

DATED

10 March

2022

THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE

and

NEWLYN PLC

CONCESSION AGREEMENT FOR THE PROVISION OF ENFORCEMENT AGENT SERVICES

FOR THE RECOVERY OF COUNCIL TAX, BUSINESS RATES, OVERPAID BENEFIT AND SUNDRY DEBTS

LOT 2

Legal Services
The District Council of Folkestone and Hythe
Civic Centre,
Castle Hill Avenue
Folkestone,
Kent CT20 2QY

© The District Council of Folkestone and Hythe 2018

Ref. LS/DK 1251 draft 30.05.18 IL Reviewed 18.10.21

Articles of Agreement

This Contract is made the [10] day of [March] 2022

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (hereinafter "**the Council**") of the one part

and

NEWLYN PLC, registered number 03770985, whose registered office is at Century House, Wargrave Road, Henley-On-Thames, Oxfordshire, England, RG9 2LT (hereinafter "**the Provider**") of the other part

(hereinafter collectively "**the Parties**" and independently "**the Party**")

WHEREAS

- A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- B. The Provider acknowledges that the Council is subject to the Best Value duty and that the Provider shall throughout the Contract Period assist the Council in discharging the Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Services.
- C. By this Contract the Council seeks to procure the provision of specific services and/or supplies from the Provider.

NOW THEREFORE IT IS HEREBY AGREED BETWEEN the parties as follows:

- 1. This Contract commences on **1st of April 2022** ("**the Commencement Date**").
- 2. This Contract is for the period from the Commencement Date until **31st March 2024** unless terminated earlier by either Party in accordance with the terms of this Contract or extended at the sole discretion of the Council in accordance with **Condition 3 (the Contract Period)**.
- 3. The Provider irrevocably undertakes it will provide the Services in accordance with this Contract, the Specification and any other documents attached to this Contract, with due skill, care and diligence and in utmost good faith.
- 4. Subject to the Services and/or Supplies having been rendered in accordance with each of the terms of this Contract, the Council will pay the Provider the Contract Price in accordance with the provisions of this Contract.

CONDITIONS OF CONTRACT
CONTENTS

Condition	Subject matter
1.	DEFINITIONS AND INTERPRETATION
2.	FORM OF CONTRACT
3.	CONTRACT PERIOD.....
4.	THE PROVIDER'S OBLIGATIONS
5.	PERFORMANCE OF SERVICES AND THE SPECIFICATION
6.	MONITORING OF SERVICES
7.	VARIATION OF SERVICES
8.	COUNCIL'S AUTHORISED OFFICER
9.	CONTRACT MANAGER
10.	THE PROVIDER'S PERSONNEL
11.	NOT USED
12.	COMPLAINTS.....
13.	NOT USED.....
14.	CERTIFICATES AND PAYMENTS.....
15.	RECOVERY OF MONIES ON BEHALF OF THE COUNCIL
16.	RIGHT OF SET OFF AND RECOVERY OF SUMS DUE
17.	VALUE ADDED TAX
18.	BEST VALUE
19.	NOT USED.....
20.	DEFAULTS
21.	DISPUTE RESOLUTION
22.	HEALTH & SAFETY
23.	UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES
24.	PROVIDER'S WARRANTIES & LIABILITIES.....
25.	INSURANCE
26.	COPYRIGHT AND INTELLECTUAL PROPERTY
27.	CONFIDENTIALITY & PUBLICITY.....
28.	TERMINATION
29.	ASSIGNMENT AND SUB CONTRACTING.....
30.	NOTICES
31.	ANTI-BRIBERY AND ANTI-CORRUPTION.....
32.	GRATUITIES TIPS AND CHARGES
33.	ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS.....
34.	PROVIDER'S WHISTLEBLOWING OBLIGATIONS
35.	WAIVER.....
36.	FORCE MAJEURE
37.	FREEDOM OF INFORMATION.....
38.	TUPE
39.	DATA PROTECTION
40.	INFORMATION FOR RETENDERING

41.	LAW AND JURISDICTION
42.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
42.	SEVERABILITY
44.	PARTNERSHIP OR AGENCY

Schedule

Subject Matter

1	SPECIFICATION.....
2	PRICING

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract the following expressions shall (save where the context may otherwise require) have the following meanings:

“2000 Act”

means the Freedom of Information Act 2000 (as amended) and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;

“Agreed Purposes”

Personal data is to be held for the purpose of collecting debts.

“Authorised Officer”

shall include the person or persons notified by the Council to the Provider pursuant to **Condition 8**;

“Best Value”

means the Council’s duty to ensure continuous improvement in the way in which its functions are exercised having regard to:

- economy, efficiency and effectiveness as that duty is defined in the Local Government Act 1999, all subsidiary legislation and Government guidance made thereunder and relevant Technical Releases of the Audit Commission; and
- the Council’s independent objectives including (but not limited to) performance of equality, environmental welfare and regeneration; each of which shall be considered and assessed with regard to every element of the Services;

“Confidential Information”

Means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other party and that Party’s Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, suppliers or plans of the disclosing party;
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

“Contract”

means the agreement concluded between the Council and the Provider comprising of the Articles of Agreement, these Conditions of Contract and the Schedules attached hereto;

“Contract Manager”

shall include the person appointed as contract manager by the Provider in accordance with **Condition 9** (Contract Manager) or (in the event of the Contract Manager’s temporary

absence from work) that person's deputy also appointed in accordance with **Condition 9** (Contract Manager);

“Contract Period”

means the period referred to in **Condition 3** (Contract Period);

“Contract Price”

means the sum to be paid to the Provider for the delivery of the Services as detailed in Schedule 2 (Pricing);

“Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach” “processing and appropriate technical and organisational measures”

have the meanings given in Data Protection Legislation;

“Council’s Guidelines”

shall include relevant rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards of the Council (including but not limited to the Constitution of the Council) as set out or referred to in the Specification or being reasonably notified to the Provider by the Council or the Authorised Officer from time to time, as any of the same may from time to time be reasonably amended by the Council and notified to the Provider;

“Council’s Publication Scheme”

shall include the publication scheme adopted by the Council pursuant to section 19 of the 2000 Act and as amended by the Council from time to time;

“Data Discloser”

means a party that discloses Shared Personal Data to the other party.

“Data Protection Impact Assessment”

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

“Data Protection Legislation”

means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI/2003/2426) as amended;

“Default Notice”

means a notice served on the Provider in accordance with **Condition 20**;

“Directive”

means the European Acquired Rights Directive 77/187;

“Dispute Resolution Procedure”

the procedure set out in **Condition 21**;

“Domestic Law”

the law of the United Kingdom or a part of the United Kingdom;

“DPA 2018”

has the meaning given in the definition of Data Protection Legislation;

“Environmental Information Regulations”

means the Environmental Information Regulations 2004;

“Expert”

means the person appointed by the mutual agreement of the Parties, or in accordance with **Condition 21**, the cost of whose appointment shall be equally borne by each Party subject to the provisions of **Condition 21**;

“Force Majeure”

shall include an event referred to in **Condition 33** of these Conditions;

“GDPR”

takes the meaning referred to in the definition of Data Protection Legislation;

“Health and Safety Guidelines”

means all rules, procedures and requirements concerning health and safety at work notified to the Provider by the Council from time to time;

“Information”

means information as defined in section 84 of the 2000 Act;

“Insurance”

shall include the policies of insurance which the Provider is obliged to take out and maintain under **Condition 25** (Insurance);

“Intellectual Property Rights”

utility models, rights to inventions, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Legislation”

shall include all Acts of Parliament, statutory regulations and bye-laws, instruments and orders, court decisions and judgements having the force of law and codes of practice issued thereunder and all applicable European Community legislation, as any of the same may be amended or interpreted from time to time;

“Location(s)”

shall include any premises at which the Services are to be provided including any land and/or premises;

“Permitted Recipients”

means the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement,

“Personnel”

means the Provider's directors, officers, consultants, employees and staff who carry out work for Provider, including but not limited to full time, part time, temporary, permanent and voluntary workers and sub-contractors and agents;

“PIDA 1998”

means the Public Interest Disclosure Act 1998;

“Prescribed Rate”

means the rate of interest payable by either Party when in default of its payment obligations hereunder being two percent (2%) above the base rate for the time being of the National Westminster Bank Plc;

“Provider”

means NEWLYN PLC

“Regulated Activity”

As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

“Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

“Representatives”

means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors;

“Request for Information”

a request for information or an apparent request under the Code of Practice on Access to Government Information, the 2000 Act or the Environmental Information Regulations;

“Schedule”

means a schedule to these Conditions;

“Services”

shall include any or all of the services to be provided by the Provider pursuant to this Contract or such of them as may from time to time remain the subject of this Contract as are more particularly described in the Specification and for the Parties agree that throughout this Contract the term “Services” shall where applicable also refer to relevant goods and/or supplies referred to in the Specification;

“Service Data”

shall include any data and/or information howsoever stored which is compiled in relation to all or any of the Services or part thereof;

“Service User”

shall include any person assessed by the Council as being eligible for the Services or any part thereof;

“Shared Personal Data”

means the personal data to be shared between the parties under **Condition** 39 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Names

- b) Addresses
- c) Contact details
- d) Outstanding debts

“Specification”

means the specifications set out in Schedule 1 relating to the provision of the Services as varied by the Council from time to time in accordance with **Condition 7** (Variation of the Services);

“Transferring Employee(s)”

means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the contract between the Council and the Provider, a contract of employment with someone other than the Council;

“TUPE”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

“UK GDPR”

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“Variation”

shall include a variation to the Contract made by notice by the Authorised Officer to the Provider in accordance with **Condition 7** (Variation of Services);

“Warranties”

shall include the warranties, representations, covenants and undertakings made and/or given by the Provider under **Condition 24** (Provider’s Warranties and Liabilities);

“Whistleblowing Policy and Guidelines”

means the policy and guidelines issued and updated from time to time by the Council (which are available on its website) in relation to the issue of whistleblowing including the Council’s *‘Whistleblowing Policy for Council Contractors’* as amended from time to time;

“Working Day”

means Monday to Friday excluding bank and public holidays in England and Wales.

- 1.2 Unless the context requires otherwise, words in the singular shall include the plural and vice versa.
- 1.3 Where the Provider is more than one person those persons shall be jointly and severally liable under the Contract.
- 1.4 Words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa.
- 1.5 Words importing the masculine gender shall include the feminine gender and vice versa.
- 1.6 The headings in this Contract are for ease of reference only and do not affect its interpretation or construction.

- 1.7 The schedules form part of the Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the schedules.
- 1.8 Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 All stipulations of the Contract as to time shall be of the essence (except any stipulations as to the time of payment by the Council to the Provider).

2. FORM OF CONTRACT

- 2.1 The Parties acknowledge and agree that any Services which may be provided by the Provider to the Council during the Contract Period shall be provided in accordance with these terms and conditions.
- 2.2 Subject to the Council's warranties contained in this Contract, the Council does not warrant the accuracy of any representation or statement of fact or law given to the Provider by the Council, its servants or agents at any time before the execution of this Contract and the Council shall not be liable to the Provider for any loss or damage which the Provider may sustain as a result of relying on any such representation, statement, information or advice whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save in so far as the relevant representation, statement, information or advice was made or given fraudulently.
- 2.3 Any Intellectual Property Rights in the Contract shall remain the property of the Council; the Provider may obtain or make at its own expense further copies of the Contract exclusively for the use of the Provider for the performance of the Services.
- 2.4 The Contract shall be subject to the Council's Guidelines (including the Constitution of the Council) current from time to time, the contents of which the Provider acknowledges it has had sight of and is fully aware of their contents.

3. CONTRACT PERIOD

- 3.1 This Contract shall start on the Commencement Date and continue until the expiry of **31st March 2024**, unless terminated earlier by either Party in accordance with the terms of this Contract.
- 3.2 The Council may wish to extend the Contract Period for not more than **48 months, by two periods of 24 months each**.
- 3.3 Any such extension will be notified by the Council to the Provider at least three (3) months prior to the contract end date and will be for the Contract Price (where applicable on a pro rata basis) unless otherwise agreed between the Parties in writing.
- 3.4 If the Council does not wish to extend the Contract Period then the Contract shall expire in accordance with **Condition 3.1**.

4. THE PROVIDER'S OBLIGATIONS

- 4.1 The Provider shall carry out and complete the Services in compliance with the Contract.

- 4.2 At all times, the Provider shall provide the Services described in the Specification with due skill, care and diligence, in utmost good faith and in accordance with the Specification and any written instructions of the Authorised Officer.
- 4.3 The Provider shall ensure that all files, books, statements and records (whether in paper or electronic form) are kept for a period of not less than six (6) years after expiry of the Contract Period relating to the provision of the Services to the extent:
- 4.3.1 they are required by the Conditions and the Specification and/or law;
 - 4.3.2 they record details of any and all monies collected on behalf of the Council; and
 - 4.3.3 otherwise reasonably required ensuring the Services are provided in a proper and timely fashion.
- 4.4 The Provider shall at all times during the provision of the Services allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access to:
- 4.4.1 all work places used by the Provider for the purposes of inspecting works being performed for the provision of the Services;
 - 4.4.2 all work places used by the Provider for the purposes of inspecting records and documents in the possession, custody or control of the Provider in connection with the provision of the Services;
 - 4.4.3 any personnel or agent of the Provider for the purposes of interviewing such persons in connection with the provision of the Services; and
 - 4.4.4 technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services.
- 4.5 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors for the purpose of conducting any audit investigation of the Contract.
- 4.6 The Provider shall at all times comply with the Constitution of the Council referred to under **Condition 2.4** and any relevant financial regulations.
- 4.7 If the Provider or its personnel default in complying or fail to comply with this Condition, any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers (and any third parties employed by the Council) as a result of the default or failure, may be deducted from any sums due or to become due to the Provider under this Contract or shall be recoverable by the Council from the Provider as a debt.
- 4.8 The Provider shall provide each year to the Authorised Officer a copy of its audited accounts within three months of the relevant accounting reference date subsequent to those provided in accordance with any tender requirements.
- 4.9 The Provider shall not advertise the fact that it is providing Services to the Council under this Contract other than with the written permission of the Council.

- 4.10 The Provider shall not in any way whatsoever be, act or hold itself out as an agent of the Council nor make representations or warranties on behalf of the Council and the Provider undertakes to contract with the Council as principal and not as agent.

5. PERFORMANCE OF THE SERVICES AND THE SPECIFICATION

- 5.1 The Provider shall at all times during the Contract Period perform the Services comprehensively with due skill, care and diligence strictly in accordance and in compliance with the Contract, including but not limited to:

5.1.1 the Specification

5.1.2 the Council's Guidelines, in particular (but without limitation) those relating to customer care and any other guidelines as may have been approved by the Council and supplied to the Provider;

5.1.3 the instructions issued to the Provider by any Authorised Officer under or in connection with the Contract;

5.1.4 all relevant Legislation;

5.1.5 in an efficient, professional, ethical and courteous manner which shall have regard to the interests and welfare of the Service Users, parents and guardians of Service Users and other occupiers of the Locations and in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council.

6. MONITORING OF THE SERVICES

- 6.1 The Parties shall meet regularly at premises to be agreed between them throughout the Contract Period in order to agree upon any issues which are outstanding and/or require review and to ensure total compliance with by the Provider with the monitoring requirements contained within the Specification, any additional monitoring arrangements or monitoring exercise that may be reasonably instigated or required by the Council.

- 6.2 The Provider shall keep and maintain such necessary data and information and shall provide such assistance as the Council may reasonably require to enable the Council to complete all official returns, including (where applicable) but without limitation (provided the nature of such data and information and the format for the same has been agreed by the Parties at the last meeting convened under **Condition 6.1**):

6.2.1 returns to the Department of Health and the Department for Works and Pensions;

6.2.2 returns to the Chartered Institute of Public Finance and Accountancy;

6.2.3 information required by the Audit Commission;

6.2.4 information required for the purposes of compliance with any external audit, Best Value, Best Value performance plans or other inspection; and

6.2.5 information required in order to ensure compliance with the Equality Act 2010 other applicable legislation and generally to ensure conformity with obligations contained in **Condition 23** (Unlawful Discrimination and Equal Opportunities).

- 6.3 The Provider shall provide such data and information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Services.
- 6.4 The Provider shall at all times during the currency of the Contract allow the Authorised Officer and such other persons (including representatives of other public bodies or agencies) as may from time to time be reasonably nominated by the Authorised Officer access on reasonable notice (save in the case of emergency or for statutory or audit purposes where no notice shall be required) to all offices and places of work used by the Provider for the purposes of monitoring and inspecting work being performed pursuant to the provision of the Services and any or all records and documents in the possession, custody or control of the Provider in connection with the provision of the Services (including but not limited to the Provider's recruitment practices).
- 6.5 The Provider shall by a term in any authorised sub-contract secure a similar right of access for the Council and its auditors as set out in Condition 6.4 for the purposes of conducting any audit investigation of the Contract.

7. VARIATION OF THE SERVICES

- 7.1 Variations to the Services or the Contract shall only be valid if agreed in writing and signed by both the Council and the Provider.

8. THE COUNCIL'S AUTHORISED OFFICER

- 8.1 The Council shall notify the Provider of the person appointed to be the Authorised Officer (and of any variation of such nominee).
- 8.2 The function of the Authorised Officer shall be to liaise with and give instructions to the Provider and its personnel in relation to all matters concerning the performance by the Provider of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Authorised Officer under this Contract.
- 8.3 The Authorised Officer shall have power on behalf of the Council to issue instructions and directions on any matter relating to the performance of the Services and exercise the functions and powers of the Council under this Contract and the Provider shall observe and comply with all such instructions or directions, which the Authorised Officer shall use reasonable endeavours to confirm in writing.

9. CONTRACT MANAGER

- 9.1 The Provider shall ensure that at all times during the Contract Period there shall be one member of the Provider's Personnel who has been and remains appointed as the Contract Manager with authority to represent the Provider for all purposes, the identity and contract details of whom shall be notified to the Council fourteen (14) days prior to the Commencement Date.
- 9.2 The Contract Manager shall be appointed subject to his identity having the written approval of the Council and his being available all times throughout the Contract Period.
- 9.3 The Contract Manager will follow and comply with any instructions or directions given or issued by the Authorised Officer in connection with performance of the Services.

10. THE PROVIDER'S PERSONNEL

- 10.1 The Provider shall engage sufficient suitably qualified Personnel to ensure that the Services are provided in all respects to the Specification throughout the Contract Period, including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, personnel holidays, personnel training or otherwise.
- 10.2 Without prejudice to the generality of **Condition 5** (Performance of Services and the Specification) the Provider shall perform the Services in accordance with the arrangements relating to personnel stated in the Specification.
- 10.3 The Provider shall notify the Authorised Officer of any material amendments to the personnel arrangements during the Contract Period whether or not they fall within the provisions of Condition 10.2 above.
- 10.4 The Provider shall be responsible for ensuring that Personnel engages in and about the provision of the Services only persons who are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.
- 10.5 The Provider shall, for the purposes of enabling the Council and the Authorised Officer to satisfy themselves as to the Provider's compliance with this **Condition 10** maintain at all times accurate and up-to-date records of all Personnel who are and who are likely to have any connection with the performance of the Services including attendance records and shall afford the Council and the Authorised Officer full access to these records upon reasonable notice in writing by the Authorised Officer.
- 10.6 The Authorised Officer shall, on giving notice together with reasons to the Contract Manager or the relevant Assistant Contract Manager, have the power to require the Provider, (but not unreasonably or vexatiously), to remove from the provision of the Services any individual member of the Provider's Personnel or of its sub-contractors including the Contract Manager or an assistant Contract Manager.
- 10.7 The Council shall under no circumstances be liable either to the Provider or to its Personnel for any cost, expense, liability, loss or damage occasioned by removal under **Condition 10** and subject as aforesaid the Provider shall fully indemnify the Council in respect of any claim made by the personnel.
- 10.8 For the avoidance of doubt, the Provider shall at all times be fully and solely responsible under this Contract for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of its employment of any individual after the Commencement Date and fully indemnifies the Council against any liability arising as a consequence thereof.
- 10.9 The Provider will provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.
- 10.10 With regard to the Provider's Personnel, including but not limited to full time, part time, temporary, permanent and voluntary personnel and sub-contractors and agents the Provider undertakes as follows:
 - 10.10.1 to ensure that all of the Provider's Personnel are Police checked in accordance with Legislation (including but not limited to the Care Standards Act 2000) by ensuring all Personnel have current Disclosure and Barring Service ("**DBS**") checks in accordance with the Safeguarding Vulnerable Groups Act 2006, Part 5 of the Protection of Freedom Act 2012 and/or Protection of Vulnerable Adults Scheme and that checks are carried out in

accordance with Legislation and the Secretary of State Code of Practice under section 122 of the Police Act 1997 and any amendment thereof;

- 10.10.2 to ensure all Personnel (as required) have a current enhanced DBS Certificate of Disclosure including a check against the children's barred list, as appropriate if the Service falls within one of the prescribed purposes under Section 5A of the Police Act 1997 (Criminal Records) Regulations 2002 and the Rehabilitation of Offenders Act Exceptions Order 1975;
 - 10.10.3 DBS checks carried out for the Provider will be accompanied by written confirmation from the DBS that the Provider is registered for the purposes of initiating DBS checks or has used an umbrella body which is registered to undertake DBS checks;
 - 10.10.4 to comply with all the requirements operated by the DBS and ensure that all of the Provider's Personnel with unsupervised access to children and/or vulnerable adults are registered and checked as required;
 - 10.10.5 to ensure that all of the Provider's Personnel who have lived or worked abroad for more than three (3) months in the last five (5) years obtain a Certificate of Good Conduct acceptable to the Council, or similar appropriate document, showing that the individual has not been convicted of any act which would render them inappropriate to work with children and/or vulnerable adults;
 - 10.10.6 to undertake that the Provider complies with the Council's Recruitment and Selection and Safer Recruitment policies which are available on the Council's website as updated from time to time; and
 - 10.10.7 to undertake that the Provider keeps clear records of every member of the Provider's Personnel, including their employment histories, medical clearances, proof of enhanced DBS checks disclosures, notes of face to face meetings, records of checked references and identity in accordance with the Council's Recruitment and Section and Safer Recruitment policies.
- 10.11 In relation to previous and spent convictions if the Provider's Personnel are exempt from the application of Section 4 (2) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions in Section 3 and Schedule 1 and 2 of the Rehabilitation of Offenders Act 1974 Exception (Amendment) Order 1975 or the Offender Rehabilitation Act 2014, the Provider undertakes it will ensure that all the Provider's Personnel shall provide information in accordance with the said Acts and Order in relation to convictions which would otherwise be spent under the provisions of the said Acts.
- 10.12 The Provider warrants that at all times for the purpose of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereafter, as amended from time to time
- 10.13 The Provider shall immediately notify the Contract Manager of any information that is reasonably requests to enable it to be satisfied that the obligations of **Condition 10** have been met.
- 10.14 The Provider shall not employ anyone who is barred from, or previous conduct or records indicate that he/she would not be suitable to carry out a Regulated Activity or may otherwise pose a risk to Users.

- 10.15 The Council (at its own discretion) may refer any information about any individual to the DBS if the conditions of section 77 of the Safeguarding Vulnerable Groups Act 2006 are met.
- 10.16 The Provider acknowledges that the Council is under a duty to assist and provide such information it holds to the DBS where the DBS considers the Council holds relevant information.
- 10.17 The Provider shall indemnify the Council against all claims, proceedings, liabilities, losses, costs, damages and expenses howsoever incurred by the Council as a result of any breach of this **Condition** 10 by the Provider and the Provider's Personnel.
- 10.18 Throughout the Contract Period the Provider undertakes it will:
- 10.18.1 comply with relevant Safeguarding Adults Board (SAB) and Safeguarding Children's Board (SCB) and Safeguarding Children's Board Multi Agency Procedures or equivalent from time to time in place;
 - 10.18.2 have in place its own safeguarding procedures acceptable to the Council which will be made available to the Council and Service Users on demand;
 - 10.18.3 ensure the Provider's Personnel are trained and work in accordance with the Provider's safeguarding procedures at all times including, where required, attendance at SAB and SCB training sessions; and
 - 10.18.4 ensure that all the Provider's staff that will be responsible for children on a one to one basis are trained in a method of restraint approved by the Council and receive up-to-date training every three years.
 - 10.18.5 The Provider shall adhere to and comply with any guidelines and/or codes of practice issued by the Council (including but not limited to the Council's Recruitment and Selection and Safer Recruitment policies) when selecting and/or recruiting employees and volunteers who may have substantial and unsupervised access to children and adults at risk.
- 10.19 The Provider shall take all reasonable steps to ensure that all persons involved in providing the Service on behalf of the Provider understand and follow relevant Safeguarding Children Board's guidance and protocols for safeguarding children and young people.
- 10.20 All persons involved in providing the Service on behalf of the Provider shall co-operate fully with any investigation by the Council or with any person authorised by the Council to conduct an investigation into any allegations of abuse against the Provider's staff.
- 10.21 All allegations, suspicions and incidents of abuse by the Provider's staff must be followed up promptly. In the event that immediate danger is reasonably likely, urgent action must be taken and emergency services contacted. Details of concerns and actions taken must be recorded and reported to the Council, and if appropriate, the Police and any regulatory body.
- 10.22 The Provider shall ensure that there are robust procedures for responding to and reporting such concerns and that all staff receive appropriate awareness training regarding Safeguarding Children which comply the Council's Safeguarding Children and Child Protection Policy. The Provider shall also ensure that they follow the Councils Whistle Blowing Policy to protect staffs who wish to raise such concerns.

10.23 The Council reserves the right to require the Provider at no cost to the Council to remove from performing the Services any Provider personnel allocated to the performance of the Services by the Provider who in the reasonable opinion of the Council is detrimental to the provision of the Services.

11. NOT USED

12. COMPLAINTS

12.1 The Provider shall have in operation a complaint policy/procedure and shall keep a record of all complaints.

12.2 The Provider's record of complaints should include:

12.2.1 the nature of the complaint;

12.2.2 the name of the complainant;

12.2.3 the date and time the complaint was received;

12.2.4 the action taken to remedy the complaint;

12.2.5 the date and time the complaint was remedied;

12.2.6 the names of the Provider's Personnel involved in the complaint and the remedy.

12.3 The record of complaints referred to in **Condition** 12.2 shall be available at all times for inspection on reasonable notice by the Council and any other party who has the legal power/authority to request this.

13. NOT USED

14. CERTIFICATES AND PAYMENTS

14.1 In consideration of the provision of the Services by the Provider, the Council shall provide the opportunity for the Provider to collect money under the relevant regulation or statute from the debtor.

14.2 The Council shall pay the Provider any sums due to the Provider within thirty (30) days of receipt of an invoice for Services previously rendered strictly in accordance with this Contract and subject to satisfactory performance of the Services. The Council shall only make payments against VAT invoices correctly submitted for Services properly performed in accordance with the Contract. Save as otherwise expressed in this Contract, in the event of failure by the Council to pay sums due within the said period, interest shall be payable on the sums due at the Prescribed Rate calculated on a daily basis which the Parties agree shall be a sufficiently substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debts Regulations 2013).

14.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Provider where the invoice is undisputed and where it complies with the standard on electronic invoicing.

14.4 For the purposes of **Condition** 14.2 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes

published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 14.5 The element of the Contract Price due relating to the unit rates for work executed shall be requested by the Provider by means of an application for payment and shall relate only to those Services correctly performed during the preceding calendar month.
- 14.6 Such applications for payment shall comprehensively detail the Services for which payment is requested and the Provider shall supply such additional information as the Council requires to verify the accuracy of such application. The Council will use such means as it considers appropriate to verify the application for payment including but not limited to enquiries with third parties.
- 14.7 Unless otherwise agreed by the Council in writing, the Contract Price shall be fixed throughout the Contract Period and in the event that the Contract Period is extended the Council, at its sole discretion, may agree to an adjustment of the Contract Price with the Provider.

15. RECOVERY OF MONIES ON BEHALF OF THE COUNCIL

- 15.1 The Provider will collect payment on behalf of the Council (where applicable) and be responsible for the security and handling of any transactions or funds, but shall not bank any monies, other than directly into an account nominated by the Council or to transfer cash and cheque payments to the Council's collection service unless otherwise stated in the Specification.

16. RIGHT OF SET OFF AND RECOVERY OF SUMS DUE

- 16.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Provider to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Contract or any other contract with the Council.

- 16.2 Where the Authorised Officer considers that an overpayment has been made to the Provider or that any other sum is due to the Council from the Provider under the terms of this Contract due to:

- 16.2.1 an error in any account which has been subject to certification for payment;

- 16.2.2 an error in any invoice; or

- 16.2.3 arising from any other cause,

he or she shall serve a notice on the Provider indicating the amount or amounts he or she considers to have been overpaid or to be due to the Council and the grounds upon which he or she relies upon for considering that the relevant amount or amounts should be recovered from the Provider.

- 16.3 If the Provider is of the opinion that the Council has either failed to make a payment due under this Contract or made a payment in error, then the Provider shall within not more than twenty-eight (28) days of such payment either being due or made in error as the case may be give to the Council written notice specifying the said error or failure made, the sum due to the Provider (or the Council, as the case may be) to correct such error or failure and information as to the unpaid Services undertaken by the Provider to which it is of the opinion that such non-payment or incorrect payment has been made. In the event such sum is

properly due to the Provider, the Council shall pay to the Provider such sum in accordance with this Contract within fourteen (14) days of receipt of such written notice.

17 VALUE ADDED TAX

- 17.1 All payments made by either Party to the other Party under the terms of this Contract shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which payment is consideration and in so far as such payments are to be made under this Contract such Value Added Tax shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

18. BEST VALUE

- 18.1 The Provider shall demonstrate to the Council's satisfaction throughout the duration of the Contract Period that there has been continuous improvement in the delivery of the Services in accordance with the principles of Best Value.

19. NOT USED

20. DEFAULTS

- 20.1 If at any time after the Commencement Date:

20.1.1 the Council (or its Authorised Officer) determines that the Services or any part of them have not been carried out in accordance with the Contract; or

20.1.2 the Provider has failed to comply with any requirement made by the Council (or its Authorised Officer) within the terms of the Contract; or

20.1.3 the Council (or its Authorised Officer) deems that Provider has adversely affected the image or reputation of the Council; or

20.1.4 the Provider is in breach of any part of this Contract

then without prejudice to any other right or remedy available to the Council, the Council or its Authorised Officer may issue Default Notices and deduct sums of money in accordance with the procedures set out below.

- 20.2 Any or all of the following procedures may be used upon issue of notice in writing to the Provider and the Authorised Officer shall have sole and entire discretion as to which is most appropriate:

20.2.1 the Council may make such deduction from the payment due to the Provider as the Authorised Officer shall reasonably calculate as compensation to the Council in respect of the Provider's failure;

20.2.2 without terminating the Contract, the Council may itself provide or procure the provision of any part of the Service until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Provider is able to perform the Contract to a standard acceptable to the Council;

20.2.3 without terminating the whole Contract, the Council may determine that part of the Services shall no longer be provided by the Provider and itself provide or procure a third party to provide that part of the Services;

20.2.4 without terminating the Contract, the Council may require the Provider to remedy the default within a specified timescale at the discretion of the Council; and

20.2.5 the Council may terminate the whole of the Contract in accordance with **Condition 28** (Termination).

21. DISPUTE RESOLUTION

21.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it, then the parties shall follow the procedure set out in this **Condition 21**.

21.2 Authorised representatives of each of the Council and the Provider agree to discuss and attempt to resolve any dispute or difference between themselves relating to this Contract prior to the appointment of an Expert.

21.3 If any dispute is incapable of resolution between the Parties, the Council and the Provider shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Provider shall use all reasonable endeavours to procure the prompt determination of the reference.

21.4 The Expert shall be deemed to act as an expert and not as an arbitrator.

21.5 The costs of the Expert appointed under this **Condition 21** shall be equally apportioned between the Parties or as may otherwise be directed by the Expert.

21.6 If the Parties are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Parties with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven days.

21.7 Nothing in this Contract shall prevent either the Council or the Provider at any time from seeking any interim or interlocutory relief from the Court.

21.8 Either Party may, within ninety (90) days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.

21.9 Until the time that a dispute between the Provider and the Council is resolved the Provider shall continue to perform the Services and be paid by the Council in accordance with this Contract.

22. HEALTH AND SAFETY

22.1 The Provider shall in performing the Services ensure that its Personnel and any sub-contractors, Council personnel or any other person acting on behalf of the Provider comply with all statutory and other legal requirements in relation to the safety and health of its employees, of sub-contractors, of any other persons in or near the Locations and of the members of the public. The Provider shall in particular comply with all Legislation in the field of health and safety at work and in performance of the Services and generally perform the Services in accordance with the Provider's health and safety policy statements and the

Provider's health and safety codes of practice and/or the Health and Safety Guidelines (where applicable). In the event of any inconsistency between the Provider's health and safety policy statements and codes of practice and the Health and Safety Guidelines, the Health and Safety Guidelines shall prevail.

- 22.2 For the guidance of the Provider the regulatory framework requiring compliance by the Provider includes but is not limited to:

The Health and Safety at Work etc. Act 1974;
The Control of Substances Hazardous to Health Regulations 2002;
The Occupiers' Liability Acts 1957 and 1984;
The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
The Health and Safety (First Aid) Regulations 1981;
The Workplace (Health, Safety and Welfare) Regulations 1992;
The Management of Health and Safety at Work Regulations 1999;
The Personal Protective Equipment at Work Regulations 1992;
The Provision and Use of Work Equipment Regulations 1998;
The Health and Safety (Display Screen Equipment) Regulations 1992;
The Health and Safety Information for Employees Regulations 1989;
Manual Handling Operations Regulations 1992;
The Electricity at Work Regulations 1989;
The Control of Noise at Work Regulations 2005;
Health and Safety (Safety, Signs and Signals) Regulations 1996; and
The Equality Act 2010

- 22.3 The Authorised Officer shall be empowered to suspend the provision of the Services in the event of non-compliance by the Provider with the health and safety requirements of the Contract. The Provider shall not resume provision of the Services until the Authorised Officer is satisfied that the non-compliance has been rectified.

- 22.4 No payment will be made for any part of the Services omitted as result of a cessation of the Services required by the Council due to breach of any health and safety requirement and neither will any additional payment be made for steps which the Authorised Officer requires the Provider to take to remedy the breach of the health and safety requirement.

- 22.5 The Provider shall:

22.5.1 keep its health and safety policy, health and safety codes of practice and risk assessments under review and make any amendments necessary, particularly where there has been a change to current legislation or working practices or the introduction of new equipment (including vehicles) and shall notify the Council in writing of any changes made; and

22.5.2 comply with any changes, amendments or further instructions reasonably requested or issued by the Council in connection with the Provider's health and safety procedures or the Health and Safety Guidelines (where applicable).

23. UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES

- 23.1 In the performance of the Services the Provider shall comply and shall ensure that its employees, agents and sub-contractors comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation including the Equality Act 2010, as well as statutory and other official guidance and codes of practice.

- 23.2 The Provider acknowledges that the Council has a general duty under the Equality Act 2010 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity carrying out their functions.
- 23.3 The Provider shall be considered to have the same obligations as the Council under the Act when providing the Services under this Contract. The Provider shall comply with the general duty under the Act as set out in **Condition** 23.2 above and any Codes of Practice issued by the Equality and Human Rights Commission including (but not limited to) the Statutory Code of Practice on Racial Equality in Employment (2006). The Provider shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.
- 23.4 The Provider shall adopt the Council's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Provider) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purpose of performing the Services, discriminate on the grounds of race directly, indirectly or by victimisation.
- 23.5 The Provider shall indemnify the Council in respect of any costs and legal expenses incurred in defending any action brought by the Equality and Human Rights Commission and/or any third party against the Council for non-compliance with the Act and/or any Codes of Practice as a result of the breach of this Condition by the Provider.
- 23.6 The Provider shall inform the Authorised Officer as soon as becoming aware of any legal proceedings (whether civil or criminal) brought against the Provider under the Equality legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Authorised Officer with such further information and documentation as may be required in relation thereto.

24. PROVIDER'S WARRANTIES AND LIABILITIES

- 24.1 The Provider from the date hereof and throughout the Contract Period warrants, represents and undertakes to the Council as follows:
- 24.1.1 it will perform all of the Services in accordance with the this Contract with due skill, care and diligence, in utmost good faith and within the times stated in the Specification, which times shall be of the essence.
- 24.1.2 all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with this Contract or arising out of the Providers submission or tender to carry out the Services, are true, complete and accurate in all respects;
- 24.1.3 it has full power and authority to enter into the Contract and thereafter to perform the Services;
- 24.1.4 it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Specification; and
- 24.1.5 it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the

Contract Period obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services.

24.2 The Provider shall be liable for and shall fully and promptly indemnify and hold harmless the Council, its officers, employees and agents against all liabilities, damages, costs, losses, claims, demands and proceedings incurred or suffered whatsoever and howsoever arising, be it directly or indirectly, out of or in connection with the Provider's obligations under the Contract in respect of:

24.2.1 any claims, demands or proceedings brought against the Council by any third party by reason either directly or indirectly of any default or breach by the Provider of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;

24.2.2 any fraudulent or negligent act or omission by the Provider (including, without limitation, any misappropriation of monies properly due to the Council);

24.2.3 any liability of the Council to pay compensation to a Customer arising out of the Provider's default in respect of repairs or failure to perform the Services in accordance with the Contract; and

24.2.4 any failure by the Provider to perform the Services in accordance with all and any terms of the Contract (including but not limited to the Specification).

24.3 The Provider's liability to the Council under **Condition** 24.2 shall be without prejudice to any other right or remedy available to the Council.

24.4 Except as provided by this Contract, the Council shall not under any circumstances be liable to the Provider whether in contract, tort or otherwise, for any loss, damage or injury howsoever caused or arising out of, in the course of or in connection with the provision by the Provider of the Services or the access to or use of the Council's premises or facilities by the Provider or the Provider's Personnel.

24.5 **Condition** 24.4 shall not apply in relation to:

24.5.1 any failure by the Council to make proper payment to the Provider in accordance with the terms of the Contract; and

24.5.2 any deliberate or negligent act or omission of the Council or any of its employees giving rise to death or personal injury.

24.6 Except in respect of death or personal injury caused by the negligence (for which no limitation applies) the entire liability of each Party under or in connection with this contract shall not exceed the values of the insurance policies held by the Provider in accordance with **Condition** 25 of this Contract.

25. INSURANCE

25.1 The Provider shall at all times maintain in force insurance policies with reputable insurers or underwriters approved by the Council which shall fully insure and indemnify the Provider against its liability under this Contract in the following amounts;

25.1.1 employer's liability of at least five million pounds (£5,000,000); and

- 25.1.2 public liability of at least ten million pounds (£10,000,000); and
- 25.1.3 professional indemnity of at least five million pounds (£5,000,000)

in respect of any one occurrence or series of occurrences arising out of one event.

- 25.2 The Provider shall during the Contract Period be responsible for contents insurance, buildings and vehicle insurance in respect of any premises occupied and vehicles used for the purposes of the Contract.
- 25.3 The Provider shall before the beginning of the Contract Period and annually thereafter and at such times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this **Condition 25**.
- 25.4 In the event that the Provider fails to comply with any of these requirements the Council shall be entitled to effect such insurance itself and recover the proper and reasonable costs of so doing from the Provider together with an administrative charge equal to ten per cent (10%) of the total cost of obtaining such insurance (subject to a maximum administrative charge of £500) and interest on the total outstanding amount at four per cent (4%) above the base rate of the National Westminster Bank Plc in force from time to time.

