which are applicable to the service being provided (including any change in such requirements) and shall meet the following minimum standards:

33.2.1 is easy for complainants to access and understand

33.2.2 clearly sets out time limits for responding to complaints and keeping the complainant and the Council informed of progress;

33.2.3 provides confidential record keeping to protect employees under this Agreement and the complainant

33.2.4 provides information to the Contractor's management so that services can be improved

33.2.5 provides effective and suitable remedies

33.2.6 is regularly monitored and audited and which takes account of complainant and Council feedback

33.3 The Contractor shall inform any users of the services or works provided under this Agreement of the existence of the complaints procedure and how to access it and will make its Complaints Procedure available on request.

33.4 The Contractor shall investigate and deal with any complaints it receives about the services or works, whether direct from the public or services users, or referred to it by the Council, in accordance with its published complaints procedure.

33.5 The Contractor shall ensure that:

33.5.1 it promptly, and within a maximum of 10 days of receiving the complaint, notifies the complainant that the Contractor is dealing with the complaint

33.5.2 under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint.

- 33.5.3** someone who is independent of the matter complained of carries out the investigation
- 33.5.4** the complainant is made aware that they are entitled to have the complaint investigated by the Council if they are not satisfied with either the process of investigation or finding of the Contactor's investigations
- 33.5.5** it deals with the complaint fully, expeditiously and fairly and shall use its reasonable endeavours to resolve the complaint within 21 Working Days of receiving the complaint
- 33.5.6** where a complaint is received by the Contractor relating to the policy or decisions of the Council rather than the Contractor's delivery of its obligations under this Agreement, the Contractor shall promptly, and within two Working Days, refer the complaint to the Council for investigation.
- 33.6** The Contactor shall ensure that all its employees and persons employed under this Agreement are made aware of its Complaints Procedure and shall designate one employee (who shall be identified to the Council) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- 33.7** The Contactor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Council within 5 Working Days of being requested or at 12 monthly intervals in any event.
- 33.8** Where the Council is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by the Council.
- 33.9** The Contractor should note that if a complaint is made to the Council by a third party relating to the services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the Council requires the Contractor to fully to co-operate in such investigation. If the Council is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Council in respect of the

costs arising from such maladministration or injustice.

34. Disputes

34.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-

34.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

34.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Council's Chief Executive and the Contractor or other authorised officer whose details have been notified to the Council, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice

34.1.3 If the dispute cannot be resolved in accordance with the preceding sub-clause then it shall be referred to a single arbitrator to be agreed between the Parties and failing such agreement within 14 days of the request of one Party to the other in writing that the matter be referred to arbitration such reference shall be to a single arbitrator appointed for that purpose on the written request of either Party by the President for the time being of the Law Society of England and Wales and any reference to arbitration under this clause shall be deemed to be a reference to arbitration within the meaning of the relevant Arbitration Acts and it is further agreed that if any matter is referred to arbitration then each Party will bear its own costs of such referral

35. Force Majeure

35.1 Neither the Council nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or

attributable to acts, events, omissions or accidents beyond its reasonable control (“Force Majeure Event”), provided that:-

35.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

35.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

35.2 If a Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:-

35.2.1 it promptly notified the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

35.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party’s obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

35.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):-

35.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

35.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

36. Rights of Third Parties

The Parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999 (or any amendment or re-enactment thereof).

37. Notices

37.1 Unless otherwise communicated to the Party in writing any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Council, the Shirehall, Abbey Foregate, Shrewsbury SY2 6ND

37.2 A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged

38. Termination

38.1 NOT USED

38.2 Either Party may terminate this Agreement by notice in writing to the other if:

38.2.1 the other Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

38.2.2 the other Party commits a series of minor breaches which, when taken together, amount to a material breach;

38.2.3 the other Party commits a material breach of this Agreement which cannot be remedied under any circumstances;

38.2.4 The Council may terminate this Agreement forthwith by notice where the Contractor commits a material breach as a result of a failure to comply with a non-compliance notice

issued in accordance with clause 28 (Non-Compliance).