26. COPYRIGHT AND INTELLECTUAL PROPERTY

- 26.1 The Intellectual Property Rights in all documents, records, data, or other information produced by the Provider as part of the Services shall belong exclusively to the Council and the Provider shall not make or distribute to a third party any copies of this Contract or the documents, records, data or other information produced by it without the written consent of the Authorised Officer, which consent the Authorised Officer shall be absolutely entitled to withhold.
- 26.2 Any and all Intellectual Property Rights developed under this Contract or arising from the provision of the Services by the Provider shall belong to the Council and the Provider agrees that it shall execute or cause to be executed (by personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
- 26.3 The Provider shall indemnify the Council against any claims, demands, actions, costs and expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from any form 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.
- 26.4 Subject to **Condition 26.5**, the Provider shall notify the Council of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement or alleged infringement of any Intellectual Property Rights. The Council shall at the request of the Provider, afford the Provider all reasonable assistance for the purpose of contesting any such claims, demands and actions. The Provider shall reimburse the Council for all costs and expenses (including, but not limited to legal costs and disbursements on a full indemnity basis) incurred in so doing.
- 26.5 If so requested by the Council, the Provider shall either:
 - 26.5.1 take all such steps as may be necessary to avoid the infringement or the alleged infringement of any Intellectual Property Rights; or

26.5.2 procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Council.

26.6 The Provider shall keep any Service Data which may at any time be in the Provider's possession or under its control and shall store such Service Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Service Data relating to each of the Services and the Provider shall at all times comply with the Data Protection Legislation and the Computer Misuse Act 1990 and shall give the Authorised Officer (and/or persons nominated by him) right of access to premises used by the Provider to monitor performance of the Services and compliance with the Legislation.

27. CONFIDENTIALITY AND PUBLICITY

Confidentiality

27.1 Subject to **Conditions** 27.3, 27.6 and 27.8, each Party undertakes to the other Party as follows:

27.1.1 to treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly both during the Contract Period and following expiry or termination of the Contract;

27.1.2 not to disclose any Confidential Information belonging to the other Party without the prior written consent of that Party, except to such persons and to such extent as may be strictly necessary for the performance of the Contract or except where such disclosure is otherwise expressly permitted by the provisions of this Contract;

27.1.3 not use any Confidential Information received from the other Party otherwise than for the purposes of or in connection with this Contract; and

27.1.4 not to use photographs or images of Service Users without the written consent of the Service User's parents and/or legal guardians and the written agreement of the Authorised Officer.

27.2 The Parties shall use of all reasonable endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third Party in breach of **Condition** 27.1 above and only use such Confidential Information in connection with the performance of the Contract.

27.3 **Condition** 27.1 shall not apply to any disclosure of Confidential Information:

27.3.1 which a Party confirms in writing is not required to be treated as Confidential Information;

27.3.2 which a Party can demonstrate has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Party;

27.3.3 which was in the possession of the receiving Party without restriction as to its disposal, before receiving it from the disclosing Party;

27.3.5 which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure;

- 27.3.5 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 27.3.6 to enable a determination to be made under the Dispute Resolution Procedure referred to under **Condition 21**;
- 27.3.6 by either Party to any department, office or agency of the Government;
- 27.3.7 which is for the purpose of:
 - 27.3.7.1 the examination and certification of the Council's or the Provider's accounts (including any External Audit of the accounts); or
 - 27.3.7.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has utilised its resources;
- 27.3.8 which is independently developed without access to the confidential Information;
- 27.3.9 by the Council to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to the Council;
- 27.3.10 by the Council to an arms length management organisation relating to Council residential or non residential properties and further disclosure by the said arms length management organisation insofar as this is reasonably necessary for the proper discharge of the Council's functions which have been or may be delegated by the Council to the arms length management organisation; or
- 27.3.11 by the Council or the arms length management organisation in service monitoring reports to the Council's Executive or other member body or to the arms length management organisation board, sub-boards or committees.
- 27.4 The Provider shall not make use of this Contract or other information issued or provided by the Council in connection with this Contract otherwise than for the purpose of this Contract, except with the prior written consent of the Council.
- 27.5 When the Provider, in carrying out its obligations under this Contract, is provided with Confidential Information or other information relating to users or potential customers of the Services the Provider shall not disclose or make use of any such Confidential Information or other information otherwise than for the purpose for which it was provided, unless the Provider has sought and obtained the prior written consent of that person or the Council.
- 27.6 At the request of the Council, the Provider shall facilitate the Council's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that the Council is required to provide information to a person as a result of a request made to it under such Code or regulations, the Provider shall provide such information relating to the Contract, the Services or itself to enable the Council to adhere to the requirements of the Code or regulations.
- 27.7 Nothing in this **Condition 27** shall prevent either Party from using any ideas, know-how or techniques gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.

- 27.8 The Provider acknowledges to the Council that nothing in this **Condition** 27 shall fetter or affect the Council's obligations under the Data Protection Legislation, the 2000 Act or the Environmental Information Regulations.

PUBLICITY

- 27.9 Subject to **Condition** 27.11, the Provider shall not and shall procure that any member of the Provider's personnel or sub-contractor shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Contract or the matters contained in this Contract without obtaining the Council's prior written approval as to its contents and manner and timing of its presentation and publication.
- 27.10 The Provider shall not and shall procure that any member of the Provider's personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Contract without the prior written approval of the Council.
- 27.11 Either Party may make a public statement or announcement concerning the completion of this Contract is required by:
- 27.11.1 law; or
- 27.11.2 any regulatory or Government body to which either Party is subject or submits, wherever situated, whether or not the requirement has the force of law PROVIDED THAT any such statement does not contravene the duty of confidentiality contained in **Condition** 27.1
- 27.12 Subject to the provisions of **Condition** 27.1 the Council reserves the right to publish or disseminate information about this Contract and the provision of the Services as it may deem appropriate from time to time.

28. TERMINATION

- 28.1 The Council shall be entitled upon the happening of any of the following events to terminate the Contract ("Termination"), without prejudice to any accrued rights or remedies under the Contract, forthwith by written notice having immediate effect:
- a) if the Provider commits a breach of any term of the Contract which breach is capable of being remedied and the Provider has failed to remedy the said breach within fourteen (14) days after issue of a written request from the Council that the Provider should do so;
 - b) a material breach by the Provider of any condition and/or of its obligations under the Contract;
 - c) if the Authorised Officer shall certify in writing to the Council that in his opinion the Provider has abandoned the Contract;
 - d) if the Authorised Officer shall certify in writing to the Council that the Provider without reasonable excuse has failed to commence the Services on the Commencement Date or has suspended the performance of the Services or

a substantial part thereof for seven days after receiving from the Authorised Officer written notice to proceed;

- e) the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to the obtaining or execution of the Contract with the Council; or for showing or forbearing to show favour or disfavour, to any person in relation to the Contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by the Provider or acting on its behalf, (whether with or without the knowledge of the Provider);
- f) if in relation to any contract with the Council, the Provider or any person employed by it or acting on its behalf shall have committed an offence or anything contrary to Legislation;
- g) if the Provider is a registered charity at the Commencement Date, if the Provider ceases to be a registered charity within the meaning of the Charities Act 2006;
- h) if the Charity Commission have:
 - i) opened an enquiry into the activities of the Provider; or
 - ii) have intervened with the running of the Provider due to misconduct or mismanagement;
- i) if the Provider has possession taken, by or on behalf of the holders or any legal charge of the Provider's property;
- j) the Provider suffering an execution to be levied on his goods;
- k) if the Provider consists of one or more individuals, any such individual dying, entering into a composition or arrangement for the benefit of his creditors or becomes bankrupt or is the subject of similar procedures under the law of any other state;
- l) if the Provider consists of a body corporate, the Provider having a receiver or manager or administrator, provisional liquidator or liquidator appointed or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or being subject to similar procedures under the law of any other state provided that an amalgamation or reconstruction of a limited company shall be deemed not to be a breach of this Condition;
- m) if the Provider has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver or has an administrative receiver appointed or is the subject of similar procedures under the law of any other state;
- o) the Provider has possession taken, by or on behalf of the holders of any debenture secured by a floating charge, of any property comprised in, or subject to, the floating charge or is the subject of similar procedures under the law of any other state;

- p) the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, or manager, or administrator, or administrative receiver or to begin similar procedures under the law of any other state; or which entitle the Court to make a winding up order or a similar order under the law of any other state.

28.2 Upon such Termination and in addition to such consequences as are set out in these Conditions of Contract:

- a) the Provider shall forthwith cease to perform the Services;
- b) the Council shall cease to be under any obligation to make further payments to the Provider and shall be entitled to retain any payments which may have fallen due to the Provider before termination until the costs, losses and/or damages resulting from or arising out of the Termination of the Contract shall have been calculated; where the Parties agree that such calculation shows a sum or sums due to the Provider, the Council shall pay the Provider such sums forthwith and in any event within 10 (ten) Working Days of the calculation being agreed between the Parties;
- c) the Council shall be entitled to repossess any of its premises, materials, equipment or other goods loaned or hired to the Provider and to exercise lien over any of the materials, equipment or other goods belonging to the Provider for any sum due hereunder or otherwise due from the Provider to the Council;
- d) the Council shall be entitled to deduct, retain or set off from any sum or sums which would but for paragraph b) of this Condition have been due from the Council to the Provider under this Contract or any other Contract or be entitled to recover the same from the Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of the contract. Such loss or damage shall include reasonable cost to the Council of the time spent by its officers in terminating the contract and in making alternative arrangements for the provision of the Services or any part thereof;
- e) when the total costs, losses and/or damages resulting from or arising out of the Termination of the Provider's employment have been calculated and deducted insofar as is practicable from any sum or sums which would but for paragraph b) of this Condition have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

28.3 Notwithstanding anything to the contrary contained herein, the Council may terminate this Contract by giving thirty (30) days notice in writing to the Provider in the event any grant from Central Government or a recognised third party to fund the Services is withdrawn, reduced or delayed.

28.4 The Provider may terminate this Contract by serving notice on the Council at least sixty (60) days prior to termination of the Contract if any sums remain unpaid for thirty (30) days after receipt by the Council of an invoice for Services previously rendered in accordance with this Contract and the Provider has given the Council prior written notice stating sum(s) remaining unpaid and its intention to terminate the Contract and such sum(s) remain unpaid for thirty (30) days following service of the notice Provided Always that the Provider shall not exercise this right of termination where the sum(s) outstanding is/are the subject of a genuine dispute.

28.5 Without affecting any other right or remedy available to it, the Council shall have the right to terminate the Contract without obligations to pay for any Services not yet rendered by giving not less than 3 (three) months notice in writing or such other period as it considers reasonable under the circumstances.

29. ASSIGNMENT AND SUB-CONTRACTING

29.1 The Council shall with the Provider's consent (not to be unreasonably withheld or delayed) be entitled to assign the benefit of the Contract or any part thereof and shall give reasonable written notice of any such assignment to the Provider.

29.2 The Provider shall not:

29.2.1 assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

29.2.2 sub-contract the provisions of the Services or any part thereof to any person without the previous written consent of the Authorised Officer which consent shall be at the absolute discretion of the Authorised Officer. This shall not relieve the Provider from any liability or obligation under the Contract, and the Provider shall be responsible for the acts, defaults or neglect of any sub-Providers, its employees and agents in all respects as if they were the acts, defaults or neglect of the Provider itself.

29.3 The Provider undertakes that the terms and conditions of any sub-contract it enters into with a sub-contractor shall comply with section 113 of the Public Contracts Regulations 2015 and result in payments being made not later than thirty (30) days from the date of receipt of a relevant invoice from the sub-contractor.

30. NOTICES

30.1 Notices under this Contract shall be given by sending them by pre-paid registered post, fax (with a confirmatory copy by post), electronic mail or personal delivery to the other Party at its address set out in the description of the Parties or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received 48 hours after sending (as evidenced by the sender's receipt), notices sent by fax and electronic mail shall be deemed to have been received on the first working day after sending (in the case of notices by fax as shown by the timed print out on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

31. ANTI-BRIBERY AND ANTI-CORRUPTION

31.1 The Council may terminate this contract and recover all its losses if the Provider (or its Personnel):

(a) fails to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti corruption including but not limited to the Bribery Act 2010; and

(b) engages in any activity, practice or conduct which would constitute an offence under, section 1, 2, and 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; or

(c) engages in any activity, practice or conduct which would constitute an offence under Section 117(2) of the Local Government Act 1972 and any amendment thereto or any subsequent legislation or under Legislation creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

(d) defraud or attempt to defraud or conspire to defraud the Council.

32. GRATUITIES TIPS AND CHARGES

32. The Provider shall not whether itself or by any of the Provider's Personnel engaged in the provision of the Services solicit or accept any gratuity, tip or any form of money taking or reward, collection or charge for the provision of any part of the Services other than bona fide charges approved by the Council.

33. ENTIRE AGREEMENT AND SURVIVAL OF PROVISIONS

33.1 This Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the Parties relating to the Services. Unless otherwise stated herein, this Contract applies in place of and prevails over any other terms, conditions and prior representations, whether contained in correspondence or implied by custom or law. Nothing in this Contract shall limit or otherwise exclude liability for fraudulent statements or misrepresentations made by either Party.

33.2 The rights and obligations which expressly or by their nature are intended to survive the expiry or termination of this Contract shall so survive and bind the Parties and their legal representatives, successors and assigns.

34. THE PROVIDER'S WHISTLEBLOWING OBLIGATIONS

34.1 The Provider hereby takes notice of and agrees to comply in all respects with the Council's Whistleblowing Policy and Guidelines and PIDA 1998. In particular (but without limitation) the Provider agrees:

34.1.1 to accept and adopt the Council's Whistleblowing Policy for Providers as a procedure for the purposes of s.43C(2) of PIDA and the Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure;

34.1.2 that to the extent that the Whistleblowing Policy and Guidelines impose duties on or grant rights, protections or immunities to Council employees or agents, the Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Provider's employees and agents and to any sub-contractors.

34.2 Without limiting the generality of **Condition** 34.1, the Provider agrees to report to the Council in accordance with the Whistleblowing Policy and Guidelines any circumstances relating to or arising out of the Contract (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the supply of the Works/Services/Supplies, which give rise to a reasonable belief that one or more of the following matters (referred to in this Condition as "instances of malpractice") has occurred, is occurring or is likely to occur:

34.2.1 a criminal offence (including any form of child abuse, or the abuse of other vulnerable individuals);

- 34.2.2 a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
 - 34.2.3 miscarriage of justice;
 - 34.2.4 danger to health and safety;
 - 34.2.5 damage to the environment;
 - 34.2.6 any other matter designated as malpractice in the Whistleblower Policy and Guidelines;
 - 34.2.7 concealment of any of the above
- 34.3 Without limiting the generality of **Condition** 34.1, in the event that any employee, agent or sub-contractor of the Provider should make a report to the Council (or to any other person authorised by law) pursuant to this Condition, the Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.
- 34.4 The Provider agrees to indemnify the Council in respect of any loss or damage caused by or arising out of a failure on the part of the Provider to report, within a reasonable time, any instances of malpractice in accordance with this Condition, the Whistleblowing Policy and Guidelines and/or PIDA 1998.
- 34.5 Where the Provider acting reasonably and in good faith makes a report pursuant to this Condition, and the Council subsequently undertakes or omits to undertake a course of action wholly in reliance upon such report the Council accepts such liability as the Provider may incur as a direct consequence of such report.

35. WAIVER

- 35.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of the Contract or to require performance by the other Party of any of the provisions of the Contract shall not:
- 35.1.1 constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of the Contract; nor
 - 35.1.2 affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

36. FORCE MAJEURE

- 36.1 If a Force Majeure event arises on or following the date of this Contract (irrespective of the fact that this Contract may then be conditional) which directly causes the Provider to be materially unable to comply with any of its obligations hereunder, the Provider and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Provider is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of **Condition** 28 (Termination). Failure by the Provider to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

- 36.2 The events which are to be classified as Force Majeure events shall include each of the following:
- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
 - b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
 - c) riot, flood or earthquake;
 - D) epidemic of pandemic; or
 - d) any circumstances beyond the reasonable control of either of the Parties.

37. FREEDOM OF INFORMATION

- 37.1 The Provider acknowledges that the Council is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agrees to use all reasonable endeavours to assist the Council (at the Provider's expense) to comply with its obligations imposed under those provisions.
- 37.2 The Provider shall process Information produced in the performance of the Contract or relating to the Contract in accordance with a records management system which complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 37.3 Subject to **Condition** 37.6, the Provider shall and shall procure that its sub-contractors shall:
- 37.3.1 transfer any Request for Information received by the Provider or its sub-contractors to the Council promptly and, in any event, within two Working Days of its receipt;
 - 37.3.2 provide the Council with a copy of all Information belonging to the Council in its possession or power, which has been requested in the Request for Information in the form that the Council requires within 5 Working Days of the Council's request for such Information (or such other period as the Council may reasonably specify), including such information as the Council may require in order to comply with the Council's Publication Scheme;
 - 37.3.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act;
 - 37.3.4 not respond directly to a Request for Information or disclose or release Information without the prior written authority of the Council.
- 37.4 Subject to **Condition** 37.6, the Council shall be responsible for determining, in its absolute discretion, whether:
- 37.4.1 Information relating to a Request for Information is exempt from disclosure under the 2000 Act or the Environmental Information Regulations;
 - 37.4.2 any Information is to be disclosed in response to a Request for Information.

37.5 The Provider acknowledges that the Council may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:

37.5.1 without consulting the Provider; or

37.5.2 following consultation with the Provider and having taken its views into account.

37.6 Where the 2000 Act applies to the Provider (by virtue of an order made under section 5 of the 2000 Act or otherwise), the Provider shall:

37.6.1 comply with the 2000 Act and any associated Legislation and codes of practice (including (without limitation) the Secretary of State's and Lord Chancellor's codes of practice issued under sections 45 and 46 of the 2000 Act); and

37.6.2 where the Provider receives a Request for Information from a third Party under the 2000 Act which relates to the Council and / or this Contract:

37.6.2.1 inform the Council about the Request for Information and the nature of the Information being sought as soon as reasonably possible;

37.6.2.2 consider and apply all lawful exemptions provided under the 2000 Act to withhold Information sought in terms of the Request for Information;

37.6.2.3 consult with the Council prior to the disclosure of any such Information; and

37.6.2.4 keep the Council informed about the Provider's progress in dealing with any Request for Information and where requested by the Council, provide the Council with copies of any correspondence and documents relating to the Request for Information.

37.7 The Provider shall indemnify the Council against all claims and proceedings and all liabilities, losses, costs and expenses incurred in connection therewith by the Council as a result of any breach of this **Condition 37** by the Provider, the Provider's personnel, sub-contractors or agents.

37.8 The Provider acknowledges that the definition of Confidential Information is indicative only and that the Council may be obliged to disclose Confidential Information pursuant to the Environmental Information Regulations or the 2000 Act.

38. TUPE

38.1 The Provider accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.

38.2 The Council and the Provider agree that the transfer of the Services (where applicable) to be effected by this Contract is governed by the Regulations and accordingly:

38.2.1 the Council shall use reasonable endeavours to request that the existing Provider of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Provider (save insofar as such contracts relate to any occupational pension schemes);

- 38.2.2 on termination of the Contract for whatever reason or expiry of the Contract Period, the Provider shall discharge all wages salaries and honoraria excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance); and
- 38.1.3 subject to the Data Protection Legislation, the Council shall provide to the Provider such information as may be reasonably required to comply with the Regulations, including without limitation:
- (a) the number of personnel, including supervisory and administrative personnel employed by the Council in the provision of the Services;
 - (b) the terms and conditions of employment of those personnel; and
 - (c) any other information in relation to those personnel as may properly be required by the Provider under this Condition.
- 38.3 The Provider shall at its own cost undertake all liability for and shall fully indemnify the Council against:
- 38.3.1 all losses, claims, damages and costs which may be brought against the Council as a consequence of the Provider's failure to consider fully the application of the Directive and Regulations to this Contract and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract; and
- 38.3.2 all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Provider.
- 38.4 On the termination of the Contract for whatever reason or on the expiry of the Contract Period, the Provider shall supply within seven (7) days of demand by the Council all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:
- 38.4.1 the number of personnel, including supervisory and administrative personnel, employed by the Provider and any sub-contractor employed in the provision of the Services;
- 38.4.2 the terms and conditions of employment of those personnel; and
- 38.4.3 any other information in relation to those personnel as may properly be required by the Council under this Condition.
- The Provider shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.
- 38.5 Prior to the termination of this Contract (or any part of this Contract) for whatever reason, the Provider shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected

employees pursuant to Directive Article 6 and Regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Contract Period or on any earlier termination of the Contract (or any part of the Contract) for whatever reason. The Provider shall indemnify and hold harmless the Council against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.

- 38.6 If at the termination of the Contract for whatever reason (apart from cause for termination being a result of a material breach of the Contract by the Provider) the Services cease to be provided by the Provider and are neither taken back in-house nor transferred to a third party Provider, then the Provider shall use its best endeavours to re-deploy employees previously engaged in the performance of the Contract. If having taken all such steps the Provider dismisses exclusively on the grounds of redundancy any of the employees previously employed by the Council in the provision of the Services, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider that amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment with the Council.
- 38.7 In addition to the provisions contained in **Condition** 38.5 above, the Parties agree that if during the Contract Period staffing levels are reduced exclusively as a consequence of redundancy of employees, the Council shall (subject to the Provider consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Provider such amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment by the Council. The Provider accepts liability for all redundancy payments pertaining to the length of service of the relevant employee with the Provider.
- 38.8 The Provider shall undertake to include in any sub-contract specific provisions which provide equivalent obligations upon each sub-contractor to those accepted by the Provider under this Contract and which provide for enforcement by:
- (a) Transferring Employees; and/or
 - (b) the Council

directly against the sub-contractor and preserving their rights under the Contracts (Rights of Third Parties) Act 1999. Copies of all sub-contracts (un-priced) shall be provided to the Council upon sub-contract award. The Provider shall indemnify and hold harmless the Council against all claims, whatsoever and howsoever arising, which may at any time arise out of the failure on the part of the Provider to comply with the requirements of this Condition.

- 38.9 The Provider shall not during the final twelve (12) months of the Contract Period or during the final twelve months of any extension to this Contract:
- (a) Undertake a reorganisation of staff employed in the performance of this contract or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Council.
 - (b) Award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the Council.
 - (c) Agree or implement any alteration to the terms and conditions on which staff are employed on the Contract without first having obtained the written consent of the Council.

39. DATA PROTECTION

- 39.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 39.2 **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 39.3 **Particular obligations relating to data sharing.** Each party shall:
- a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - c) process the Shared Personal Data only for the Agreed Purposes;
 - d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 39.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- b) promptly inform the other party about the receipt of any data subject rights request;
- c) provide the other party with reasonable assistance in complying with any data subject rights request;
- d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- i) maintain complete and accurate records and information to demonstrate its compliance with this **Condition 39** and allow for audits by the other party or the other party's designated auditor; and
- j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

39.5 **Indemnity.** Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

40. INFORMATION ON RE-TENDERING

40.1 If requested to do so by the Council, the Provider shall provide to the Council at no additional charge any and all relevant information in its possession to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal

obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.

41. LAW AND JURISDICTION

- 41.1 The Contract shall be governed by and construed in accordance with the Laws of England and the Parties submit to the exclusive jurisdiction of the English courts.
- 41.2 The express terms and conditions of this Contract shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations, whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 41.3 References to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it.

42. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 42.1 Unless expressly stated nothing in this Contract or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Contract.

43. SEVERABILITY

- 43.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 43.2 If any provision or part-provision of this Contract is deemed deleted under **Condition 43.1**, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

44. PARTNERSHIP OR AGENCY

- 44.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties.
- 44.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

IN WITNESS WHEREOF the parties hereto have entered into this Consultancy Agreement as a Deed on the day and year first above written

**THE COMMON SEAL of THE
DISTRICT COUNCIL OF
FOLKESTONE AND HYTHE**
was hereunto affixed in the
presence of:

44.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties.

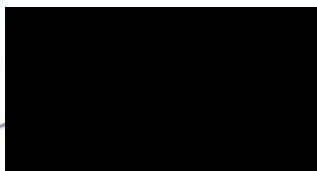
44.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

IN WITNESS WHEREOF the parties hereto have entered into this Consultancy Agreement as a Deed on the day and year first above written

**THE COMMON SEAL of THE
DISTRICT COUNCIL OF
FOLKESTONE AND HYTHE**
was hereunto affixed in the
presence of:



9519



For and on behalf of
NEWLYN PLC

Director



_____ – SALES AND
MARKETING DIRECTOR

Director/
Company
Secretary

Signature



_____ – CLIENT SERVICES
DIRECTOR

SCHEDULE 1

SPECIFICATION

SPECIFICATION:

SPECIFICATION FOR THE PROVISION OF ENFORCEMENT AGENT SERVICES FOR
THE RECOVERY OF COUNCIL TAX, BUSINESS RATES, OVERPAID BENEFIT AND
SUNDRY DEBTS

Part 1 – General Requirements

- 1 General**
- 2 Lots
- 3 Complaints and Enquiries
- 4 Reporting Requirements
- 5 Training
- 6 Responsive Debtor Enquiry Service
- 7 Security and Audit
- 8 Confidentiality
- 9 Equal Treatment
- 10 Times of Visits by Enforcement Agents
- 11 Enforcement Agent’s Guidelines
- 12 Taking Control of Goods
- 13 Time limits to Take Control of Goods
- 14 Criminal Records Bureau/Independent Safeguarding Authority
- 15 Sustainability

Part 2 - Council Tax, Business Rates & Overpaid Benefit/ Sundry Debtor Recovery Services

- 1 General**
- 2 Procedures to be Adopted in Executing Liability Orders\Warrants of Control
- 3 Documentation
- 4 Procedures
- 5 Performance
- 6 Liaison
- 7 Receipt, Allocation of Payments and Reconciliation of Accounts
- 8 Reports
- 9 Costs to the Debtor
- 10 Payment
- 11 Qualifications
- 12 Contract Administration
- 13 Client Responsibility
- 14 Written Notice – General
- 15 Statutory Requirements
- 16 Management Information
- 17 Timescales
- 18 Procedures and Performance Targets – Liability Orders

19	Procedures and Performance Targets – Warrants of Commitment
20	Procedures and Performance Targets – Benefits Overpayments
21	Costs to Taxpayers
22	Costs to Ratepayers
23	Costs to Council
24	Benefit Overpayments/ Sundry Debtors
25	Fees and Charges

PART 1 – GENERAL REQUIREMENTS

1. General

- 1.1 This specification should be read in conjunction with the Invitation and instructions to Tenderers, form of tender and Contract Conditions.
- 1.2 Folkestone & Hythe District Council will appoint two (2) Contractors for a Contract Term of two years with an option to extend for a further two years at its discretion subject to satisfactory performance, and a further two years beyond this initial extension at its discretion subject to satisfactory performance (i.e. 2+2+2 years). The contract commencement date is 1 April 2022 .
- 1.3 Each of the Contractors shall provide a comprehensive Enforcement Agent Service (the Service) to the Council and the residents of the District. It will carry out all the functions necessary to provide the Service and to ensure the timely collection and payment of debts and associated fees, at all times, in compliance with:
- ◆ all relevant legislation, including statutes, regulations, Ministry of Housing, Communities & Local Government (MHCLG) circulars and other relevant government circulars;
 - ◆ the Council's policies and procedures as may be varied from time to time;
 - ◆ any other policies and procedures which the Authorised Officer deems relevant to the proper delivery of the Services;
 - ◆ specific performance and quality standards, in line with the provisions of **paragraphs 17 to 20** (inclusive) of **Part 2** of the Specification.;
 - ◆ service levels between the Contractor and the Council in line with the provisions of **paragraphs 17 to 20** (inclusive) of **Part 2** of the Specification.;
 - ◆ any requirements of the Council's internal auditor and/or its external auditor.
- 1.4 The Council is unable to guarantee the amount or volume of debtor recovery work that the Contractor will be required to undertaken on its behalf.
- 1.5 The Contractor shall not subcontract any portion of the Contractor duties under this agreement without prior written consent of the Council.
- ### **2. Lots**
- 2.1 The Council intends to award the contract to two separate enforcement agents. As such, the requirement will be split into two lots. A contractor will **not** be awarded more than one lot (contract).

- 2.2 There will be instances where the contractor for any lot may be asked to collect debts for the other area when the contractor awarded the specific lot has been unable to collect all or part of the debt,
- 2.3 Lot 1 comprises of: Folkestone, Elham, Elmsted, Hawkinge, Lyminge, Monks Horton, Newington, Paddlesworth, Acrise, Stelling Minnis, Stowting, Swingfield and Sellinge.
- 2.4 Lot 2 comprises of: Lydd, Lymyne, Hythe, Saltwood, New Romney, Brenzett, Brookland, Burmarsh, Dymchurch, Ivychurch, Newchurch, Old Romney, St Mary in the Marsh, Snargate, Postling and Stanford.
- 2.5 Expected cases referred for Council Tax and NNDR are approximately 1200 for Lot 1 and approximately 800 for Lot 2 based on 2019/20 figures.

3. COMPLAINTS AND ENQUIRIES

- 3.1 The Contractor shall have, or within 14 days of the contract commencement date, shall establish and thereafter maintain, an internal complaints procedure that shall have been approved by the Council, overseen by a director or senior manager.
- 3.2 The Contractor shall deal with complaints and enquiries, in accordance with its approved internal complaints procedure and within timescales set by the Council in line with the Councils complaints policy <https://www.folkestone-hythe.gov.uk/your-council/council-information/make-a-complaint-or-compliment/complaints-procedure> . The Contractor shall maintain a system for tracking complaints and enquiries. The complaints and enquiries will include the following:
- ◆ complaints direct from the public, via telephone and correspondence;
 - ◆ enquiries or complaints from members, members of parliament and the chief executive;
 - ◆ enquiries or complaints by the ombudsman.
- 3.3 The contractor shall provide quarterly summaries of complaints received which relate to any aspect of the Services provided by the Contractor, together with the steps taken by the Contractor in response to the complaints.
- 3.4 The Council will deal with any complaints it receives about the Contractor under its complaints procedure. The Contractor must, on request, assist in any way the Council considers reasonably necessary to resolve such complaints.
- 3.5 The Contractor shall deal with complaints promptly, courteously and efficiently.
- 3.6 If the Contractor is investigating or dealing with any complaint the Council shall not intervene or carry out separate investigations unless it reasonably considers the Contractor's action is inadequate and gives reasonable prior written notice to the Contractor of its intention to intervene, or start its own investigation.
- 3.7 The Council retains the right to require the Contractor to take specified steps and/or action as a result of any reasonable conclusions drawn by the Council following any investigations into complaints received in respect of the Contractor's provision of the Services.

4. REPORTING REQUIREMENTS

- 4.1 The Contractor shall provide regular reports, in a form and with a content

required by the Authorised Officer, at intervals (at least on a monthly basis) requested by the Authorised Officer. These will include providing:

- ◆ all information necessary to enable the Authorised Officer to monitor performance levels and take further recovery action if necessary;
- ◆ all information in the appropriate format to enable the Authorised Officer to submit any Government returns or reports to other interested bodies.
- ◆ All information necessary to respond to relevant freedom of information requests.

5 TRAINING

5.1 The Contractor shall provide training for its own staff if they are involved in the provision of the Services to the Council. In particular, the Contractor will ensure that any of its staff who will be delivering Services to the public, comply with the Council's 'Enforcement Agent's Code of Conduct' and are fully training in all aspects of the Service, including legislation, customer care and the use of information technology.

6 RESPONSIVE DEBTOR ENQUIRY SERVICE

6.1 The Contractor shall provide a responsive debtor enquiry service in accordance with standards set down by the Council. Debtors must be able to contact this service by telephone.

7 SECURITY AND AUDIT

7.1 The Contractor shall:

- ◆ comply with any requirements of the Council's auditors in respect of the security of Council funds, including the separation of duties to ensure the financial integrity of processes and any measures designed to ensure the appropriate probity of Contractor staff;
- ◆ ensure that any requirements of the Council relating to security arrangements for access to the computerised Revenues system are observed;
- ◆ ensure that all monies are paid to the Council, and are accounted for in the manner prescribed by the Specification;
- ◆ ensure that there are full documented reconciliations of all systems being used by the Contractor in the delivery of the Services;
- ◆ ensure that it has in place robust audit standards as agreed with the Authorised Officer.

7.2 The Contractor shall account for monies in accordance with the timescale set out in the Contract. The Contractor shall keep and properly maintain a separate client bank account in the name of Folkestone & Hythe District Council and also a suspense account (also in the name of Folkestone & Hythe District Council) which records all unidentified payments. The Contractor shall allow reasonable access to Folkestone & Hythe District Council and its auditors to the records relating to these accounts.

8 CONFIDENTIALITY

- 8.1 The Contractor shall ensure that all information coming into its possession during the performance of the contracted duties is treated as strictly confidential and is not to be used for any purpose other than performance of the Contract. Such information may only be disclosed to authorised sources with the express agreement of Folkestone & Hythe District Council. All electronic data and associated records will be handled in strict compliance with the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018, and with any guidance issued by the Information Commissioner. Any information held is to be returned to the Council upon termination of the Contract.

9. EQUAL TREATMENT

- 9.1 The Contractor and all employees and agents shall not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.

10. TIMES OF VISITS BY ENFORCEMENT AGENTS

- 10.1 The Contractor's enforcement agents must not visit to enforce a liability order before 06:00 hours or after 21:00 hours on the days Monday to Sunday inclusive or at any time on a bank holiday, Good Friday or Christmas Day, unless prior agreement has been reached with the Council or it is a trade or business premises whereupon it can be visited during any hours where the premises are open for the conduct of trade or business .
- 10.2 The Contractor's enforcement agents shall not visit during the inclusive period 20 December to 2 January each year.
- 10.3 Contractors must also respect any other religious holiday which is observed by a debtor.

11. ENFORCEMENT AGENT'S GUIDELINES

- 11.1 The Contractor shall ensure that the following guidelines are adhered to when enforcing the payment of debts.

11.1.1 The enforcement agent will at all times carry full and proper photographic identification and, when attending at a debtor's property, will produce this at the outset without being asked. The enforcement agent will also carry written authority from the Council to act on the Council's behalf and if requested to do so, will show that to the debtor and to any other person who has reason to make that request.

11.1.2 The nature of the work demands that the enforcement agent should adopt a firm but polite attitude with debtors and other people they contact in the course of their duties. The enforcement agent should seek to ensure that any assistant, colleague or contractor adheres to the same standard of behaviour.

11.1.3 The enforcement agent will be cautious in all cases and have regard to the circumstances of the case. Folkestone & Hythe District Council shall inform the Contractor of the types of debtor considered to be 'vulnerable'; these are listed below. Any other cases considered suitable by the enforcement agent for special consideration should be referred back to Folkestone & Hythe District Council for guidance.

11.1.4 On meeting any person of adult age at a property, the enforcement agent should introduce himself or herself, and any other assistant or colleague. The enforcement agent should seek to establish the identity of all persons present and inform the debtor (if present) or any other responsible person, of the purpose of the visit, and where appropriate explain the

powers of the enforcement agent. The absence of the debtor will not prevent the enforcement agent from taking control of goods, but the enforcement agent will be required to take all the relevant circumstances into account before deciding whether to take control of goods or to return at another time.

11.1.5 The enforcement agent will not enter the debtor's premises if it appears that the only persons present are young people under the age of 18. No detailed discussion should take place with young persons but the enforcement agent may enquire as to when the debtor is likely to be at home and/or a written communication may be left at the premises.

11.1.6 Entry may only be made by lawful means and no goods in a building may be taken into control unless lawful entry has been made.

11.1.7 Any payment made in person by the debtor must be immediately acknowledged in writing on appropriate letter headed paper or by means of an official receipt.

11.1.8 In all cases where control of goods takes place the enforcement agent will hand to the debtor or leave at the premises the required copies of the relevant council tax or non-domestic rating regulation, as appropriate, together with a copy of the schedule to the regulations setting out the fees and charges relating to taking control of goods, and a note setting out the amount due, including the fees and charges incurred. The enforcement agent will give the debtor a copy of any Controlled Goods Agreement entered into.

11.1.9 The enforcement agent may take control of the debtor's goods wherever they are found in England and Wales, subject to the Council's instructions. Goods need not be in a building in order for them to be taken control of but goods in a building may only be taken control of if there has been lawful entry.

11.1.10 The enforcement agent must comply with the protection from control of goods in local taxation that applies to specified goods. Those goods protected from control of goods under council tax law may not be taken control of under a council tax warrant of control and those goods protected from control of goods under non-domestic rating law may not be taken control of under a non-domestic rating warrant of control.

11.1.11 The enforcement agent may force entry only where permitted by law and after gaining approval from the Council. If there is any risk of a breach of the peace the police must be informed. The enforcement agent must ensure that any damage is kept to a minimum and that the premises are secured before departure.

11.1.12 Goods may be removed by the enforcement agent in person or by an assistant, or by contractors, acting under the direct supervision of the enforcement agent. Due care must be exercised to avoid any unnecessary damage to goods being removed and goods are to be stored safely and securely, pending their collection by the debtor on payment, or pending sale. Goods will be held for a minimum of 14 days before sale. The Contractor shall ensure that goods in its possession are covered by adequate insurance.

11.1.13 The enforcement agent should promptly report any threats or other matters of concern to the Authorised Officer and if necessary should report any serious risk of a breach of the peace to the police. A means of communication with the Authorised Officer will be provided both during and outside normal office hours.

11.1.14 Enforcement agents will provide a means by which debtors may contact the Contractor whilst enforcement agent operations are in progress.

11.1.15 The enforcement agent must comply with health and safety requirements when carrying out enforcement duties. This also includes undertaking a risk assessment where this is required.

12. TAKING CONTROL OF GOODS

12.1 The Contractor will be aware of the sensitive nature of distress for local revenue collection and extreme care should be taken when dealing with the following categories of case. The approach expected by Folkestone & Hythe District Council is outlined below:-

The Elderly

Many elderly people are physically and mentally healthy and financially secure. However where it is evident that an elderly person is frail, confused, ill, or living off limited income the enforcement agent should make no attempt to take control of or remove goods without first consulting with the Council.

The Disabled

If it is evident that the debtor has a disability that is anything other than a relatively minor disability, no action should be taken without consulting the Council. The enforcement agent should never remove or take control of goods that are necessary to a person by virtue of their disability.

Blindness, Deafness or Language Difficulties

If it is evident that the debtor is having difficulty communicating due to profound deafness, blindness or language difficulties, no action should be taken without consulting the Council. The enforcement agent should never remove or take control of goods that are necessary to a person by virtue of these difficulties.

The Mentally Impaired

If it is evident that the debtor is mentally impaired, no action should be taken without consulting the Council.

Serious or long term illness

If it is evident that the debtor (or the debtor's partner) is suffering from any condition which is serious or life threatening the enforcement agent should consult the Council before attempting to take control of or remove goods.

Recently Bereaved

In such cases the enforcement agent should consult with the Council before attempting to take control of or remove goods.

Single Parent Family

As with the elderly, this does not automatically place the defaulter in a vulnerable category. Some single parent families are financially secure. Others are dependent on state benefits. The enforcement agent should exercise discretion in these cases and consult with the Council if considered necessary before taking action.

Young Children and Severe Social Deprivation

If the debtor has young children *and* severe social deprivation is evident, the enforcement agent should seek guidance from the Council before continuing action.

Pregnancy

If the debtor or the debtor's partner (if present) is pregnant and is distressed the enforcement

agent should seek guidance from the Council before continuing action.

Unusual Circumstances

If the enforcement agent finds unusual circumstances that are not covered by any of the above categories, the enforcement agent should take no action without first consulting the Council.

12.2 The Contractor must use their professional judgement in all cases.

13. TIME LIMITS TO TAKE CONTROL OF GOODS

13.1 Whilst a liability order remains live for an indefinite period, once it is passed to an enforcement agent it becomes a warrant of control which is valid for 12 months only.