- 38.2.5** the other Party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 38.2.6** the other Party ceases to carry on its business or substantially the whole of its business; or
- 38.2.7** the other Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

38.3 NOT USED

- 38.4** Where notice to terminate is given pursuant to this clause 38, this Agreement shall terminate with effect on the date specified in the notice

39. Consequences of Termination

- 39.1** Other than as set out in this Agreement, neither Party shall have any further obligations to the other under this Agreement after its termination
- 39.2** Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect
- 39.3** Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies obligations or liabilities of the Parties existing at termination
- 39.4** Notwithstanding its obligations in this clause 39, if a Party is required by law, regulation, or government or regulatory body to retain any documents or materials containing the other Party's Confidential Information, it shall notify the other Party in writing of such retention, giving details of the documents and/or materials it must retain.
- 39.5** upon termination of this Agreement for any reason, the Contractor shall, at its own cost, deliver, and require that its employees, agents and sub-contractors deliver, to the Council all Project Materials, information and any other property of the Council which are in the possession or control of

the Contractor or the Contractor's employees, agents or Sub-Contractors at the date of termination.

40. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) – NOT USED

41. Staffing Security – NOT USED

42. Security Requirements – NOT USED

43. Governing Law And Jurisdiction

It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts

44. Severance

If any provision of this Agreement prohibited by law or judged by any court of competent jurisdiction to be unlawful, void, invalid or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

45. Parent Company Guarantee¹⁵ – NOT USED

It is a condition of this Agreement that if the Contractor is a subsidiary company then its Ultimate Group/Holding Company must guarantee the performance of this contract and provide a letter to that effect signed by a duly authorised signatory of the Ultimate Group/Holding Company.

46. Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

47. Agency, Partnership etc

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither

¹⁵ Delete this clause if no parent company guarantee is required.
Replace text highlighted in green with words "not used"

Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

48. Conflict of Terms

If there is any ambiguity or inconsistency in or between the Contract Documents the Council shall determine, at its sole discretion, the priority of the documents.

49. Entire Agreement

This Agreement contains the entire agreement between the Parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

IN WITNESS of this Agreement

Signed by and on behalf of
Shropshire Council

.....

.....

Signed by and on behalf of
(Contractor)¹⁶

¹⁶ Insert the contractors name

.....
Signature of authorised signatory

.....
Position in Company

Or

.....
Director

.....
Director/Company Secretary

Print Name (s).....

SCHEDULE 1

SPECIFICATION

Schedule 2

Processing, Personal Data and Data Subjects

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

1. The contact details of the Data Controller's Data Protection Officer are: Information Governance Officer email: Information.Request@Shropshire.gov.uk
2. The contact details of the Data Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Data Controller and Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Contractor is the Data Processor in accordance with Clause 18.1.
Subject matter of the processing	The processing is needed in order to ensure that the Data Processor can effectively deliver the Services to the Council.
Duration of the processing	From appointment through to completion on the project in January 2020.
Nature and purposes of the processing	The nature of the processing in this project includes collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use and where appropriate disclosure to inform the Viability and Deliverability Study.
Type of Personal Data	Name, address, telephone number(s), email address(es), where relevant land ownership details
Categories of Data Subject	Council staff, members of the public including landowners/site promoters/developers and where relevant their agents.
Plan for return and destruction of the data once the processing is complete UNLESS legal requirement to preserve that type of data	Data retained for the duration of the Study and then hard copies returned to the Council and electronic copies deleted.

Appendix 1

Tender



Shropshire Council
Shirehall
Abbey Foregate
Shrewsbury
Shropshire SY2 6ND

22nd November 2019

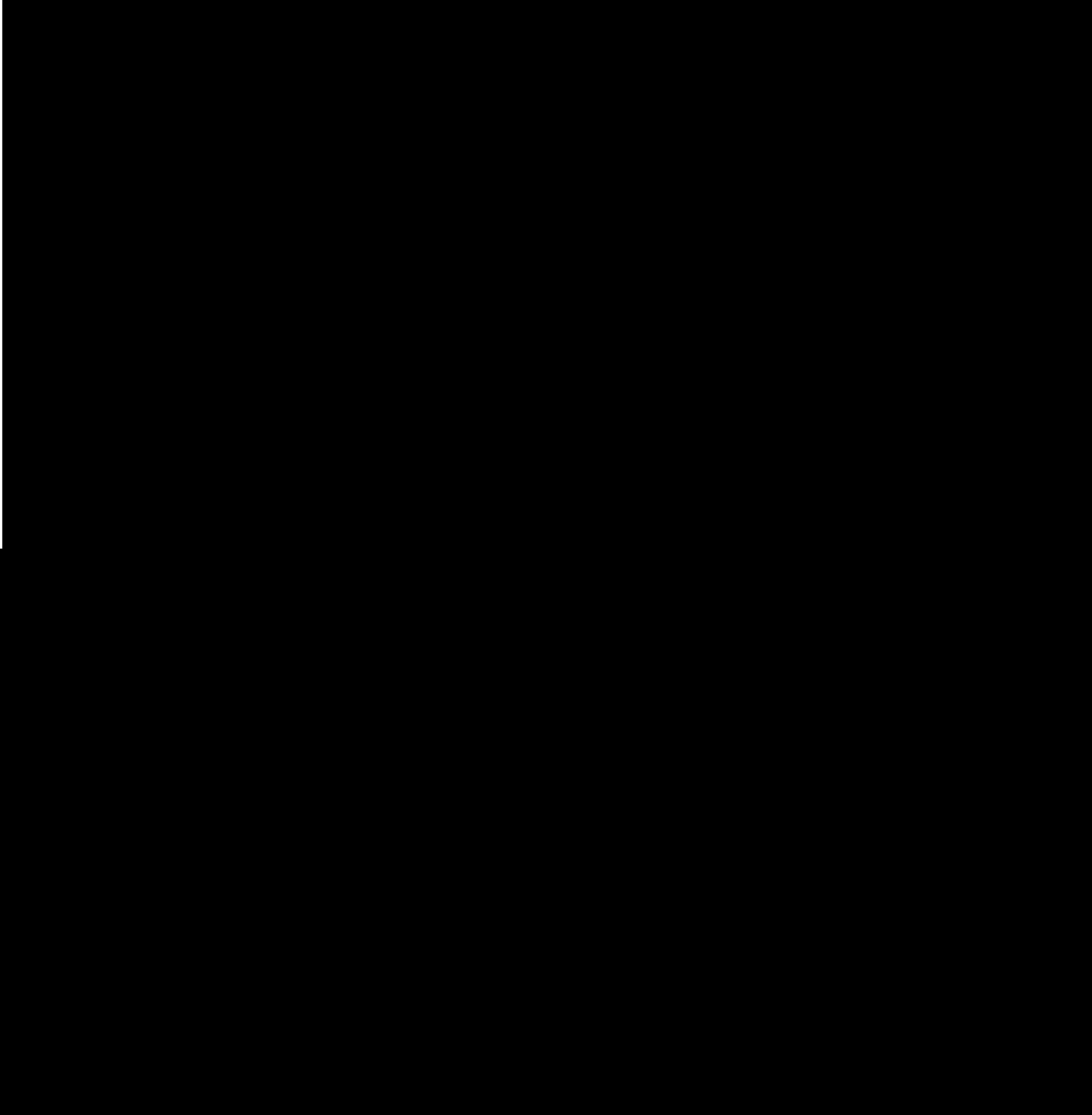