13.2 Where a warrant of control is returned to the Council, all fees will be removed.

13.3 Where the liability order is re-issued to another or the same enforcement agent the clock rewinds to the beginning.

13.4 If an arrangement is made the clock stops until such time as it is paid in full or the debtor defaults. If the debtor defaults the clock rewinds to the beginning.

14 CRIMINAL RECORDS BUREAU/INDEPENDENT SAFEGUARDING AUTHORITY

14.1 All Enforcement Agents undertaking distress must be subject to Criminal Records Bureau disclosure checks.

14.2 The Contractor shall also ensure that all enforcement agents it engages to provide the Services are registered with the Independent Safeguarding Authority (ISA) if and when such registration becomes necessary. When such registration becomes necessary, the Contractor shall refer all Relevant Information concerning personnel engaged in providing the Services to the ISA. Relevant Information for the purposes of this clause means any concerns of the Contractor that personnel engaged in providing the Services has harmed or risked harm to a child or vulnerable adult.

15 SUSTAINABILITY

15.1 The Contractor shall support the Councils agenda for sustainability. <https://www.folkestone-hythe.gov.uk/creatingtomorrowtogether>

COUNCIL TAX, BUSINESS RATES & OVERPAID BENEFIT RECOVERY SERVICES / SUNDRY DEBTORS (INCLUDING FORMER TENANT ARREARS)

1. GENERAL

- 1.1 The Contractor shall ensure that all enforcement agents work not only within the framework of the law of control of goods but also exercise their duties with an awareness of the personal circumstances of any individual and with care and humanity.
- 1.2 The Contractor will hold current membership of the Civil Enforcement Association and be required to be bound by its codes and practices.
- 1.3 The Contractor shall ensure that all enforcement agents
- ◆ are employed in a full time capacity by the Contractor and must not be a sub-contractor or temporary employee of the Contractor.
 - ◆ hold current valid certificates in accordance with s64 (1) of the 2007 Act.
 - ◆ hold and in all cases display to the debtor (or his representative) current, valid authorisation from the Council together with all documentation as required by the relevant regulations.
 - ◆ at all times when so employed dress in an appropriate manner and address the debtor, the debtor's family and any representatives of the debtor in a polite and professional manner. At no time will either threatening behaviour or intimidation of the debtor, the debtor's family or any representative be acceptable and if any complaint of such behaviour is upheld against the enforcement agent(s), the result shall be forfeiture of the contract.
 - ◆ where required by the regulations, leave relevant documentation with the debtor.
 - ◆ at all times be aware of the relevant legislation and litigation and at no time act illegally, irregularly or unlawfully.
 - ◆ be adequately trained and supervised.
- 1.4 The instructions given by the Authorised Officer are paramount and must be carried out at all times. Any variations will be agreed in writing.
- 1.5 The Contractor shall:
- ◆ Comply with the approved accounting and banking procedures and pay promptly, in accordance with the contract, all monies due to the Council.
 - ◆ Ensure that each payment of monies to the Council is supported by a schedule giving sufficient information to enable the Council to credit each debtor's account correctly.
 - ◆ Allow access to any authorised officer of the Council, at any time, to records, offices and premises of the Contractor for audit purposes.

Indemnify the Council against costs awarded against it following any legal action taken in respect of the Enforcement Agent taking control of goods or associated actions in recovering debt

2. PROCEDURES TO BE ADOPTED IN EXECUTING LIABILITY ORDERS

2.1 The Contractor will seek to obtain payment of the outstanding amount in full. Where this is not possible the Contractor should look to obtain payment by means of an arrangement. (The Council reviews payment arrangements on a regular basis and will furnish the Contractor with full details in writing).

2.2 Where the Contractor identifies any instance where the taxpayer/ratepayer is suffering hardship or where circumstances exist that appear to make the taxpayer/ratepayer vulnerable e.g.:

- ◆ circumstances in relation to age, illness or disability
- ◆ communication problems - especially where the debtor has language difficulties or is hard of hearing
- ◆ any other circumstances where the execution of the warrant of control would not be appropriate

the Contractor shall withdraw and contact the Authorised Officer for instructions.

2.3 Where removal of goods is to take place the Authorised Officer must be notified in advance and in all cases the following may not be taken:

- Tools of the trade to an aggregate value of £1,350 (excluding business debts)
- Clothing, bedding, furniture and household equipment to satisfy basic domestic needs of the debtor and family
- A vehicle displaying a disabled badge or used for, or reasonable grounds to believe it is used for the carriage of a disabled person
- Goods where the debtor is a child (defined as under the age of 16)
- Items in use (in hand, or operated by), and taking control is likely to cause a Breach of the Peace

2.4 Where multiple Liability Orders exist, the debts are to be cleared consecutively. Other than in accordance with the The Taking Control of Goods (Fees) Regulations 2014 on no account are any costs on subsequent orders to be collected until all costs and outstanding debts have been cleared on the previous order.

3. DOCUMENTATION

3.1 All documentation produced by the Contractor that will be received by the debtor or his representative must be approved by the Council. Copies of all standard letters, forms and print outs must not be given to the debtor unless the content and format of the documents have, in the first instance, been agreed in writing by the Council.

3.2 All reports, schedules etc., must be agreed by the Council and must include Liability Order(s) date to enable correct cash allocation. Format of these documents should not be changed without the prior written agreement of the Council.

3.3 All reports, schedules etc., must be forwarded to the Council electronically within the agreed time scale as specified in sections 17 to 19 inclusive.

3.4 Reports or certificates that are to be submitted to the court e.g. "nulla bona" shall be in a format that is acceptable to the court.

4. PROCEDURES

4.1 All procedures carried out by the Contractor must be agreed in advance by the Council and details of the requirements are outlined in sections 16 to 19 inclusive.

4.2 Variation to these procedures can only be instigated with the express written permission of the Council and in any event one month's notice must be given.

4.3 Any incidents arising which potentially may lead to either a complaint or legal action by the debtor must be reported in full, in writing to the Council, within 24 hrs of the incident occurring.

5. PERFORMANCE

5.1 The Contractor shall at all times perform to the criteria set out in sections 16 to 19 inclusive. Any variances in the performance criteria must be authorised in writing by the Council in the first instance.

5.2 Performance will be monitored monthly and the Contractor will be required to attend quarterly performance meetings throughout the Contract Term.

6. LIAISON

6.1 Day to day liaison is to be conducted by telephone or e-mail. All updates given to the Contractor by the Council will be provided on client web or emailed to the contractor.

6.2 All new instructions shall be passed to the Contractor by the Council in a controlled and appropriate manner. The Council will make every effort to ensure that all information received is accurate and relevant.

6.3 Any failure to receive notification should be reported to the Council within 24hrs.

6.4 The Council undertakes to notify the Contractor within 24hrs of any case that has come to the Council's attention which no longer requires enforcement agent action.

6.5 Any alterations to the amount outstanding shall be notified to the Contractor within 24hrs by means of updating client web, telephone and e-mail.

6.6 The Council will notify changes to the defaulters address or other pertinent information as soon as possible.

6.7 The Council undertakes to notify the Contractor immediately in any cases where Breathing Space has been invoked and the Contractor is expected to cease action immediately until notified otherwise.

7. RECEIPT, ALLOCATION OF PAYMENTS AND RECONCILIATION OF ACCOUNTS

7.1 All payments received by the Contractor must be recorded in an accurate and appropriate manner with full receipts being issued to the debtor. The Contractor must ensure that adequate systems are used to record payments received from the debtor as well as those made to the Council.

7.2 All cash payments or equivalent must be forwarded to the Council within 14 days of receipt and within 21 days in respect of cheque payments to allow for cheque clearance.

7.3 All payments must be allocated to the respective Liability Order as outlined in **paragraph 3.2** above.

7.4 The Council may at any time audit a debtor's account. The Contractor must provide adequate information to permit the Council to establish the current state of the account, including, but not limited to, such matters as the number of Liability Orders outstanding, the amount owed in respect of each Liability Order, the date and amount of any payments made, and any action taken by the Contractor.

8. REPORTS

8.1 The Contractor shall provide ad hoc reports, as requested by the Authorised Officer, on any matter relating to the monitoring of the Contract. The Contractor shall provide regular electronic reports, in a form and with content and at the intervals as shown below or as required by the Authorised Officer.

- ◆ Details of new cases set up - opening balance, total of debt. (monthly).
- ◆ Details of existing cases - amount collected, breakdown of fees applied, closing balance. (monthly).
- ◆ Details of returned cases - number returned no trace, number returned at Council's request, and number returned nulla bona. (monthly).
- ◆ Closed File/Nulla Bona reports - Liability Order date, date cases received, year it applies to, property address and correspondence address, full report of all action taken, times and dates of calls made and the address called at, who responded, arrangements made, information received. Enforcement Agent details - who called. Any comments made. Details of any checks made with neighbours. Full breakdown of financial details applied - opening balance, fees applied in detail, payments collected, direct payments/adjustments advised by the Council. Closing balance. Proof of call by recording details of the property - e.g. door colour or other details of the property, makes of cars seen on the drive. (monthly).
- ◆ Status Report - Date case received, opening balance, fees applied, balance as at date of report. Existing stage of recovery and last action taken/last action date. Details of any arrangement/last payment received.

9. COSTS TO THE DEBTOR

9.1 All costs charged to the defaulter shall be in accordance with the relevant statutory regulations and at the contractually agreed rate as shown in sections 21 and 22. Increases in the costs structure, other than by regulation, will require the written approval of the Council before implementation.

9.2 Costs incurred by the debtor must be clearly documented in an approved format and a copy given to the debtor in accordance with the relevant legislation.

10. PAYMENT

10.1 The contractor must submit itemised invoices to the Council for any fees, charges or commission due.

10.2 Subject to certification, payment in respect of such invoices shall be made by the Council within 21 days of receipt.

11. CONTRACT ADMINISTRATION

11.1 The Contractor(s) shall nominate a single point of contact and an individual manager who will be responsible during normal office working hours for handling contract administration on behalf of the Contractor throughout the Contract Term.

11.2 Contract Review meetings will be held on a regular basis. The aim of such meetings will be to discuss the effectiveness and efficiency of the Contractor's performance and provision of the Services. The Council's aim is to work to achieve continuous improvement, working together to achieve better service and minimise costs where possible.

12. CLIENT RESPONSIBILITY

12.1 The Authorised Officer for the Services will be named prior to the start of the contract period.

13. WRITTEN NOTICE - GENERAL

13.1 Any written notice, delivery note or invoice, which may be served under this Contract shall be sufficiently served if duly sent by pre-paid 1st class post, or delivered by hand, during normal office working hours to the usual or last known place of business of the Contractor or the Council, as the case may be.

13.2 If sent by 1st class post, any notice or document as referred to in paragraph 15.1 shall be deemed to have been received 2 working days after the date of posting, and if delivered by hand or before 4 pm, the notice or the document shall be deemed to have been received on the date of delivery otherwise on the next working day.

14. STATUTORY REQUIREMENTS

14.1 The Contractor must ensure that all employees and agents know and understand the law, administrative procedures and the Council's requirements to the extent necessary for them to perform properly any action they are required to take.

15. MANAGEMENT INFORMATION

15.1 The Contractor shall furnish promptly to the Council such information which the Council is required by law to furnish to persons or bodies in relation to the services provided under this Contract.

15.2 The Contractor will provide a statement to the Authorised Officer, within five working days of each month end, which will detail the work activity undertaken by the Contractor in the previous month. The actual detail to be provided will be in agreement with the Authorised Officer.

15.3 The Contractor will, on returning any un-executed liability orders for unpaid debts, report the reason(s) why control of goods has not taken place, together with any recommendations or other relevant information. Where no goods, or no sufficient goods can be found on which to take control of the sum due, this shall be reported to the Council in an agreed form.

16. TIMESCALES

16.1 Liability Orders

Action	Timescales
Notice of Enforcement (NOE)	Within 2 days of receipt of Liability Order

2nd Letter	Between 10 to 14 days after NOE
First Visit	Not less than 28 days after issue of NOE
Second Visit	Within 28 days of first visit
Maximum Arrangements Times	One year (unless by agreement with Authorised Officer)
Minimum Arrangements Amounts	Where unemployment an amount equivalent to that obtainable from deductions from Benefit, otherwise the minimum amount to collect the debt within the maximum arrangement time above.
Minimum Number of Visits	3 of which one must be outside normal office hours (9 to 5 Monday to Saturday). A Personal Information Form (PIF) is to be left/completed at the debtors premises when visiting
Maximum Number of Visits	No limit specified
Cash received - payment to Folkestone & Hythe District Council	Within 14 days of receipt
Cheque payments to Folkestone & Hythe District Council	Within 21 days of receipt
Maximum time Liability Order to be held by Enforcement Agents unless subject to an arrangement	90 days (unless by agreement with Authorised Officer)

16.2 Warrants of Commitment

Action	Timescales
Notice of Enforcement (NOE)	Within 2 days of receipt of Liability Order
2nd Letter	Between 10 to 14 days after NOE
First Visit	Not less than 28 days after issue of NOE
Second Visit	Within 28 days of first visit
Maximum Arrangements Times	One year (unless by agreement with Authorised Officer)
Minimum Arrangements Amounts	Where unemployment an amount equivalent to that obtainable from deductions from Benefit, otherwise the minimum amount to collect the debt within the maximum arrangement time above.
Minimum Number of Visits	3

Maximum Number of Visits	No limit specified
Cash received - payment to Folkestone & Hythe District Council	Within 14 days of receipt
Cheque payments to Folkestone & Hythe District Council	Within 21 days of receipt
Maximum time Liability Order to be held by Enforcement Agents unless subject to an arrangement	90 days (unless by agreement with Authorised Officer)

16.3 Benefits Overpayments / Sundry Debtors

Action	Timescales
Send new Invoice	Within 14 days of receipt of notification of debt
First Visit	Within 14 days of issuing invoice
Second Visit	Within 28 days of first visit
Maximum Arrangements Times	One year (unless by agreement with Authorised Officer)
Minimum Arrangements Amounts	Where unemployment an amount equivalent to that obtainable from deductions from Benefit, otherwise the minimum amount to collect the debt within the maximum arrangement time above.
Maximum Number of Visits	No limit specified
Cash received - payment to Folkestone & Hythe District Council	Within 14 days of receipt
Cheque payments to Folkestone & Hythe District Council	Within 21 days of receipt
Maximum time debt to be held unless subject to an arrangement	90 days (unless by agreement with Authorised Officer)

17 PROCEDURES AND PERFORMANCE TARGETS – LIABILITY ORDERS

- 17.1 Enforcement agent to acknowledge receipt of all Liability Orders within 48 hours.
- 17.2 Letters may be issued to defaulter prior to first visit but the issue of letters is not obligatory.
- 17.3 Only a Controlled Goods Agreement to be entered into on first visit. On subsequent visits Folkestone & Hythe District Council would normally require a Controlled Goods Agreement only to be taken but full removal of goods may be taken where it is thought appropriate but only with the express permission of Folkestone & Hythe District Council.

- 17.4 Arrangements with defaulters are encouraged subject to the maximum timescale and minimum arrangement amounts as defined in **paragraph 17.1** above.
- 17.5 The completion by the defaulter of a Personal Information Form is encouraged irrespective of whether an arrangement is made or not.
- 17.6 Where the debtor is a limited company that the Contractor is unable to contact, a company search is to be undertaken to ensure that all addresses have been explored.
- 17.7 Payments by defaulters are to be forwarded to Folkestone & Hythe District Council within the agreed timescales as outlined under **paragraph 7 (RECEIPT, ALLOCATION OF PAYMENTS AND RECONCILIATION OF ACCOUNTS)** of **Part 2** of the Specification.
- 17.8 A written record of actions taken is to be made and where appropriate details forwarded to Folkestone & Hythe District Council in accordance with **paragraph 3 (Documentation)** of **Part 2** of the Specification.
- 17.9 Certificates of "nulla bona" to be issued to Folkestone & Hythe District Council within 14 days of determining the fact and a letter to be sent to the defaulter advising him that the matter has been returned to the Council so that Committal proceedings may commence.
- 17.10 All Liability Orders to be returned to Folkestone & Hythe District Council no later than 90 days after receipt by the company, unless subject to an ongoing arrangement for payment, together with written details of actions taken.

18 PROCEDURES AND PERFORMANCE TARGETS – WARRANTS OF COMMITMENT

18.1 General

- 18.1.1 Warrants passed for execution to the Contractor may be executed anywhere within England or Wales.
- 18.1.2 All warrants should be kept securely in the possession of the person authorised by the Contractor (authorised officer) and not photocopied or defaced.
- 18.1.3 Warrants issued and received will be sent by recorded delivery or collected / delivered by hand and signed for.
- 18.1.4 Where the Enforcement Agent executing the warrant identifies that the person named upon the warrant may fall within one of the categories referred to in **paragraph 11 (Taking Control of Goods)** of **Part 1** of the Specification where the execution of the warrant would not be appropriate, the enforcement agent should withdraw and contact the Authorised Officer for instructions.

18.2 WARRANTS ISSUED WITH BAIL

- 18.2.1 The enforcement agent will seek to obtain payment in full of the amount shown upon the warrant or of any reduced amount as advised by the Council. This should be sought from the person named as liable upon the warrant.
- 18.2.2 Where this is not possible the enforcement agent will bail the person named upon the warrant to a pre advised court date in accordance with written guidelines provided by the Council.

18.2.3 Where the person named upon the warrant is in receipt of benefit from the Department of Works and Pensions or employed, either full or part time, then full details should be recorded and returned with the completed bail form and warrant to the Council at least two weeks prior to the court date the debtor has been bailed to.

18.3 Warrants issued without bail.

18.3.1 The enforcement agent in possession of the warrant without bail will seek to obtain payment in full of the amount shown on the warrant or of any reduced amount as advised by the Council. This should be sought from the person named as liable upon the warrant. If guaranteed payment in full is received the debtor, if in custody, should be released.

18.3.2 Where the person named on the warrant is in receipt of benefit from the Department of Works and Pensions or employed, either full or part time, then full details should be recorded and the enforcement agent in possession of the warrant should then contact the Authorised Officer for further instruction.

18.3.3 In the event that the person named upon the warrant declines to give the details or pay in full the officer should contact the authorised Council Officer for further instruction.

18.3.4 The enforcement agent in possession of the warrant should be prepared to escort the person named upon the warrant to police custody where he / she will be held until such time that the Court are able to deal with the matter.

18.4 Commitment Warrants.

18.4.1 The enforcement agent will seek to obtain payment in full of the amount shown on the warrant or of any reduced amount as advised by the Council. This should be sought from the person named as liable upon the warrant. If guaranteed payment in full is received the taxpayer / ratepayer if in custody should be released.

18.4.2 In the event that the person named upon the warrant declines to pay the amount outstanding on the warrant or the reduced amount as advised by the Council the enforcement agent in possession should contact the Authorised Officer for further instruction.

18.4.3 The enforcement agent in possession of the warrant should be prepared to escort the person named upon the warrant to the named HMP, where he / she will be held for the number of days displayed, or if part payment is made and the period of imprisonment requires reducing, this will be calculated and advised to the prison by the Council.

19 PROCEDURES AND PERFORMANCE TARGETS – BENEFITS OVERPAYMENTS/ SUNDRY DEBTORS (INCLUDING FORMER TENANT ARREARS)

19.1 Enforcement agent to acknowledge receipt of all notifications of debt within 48 hours.

19.2 An invoice must be issued to the debtor prior to first visit.

19.3 Arrangements with debtors are encouraged subject to the maximum timescale and minimum arrangement amounts as defined in **paragraph 17.3** above

19.4 The completion by the debtor of an Income/Expenditure Form is encouraged irrespective of whether an arrangement is made or not.

- 19.5 Where the debtor is a limited company that the Contractor is unable to contact, a company search is to be undertaken to ensure that all addresses have been explored.
- 19.6 Payments by debtors are to be forwarded to Folkestone & Hythe District Council within the agreed timescales as outlined under **paragraph 7** (RECEIPT, ALLOCATION OF PAYMENTS AND RECONCILIATION OF ACCOUNTS) of **Part 2** of the Specification.
- 19.7 A written record of actions taken is to be made and where appropriate details forwarded to the Council in accordance with **paragraph 3** (Documentation) of **Part 2** of the Specification.
- 19.8 All notifications of debt to be returned to the Council no later than 90 days after receipt by the Contractor, unless subject to an ongoing arrangement for payment, together with written details of actions taken.

20 COSTS TO TAXPAYERS

- 20.1 All statutory fees in accordance with the The Taking Control of Goods (Fees) Regulations 2014.

21 COSTS TO RATEPAYERS

- 21.1 All statutory fees in accordance with the The Taking Control of Goods (Fees) Regulations 2014.

22 COSTS TO COUNCIL

- 22.1 Warrant Costs to be agreed with the Council in accordance with the Pricing Schedule (see Part 4 – Form of Tender Document)

23 BENEFIT OVERPAYMENTS/SUNDRY DEBTS

- 23.1 This service would be provided by the Contractor on a cost neutral basis.

24. FEES AND CHARGES

- 24.1 The Contractor may charge on behalf of the Council to any debtor any fees or charges which are expressly permitted under the The Taking Control of Goods (Fees) Regulations 2014. and no others.
- 24.2 Where the amount permitted by law to be charged is reasonable costs, fees or expenses, the Council reserves the right to determine what is reasonable, either generally or in particular cases. The Council will consult the Contractor before making such a determination.

SCHEDULE 2

PRICING

ITEMS	LOT 2 CHARGE (£)
With Bail Warrant	
Without Bail Warrant	
Committal Warrant	

**Invitation to Tender (ITT)
Supplier Response Document**



**PROVISION OF ENFORCEMENT AGENT SERVICES
FOR THE RECOVERY OF COUNCIL TAX, BUSINESS RATES, OVERPAID BENEFIT AND
SUNDRY
DEBTS**

December 2021

CONTENTS

Section 1 – Supplier details

Section 2 – Technical and quality questions

Section 3 – Pricing schedule

Section 4 – Terms & conditions of contract

Section 5 – Declarations

REQUIRED DOCUMENTS

Please also complete and provide:

- ITT sub-contractor information (if applicable)

APPENDICES

Please list any additional documents you have submitted with your tender:

- Appendix 1 – Certifications
- Appendix 2 – Organogram

SECTION 1 – SUITABILITY QUESTIONNAIRE

1.1 ORGANISATION DETAILS

This section is for information only, but must be completed in full.

The terms 'the organisation' and 'your organisation' used in this document mean your business, company, charity, partnership or any other type of organisation identified below.

Full name of the organisation submitting this tender	Newlyn Plc
--	------------

Invitation to Tender (ITT) - Supplier Response Document

Registered office address:	Century House Wargrave Road Henley-on-Thames Oxfordshire RG9 2LT
Company registration or charity registration number	3770985
VAT registration number	739828088
Name of immediate parent company	N/A
Name of ultimate parent company	N/A
Type of organisation: <ul style="list-style-type: none"> • public limited company (PLC) • limited company (LTD) • limited liability partnership (LLP) • other partnership • sole trader • third sector (charity) • other (please explain) 	please state which: Public Limited Company
Are you a Small, Medium or Micro Enterprise (SME)?	Yes
Contact details for questions about this tender	
Name:	██████████
Phone:	██████████
Mobile:	██████████
Email:	Bidteam@newlynplc.co.uk

Sole bidding organisation

You are a 'sole bidding organisation' if this tender is submitted for your company only. If you intend to use sub-contractors, consultants or other partner organisations to deliver the contract, you do not need to identify them in your response*. Your company will be entirely liable to Folkestone & Hythe District Council (F&HDC) for the delivery of the requirements of the contract.

Invitation to Tender (ITT) - Supplier Response Document

*Exception: where sub-contractors will play a significant role in the delivery of the services (e.g. more than 50%) please refer to Section 1.1

Consortia, partnerships and joint ventures

If you are tendering for this contract on behalf of a group of companies (a consortium, partnership or joint venture) the following information must be provided:

- Full details of the consortium, partnership or joint venture and
- Information sought in this questionnaire in respect of each of the consortia, partnership or joint venture constituent members as part of a single response.

If you propose to create a separate corporate entity for this contract, you must provide details of the actual or proposed percentage shareholding of the constituent members within the consortium in a separate schedule (how much of the new organisation each member will own).

F&HDC reserves the right to require a successful consortium to form a single legal entity in accordance with Regulation 19(6) of the Public Contracts Regulations 2015.

If there is a change in the consortium, partnership or joint venture you must inform F&HDC immediately.

Special Purpose Vehicles (SPV)

You are a 'Special Purpose Vehicle' (SPV) if you have formed (or will form) a new legal entity for the purpose of bidding for this contract, with the intention that this organisation will be awarded the contract.

In addition the member organisation of the special purpose vehicle will be required to be jointly and severally liable to the Council for the delivery of the requirements of the contract, regardless of

- (a) the value of their contributions in respect of the contract sum, time, volume, quality or any other considerations, or
- (b) the future organisational or legal standing of the special purpose vehicle.

You must inform F&HDC of any withdrawal of members of the SPV during or subsequent to the ITT so that the implications of such a withdrawal may be assessed.

Consortia and sub-contracting (please tick)	
a) Your organisation is bidding to deliver the contract itself	✓
b) Your organisation is bidding in the role of prime contractor and intends to use third parties to deliver some of the contract If more than 50% of the work will be completed by sub-contractors, please complete the sub-contractor information template provided.	
c) Bidding organisation is a consortium, joint venture or partnership	

Invitation to Tender (ITT) - Supplier Response Document

d) Bidding organisation is a special purpose vehicle	
--	--

If your answer is (c) or (d)
 please provide a separate document explaining which member of the group will be responsible for providing each part of the contract.

for non-UK organisations only	
Is your organisation registered with the appropriate trade or professional register(s) in the EU member state where it is established? If yes, please provide details and any registration numbers.	Yes / No
Is it a legal requirement in the state where you are established for you to be licensed or a member of a particular organisation in order to provide the services in this procurement? If yes, please provide details of what is required and confirm that you have complied with this.	Yes / No

1.2 GROUNDS FOR MANDATORY REJECTION

This Section is **PASS/FAIL**. If you answer 'yes' to any question in this section your tender will be rejected.

If you are unsure how to respond you should contact us for advice before completing this form.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.2.1 Details about the grounds for mandatory rejection are set out on online (go to gov.uk webpage) . If your organisation or any other person who has powers of representation, decision or control in your organisation has	Answer
---	--------

Invitation to Tender (ITT) - Supplier Response Document

been convicted anywhere in the world for any of the offenses below within the last 5 years, please mark which.	
(a) Participation in a criminal organisation.	No
(b) Corruption.	No
(c) Fraud.	No
(d) Terrorist offences or offences linked to terrorist activities	No
(e) Money laundering or terrorist financing	No
(f) Child labour and other forms of trafficking in human beings	No
(g) Has your organisation been in breach of tax payment or social security contribution obligations?	No
<p>1.2.2 If you answered "yes" to any of (a) to (f) above, please provide:</p> <ul style="list-style-type: none"> • Date of conviction; • which the conviction was for; • the reasons for conviction; and • Identity of who has been convicted <p>If the relevant documentation is available online, please provide:</p> <ul style="list-style-type: none"> • the web address; • issuing authority; and • reference of the documents 	
Not applicable	
<p>1.2.3 If you answered "yes" to (g) above,</p> <p>(a) provide details.</p> <p>(b) confirm you have paid, or have entered into a binding arrangement to pay, the outstanding sum (and any accrued interest or fines).</p>	
Not applicable	

1.3 GROUNDS FOR DISCRETIONARY REJECTION

This Section is **PASS/FAIL**. If you answer 'yes' to any question F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer 'yes' to any question, please set out (in 1.3.1) the full details of the relevant incident and any remedial action taken. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

Invitation to Tender (ITT) - Supplier Response Document

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.3.1 Details about the grounds for discretionary rejection are set out on online (go to gov.uk webpage) .	Answer
Do any of the below apply or have applied to your organisation or any other person who has powers of representation, decision or control in your organisation within the last 3 years?	
(a) Breach of environmental obligations?	No
(b) Breach of social obligations?	No
(c) Breach of labour law obligations?	No
(d) Bankruptcy or gone into liquidation or receivership? Or currently subject to proceedings for the appointment of a receiver, manager or administrator on behalf of a creditor?	No
(e) Committed an act of grave misconduct in the course of your business or profession? Or been convicted of a criminal offence relating to the conduct of your business or profession?	No
(f) been significantly or persistently deficient in the performance of a previous public contract, leading to early termination of the contract, damages, or other comparable sanctions	No
1.3.2 Conflict of interest	
(a) Is any officer, employee or consultant of your organisation an employee or ex-employee of F&HDC or in any way connected to an employee or ex-employee of F&HDC? Or Is any officer, employee or consultant of your organisation an elected member of the Authority or someone who has been an elected member?	No
(b) Is any officer, employee or consultant of your organisation involved in any other organisation that may be interested in bidding for F&HDC services under this tender process?	No
(c) Been involved in the preparation of this procurement process, design of services, or tender documents?	No
(d) Obtained or attempted to obtain confidential information,	No

Invitation to Tender (ITT) - Supplier Response Document

<p>or entered into unlawful agreements with competitors whose to restrain or distort competition,</p> <p>or influenced or attempted to influence the evaluation panel or F&HDC</p> <p>in the process of preparing this tender?</p>	
<p>(e) Aware of any other conflicts of interest in submitting this tender or which may occur in delivering the services?</p>	<p>No</p>
<p>1.3.3 If the answer to any of the criteria listed in 1.3.1 or 1.3.2 above is “yes”, please give details, including action has been taken to remedy the situation.</p>	
<p>Not applicable</p>	

1.4 ECONOMIC & FINANCIAL STANDING

This Section is risk based **PASS/FAIL**.

You are not required to submit any financial documents at this time, but F&HDC reserves the right to request further information and or request a credit agency report.

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: we will obtain this information for each member of the group. The threshold for turnover can be met entirely by one member or by a combination of members; it is not necessary for each member to individually meet the threshold.

<p>1.4.1 Is your annual turnover (at the date of the last audited accounts) greater than £2,000,000 GBP?</p>	<p>Yes</p>
<p>1.4.2 If the audited accounts dated more than 6 months ago, has been any material change in the financial or trading conditions of your organisation?</p>	<p>No material change</p>
<p>1.4.3 If your organisation has been trading for fewer than 12 months, is your projected annual turnover greater than £2,000,000 GBP?</p>	<p>Not applicable</p>
<p>1.4.4 Please list which you are able to provide:</p> <p>A copy of your audited accounts for the last two years,</p> <p>Or financial statements for the most recent year,</p> <p>Or a statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.</p>	<p>✓</p>

Invitation to Tender (ITT) - Supplier Response Document

1.4.5	If you cannot provide one of the above, please explain why and list any other financial information you can provide.	
1.4.6	If you have a parent company are you able to provide parent company accounts?	Not applicable
1.4.7	If you have a parent company is the parent company willing to provide a guarantee at F&HDC's request?	Not applicable
1.4.8	If you do not have a parent company Or your parent company will not offer a Parent Company Guarantee will you be able to obtain a guarantee elsewhere (e.g. from a bank)?	Not applicable

1.5 INSURANCE

This Section is **PASS/FAIL**. Your organisation will fail if it does not hold or is unwilling to obtain the minimum levels of insurance required.

You are not required to submit any evidence at this time. If you are successful, you will be asked to provide evidence in the form of copies of policies, letters of confirmation from insurers (or Brokers).

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: you must be adequately covered as a whole but may do so through any combination of policies of member organisations.

1.5.1	Is your Public Liability indemnity cover greater than £5 million GBP per incident?	Yes
1.5.2	Is your Employers Liability cover greater than £5 million GBP per incident (or the amount required by law)?	Yes
1.5.3	Is your Professional Indemnity cover greater than £2 million GBP per incident?	Yes

1.6 HEALTH & SAFETY

Invitation to Tender (ITT) - Supplier Response Document

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: the lead member must ensure that this information is shared with all members. The lead member must confirm that all members understand and agree their obligations in this section.

Your organisation must:

- Ensure that its entire workforce and all sub-contractors will comply with all relevant health and safety legislation as well as any requirements or instructions from F&HDC.
- Have appointed a competent person with overall responsibility for health and safety that is duly authorised in the organisation.
- Have processes in place for the identification of training needs and delivery of training to its workforce appropriate to the work for which it is bidding.
- Have processes in place for the development of risk assessments and method statements relevant to the nature of the work for which it is bidding that will identify, manage and mitigate associated risks and hazards.

If your organisation has five or more employees

- have in place a written health and safety policy as required by Section 2(3) of the Health and Safety at Work etc Act 1974 and issue any codes of safe working practices to your workforce.

This policy must provide details of the competent person or persons that have been appointed on behalf of the organisation to undertake the measures needed to comply with the requirements and prohibitions of the Management of Health and Safety at Work Regulations 1999.

F&HDC may verify your compliance with the above requirements at any stage of the procurement process or during the life of the contract, by means of policy checking, validation of accreditations, site audits or any other method it deems appropriate.

Further information on employers' health and safety obligations can be found on the Health and Safety Executive website at [hse.gov.uk/simple-health-safety/index](https://www.hse.gov.uk/simple-health-safety/index).

Specific guidance on how to write a policy and risk assessment is available at [hse.gov.uk/simple-health-safety/write](https://www.hse.gov.uk/simple-health-safety/write).

Please confirm that you understand and agree to your obligations as described above	Yes
---	-----

1.7 EQUALITY & DIVERSITY

If you are bidding as a consortium, partnership, joint venture or special purpose vehicle: your response must apply to all members.

1.7.1 Does your organisation comply with its legal obligations under the Equality Act 2010, relating to the protected characteristics as follows?	Answer
Age	Yes

Invitation to Tender (ITT) - Supplier Response Document

Disability	Yes
Gender reassignment	Yes
Marriage and civil partnership	Yes
Pregnancy and maternity	Yes
Race	Yes
Religion or belief	Yes
Sex	Yes
Sexual orientation	Yes

1.7.2 In the last three years has any finding of unlawful discrimination been made against your organisation by any court or industrial or employment tribunal? Or in comparable proceedings in any jurisdiction other than the UK?	No
1.7.3 In the last three years has any finding of unlawful discrimination been made against your organisation as a result of a formal investigation by the Equality and Human Rights Commission (EHRC) or any relevant statutory European Body?	No
1.7.4 If the answer to either 1.8.2 or 1.8.3 was Yes , provide the following information: (a) If your organisation was required to take action, did the action taken satisfy the relevant organisation? (b) what action your organisation was required to take (c) what action your organisation took. If your organisation did not take the required action, explain why not. You may be excluded if you are unable to demonstrate to F&HDC's satisfaction that appropriate remedial action has been taken to prevent similar unlawful discrimination occurring in the future.	
Not applicable	
1.7.5 If you use sub-contractors, do you have processes in place to check whether any of the above apply to your sub-contractors?	Not applicable

--	--

1.8 MODERN SLAVERY

<p>1.8.1 Section 54 of the Modern Slavery Act 2015 requires organisations with a turnover of £36 million or more to develop a slavery and human trafficking statement each year.</p> <p>Does this requirement apply to your organisation?</p> <p>Guidance about the Modern Slavery Act 2015 can be found online (go to gov.uk webpage)</p>	<p>No</p>
<p>1.8.2 If you have answered 'yes' to 1.8.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?</p> <p>If yes, provide the web address where your report can be found</p> <p>If no, please explain.</p>	<p>N/A</p>
<p>1.8.3 <i>This question is for information only. Your tender will not be rejected if the answer is 'no'.</i></p> <p>If you have answered 'no' to 1.8.1, do you have a modern slavery policy or measures in place to mitigate the risk of modern slavery in your organisation and in your supply chain?</p> <p>This would include checks made on your staff and people who work for your organisation through subcontractors and agencies.</p> <p>If yes, please provide details of the measures currently in place.</p>	<p>Yes / No [details]</p>
<p>1.8.4 <i>This question is for information only. Your tender will not be rejected if the answer is 'no'.</i></p> <p>Are all of your employees paid at the National Living Wage (NLW) or higher?</p> <p>The current rate of NLW can be found online (go to gov.uk webpage)</p>	<p>Yes, we pay National Living Wage as a minimum to all our employees, including employees under 25 years of age.</p>

1.9 WHISTLEBLOWING

<p>1.9.1 Do you have a Whistleblowing policy in place; or do you agree to have in place or adopt F&HDC's Whistleblowing policy by contract award?</p>	<p>Yes</p>
---	------------

Invitation to Tender (ITT) - Supplier Response Document

(go to F&HDC's policy page)	
---	--

SECTION 2 – TECHNICAL AND QUALITY QUESTIONS

2.1 CAPABILITY

This section is **PASS/FAIL**. A bidding organisation will fail if it cannot provide details of up to 3 contracts that demonstrate technical capability or provide alternative evidence.

RELEVANT EXPERIENCE AND CONTRACT EXAMPLES			
Please provide details of up to three contracts from the public, private or voluntary sector, that are relevant to the services described in this tender. three years. Works contracts may be from the past five years.			
Contracts for the supply of goods or services should be from the past			
The customer contact for each example should be prepared to speak to F&HDC to confirm the accuracy of the information provided			
Suppliers should not use previous work for or associated with F&HDC below. in these examples.			
	Contract 1	Contract 2	Contract 3
Name of Customer Organisation	Buckinghamshire Council	Ashford Borough Council	Southend on Sea Borough Council
Contact name, telephone number & and email	████████████████████ ██████ ██████████ ████████████████████	████████████████████ ██████████ ██████████ ████████████████████	████████████████████ ████████████████████ ██████████ ████████████████████ ████████████████████
Start date	Original Contract 1999, New Contract Buckinghamshire 2021	October 2013	July 2015

Invitation to Tender (ITT) - Supplier Response Document

End date	Ongoing	Ongoing	July 2021
Estimated Contract Value	£1,047,362.84 Based on cases received since 2021	£2,604,440.14 Based on cases received since 2013	£16,836,125.50 Based on cases received since 2015

Invitation to Tender (ITT) - Supplier Response Document

<p>Brief description of contract</p>	<p>We originally began working with Chiltern DC in 1999, incorporating South Bucks during 2016. In April 2020 Chiltern, South Bucks and Wycombe became one unitary authority: Buckinghamshire Council in respect of revenues. We continue to provide enforcement services to Buckinghamshire Council via an SLA agreement. We originally began working with Chiltern DC in 1999, incorporating South Bucks during 2016. In April 2020 Chiltern, South Bucks and Wycombe became one unitary authority: Buckinghamshire Council. We continue to provide enforcement services to Buckinghamshire Council via an SLA agreement.</p> <p>TESTIMONIAL: <i>"...we maintain close scrutiny of Newlyn's performance and our long association with them is testament to their very successful track record and consistently high levels of collection. This success is no fluke and reflects Newlyn's willingness to adapt their business model where necessary to offer a bespoke service or cater for changing priorities and new initiatives..."</i> [REDACTED], Revenues Operations Manager, Buckinghamshire Council</p>	<p>Newlyn began working with Ashford Borough Council in 2013 and currently enforce Liability Orders in respect of the non-payment of Council Tax and NDR.</p> <p>The first batch of cases sent to us were historical files; some of which were over 10 years old. We conducted extensive tracing activities and linking exercises on these aged files reporting back our findings at each stage. Where positive contact was made, we went on to collect monies which would have otherwise been written off. Based on the results of this initial project, we now receive an equal share of the Authority's Liability Orders.</p> <p>TESTIMONIAL: <i>Newlyn PLC has been one of our main enforcement service providers since 2013 and Anthea Johns has been our Client Manager from the start. In this time Anthea has built up a strong relationship of trust and respect with my Recovery Team, through our regular client meetings and her willingness to resolve any</i></p>	<p>We were awarded the contract in 2015 via procurement selection process and were appointed as one of two providers for the collection of Council Tax, NDR, Sundry Debt and HBOP. A dedicated Client Manager supported by the Client Services Director is responsible for ensuring that the contract is delivered in accordance with the client's requirements. At each quarterly meeting, we provide a summary of key performance information and compare it to the position at the same point in the previous year, to focus on our year-on-year performance and readily allows us to analyse trends. Each year we collect a higher percentage of the debt and are consistently the top performer for each debt type.</p> <p>We have been the top performer for Council Tax and NDR throughout the contract period.</p> <p>TESTIMONIAL: <i>"Newlyn has outstanding resources available to them from agents out enforcing to tracing sources which all together has resulted in cases being paid where no contact has previously been obtained by other agents. Collection rates</i></p>
--------------------------------------	--	--	---

Invitation to Tender (ITT) - Supplier Response Document

		<p><i>complications that may arise. Newlyn PLC's collection rates have been extremely high, and they provide the highest quality of service to this Council. [REDACTED], Recovery Manager, Ashford Borough Council</i></p>	<p><i>across all areas have been excellent and we have utmost faith that these will be maintained, and that Newlyn will strive to continue to maximise collection." Southend-on-Sea Council</i></p>
<p>If you cannot provide three contract examples please give evidence of your technical capability in this market.</p>			

2.2 GENERAL DATA PROTECTION

For the purposes of the Data Protection Legislation, F&HDC is the data controller and the contractor, as a regulated entity is likewise a data controller.

2.2.1 Do you have the resources, systems and procedures in place to ensure your organisation will comply with the General Data Protection Regulations while performing the contracted services?

If **yes**, please provide details of the measures currently in place.

If **no**, please detail what measures will be in place before the contract starts.

We confirm that we have the resources, systems, and procedures in place to ensure compliance with GDPR while performing the contracted services. [REDACTED]

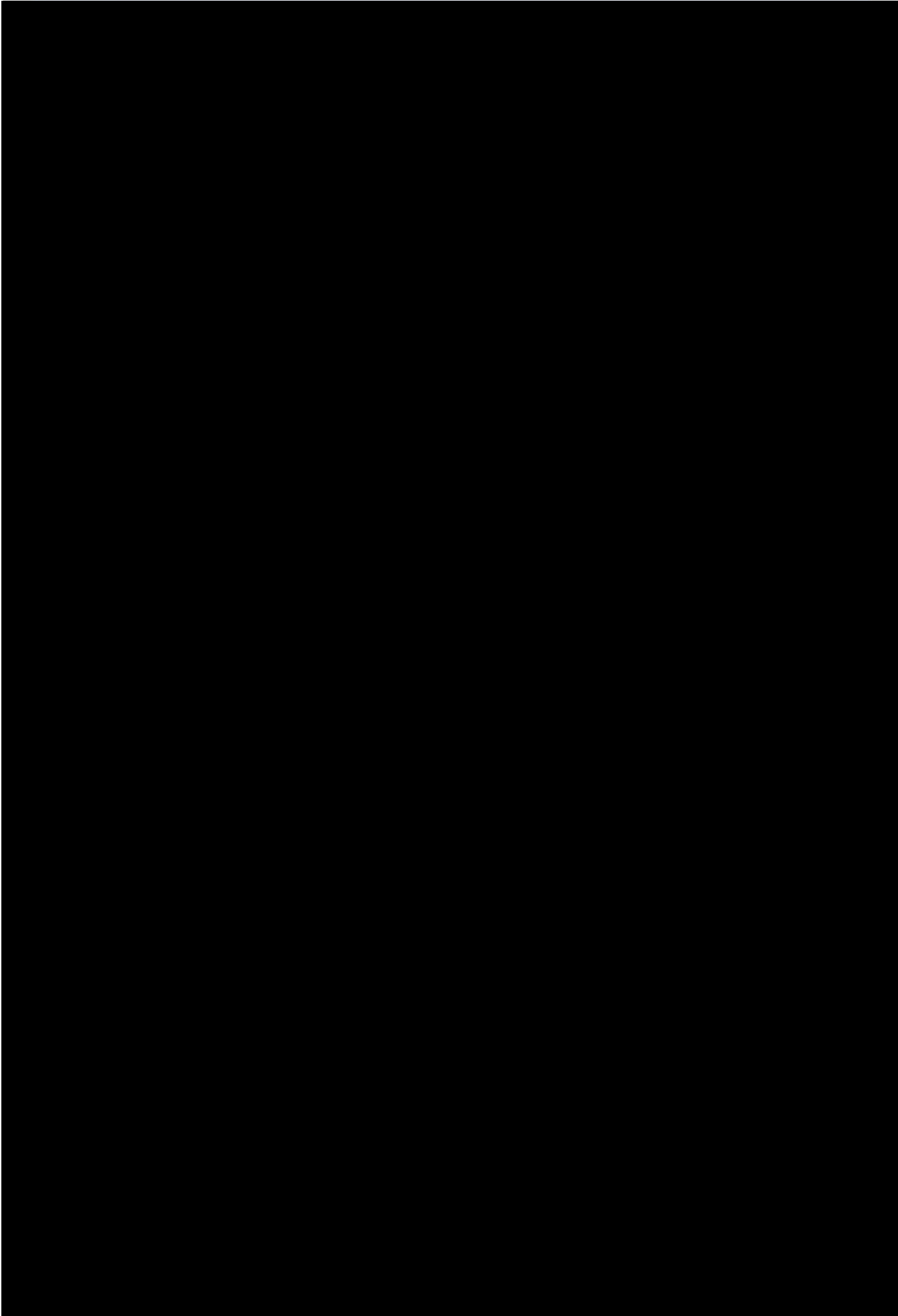
[REDACTED]

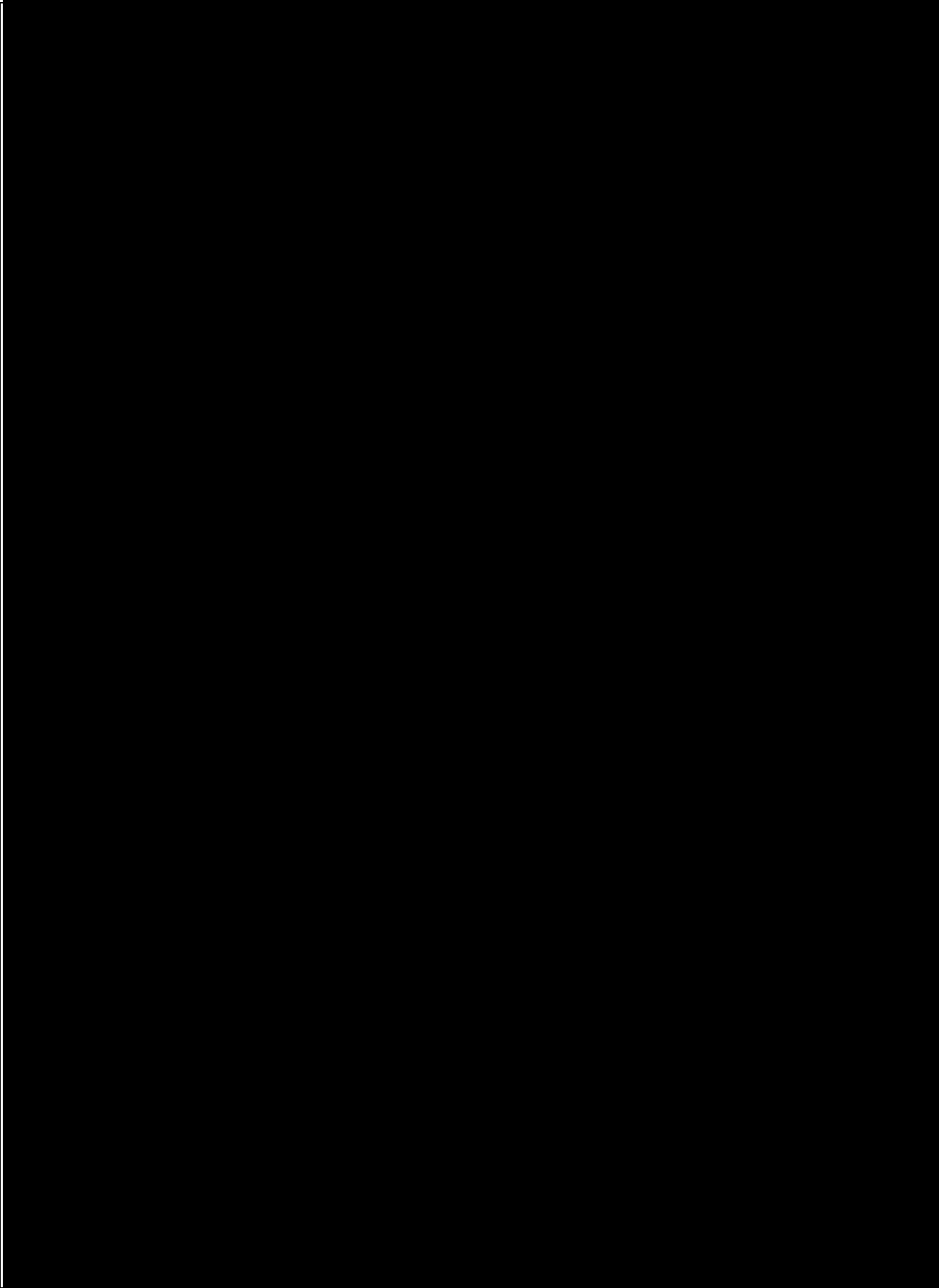
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





2.3 HEADLINE QUESTIONS

Please note that these questions are pass/fail (a YES will be a pass, a NO will be a fail). Your submission will be rejected and disqualified, if you fail any of the head-line questions

The Authority will not allow for sub-contracting. Can you confirm that you will adhere to this over the lifetime of the contract?	Yes
Do you, your staff, and all those engaged in the collection of debts due to the Authority hold all relevant certifications as required to undertake these activities? Additionally, do you undertake to ensure that these are kept valid and up to date with any prevailing legislation?	Yes
The Authority requires that all monies collected will be held in a dedicated Folkestone & Hythe District Council bank account. Are you prepared and capable of adhering to this?	Yes

2.4 WEIGHTED QUESTIONS

Q1. CONTRACT DELIVERY (20%)

Give details of how you would deliver the contract and maximise collection, by demonstrating how this approach has worked in relation to similar contracts / authorities,

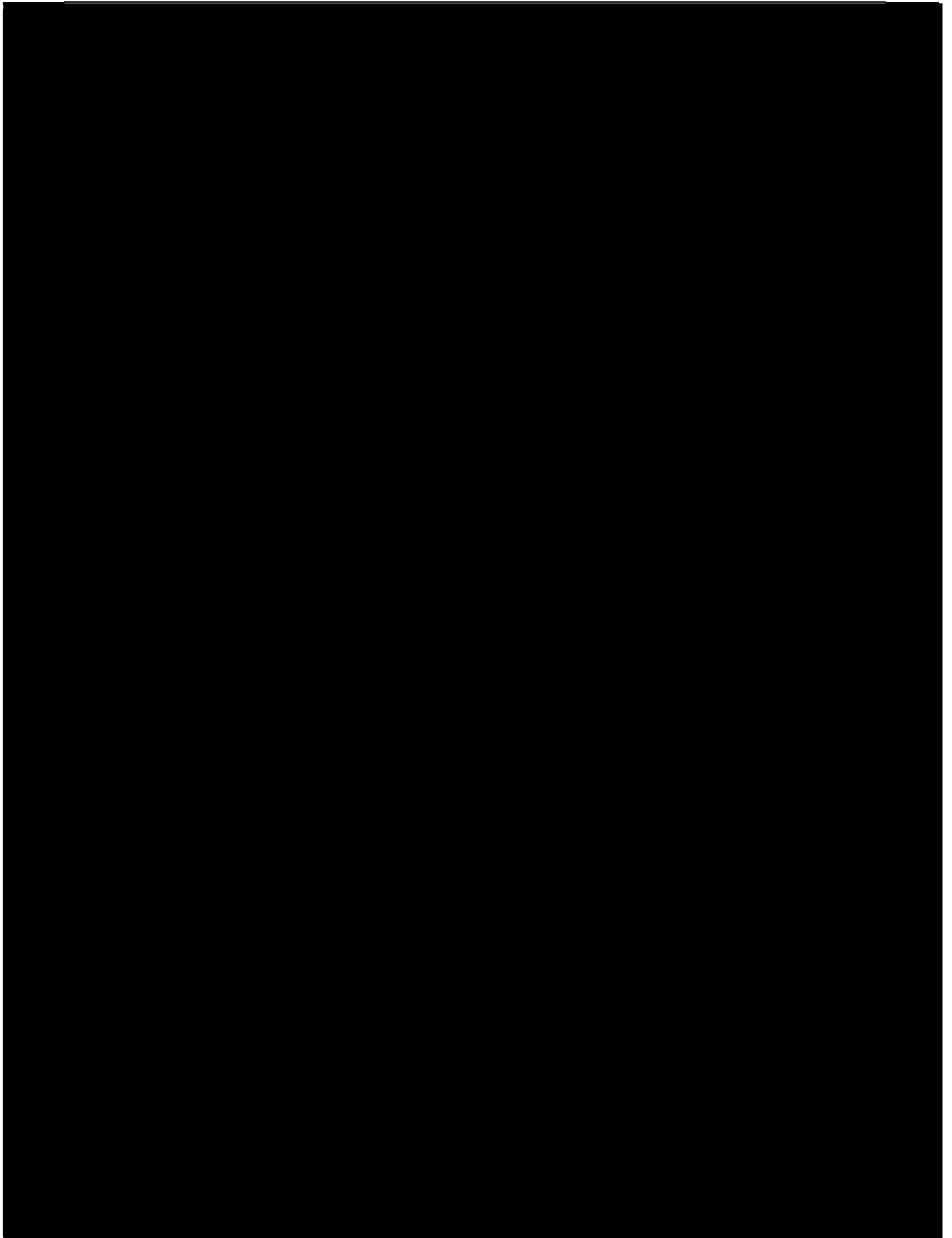
This should include, but not limited to

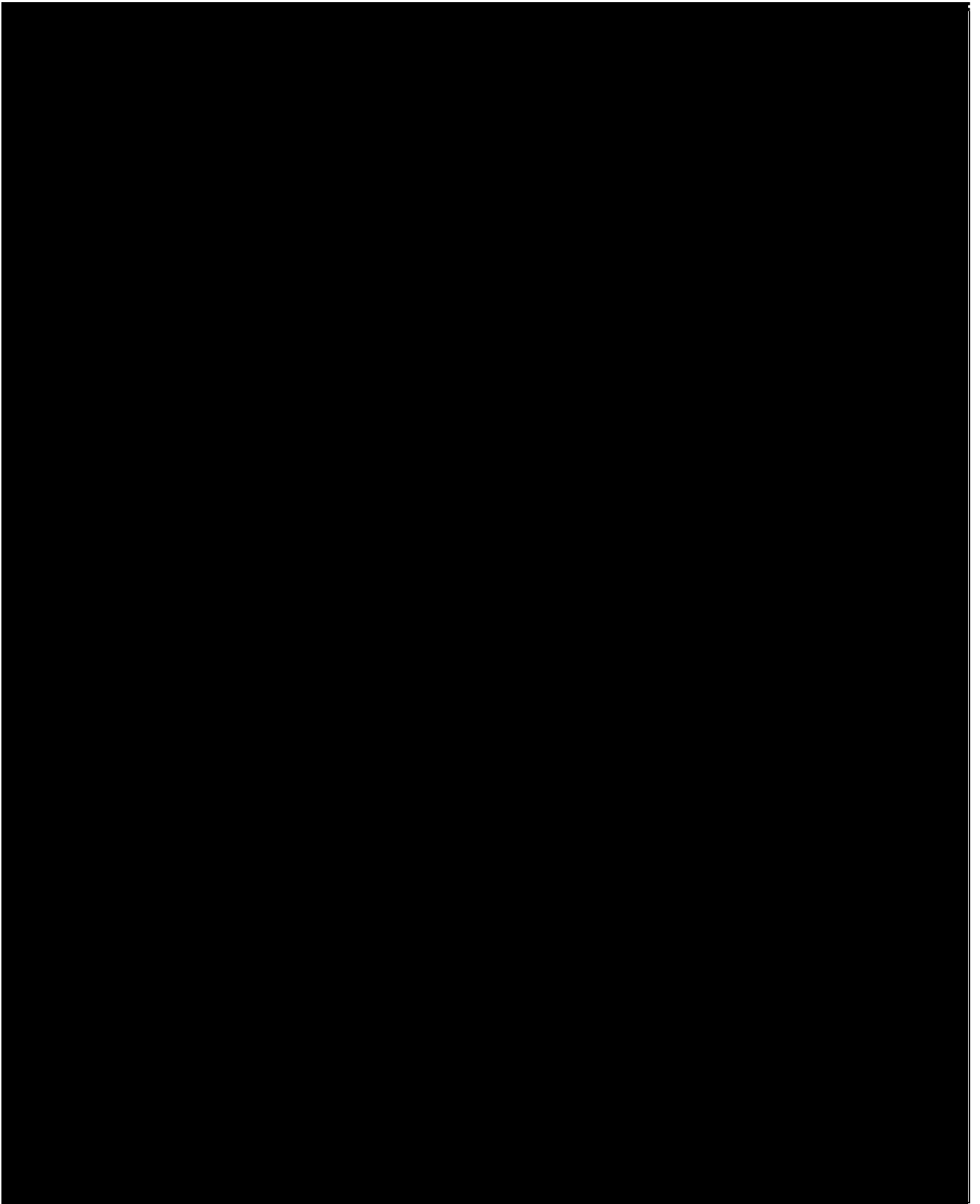
- > Details of how you have calculated rates, methods of payments, arrangements for collecting out of area; tracing arrangements; what you do that is unique and effective
- > Management of variable workloads, returns to the Council, time spent by enforcement agents in Folkestone & Hythe area, local knowledge, and rotation of enforcement agents in the District
- > Methods of contact, payment options, opening hours, ability to self-serve, policies for potentially vulnerable debtors

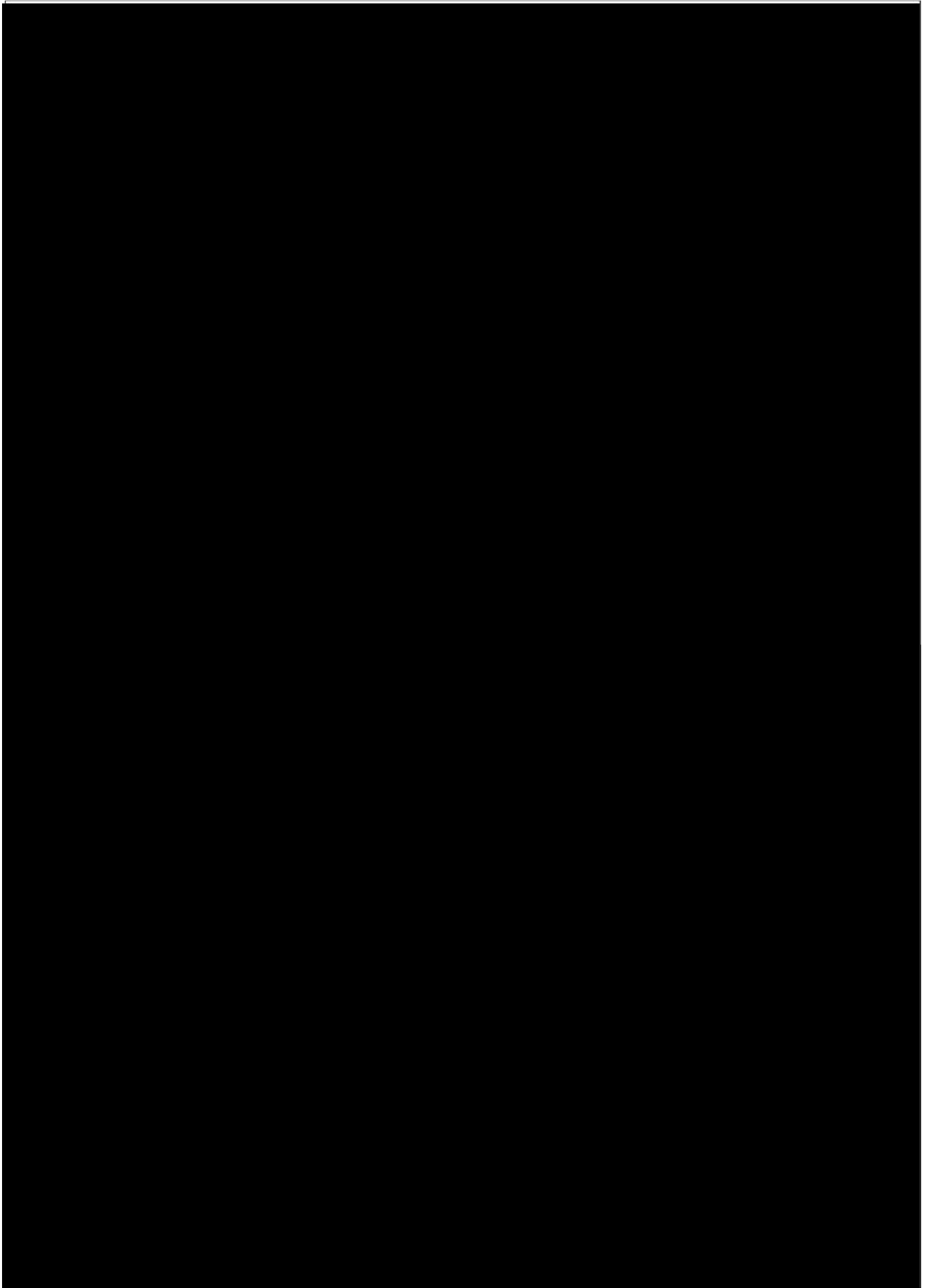
(max word count 2000)

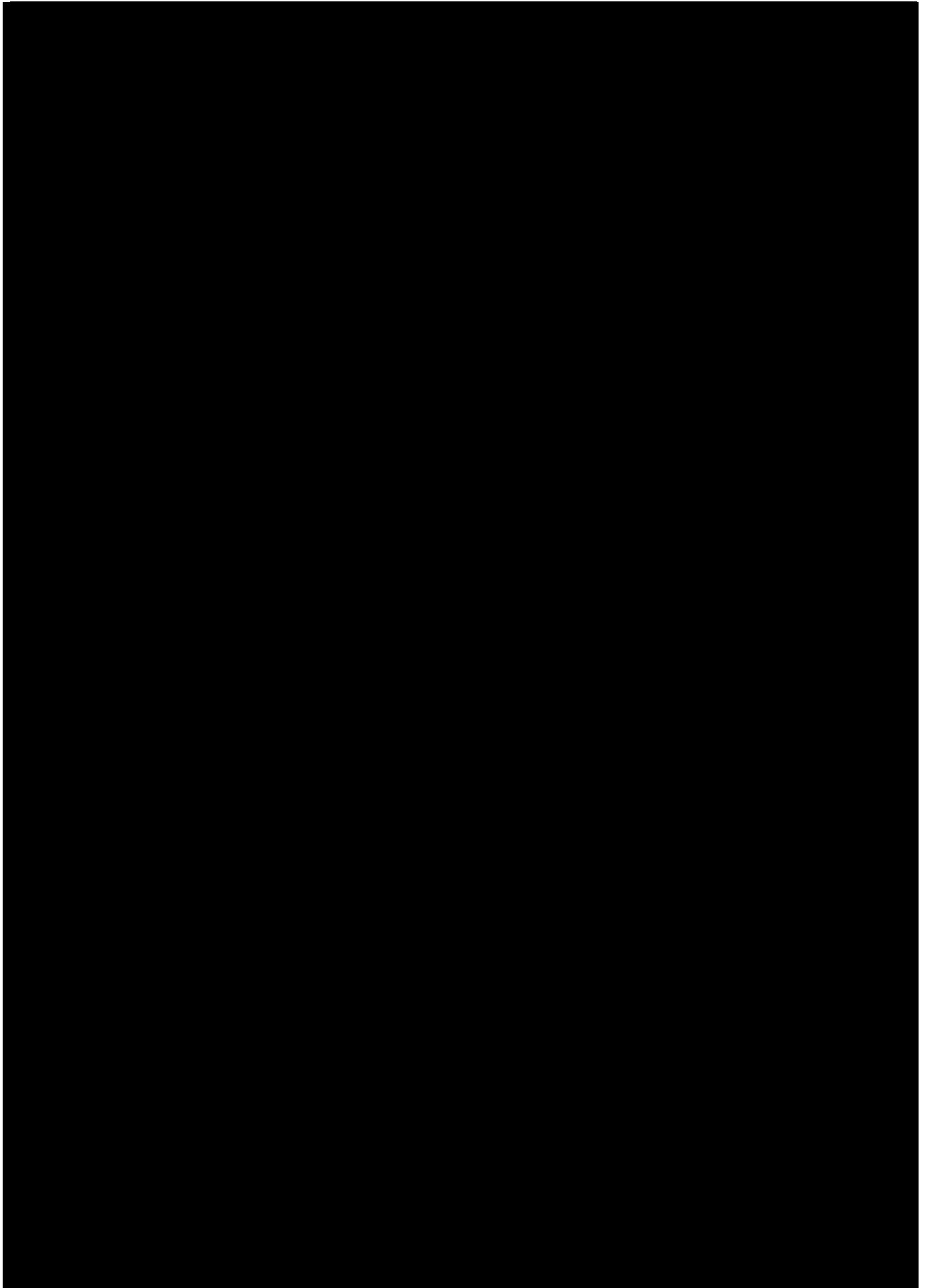
[Redacted]

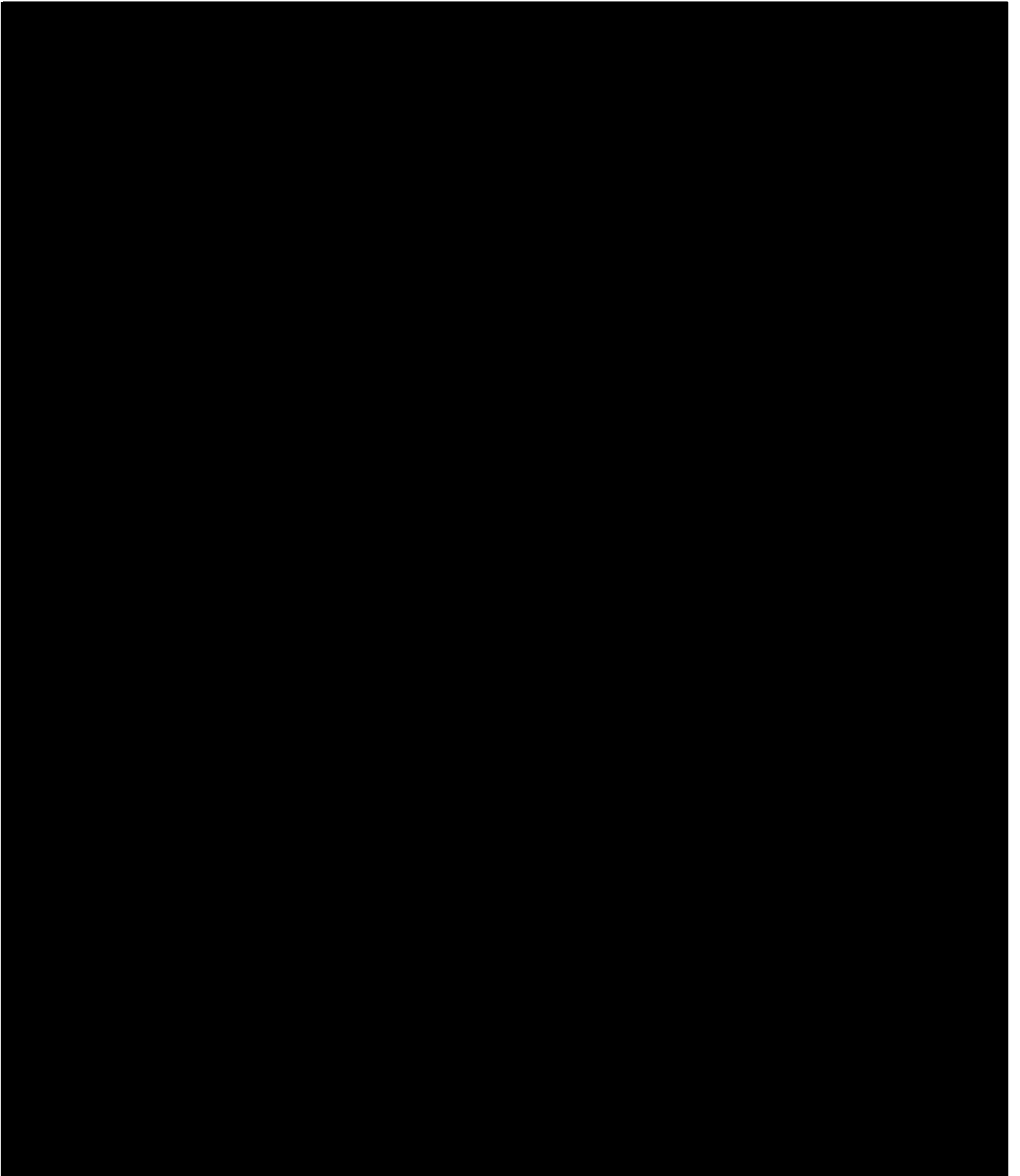
[Redacted]