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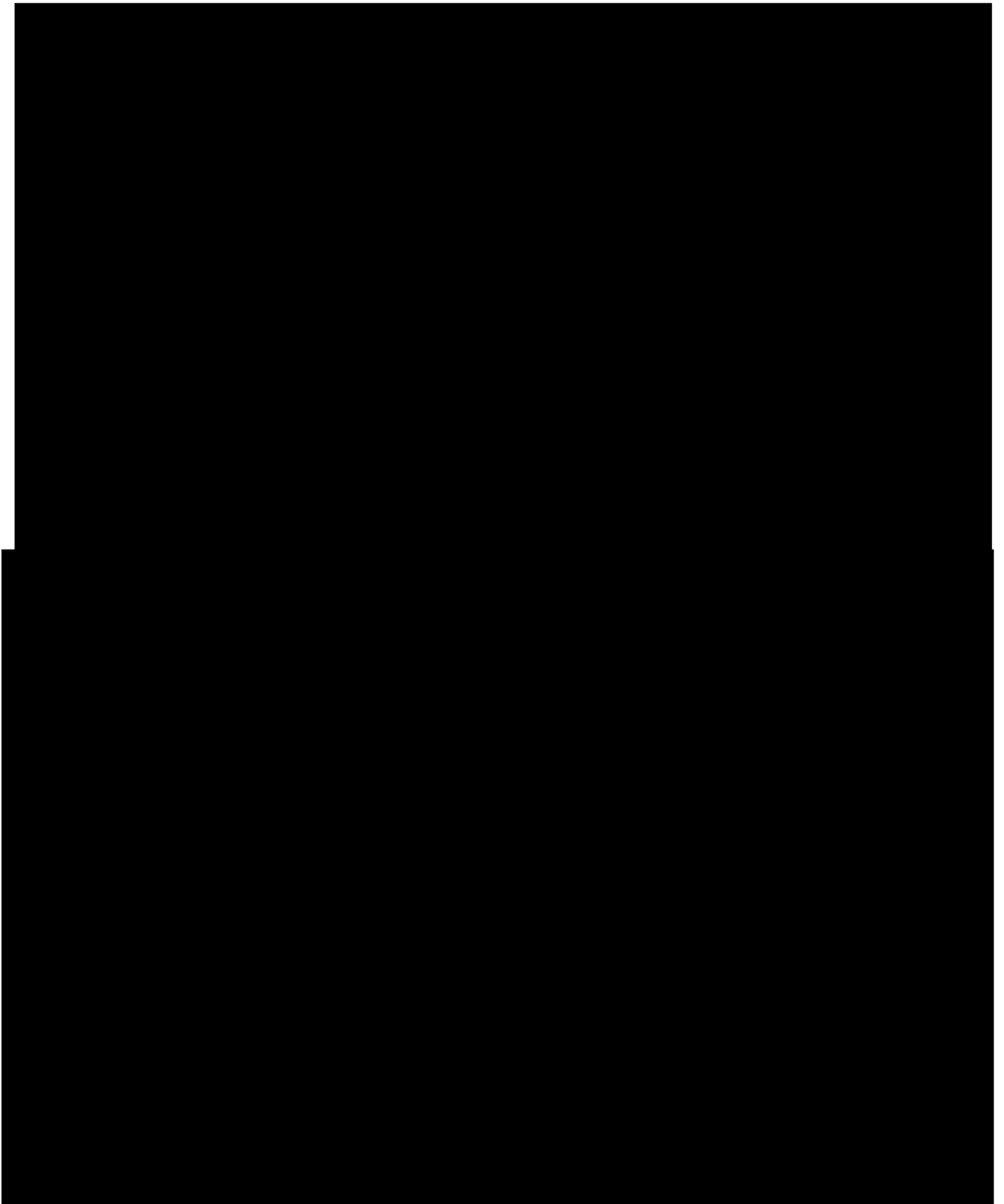
**DONV 011- VIABILITY AND DELIVERABILITY STUDY
SHROPSHIRE COUNCIL**