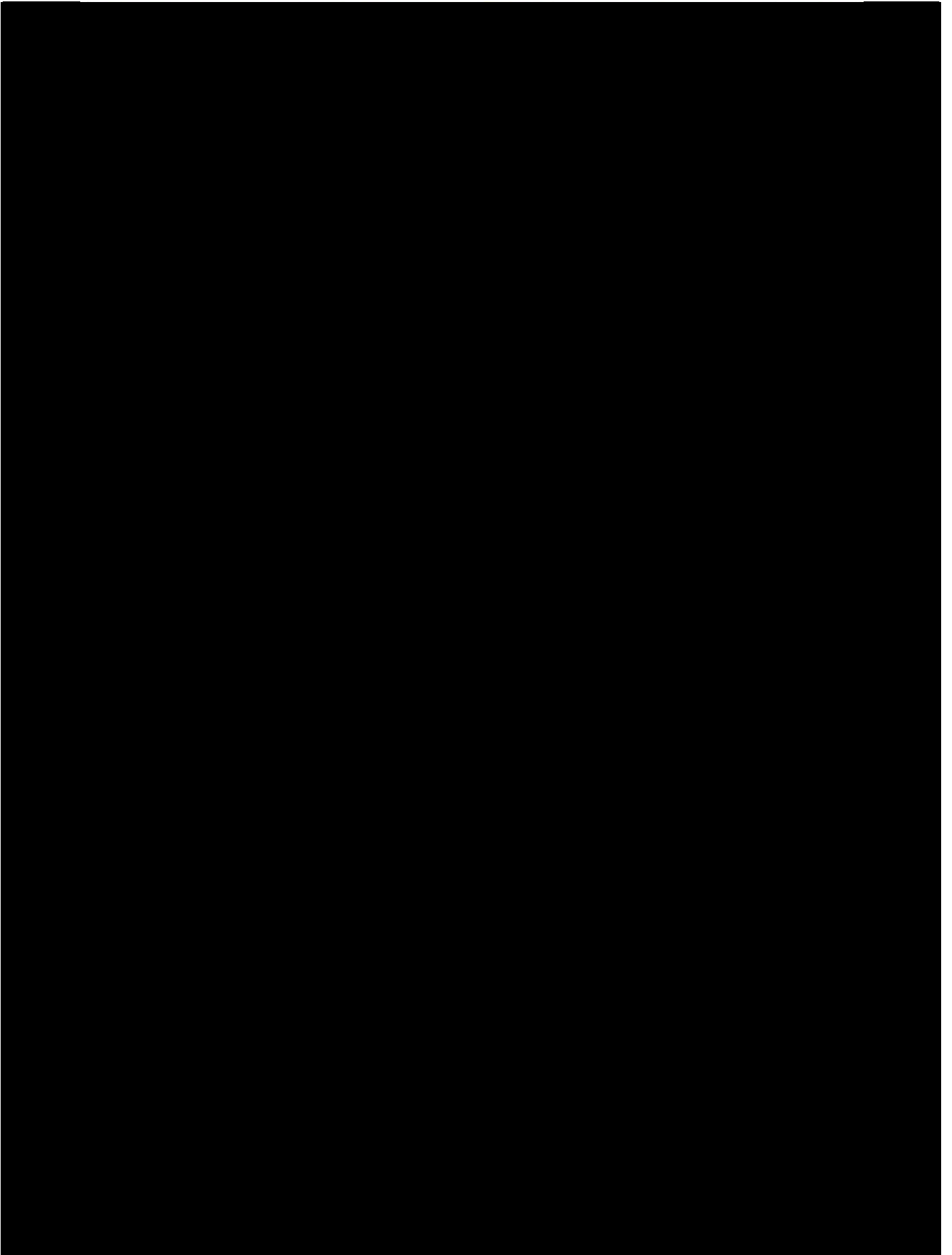


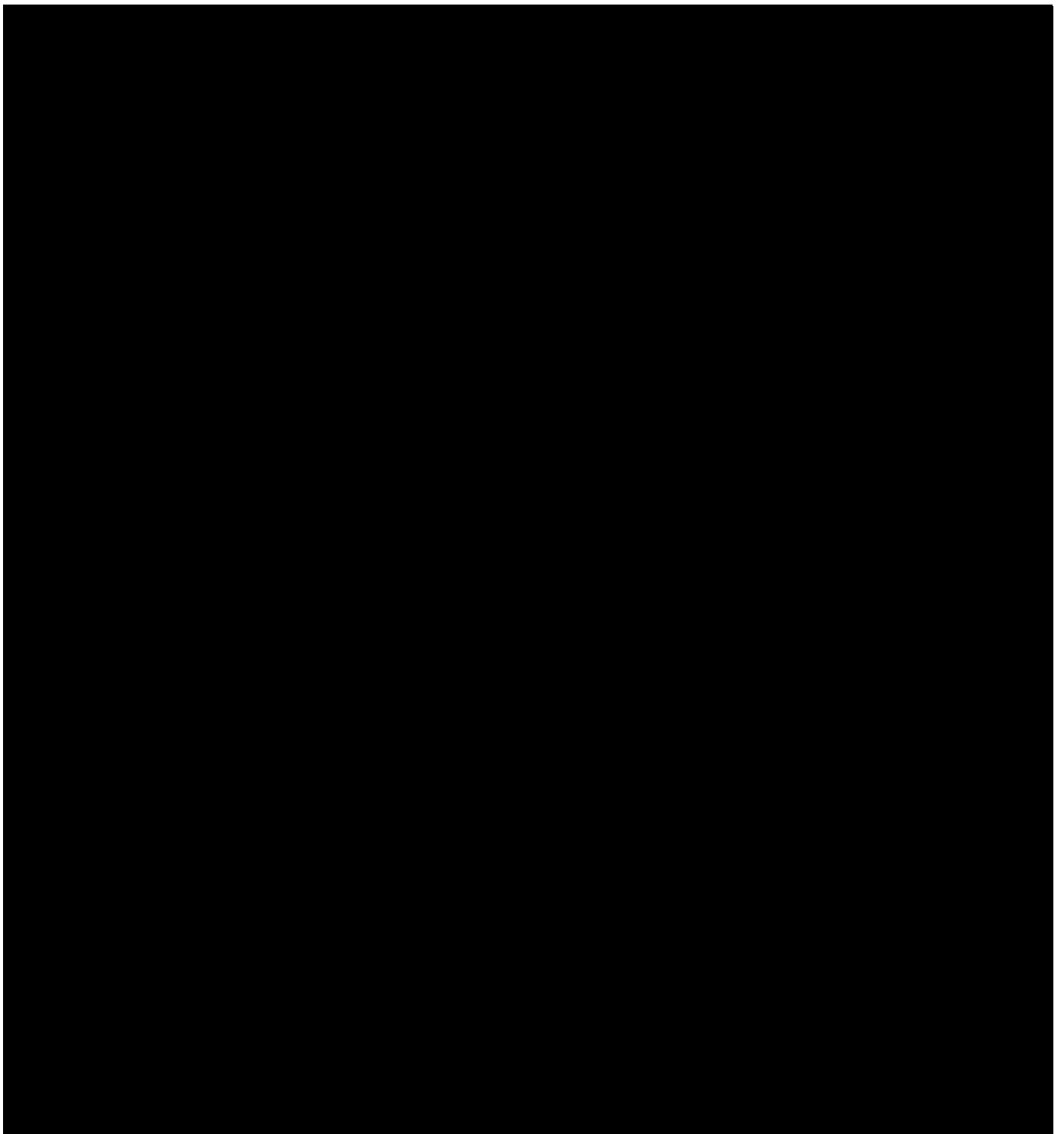


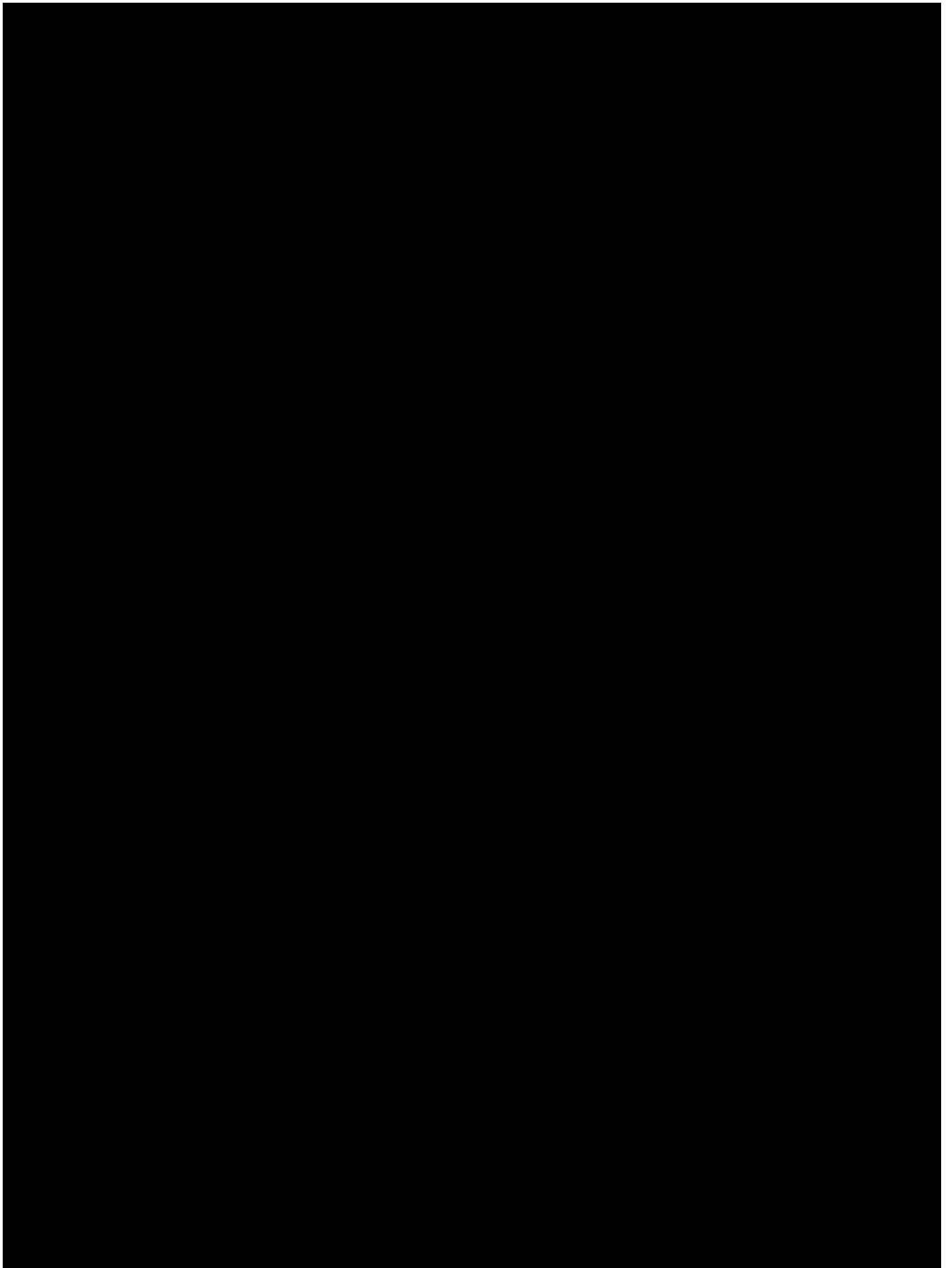


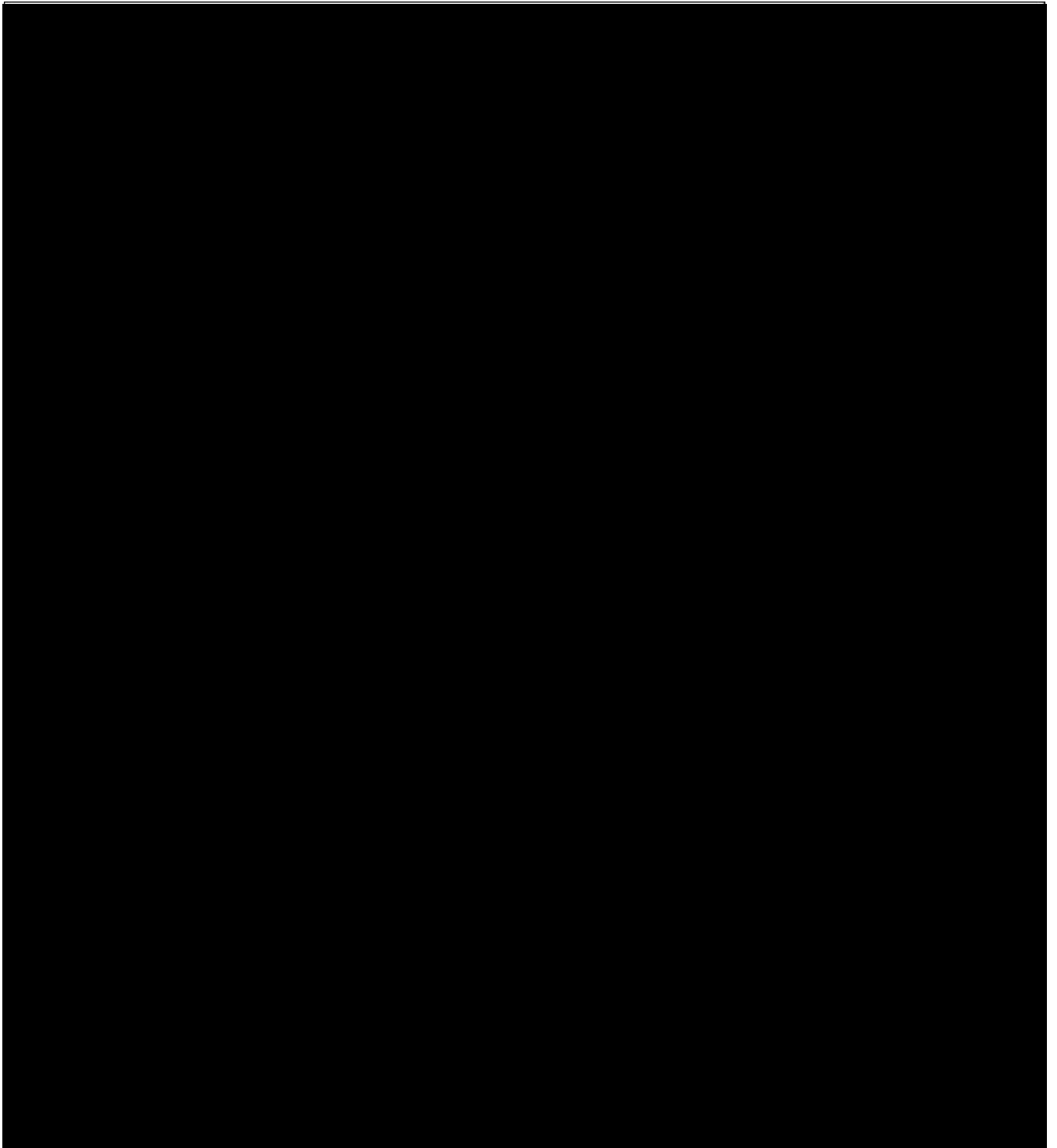


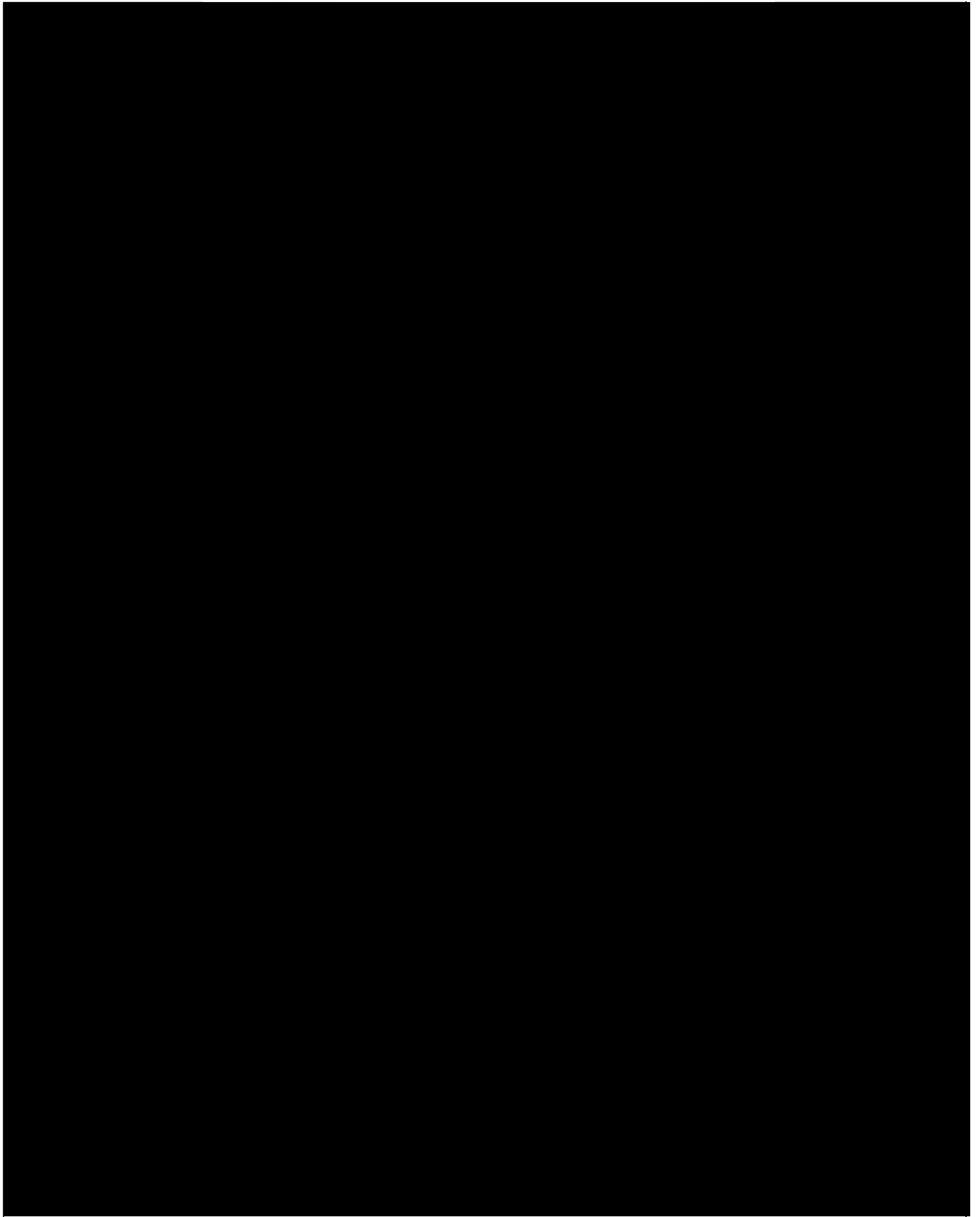


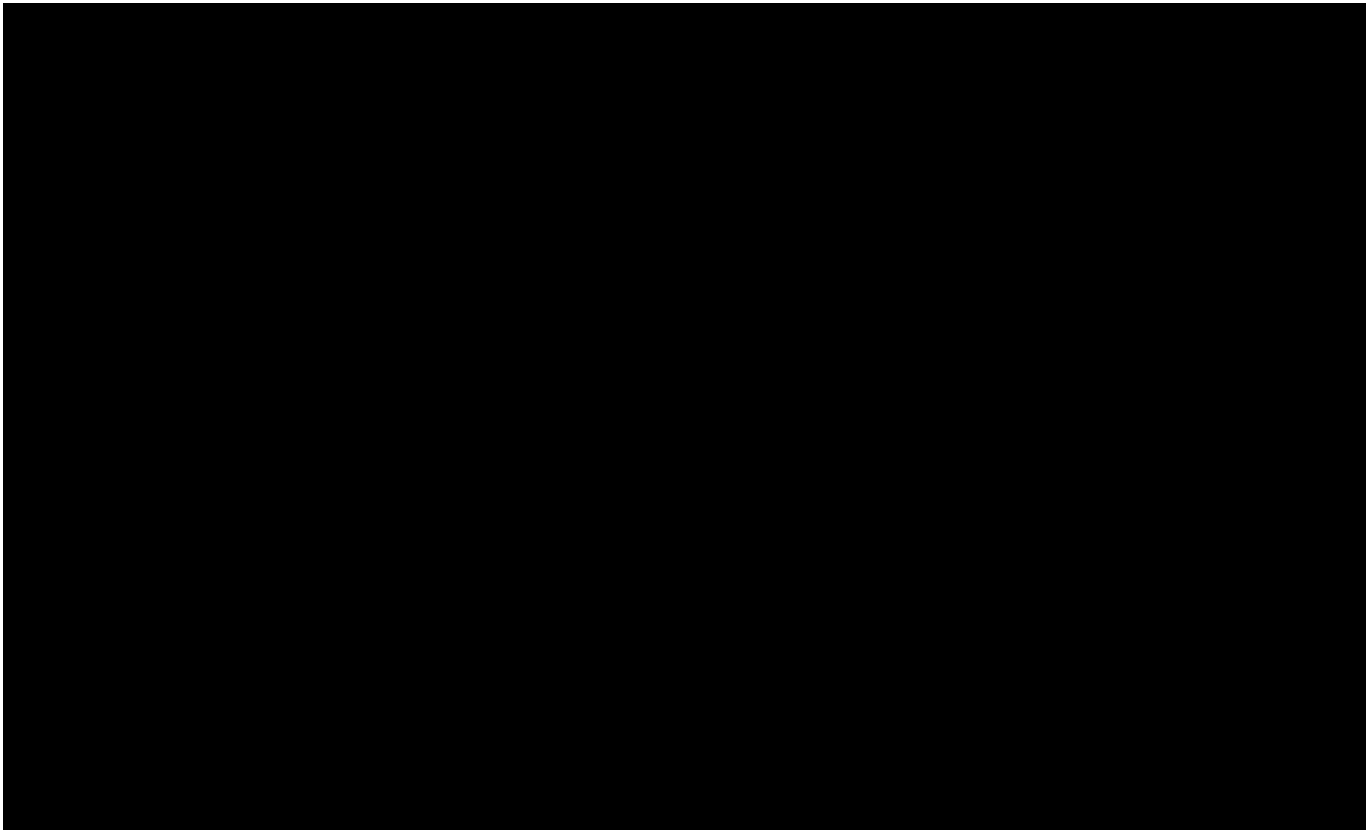












Q2. RESOURCES (20%)

Outline your proposed resource for this contract and how they will be deployed, response should also include:

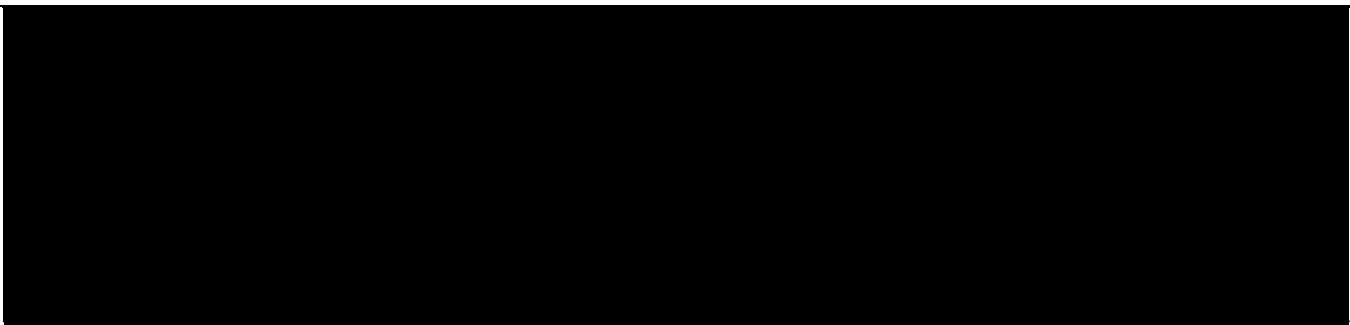
Staff

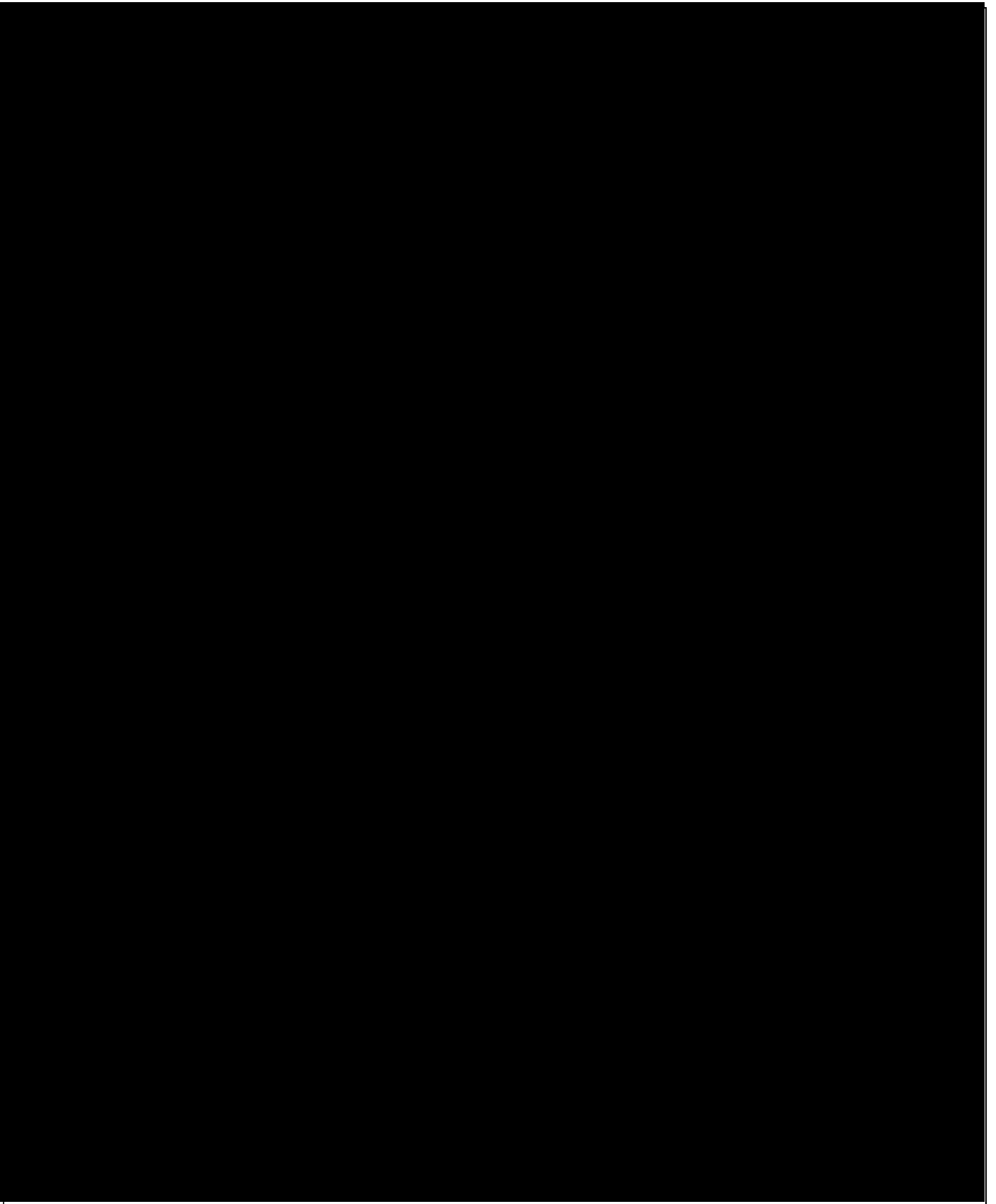
- > details of your local presence, how many staff hours will be allocated to this contract
- > how your company will ensure an adequate number of experienced staff
- > how the company will ensure staff have the relevant qualification(s) and training(s) for the delivery of the contract

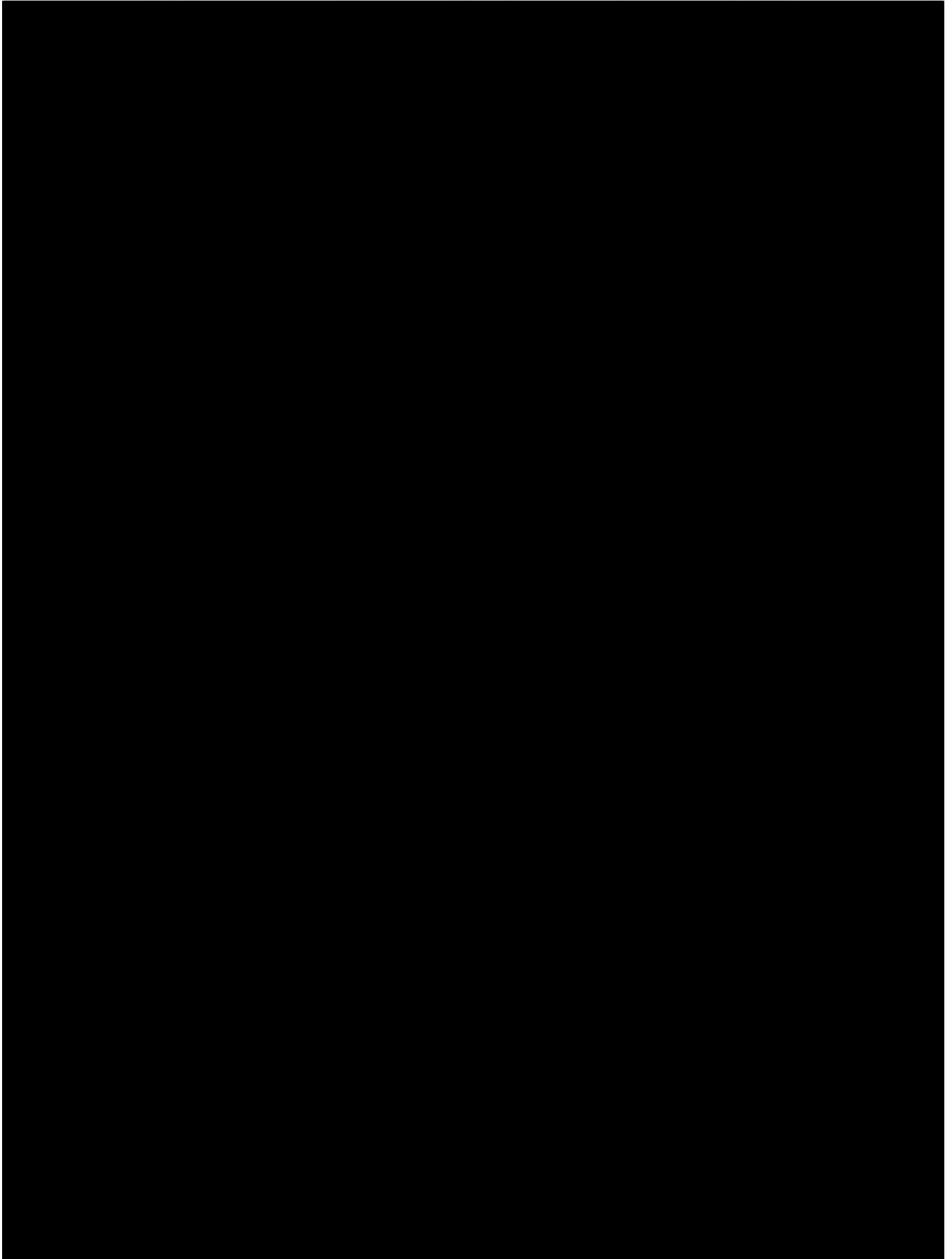
Equipment

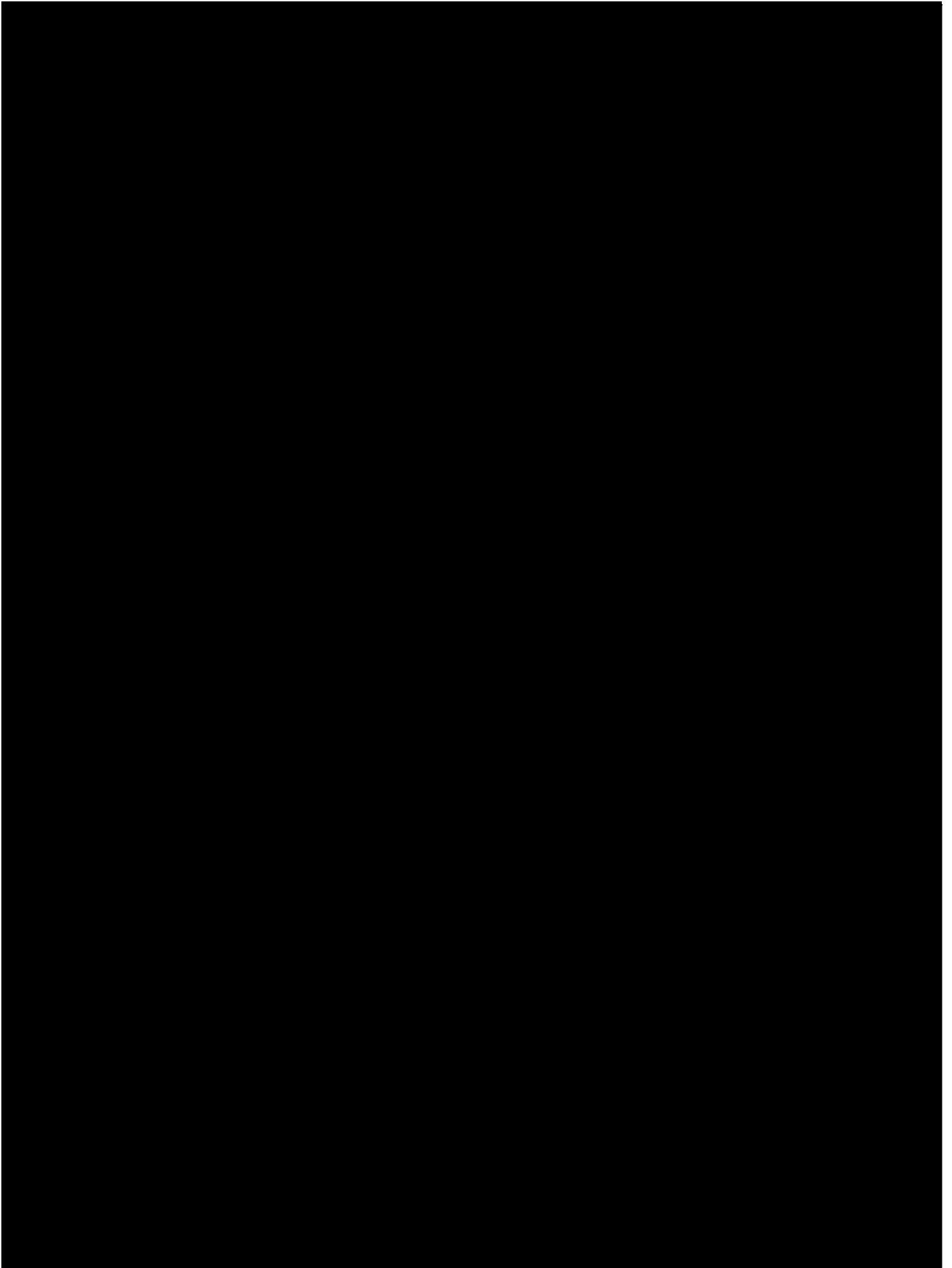
- > details of relevant equipment to be used (such as storage facilities, vehicle ownership and body worn cameras) and how it will be deployed

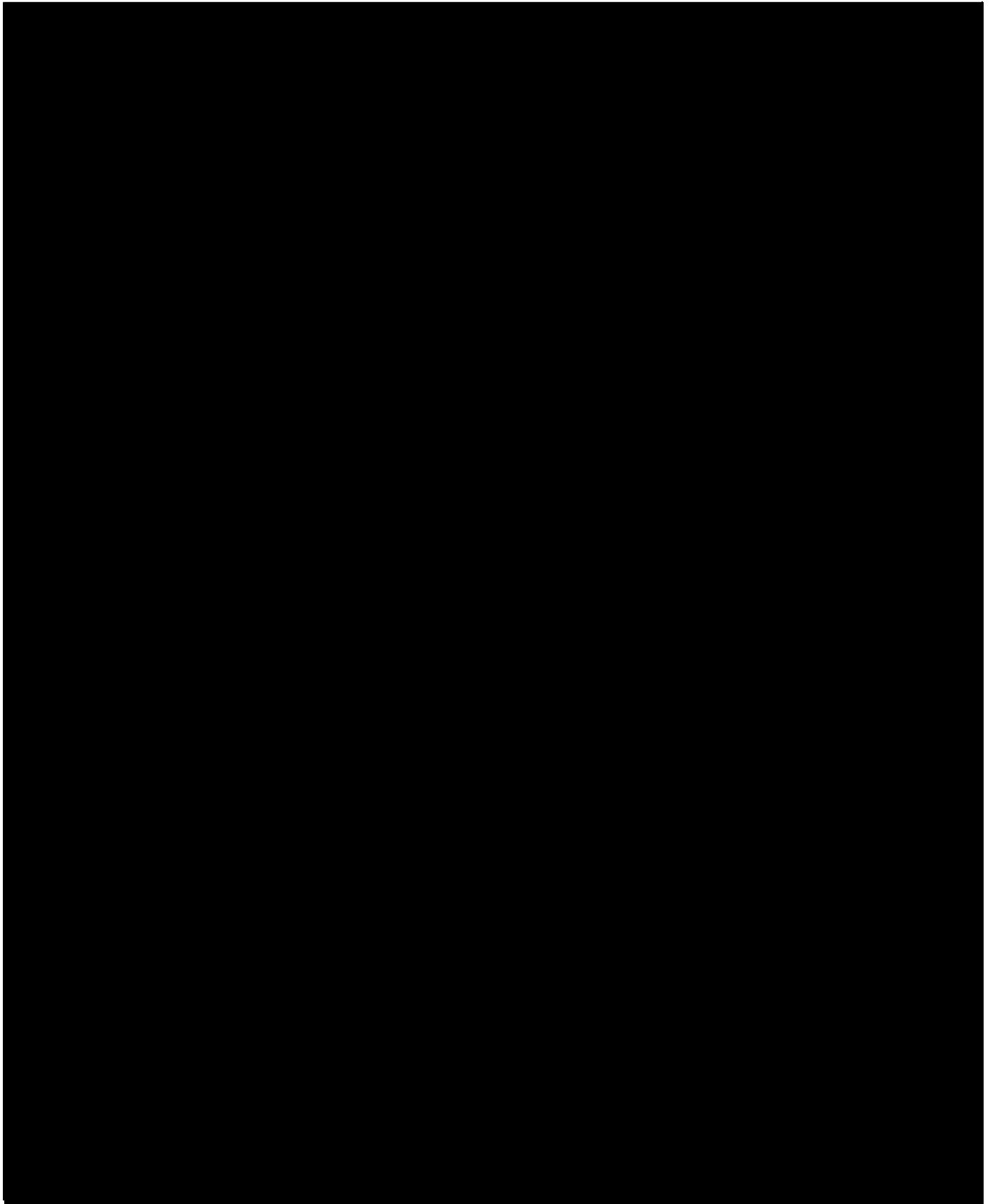
(max word count, 2000)

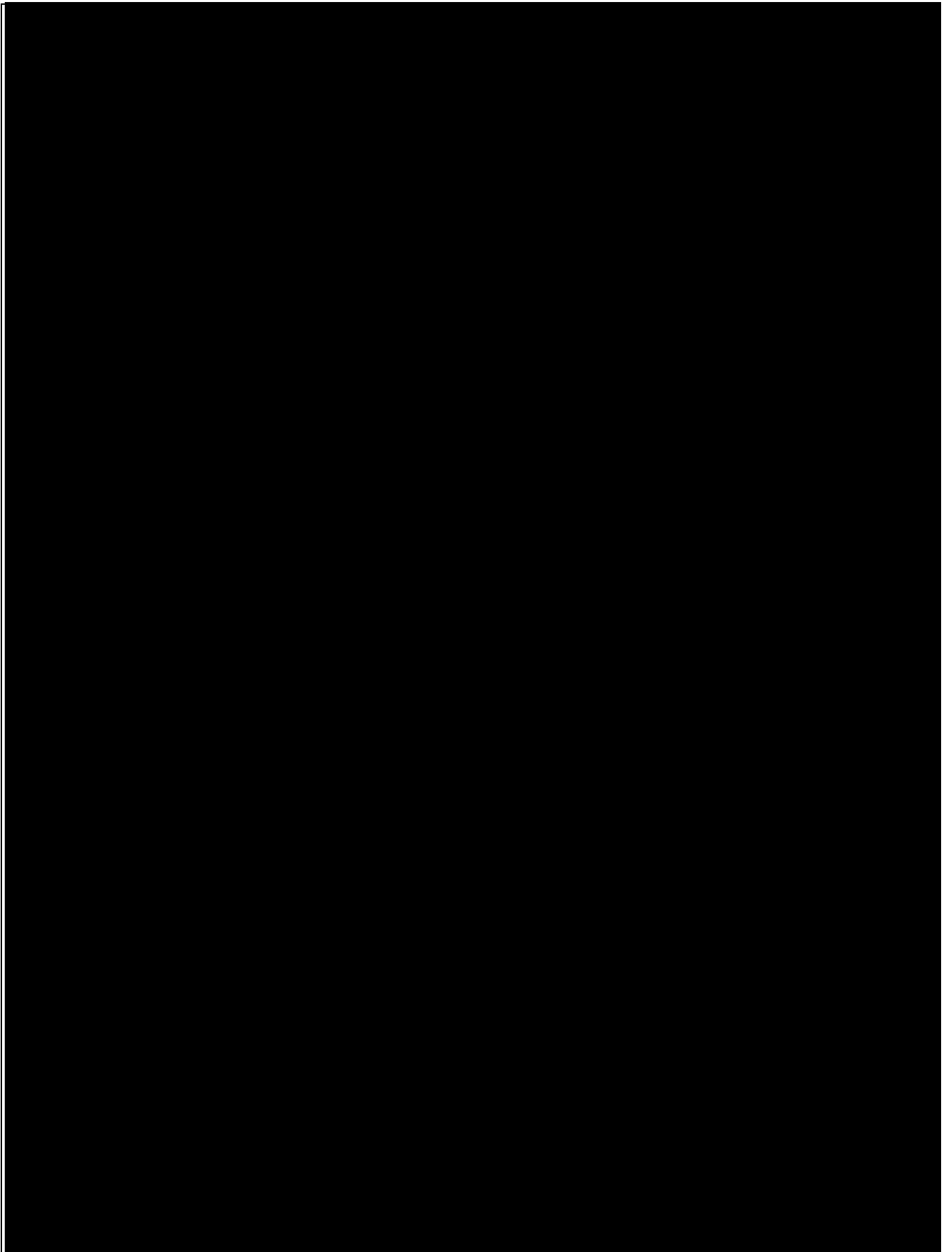










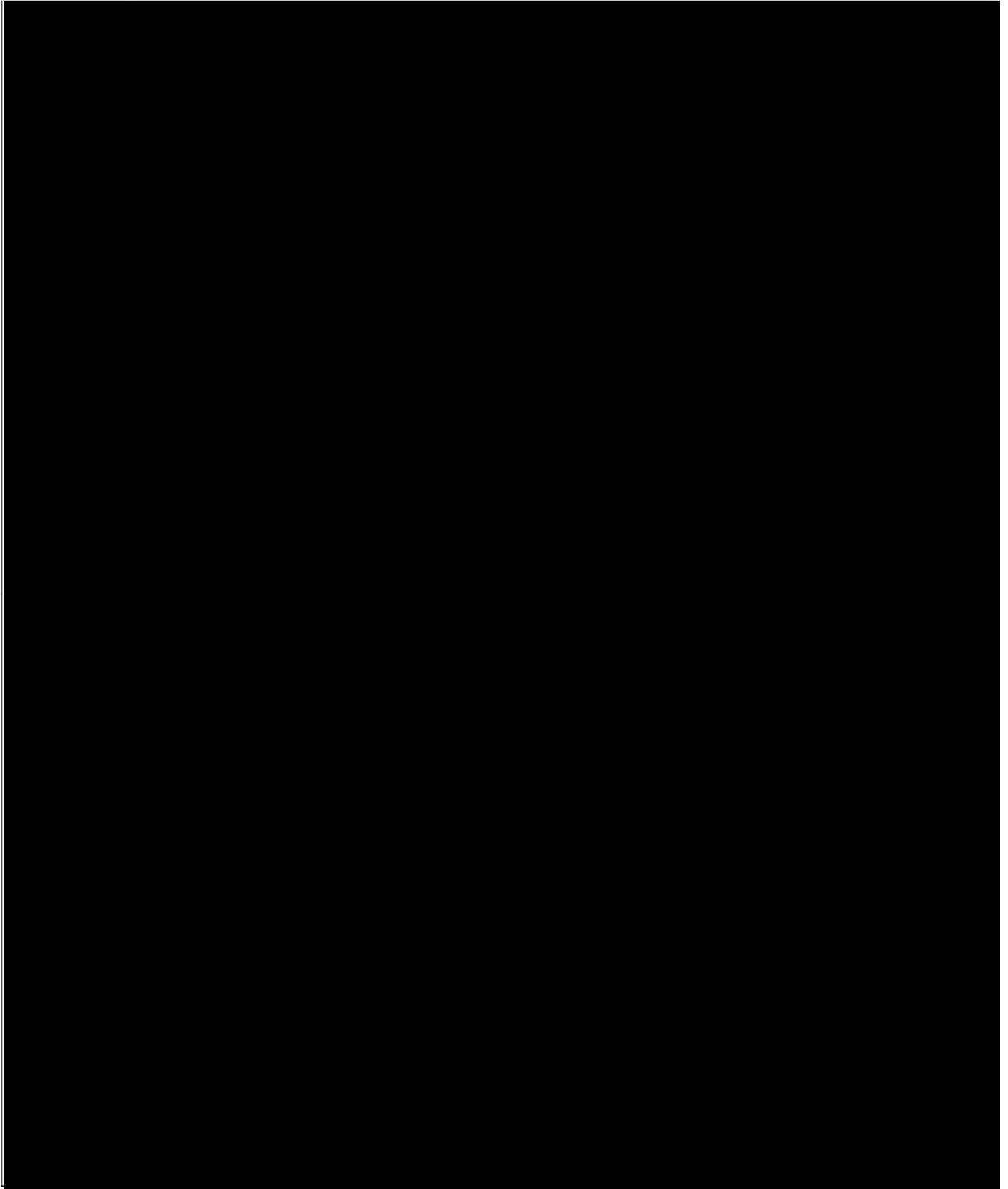


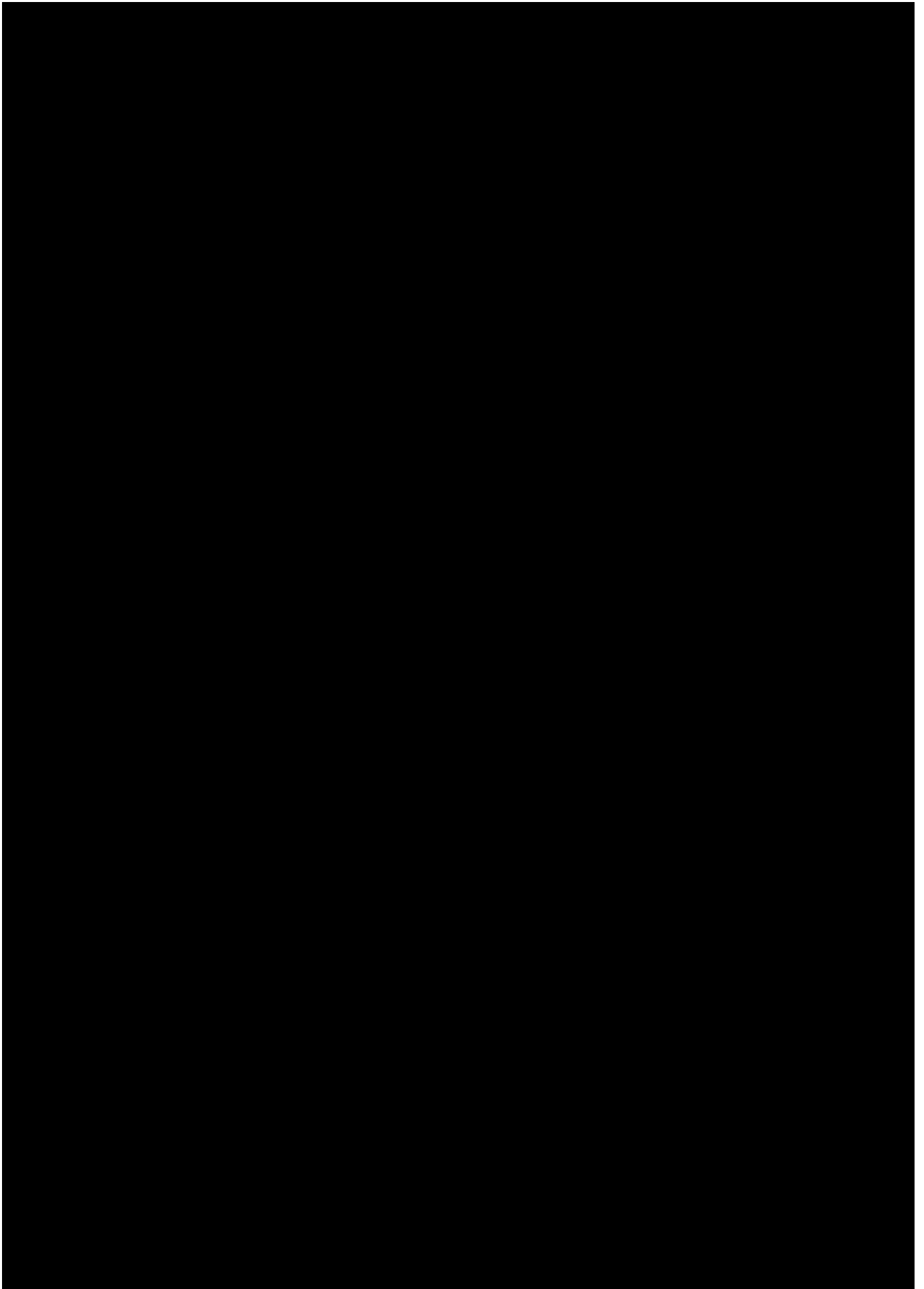
Q3. CUSTOMER ENGAGEMENT (15%)

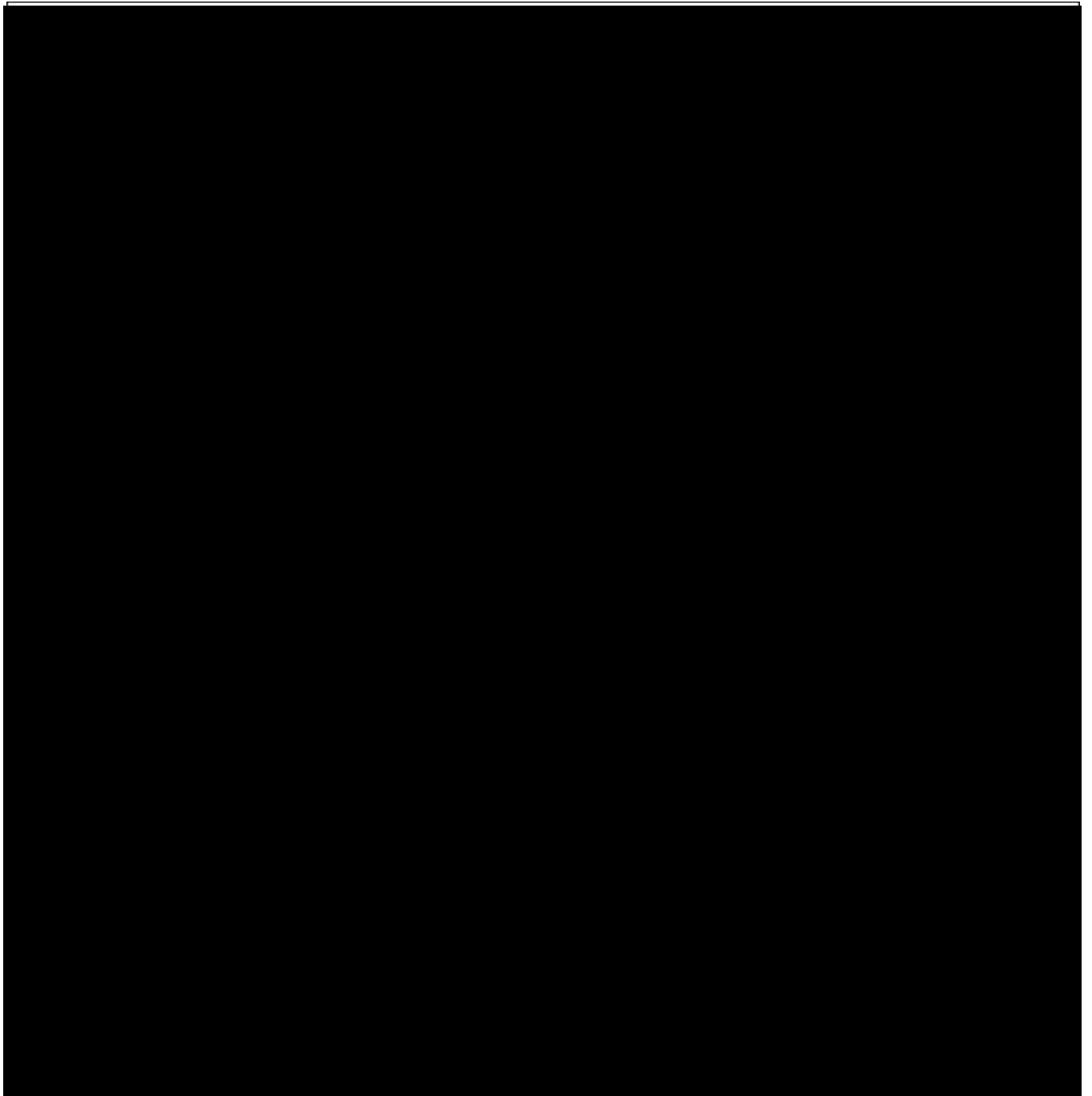
Describe how your staff will interact with debtors, most especially, managing vulnerable debtors and reducing the impact of enforcement action on this group

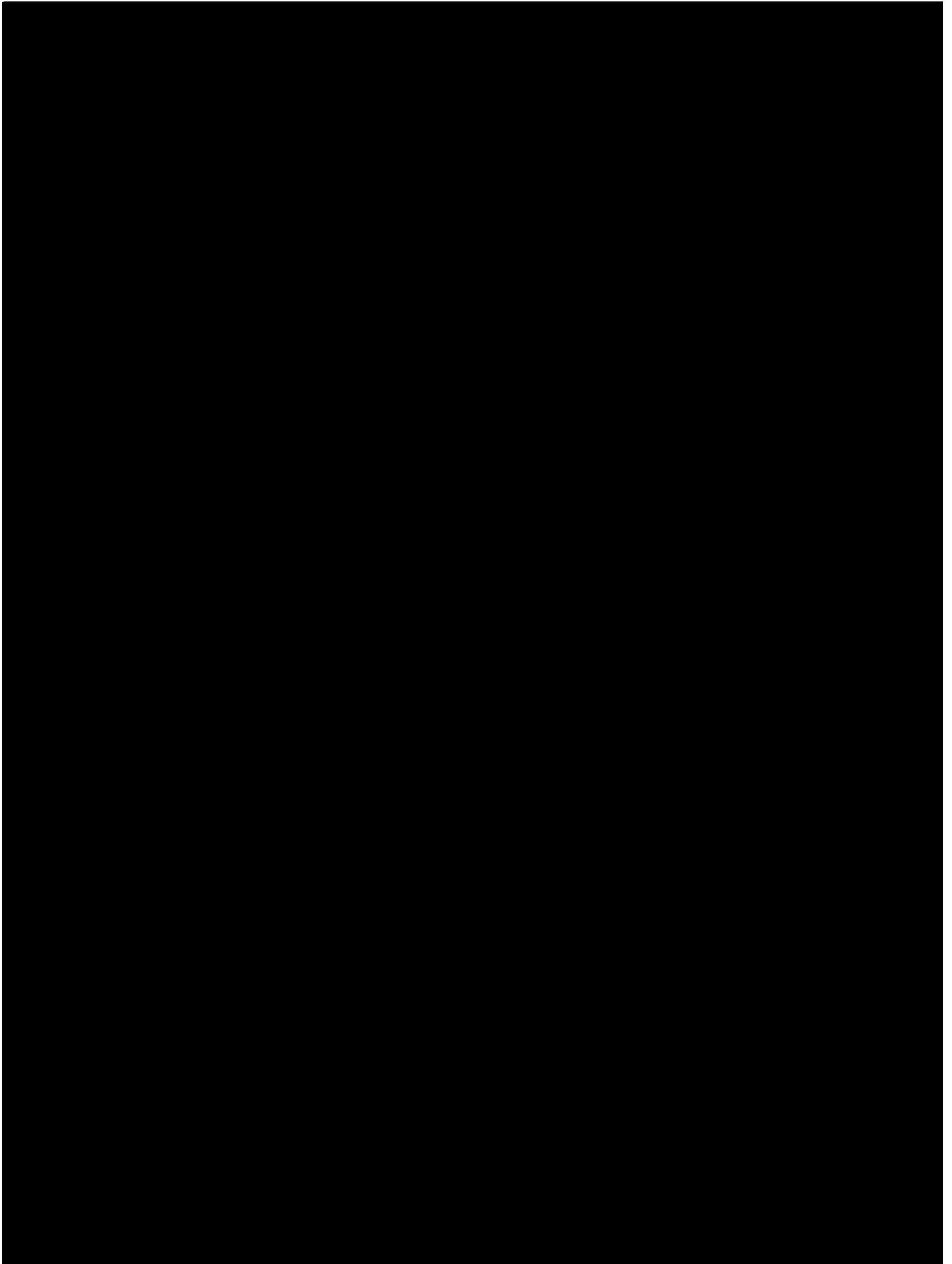
- how will you signpost and support vulnerable debtors?

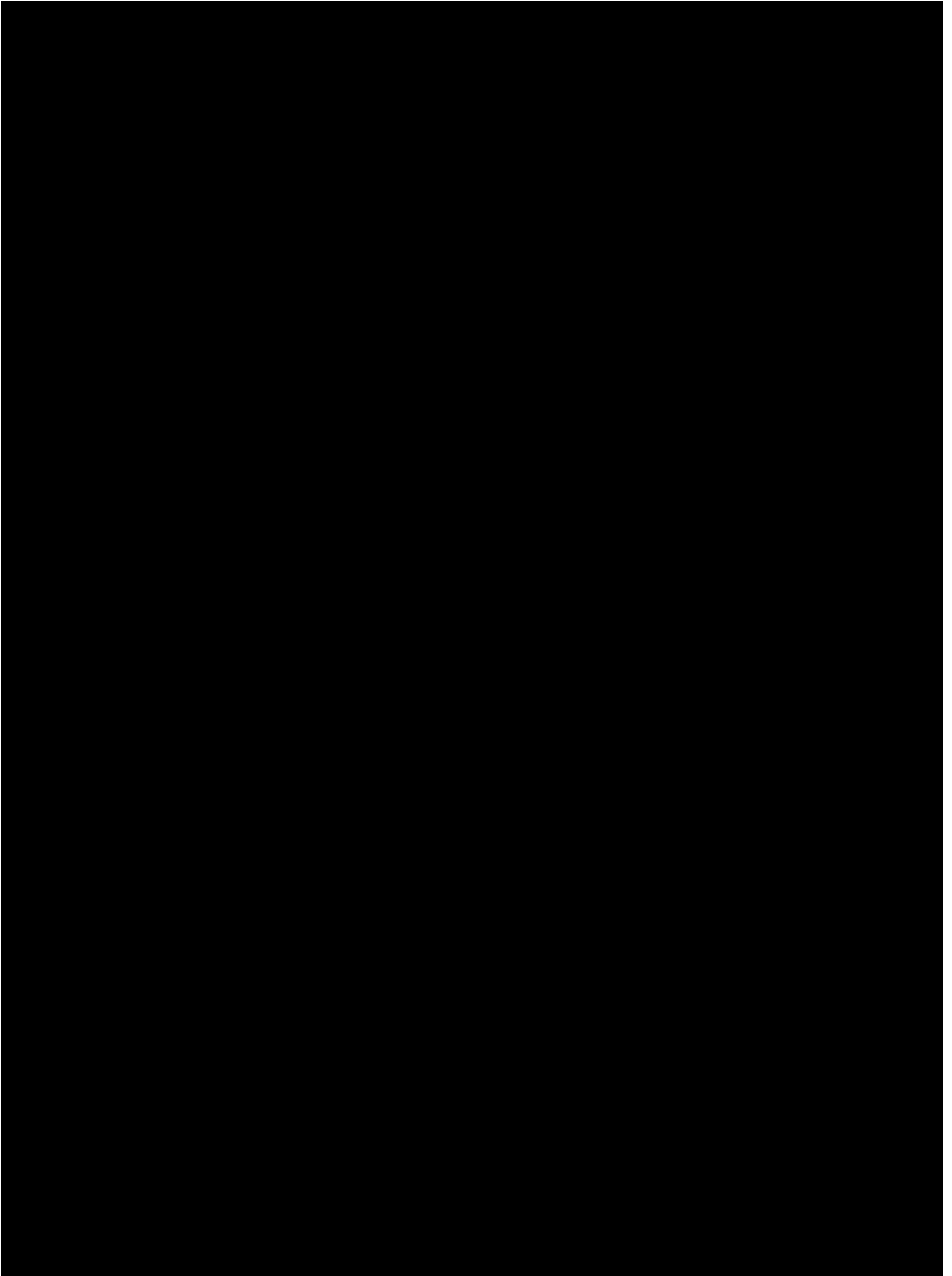
(max word count 1250)

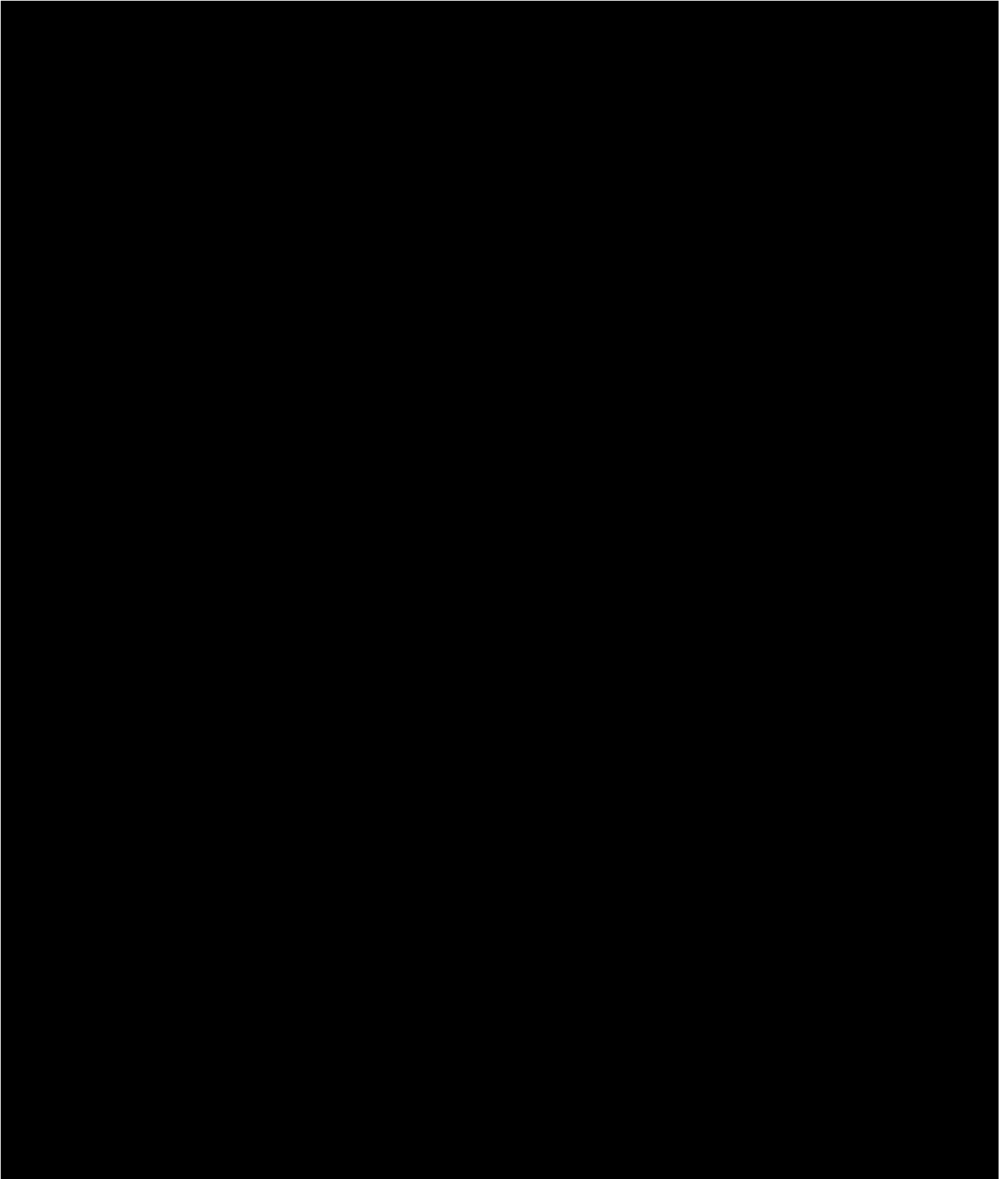












Q4. CONTRACT IMPLEMENTATION & IT SYSTEM (15%)

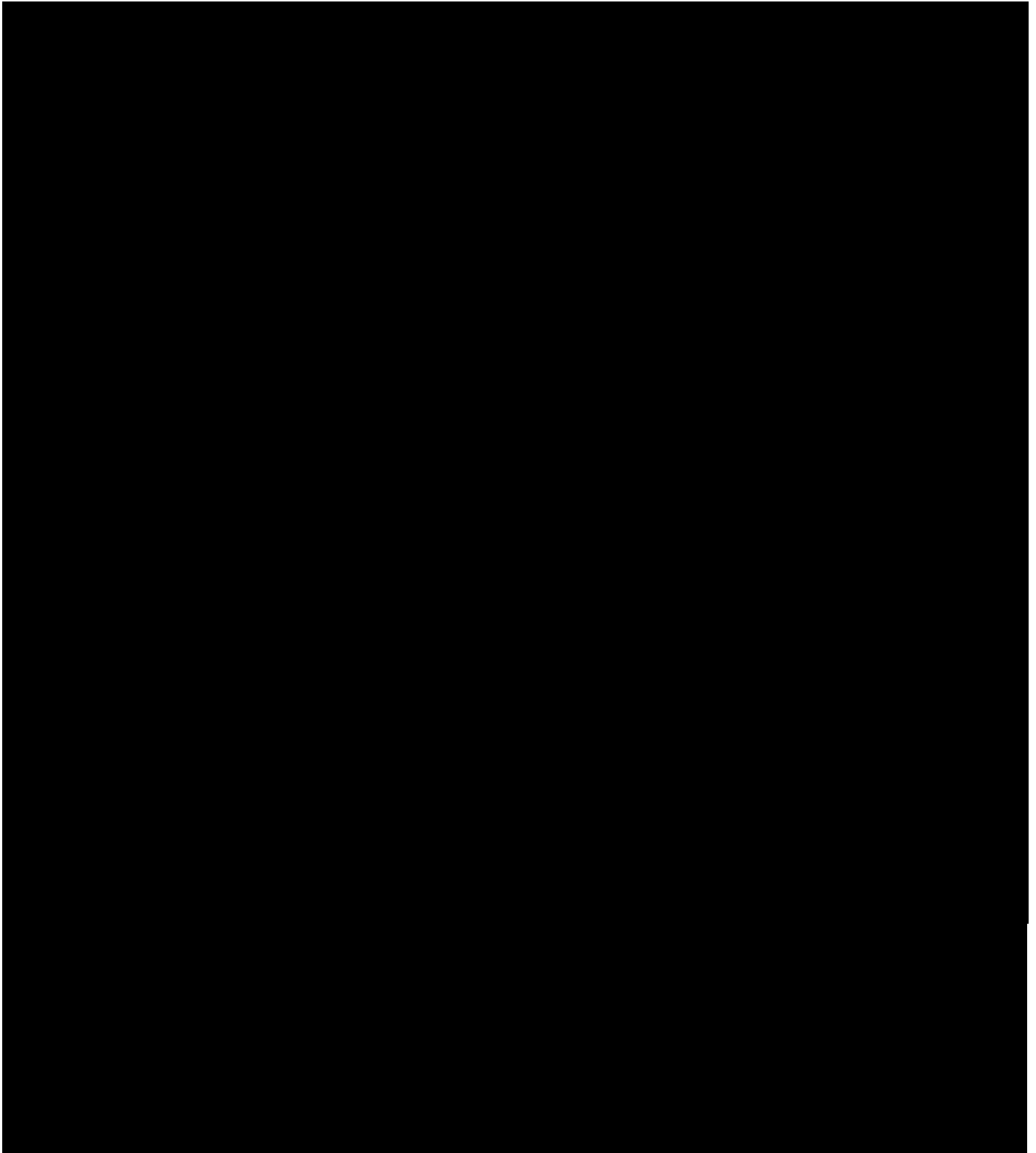
Describe how you will manage the contract transition from the existing provider, such as the transfer of existing cases from incumbent supplier, charging policy for any transferred cases, testing of systems, staff familiarisation and general system capabilities.

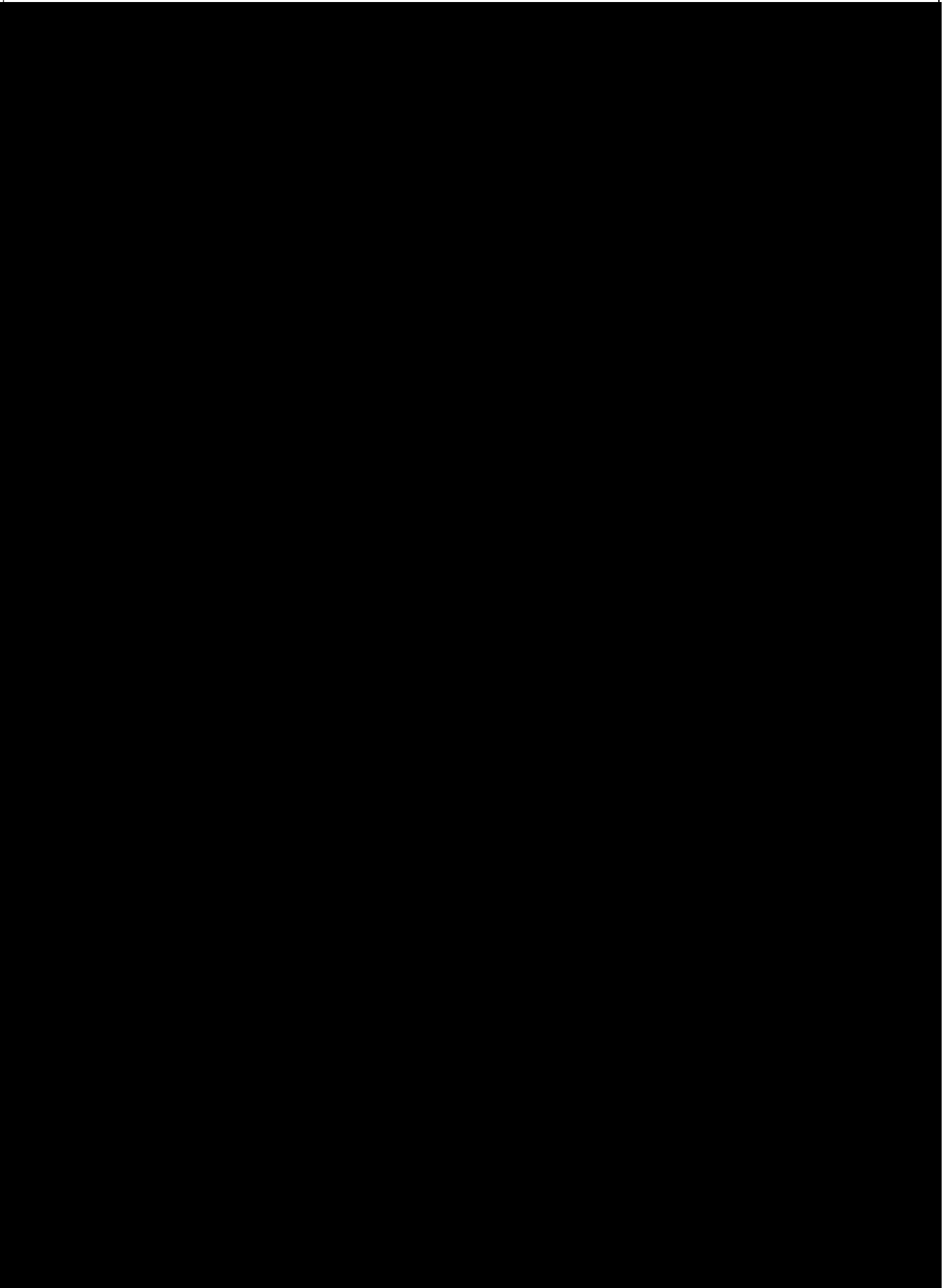
Invitation to Tender (ITT) - Supplier Response Document

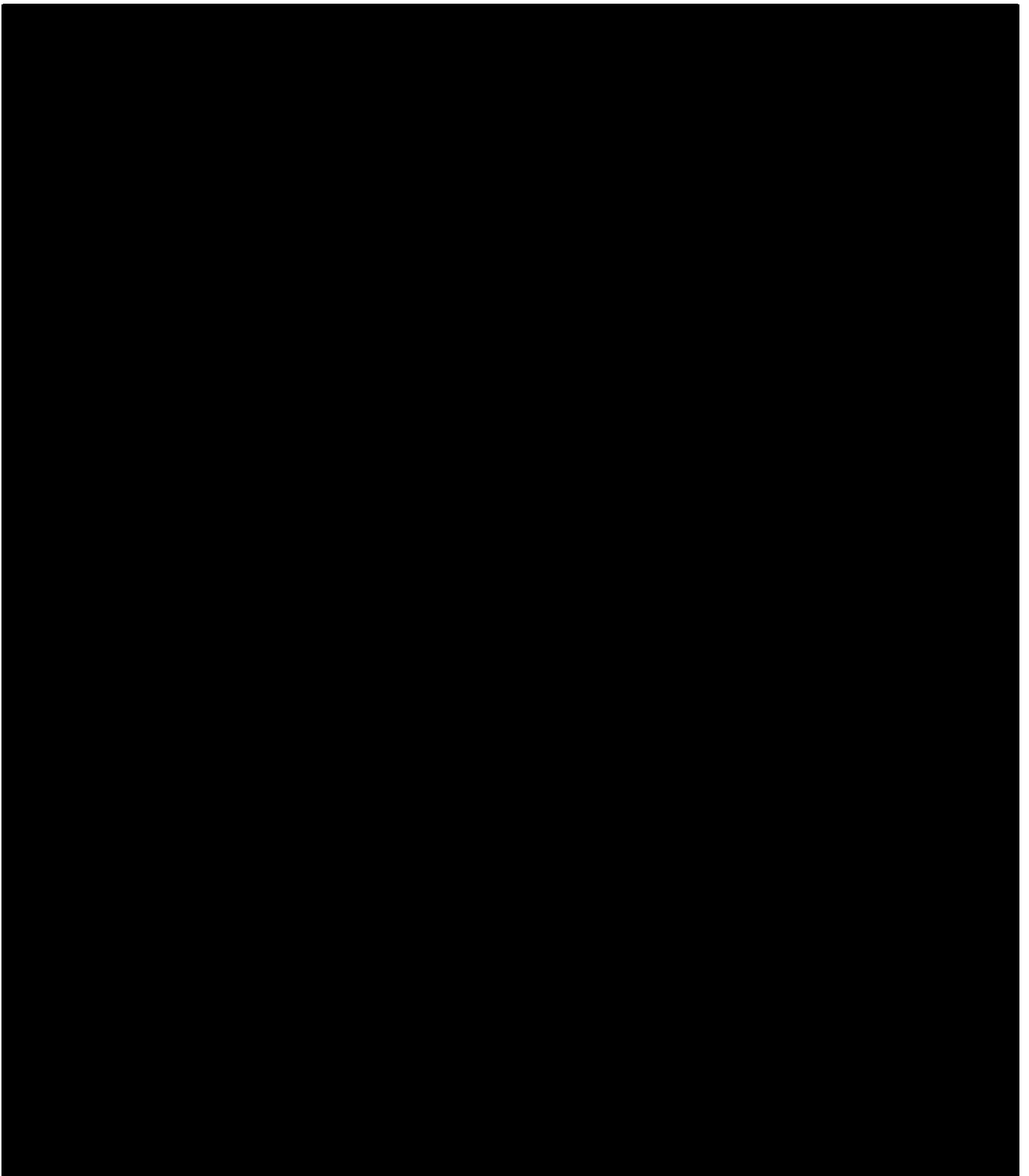
Provide details of IT systems you have in place or propose to introduce to support this service both for the Council and debtors

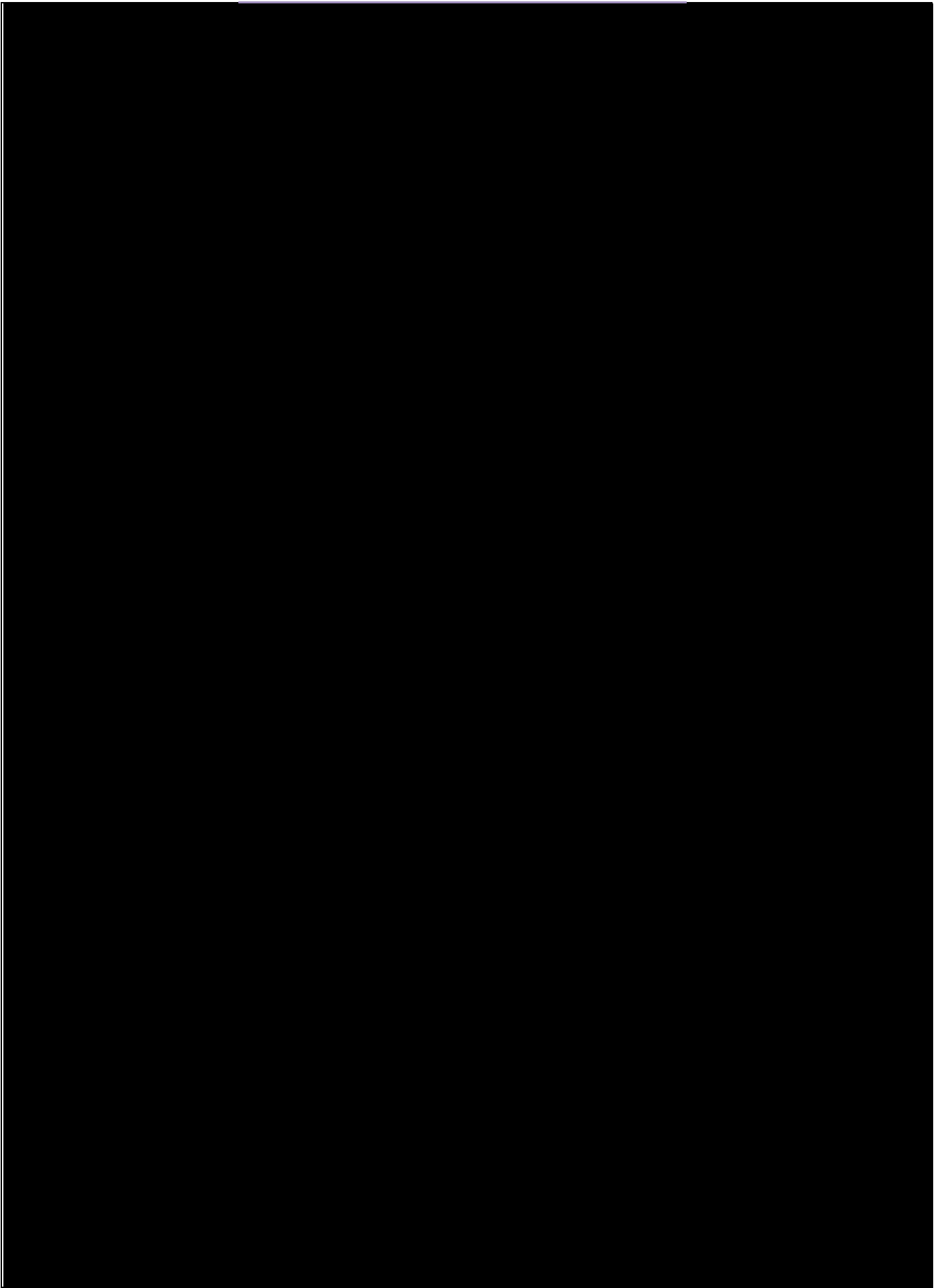
Response should also address how you will ensure that your IT system is able to provide the relevant information and assistances required to both

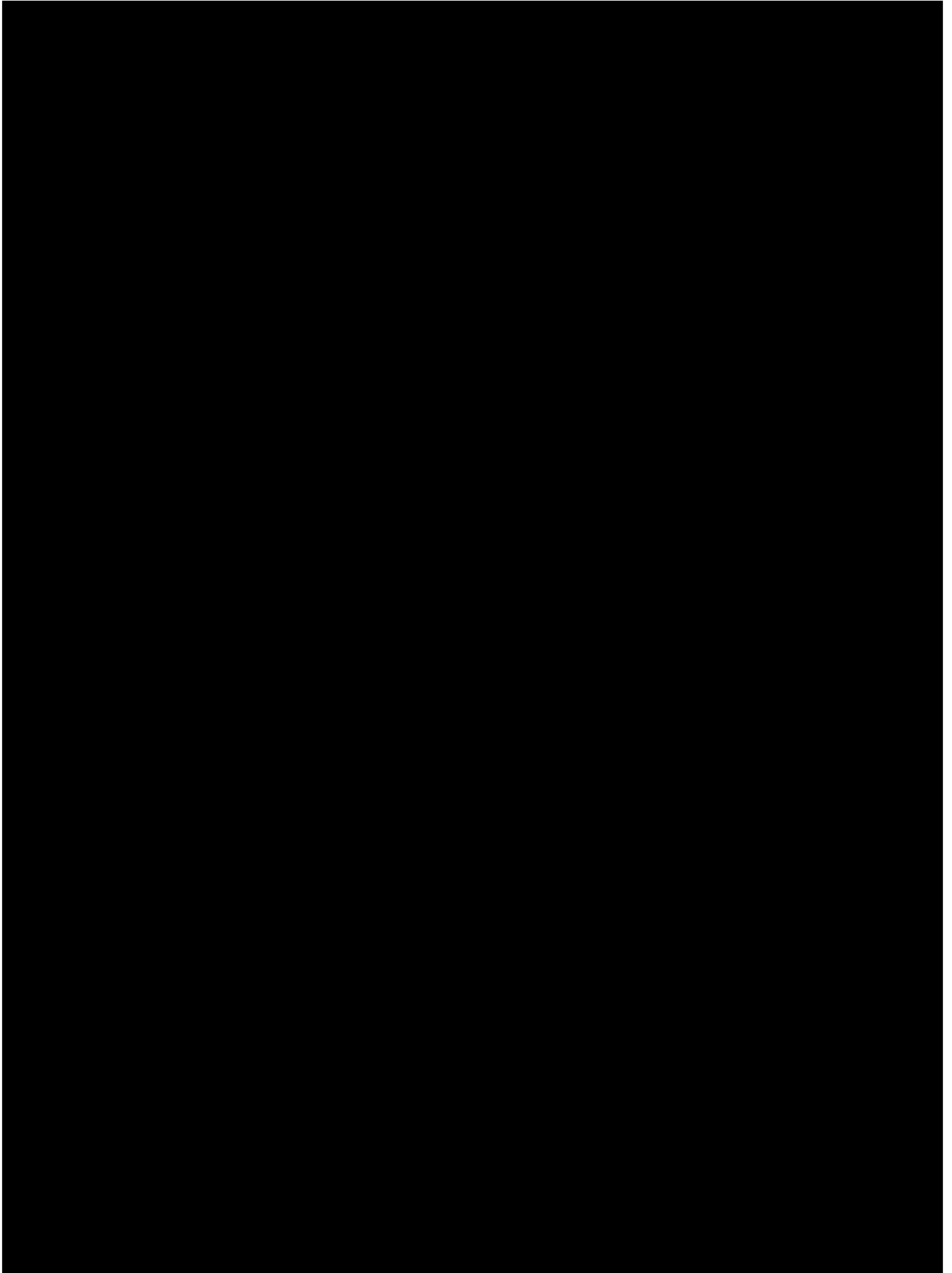
(max word count, 1250)