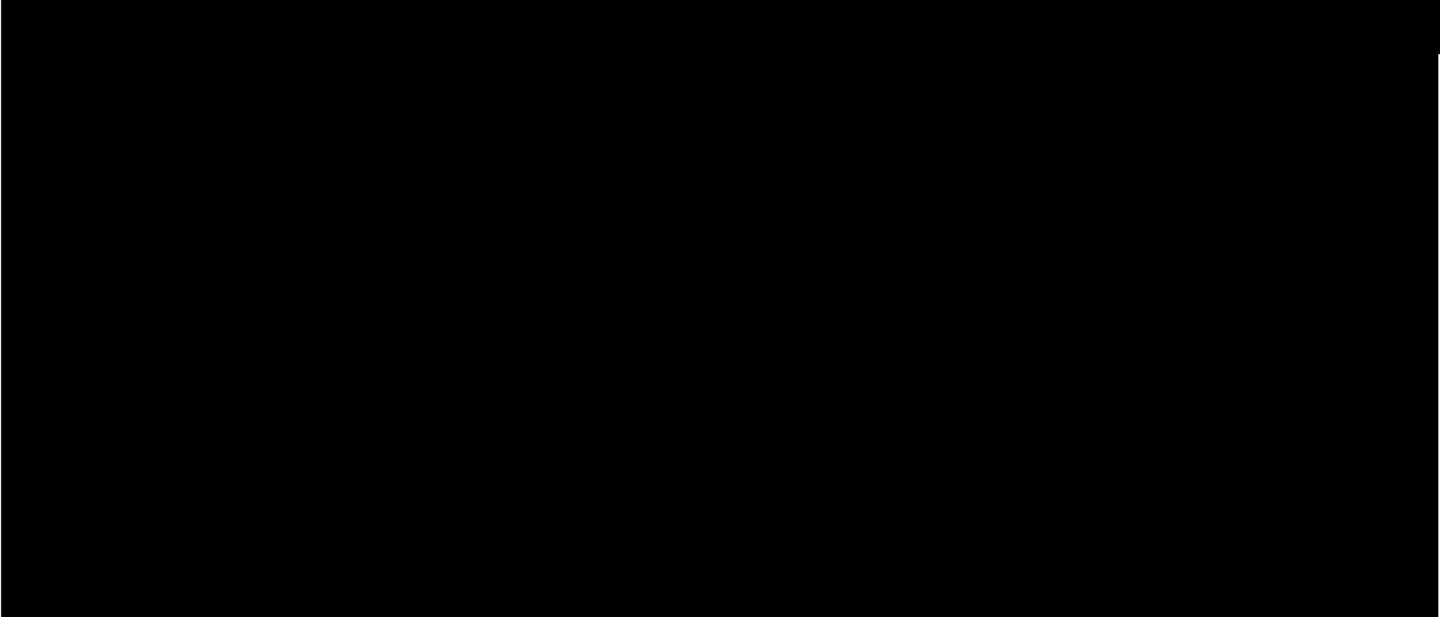
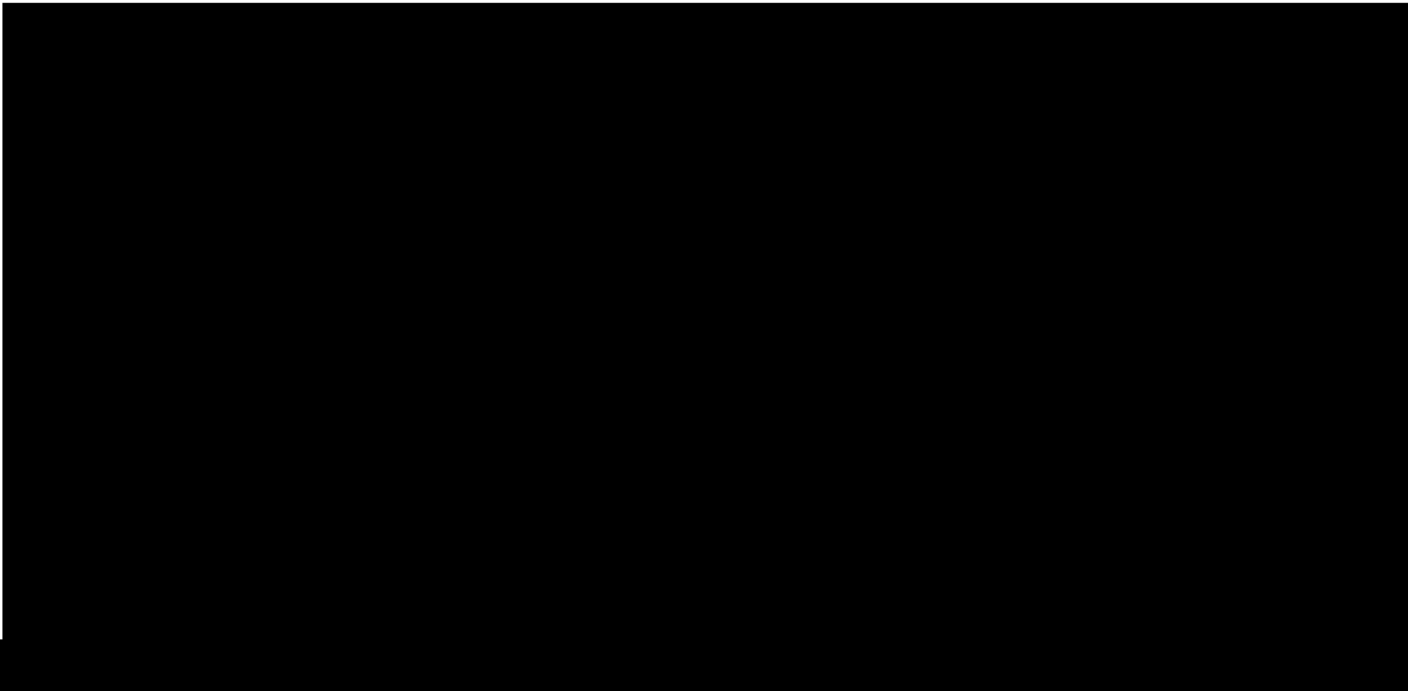
SUBJECT TO CONTRACT

Subject to Shropshire Council receiving no notice during the standstill period of any intention to legally challenge the award process, the Council aims to conclude the award after the expiry of the standstill period.

For your further information we would confirm that your quality submission was scored against the published 0-10 scoring scheme and the stated award criteria and received the marks as set out. We have also included some commentary to the marks:







We will be in touch after the standstill period.

Yours faithfully