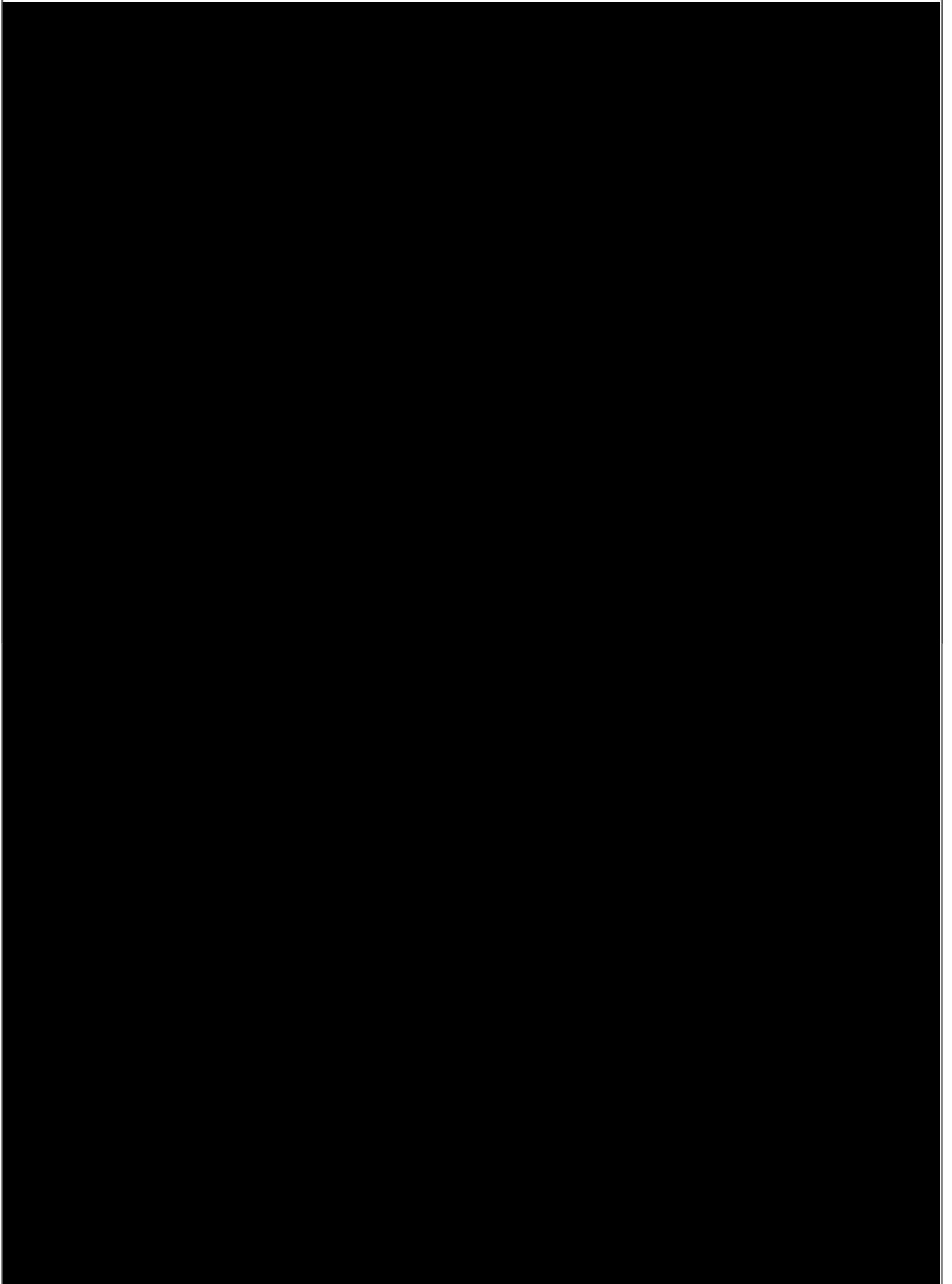


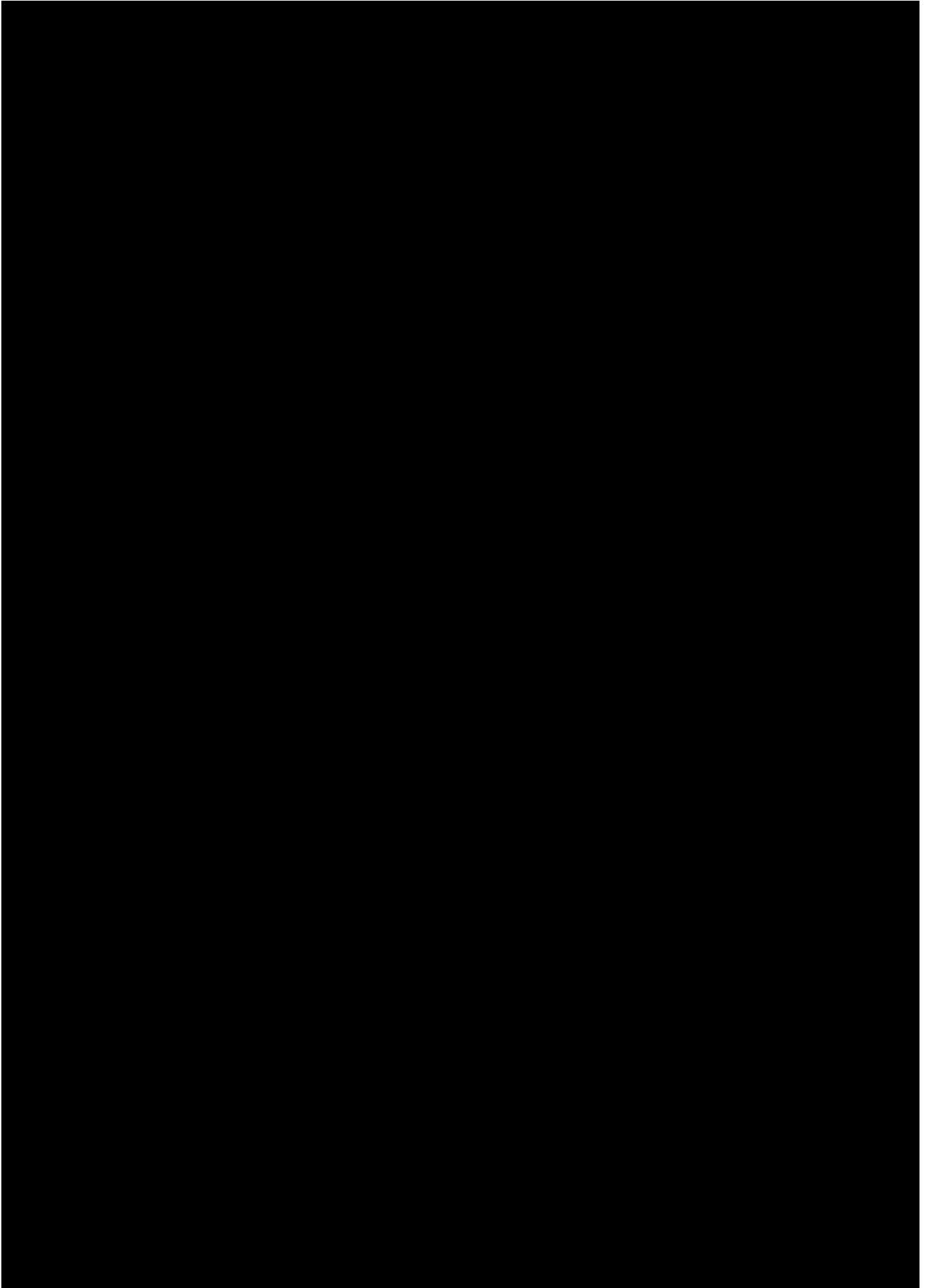


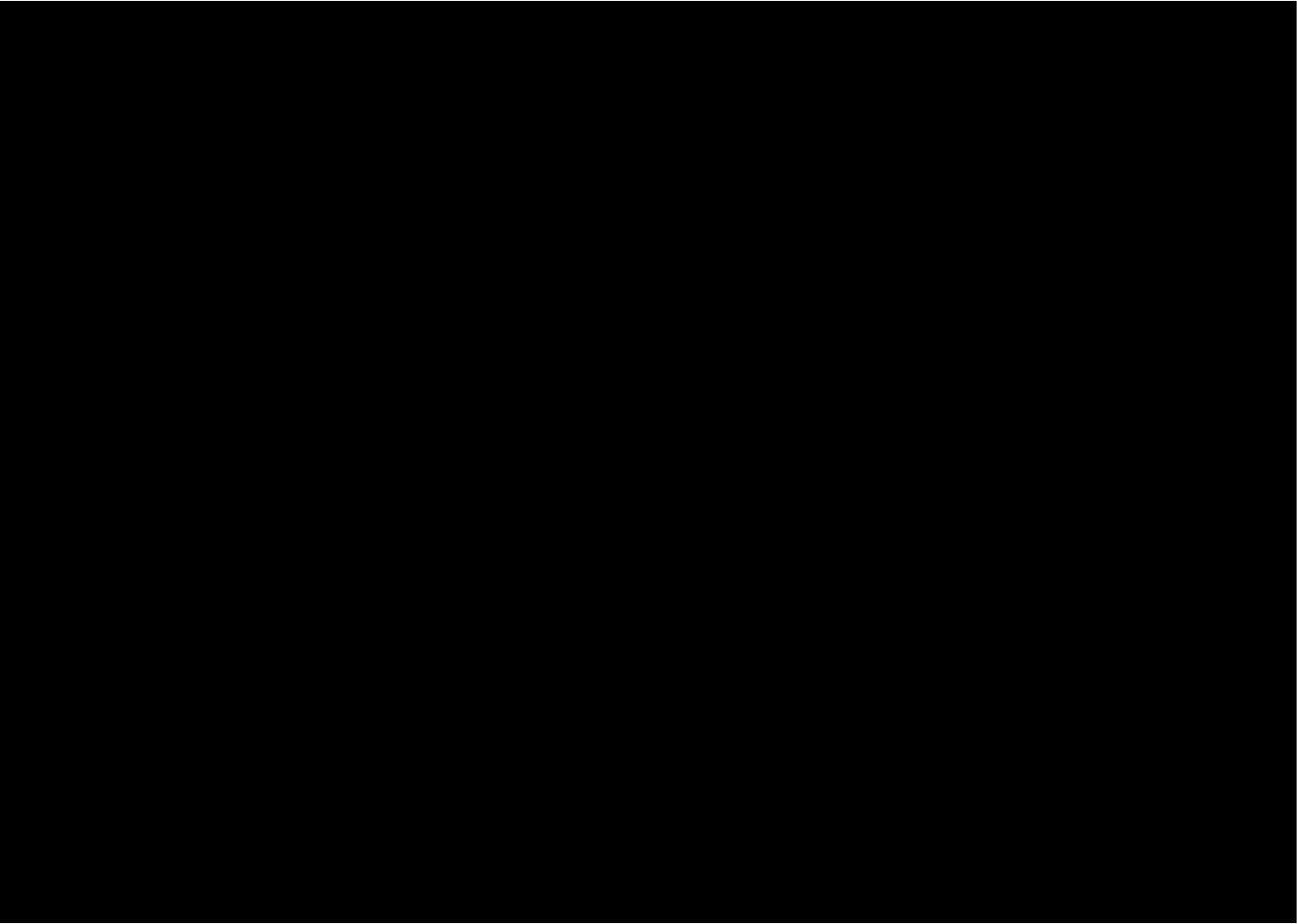










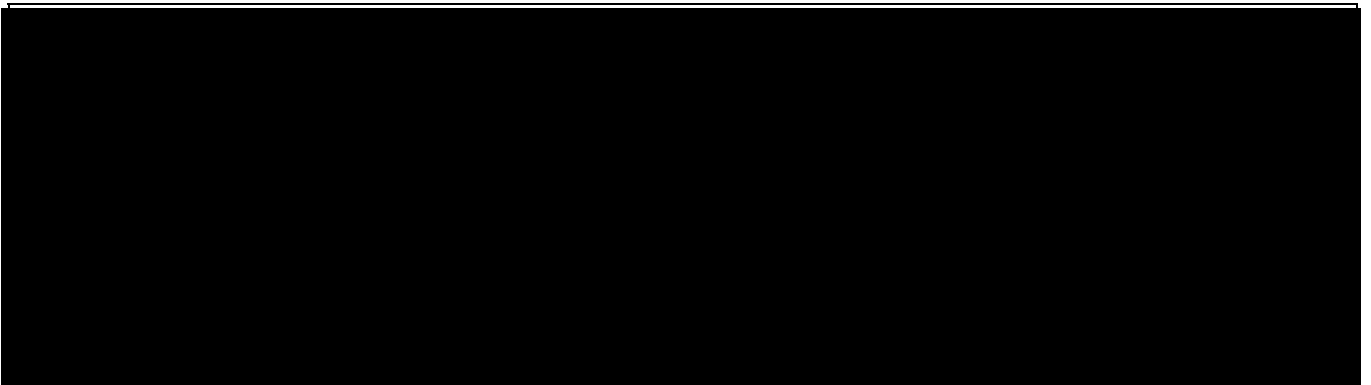


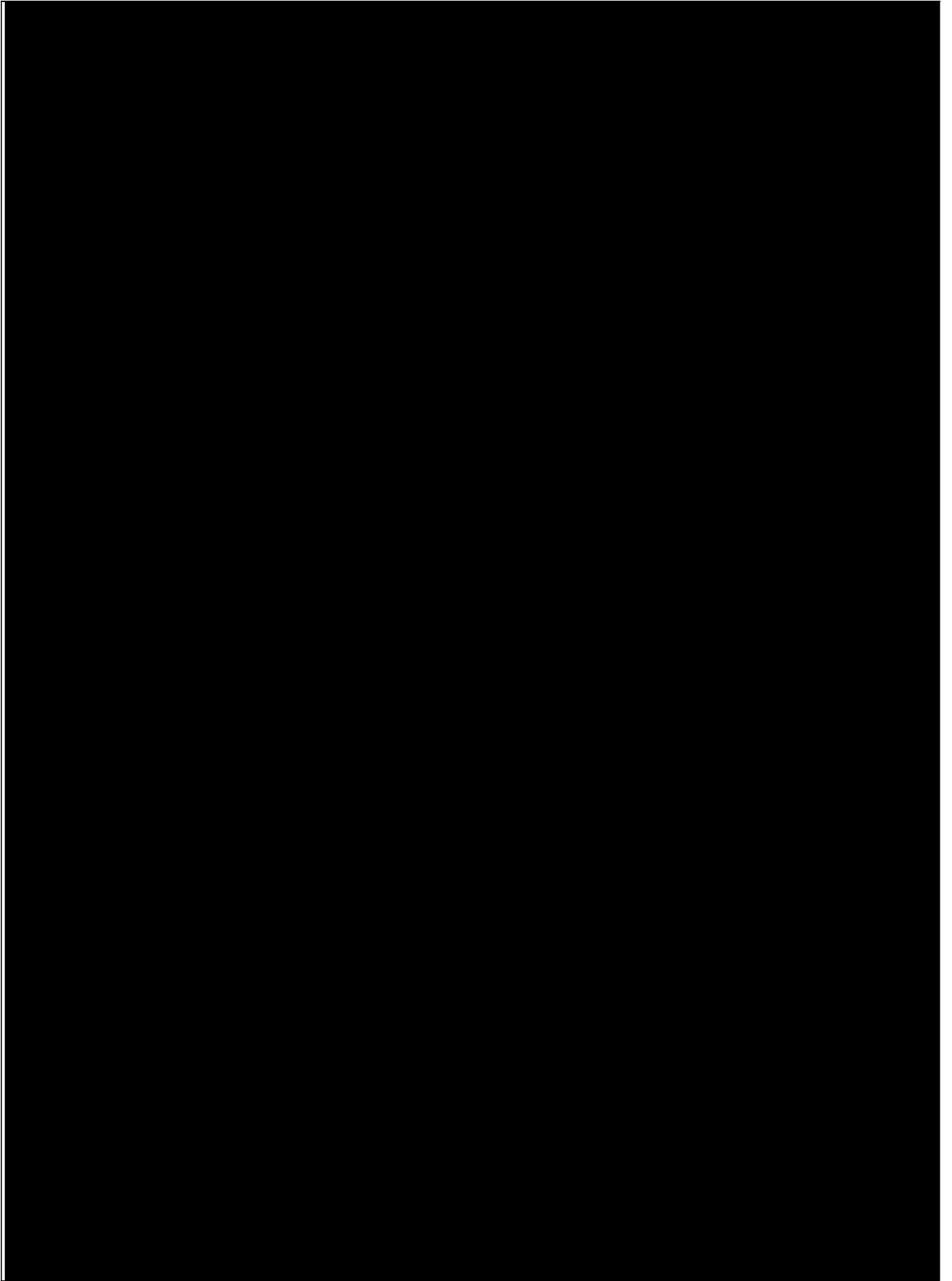
Q5. QUALITY ASSURANCE/ACCREDITATION (10%)

Give details of how you will ensure a quality service both to Folkestone & Hythe District Council and its debtors. Information should include

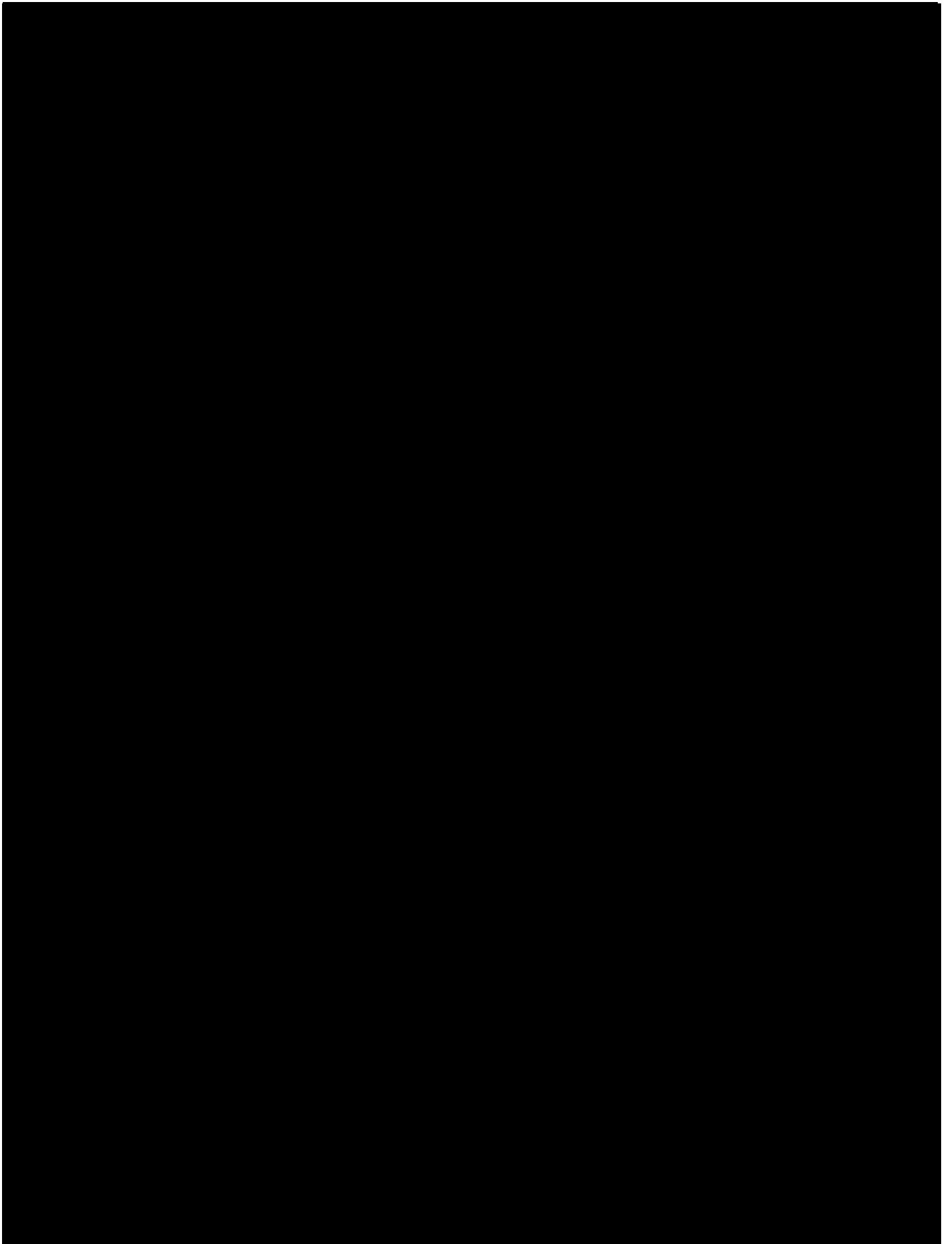
- > complaint management processes & procedures and how you'll align these to the Councils own policies
- > evidence of registration to relevant quality standards/association from an independent body attesting conformity to quality assurance standards.

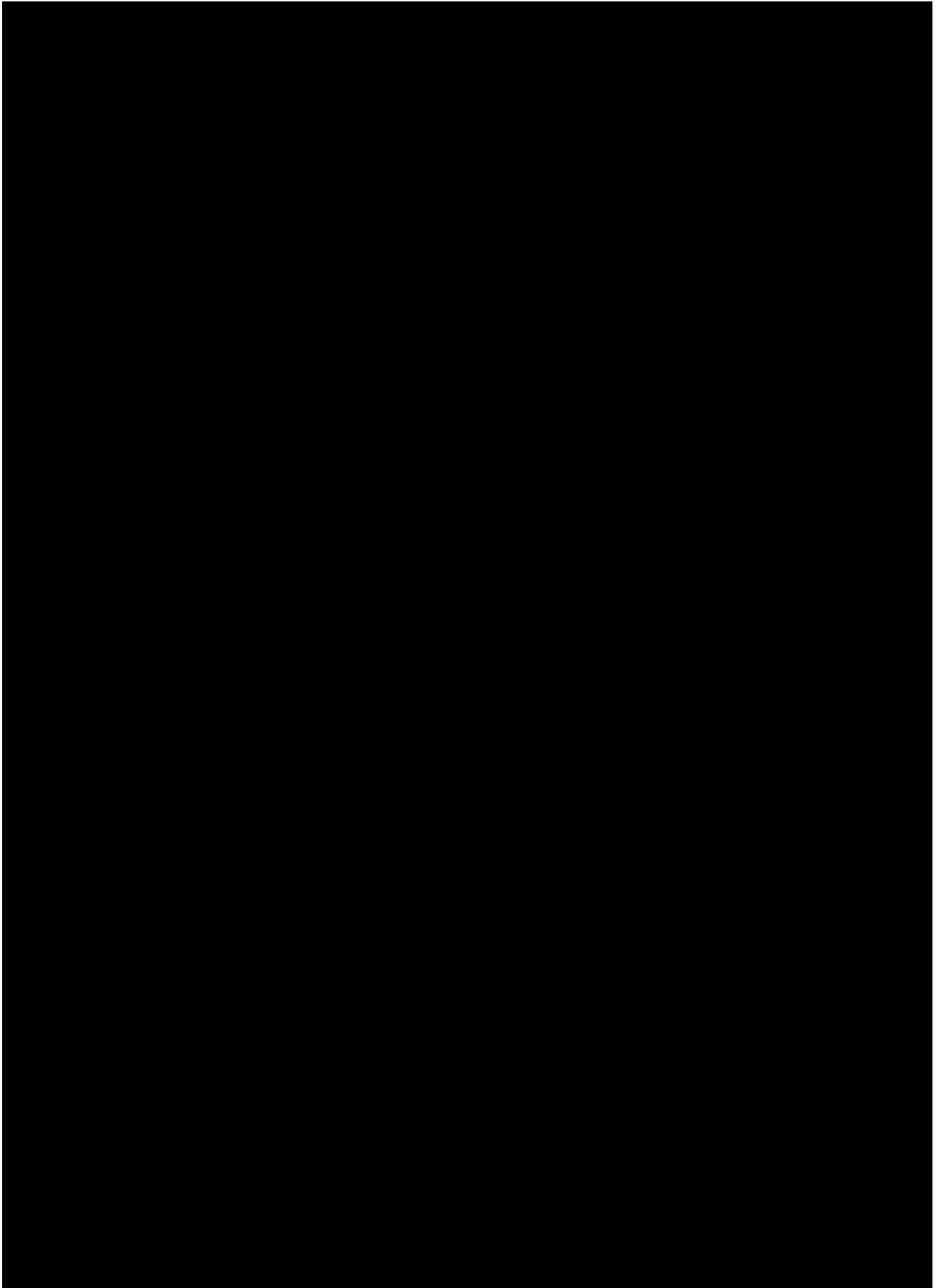
(max word count, 1000)

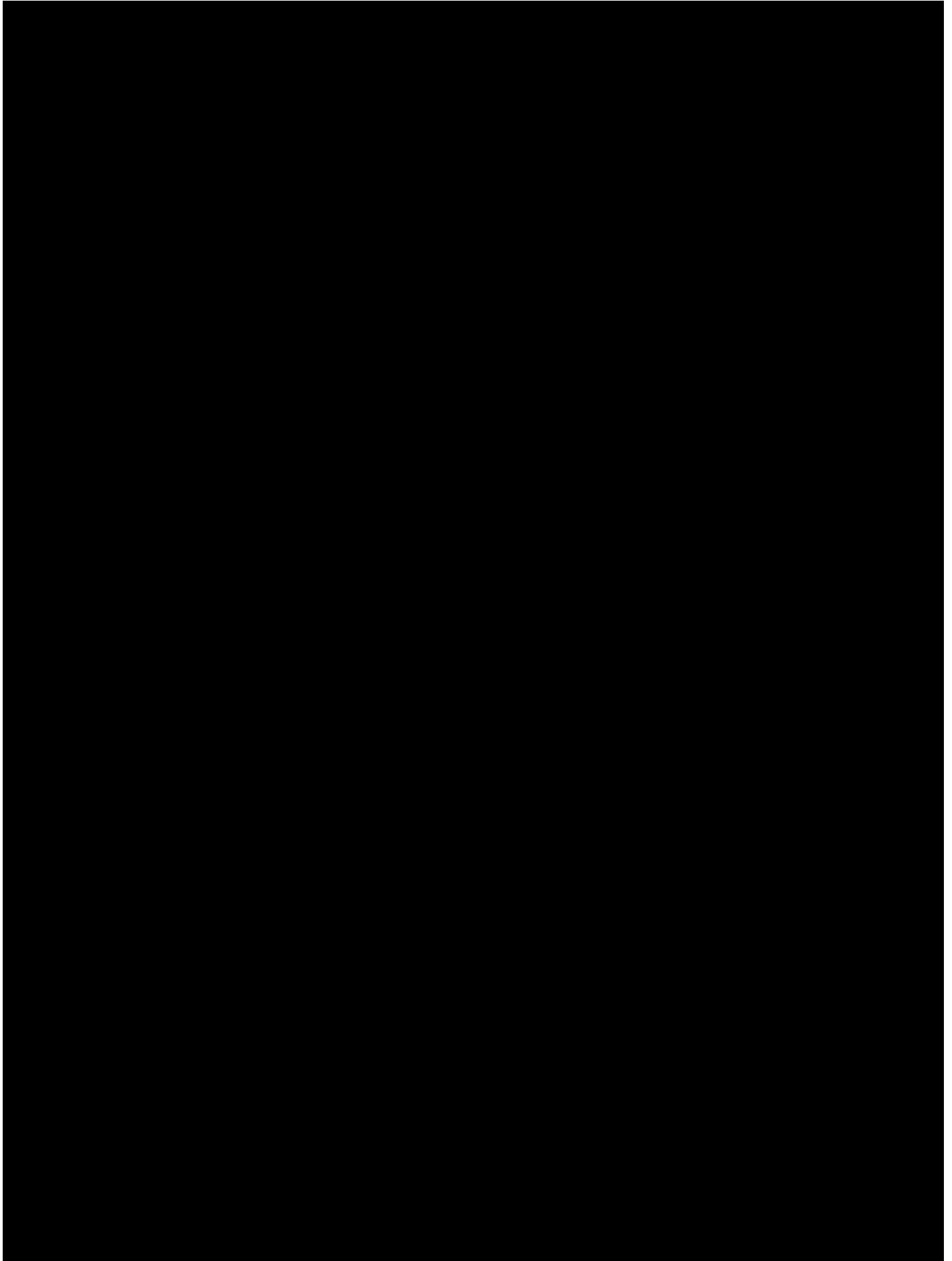


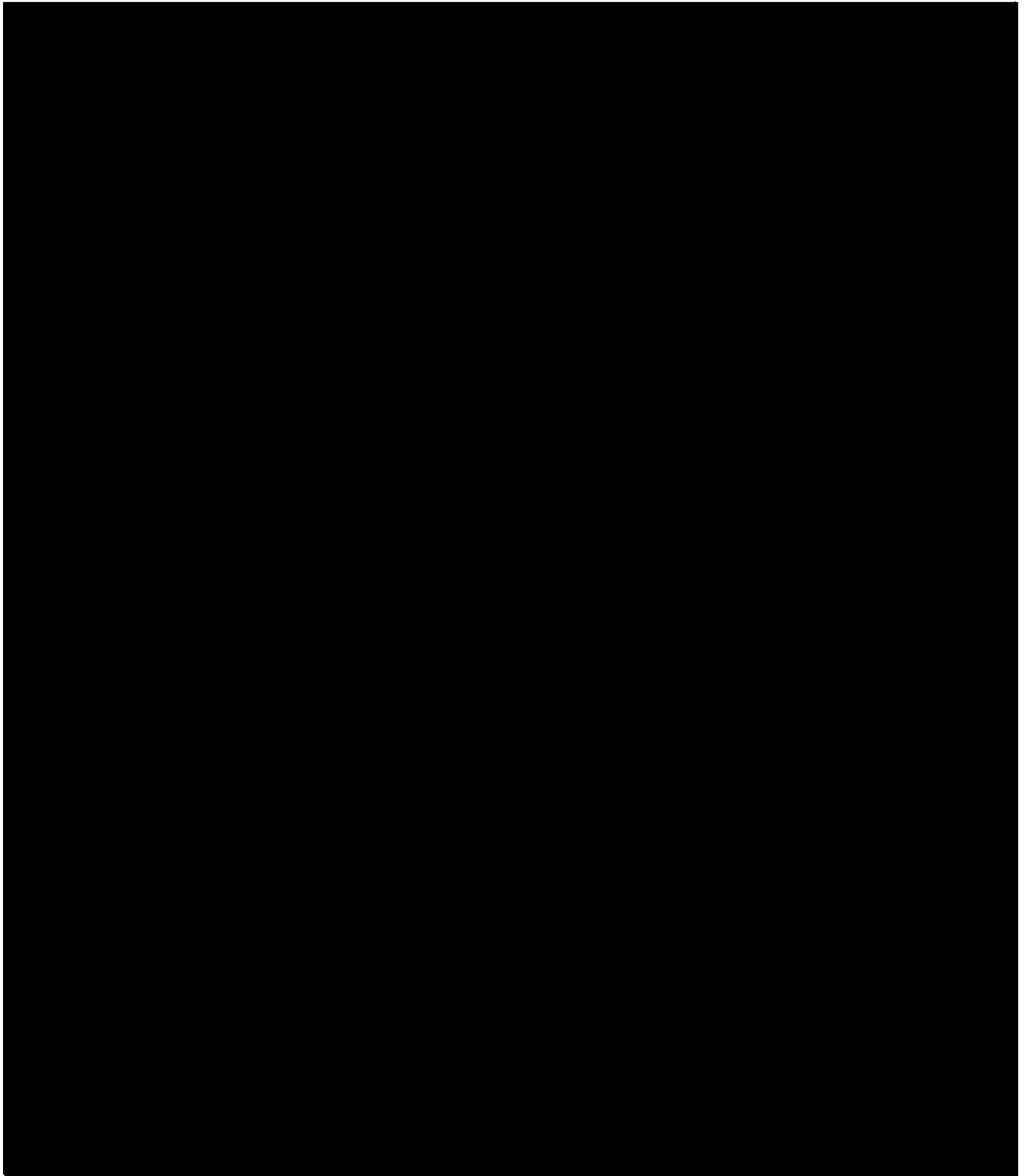


Invitation to Tender (ITT) - Supplier Response Document







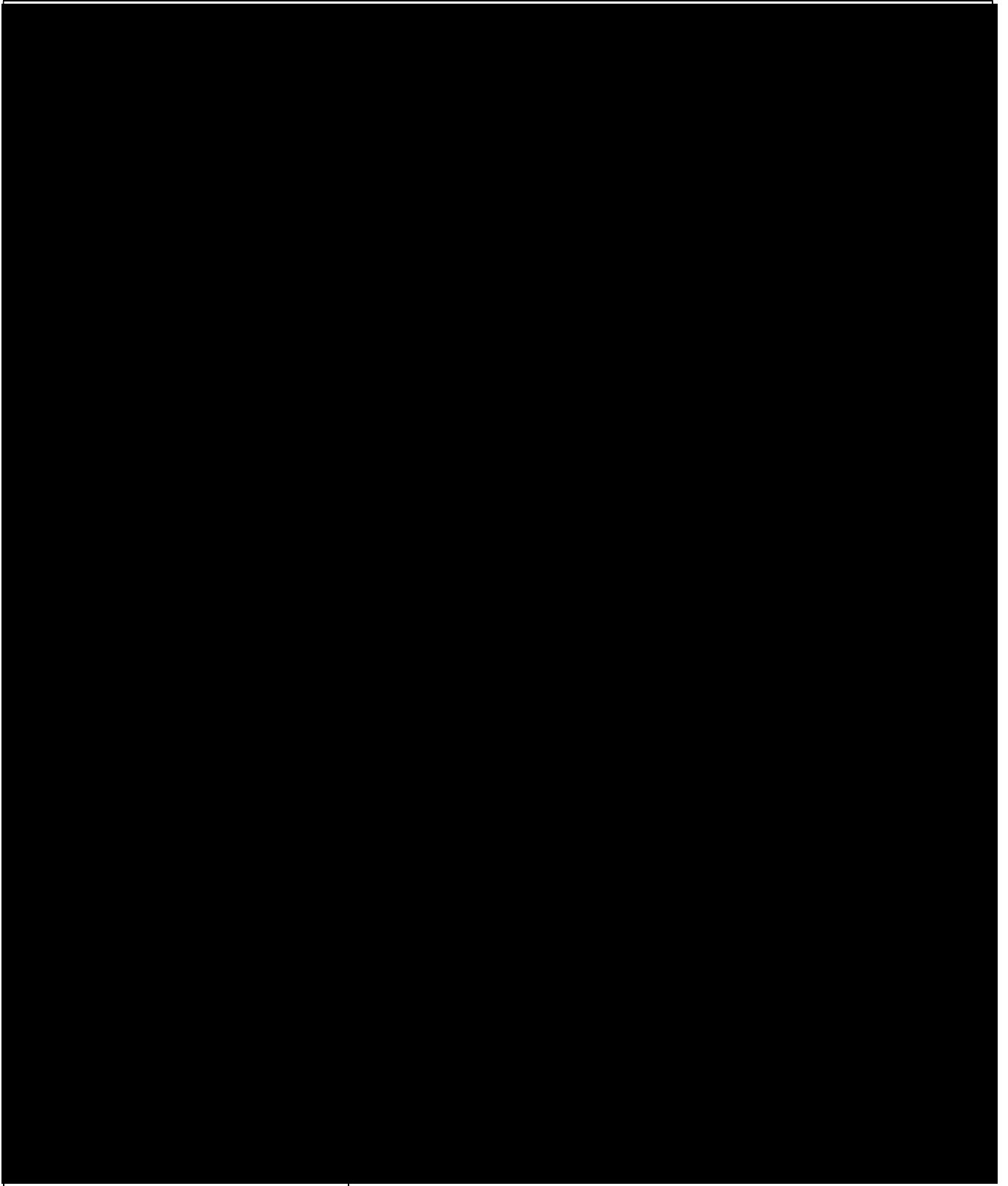


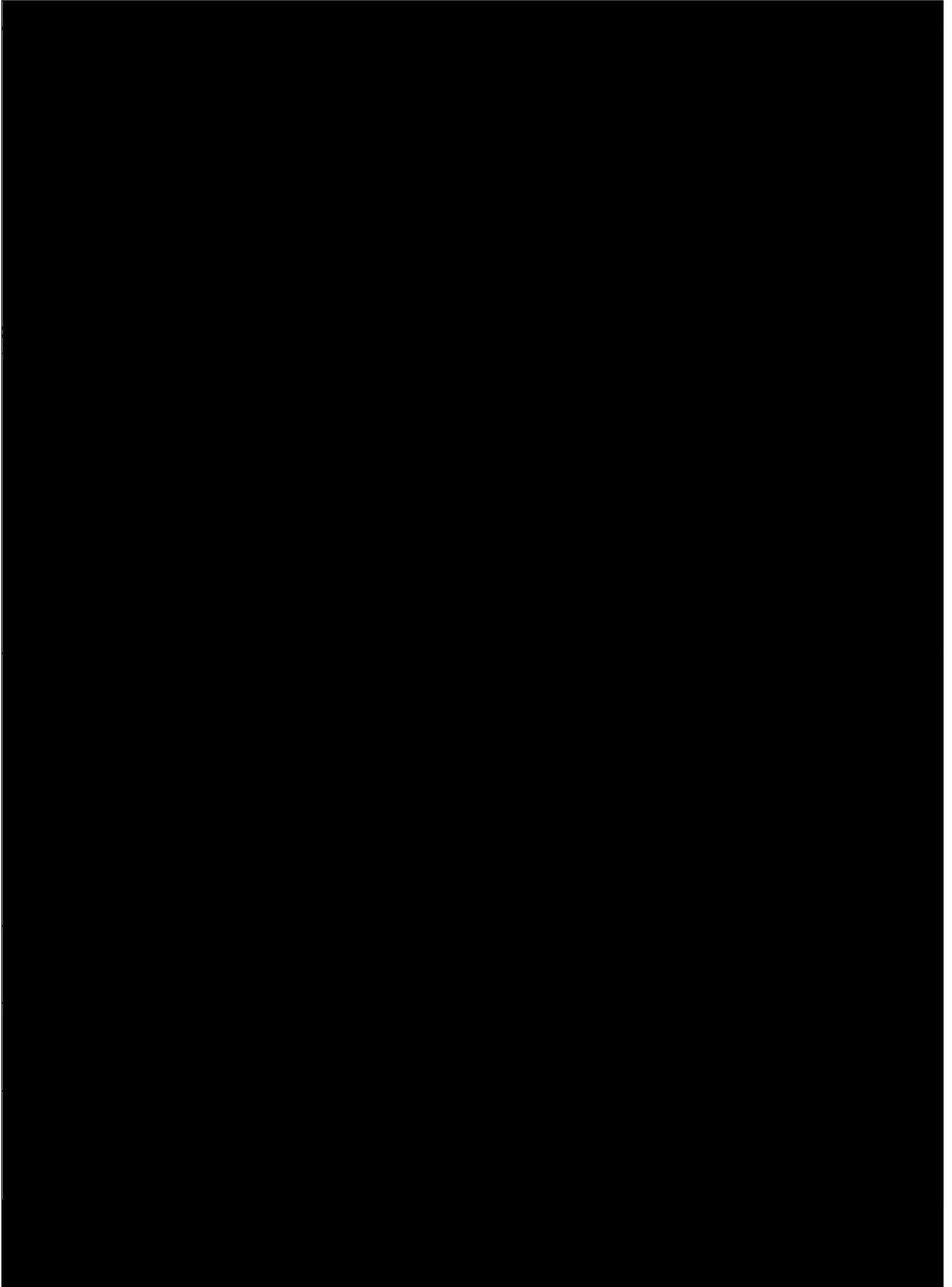
Q6. RISK AND CONTINGENCIES (10%)

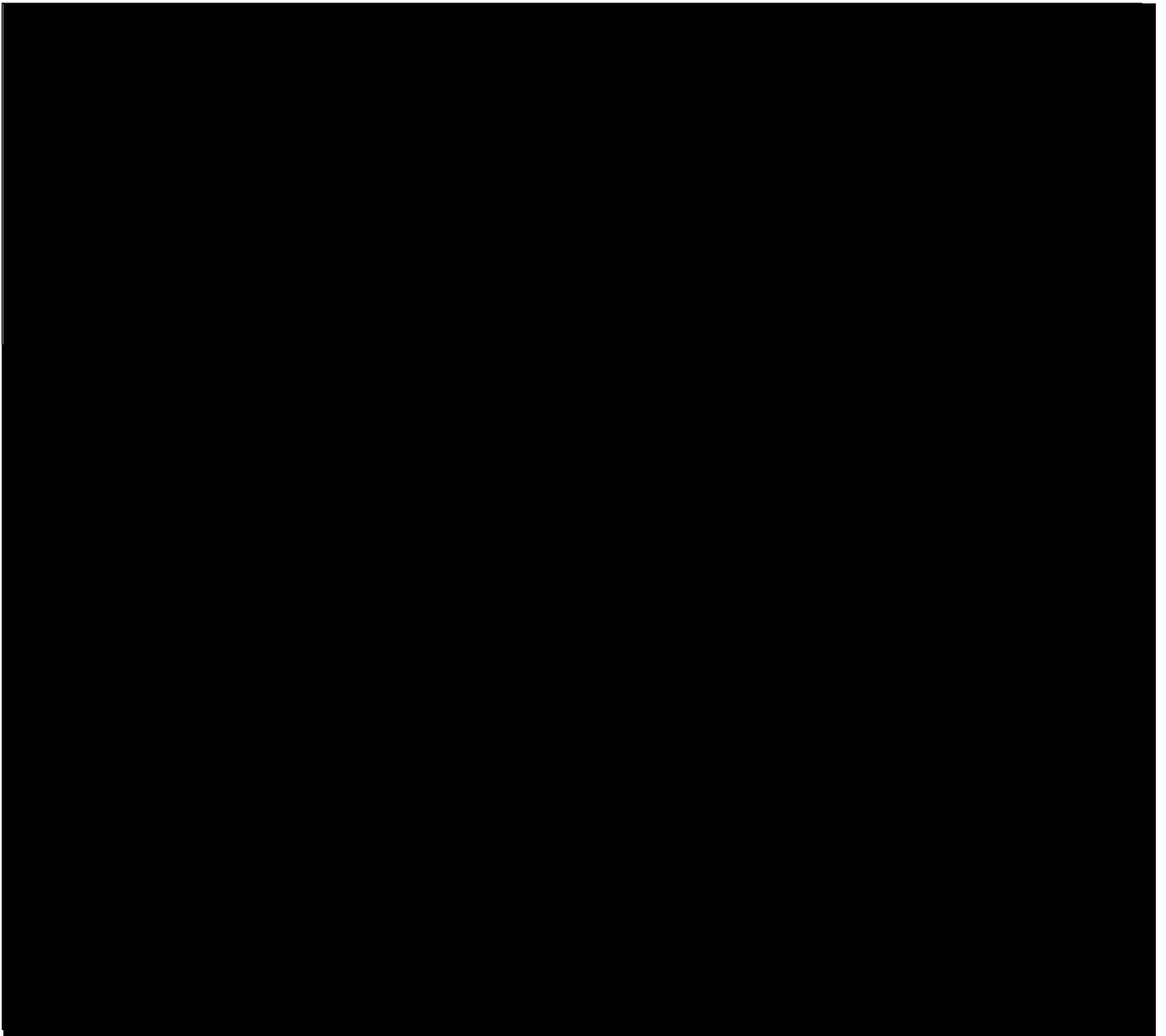
Set out your plans for dealing with risks and contingencies taking on board the Council's requirements as set out in the specifications. Response should include:

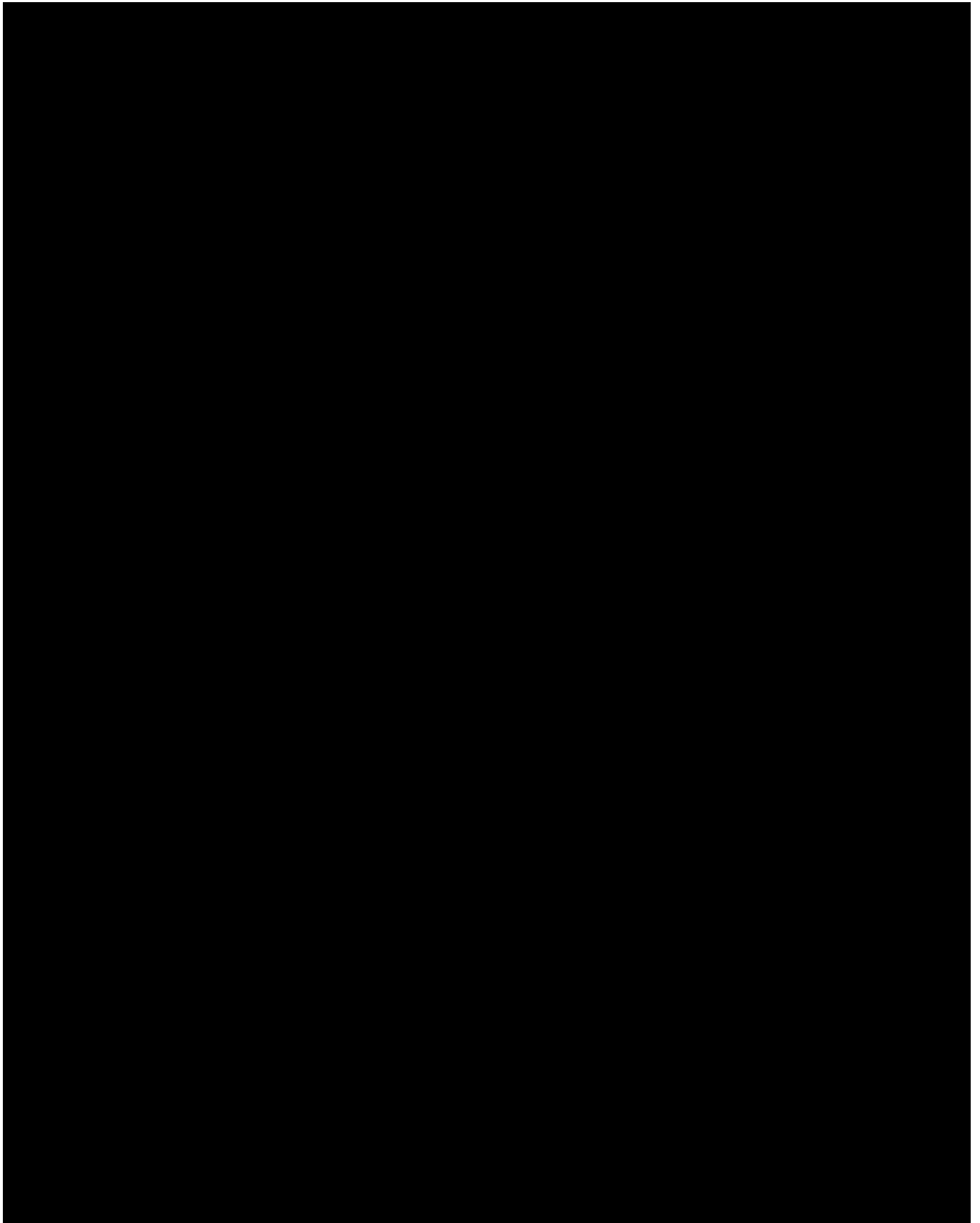
- > risks associated with the delivery of this contract project and how they can be mitigated
- > your business continuity plan in the event of any unforeseen events
- > how you have dealt with challenges posed by the pandemic

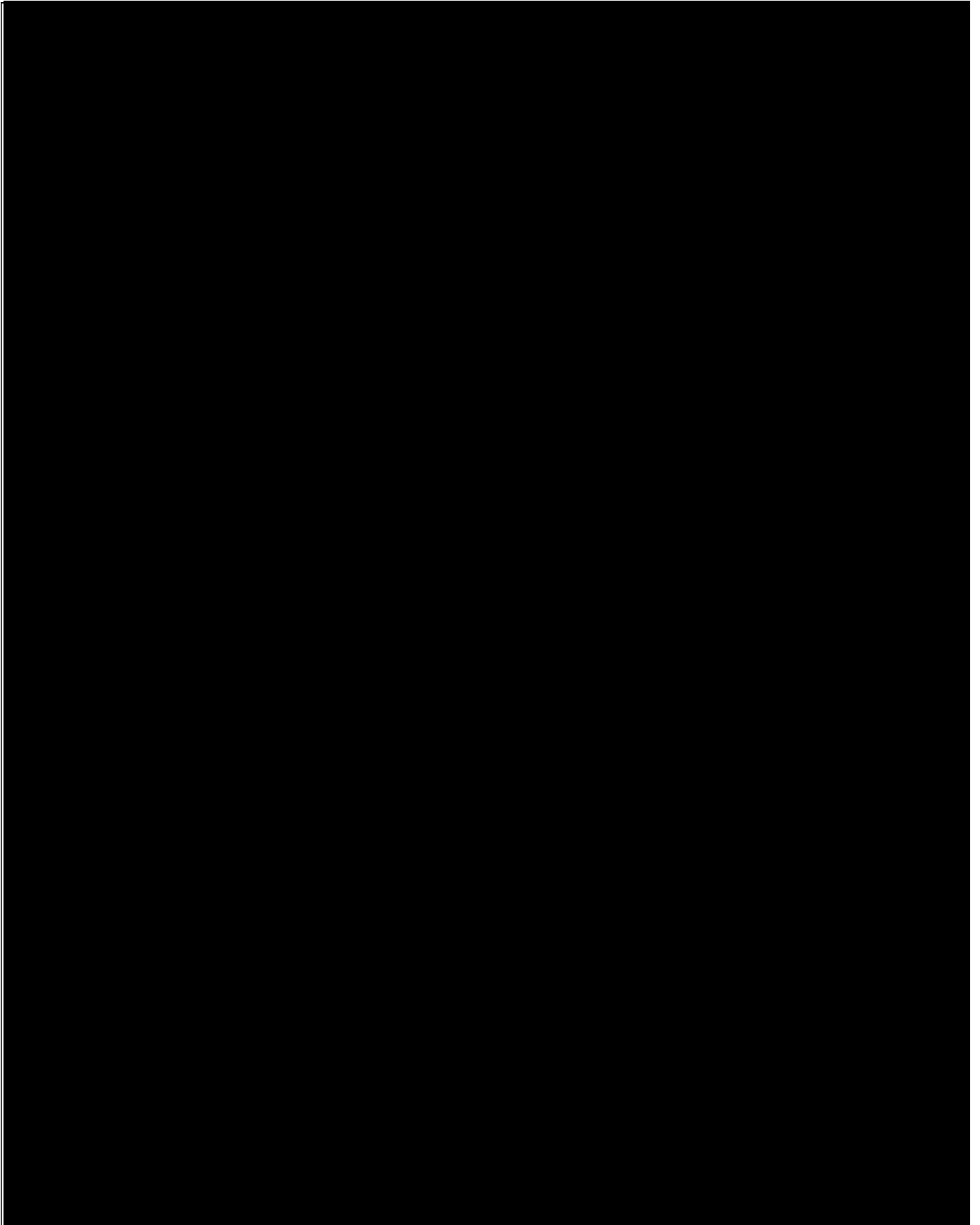
(max word count, 1000)

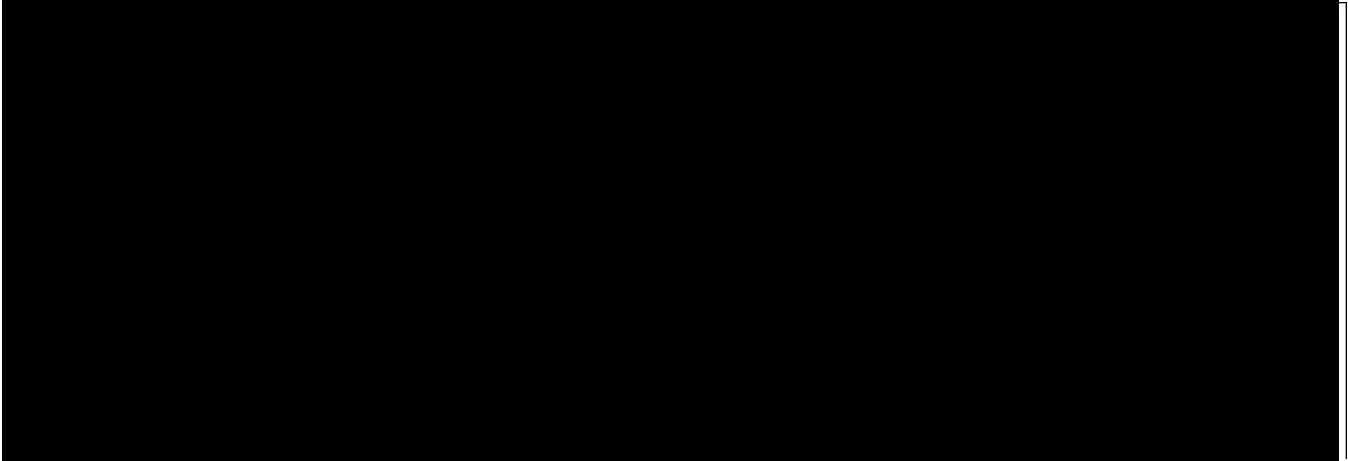












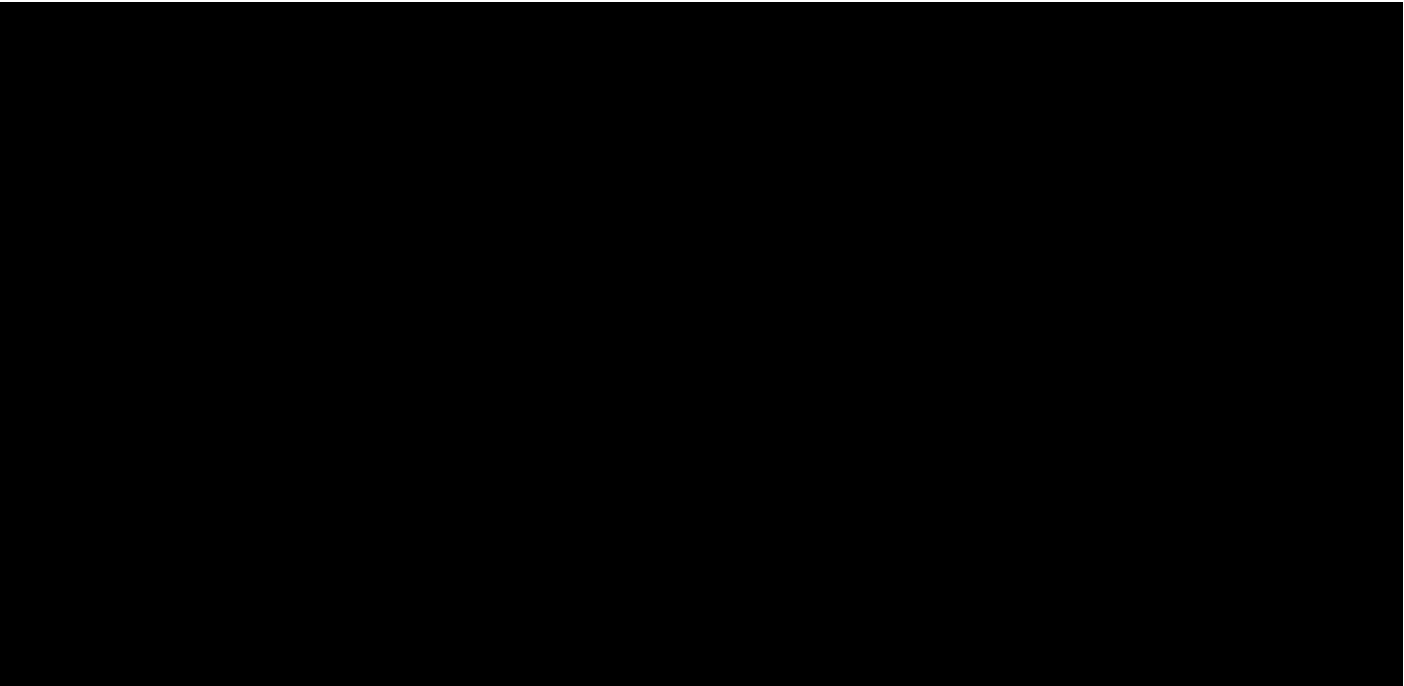
Q7. SUSTAINABILITY (5%)

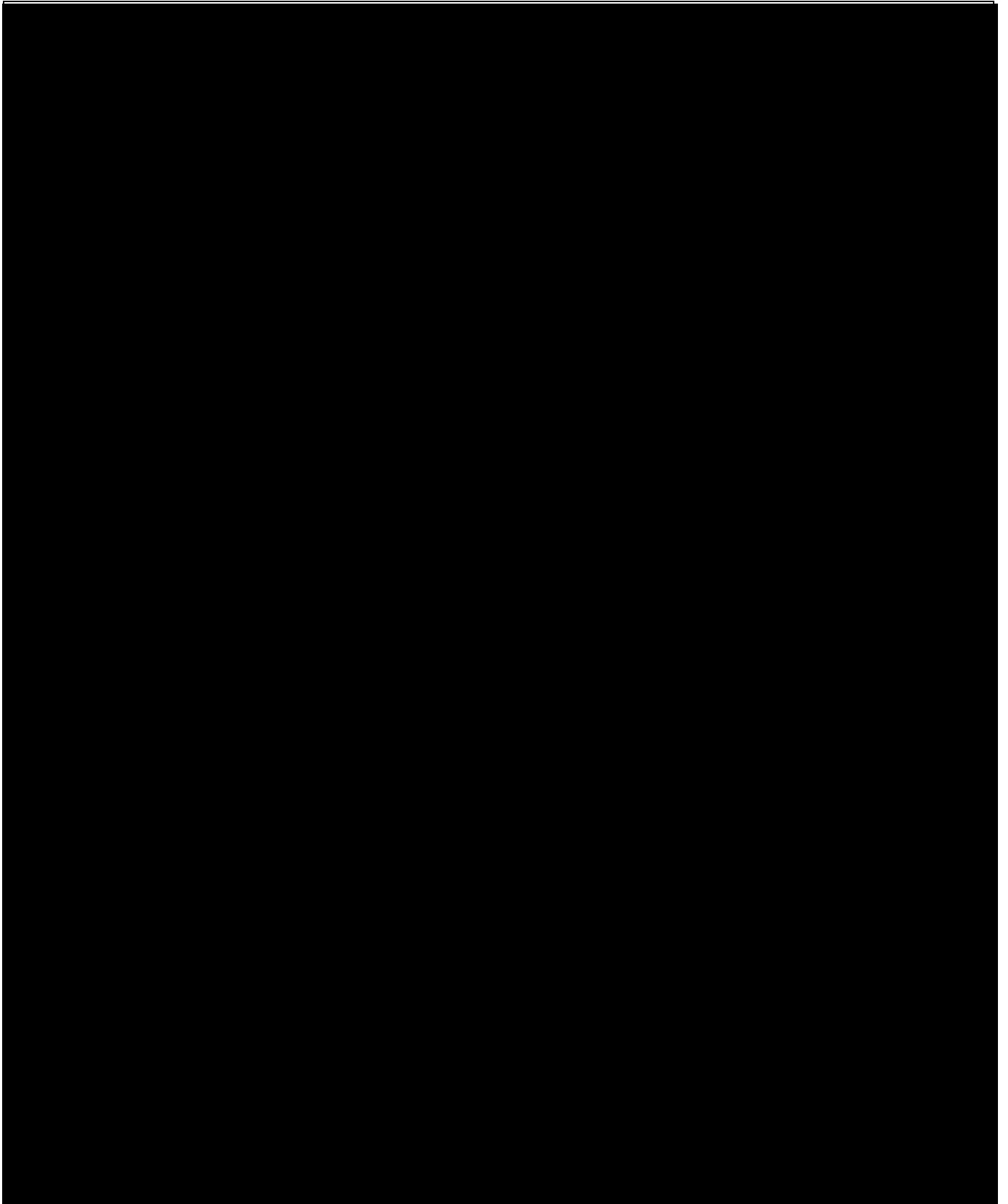
Give details of how you will ensure service provision maximises sustainability and is environmentally friendly. Responds should include:

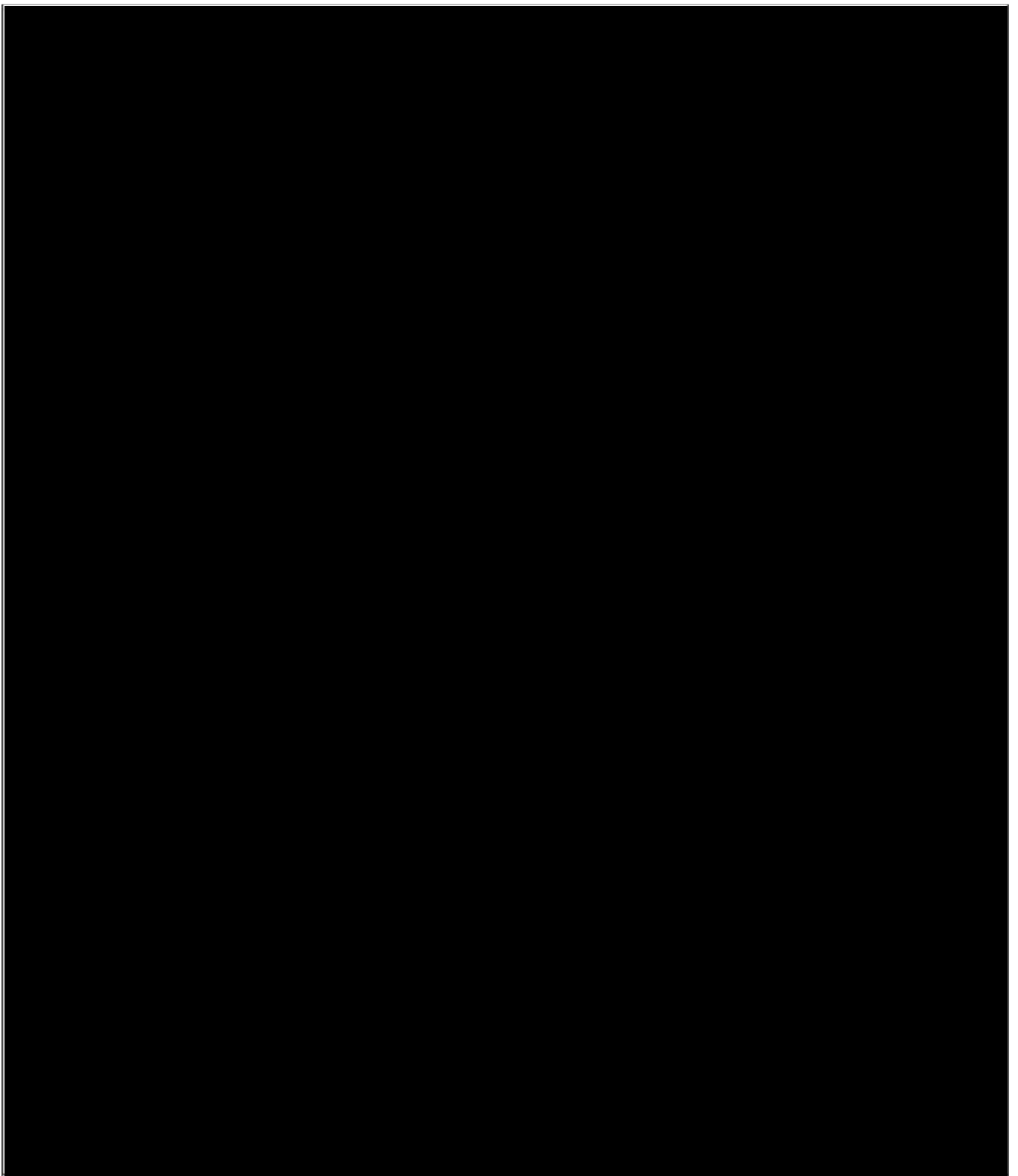
- > how you will mitigate or eliminate the carbon impact of activities carried out under this contract, either through actions your organisation is already taking or plans to implement during the initial period of the contract.
- > how you will monitor these commitments in a measurable way.

Please consider your forward plans incorporating the Councils own Corporate plan with regard to Sustainability

(max word count, 500)



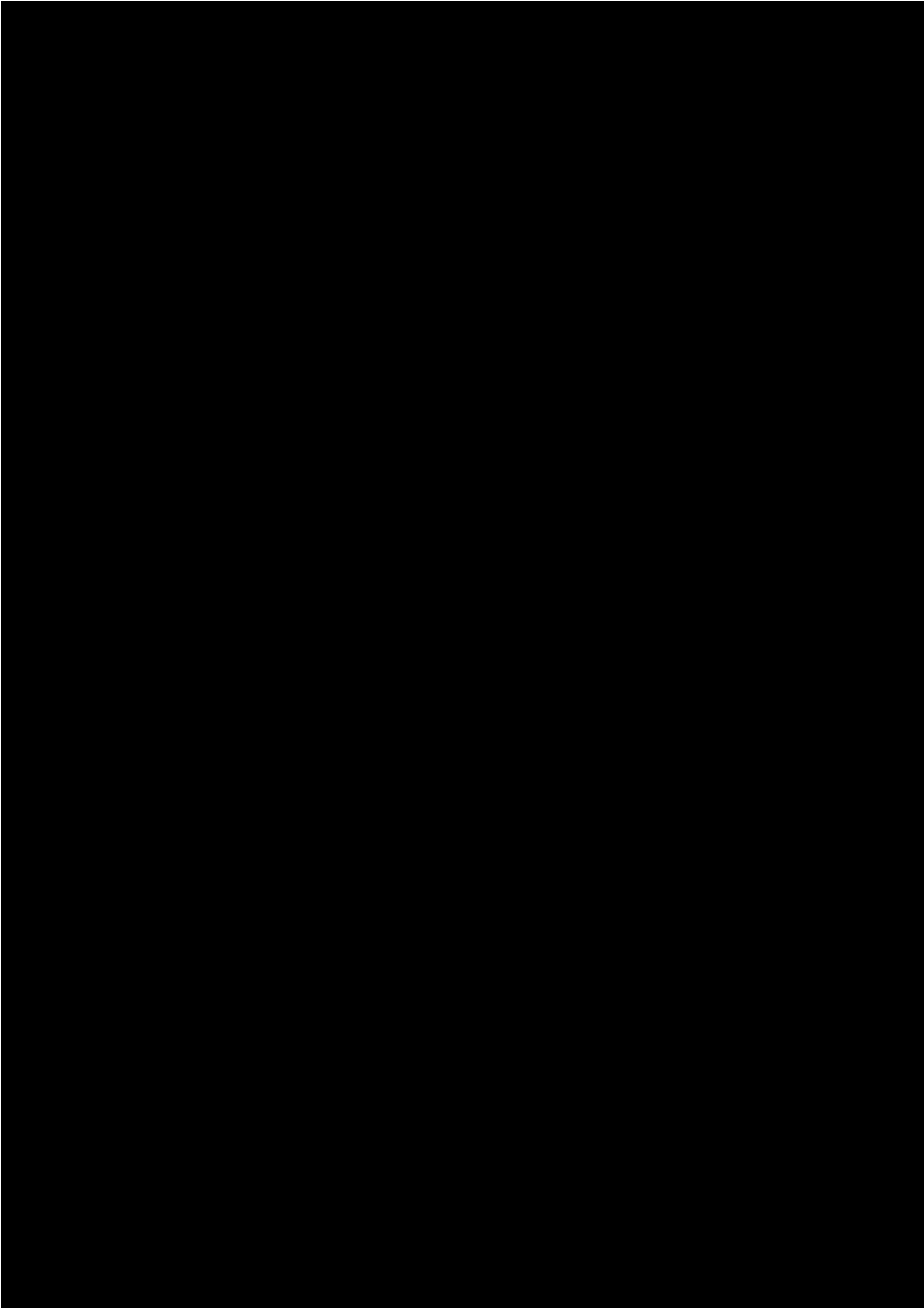


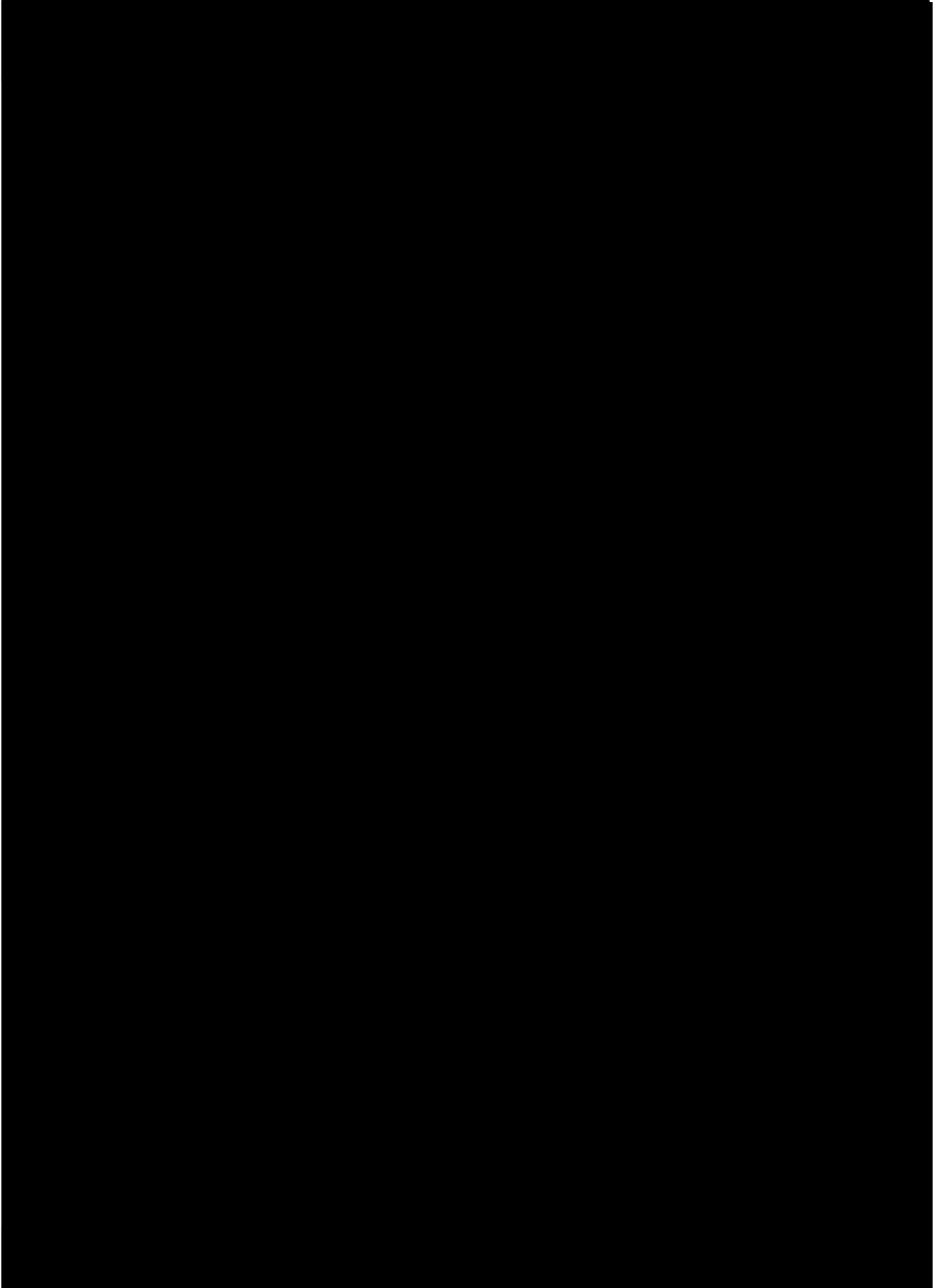


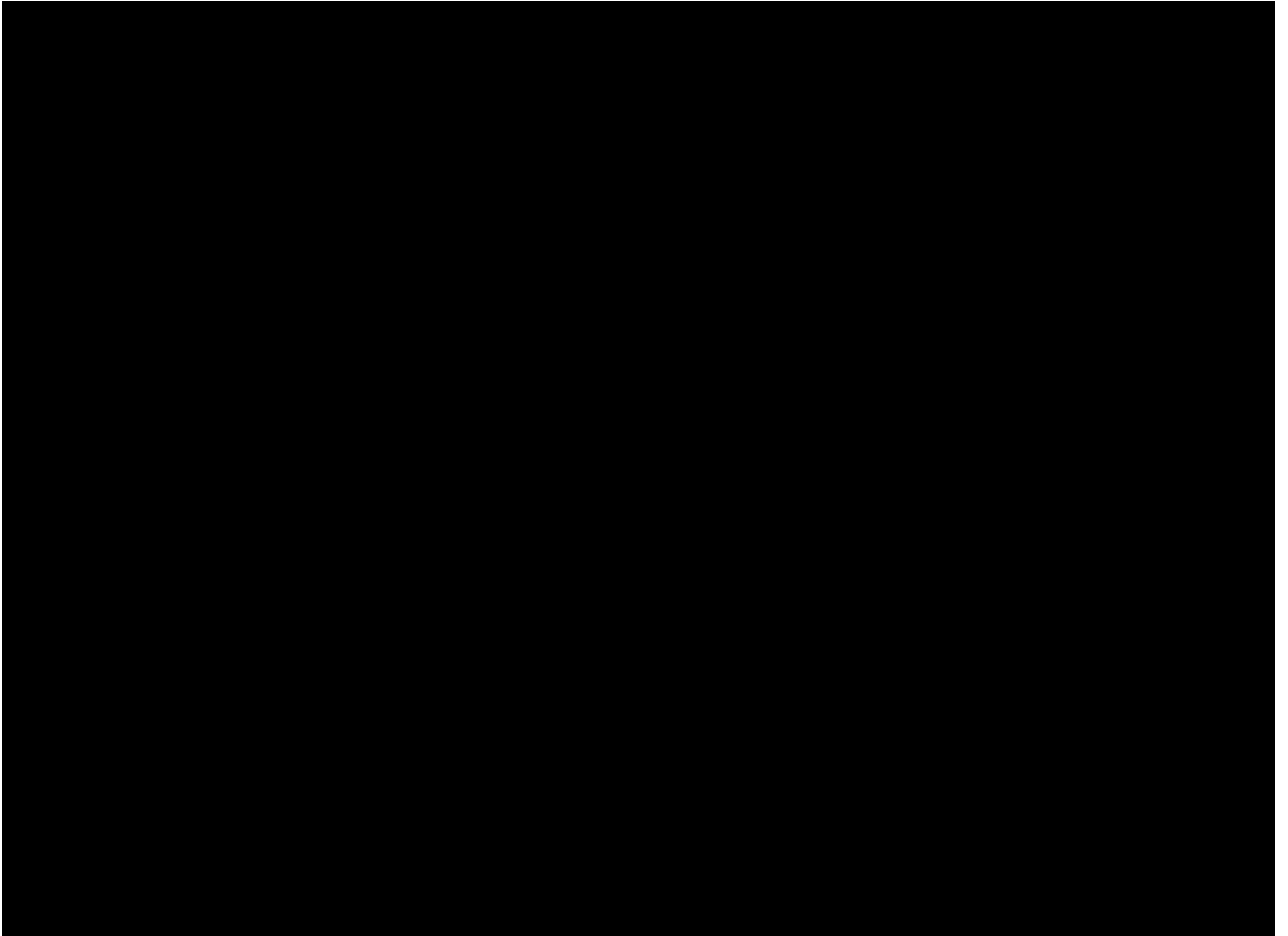
Q8. ADDED VALUE (5%)

Provide details of any practices that you consider to be innovative in the delivery of the service and/or any other items you would suggest over and above the services in the specifications

(max word count, 500)







SECTION 3 – LOTS & PREFERENCE

This information provided in this Section is for EVALUATION AND AWARD PURPOSES and must be completed in full.

As outlined within the ITT Instructions Document, suppliers can tender for one Lot or both Lots, however, no supplier shall be awarded more than one Lot. The Lot split is as detailed in Appendix A - Tender Specification (Part 1, Section 2).

In the event that a supplier tendered and achieved the highest score for both respective Lots, the supplier shall be awarded only one by virtue of preference I (i.e. their submission for the second lot shall be disregarded) – with the alternative being awarded to the next ranked supplier within that Lot.

For the purpose of this exercise, please indicate which Lot you are tendering for and select **ONE (1)** Lot below, which shall be deemed to be your Lot preference should your tender be successful for both Lots.

Tendering for Lot 1	<input type="checkbox"/>
Tendering for Lot 2	<input type="checkbox"/>
Lot Preference	Lot 1 <input checked="" type="checkbox"/>

SECTION 3 – PRICING SCHEDULE

Please insert your charges in the table provided below.

The table is for information purposes only and charges provided would NOT be evaluated.

ITEMS	LOT 1 CHARGE (£)	LOT 2 CHARGE (£)
With Bail Warrant		
Without Bail Warrant		
Committal Warrant		

SECTION 4 – TERMS & CONDITIONS OF CONTRACT

This Section is **PASS/FAIL**. If you answer 'no' F&HDC is entitled to reject your tender but can choose to allow you to proceed further, after considering your circumstances.

If you answer 'no', please set out the full details in an additional appendix. F&HDC will consider your response before making a decision about whether or not to include your tender in its evaluations or to reject it.

<p>Please ensure you have read Appendix H and Section 5 of the Instructions document.</p> <p>Do you accept F&HDC's terms (or the terms as amended by F&HDC in any pre-tender clarifications)?</p>	<p>Yes</p>
---	------------

Invitation to Tender (ITT) - Supplier Response Document

SECTION 5 – DECLARATIONS

TO: The District Council of Folkestone and Hythe (F&HDC)

PROVISION OF: PROVISION OF ENFORCEMENT AGENT SERVICES (*THE RECOVERY OF COUNCIL TAX, BUSINESS RATES, OVERPAID BENEFIT AND SUNDRY DEBTS*)

REFERENCE: DN585446

We Newlyn Plc the undersigned, having examined the Invitation to Tender (ITT) and all other relevant schedules (“the ITT Documents”), do hereby offer to provide the supplies, services and/or works to the Council as specified in the ITT Documents and in accordance with the attached additional documentation, commencing and continuing for the period specified in the ITT Documents (including any option to extend).

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between the Council and ourselves.

We agree that before executing the Contract (and associated schedules) substantially in the form set out in the ITT Documents, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents shall be required as a condition precedent to the entering into of the Contract.

We further agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in paragraph 3.1.3 of the **Invitation to Tender Instruction Document**.

We understand the Council is not bound to accept the lowest of any Tender received, nor assign a reason for the rejection of any Tender. We accept that any costs incurred in Tender preparation are for our own account.

We further undertake and it shall be a condition of any Contract, that:

The amount of our Tender has not been calculated by agreement or arrangement with any person other than the Council and that the amount of our Tender has not been communicated to any person until after the Tender Return Date and in any event not without the written consent of the Council.

We have not canvassed and will not before the evaluation process canvass or solicit any member or officer, employee or agent of the Council or other contracting authority in connection with the award of the Contract and undertake that no person employed by us has done or will do any such act.

I warrant that I have all requisite authority to sign this Tender and confirm that I have complied with all the requirements of the ITT.

Signature:		
Name & job title:		
Dated:	7 th January	
For and on behalf of:	Newlyn Plc	

Invitation to Tender (ITT)

Instructions Document



PROVISION OF ENFORCEMENT AGENT SERVICES

**FOR THE RECOVERY OF COUNCIL TAX, BUSINESS RATES, OVERPAID BENEFIT AND
SUNDRY DEBTS**

December 2021

CONTENTS

SECTION 1 – BACKGROUND AND TIMETABLE8

SECTION 2 – SUPPLIER RESPONSES.....9

SECTION 3 – GENERAL INSTRUCTIONS10

SECTION 4 – EVALUATION.....11

SECTION 5 – TERMS AND CONDITIONS OF CONTRACT13

ADDITIONAL DOCUMENTS
APPENDIX A - TENDER SPECIFICATION
APPENDIX B – CONTRACT AGREEMENT

SECTION 1 – BACKGROUND AND TIMETABLE

1.1 Introduction

- 1.1.1 Folkestone & Hythe District Council (F&HDC) wishes to select and appoint a suitable contractor for the **provision of Enforcement Agent Services (*For the Recovery of Council Tax, Business Rates and Overpaid Benefit*)** under a concession contract and invites organisations to submit a tender to meet F&HDC's requirements. The specific requirements for the above are detailed in the Specification at **Appendix A**.
- 1.1.2 The contract is anticipated to start on the 1st of April 2022 and continue for 24 months (with the provision to extend by additional two (2) periods of 24 months), unless terminated in accordance with the Conditions of the Contract.
- 1.1.3 Suppliers should note that the Council intends to award this contract to two separate suppliers. As such, the requirement has been split into two Lots, please refer to Appendix A - Tender Specification (Part 1, Section 2).
- 1.1.4 Suppliers are welcome to submit tender for one or both Lots.
- 1.1.5 No supplier will be awarded more than one Lot (contract) and award will be based on the top ranked supplier per Lot, once the evaluation process is completed.
- 1.1.6 Suppliers tendering for both Lots **MUST** indicate their preference in Section 3 of the ITT Response Document.
- 1.1.7 In the event that a supplier tender submission achieved the highest score for both respective Lots, the supplier will only be awarded the contract to deliver their preference with the other Lot dismissed.

1.2 ITT TIMETABLE

- 1.2.1 The key dates for this tender are outlined in the timetable below.
- 1.2.2 While we do intend to keep to this schedule, these dates are estimates and we may amend or deviate from the timetable. If we do change the timetable, we will notify you of the changes.

Date	Activity
02 December 2021	Publication of Invitation to Tender (ITT) document pack
24 December 2021	Deadline for clarification questions
07 January 2022 12noon	Tender Return Date
19 January 2022	Evaluation completed
21 January 2022	Successful/unsuccessful notifications
01 April 2022	Contract start date

SECTION 2 – SUPPLIER RESPONSES

2.1 Instructions for Tenderers

- 2.1.1 Read these instructions carefully before completing the **Invitation to Tender Supplier Response document**. It is your responsibility to make sure the document is fully completed with any other required documents. If you fail to comply with these requirements, we may reject your tender.
- 2.1.2 By submitting a response to this ITT, you confirm that you understand and can provide services (or works or goods) that satisfy the requirements described in our specifications.
- 2.1.3 Complete the following documents and upload them to the **Kent Business Portal** (kentbusinessportal.org.uk) by attaching them to your online response.
- **ITT supplier response document**
 - **ITT sub-contractor information**
- If possible, please return these documents in the file format provided (e.g. .doc, .xls, etc.) or a compatible format. If you need the documents provided to you in an alternative file format, please ask using the 'Messages' function in the portal.
- 2.1.4 You must submit your tender via the **Kent Business Portal**. We cannot accept tenders returned by post or email. If you have any difficulty using the portal, please contact us in plenty of time before the Tender Return Date.
- 2.1.5 You are permitted include appendices with your tender to support answers to the quality/technical questions in the **Invitation to Tender Supplier Response document**.

Any additional documents you include should be relevant and, if part of your answer to a quality question, comply with any word count limits.

- 2.1.6 You are not required to submit copies of audited accounts, insurance certificates or company policies with your tender. If you are successful, you must provide these and any other evidence we request, before F&HDC enters into contract with you.
- 2.1.7 Tenders must be submitted by the Tender Return Date (see section 1.2). We will not consider late tenders unless agreed by the F&HDC's authorised officers in exceptional circumstances.
- 2.1.8 **Tender Validity** – your tender must be open for acceptance for at least 180 days from the Tender Return Date. We will not accept any changes to your tender in that period, unless a genuine error is found and corrected before we make the award decision.
- 2.1.9 **Modification & Withdrawal** – You may modify or withdraw your tender at any time before the Tender Return Date. This should be done using the Kent Business Portal. If you need to withdraw your tender after the deadline, please send a message using the 'Messages' function within the portal.
- 2.1.10 **Queries and Clarifications** – All enquiries about this ITT should be sent using the 'Messages' function within the Kent Business Portal. We will try to answer all questions as quickly as possible before the Clarification Closing Date. We recommend you submit your questions as early as possible.

2.2 Price

- 2.2.1 Please complete **Pricing Schedule** in Section 3 of the response document
- 2.2.2 Prices/rates are to be in £ Sterling (GBP), net only, and inclusive of all costs associated with the provision of the services (or works or goods).
- 2.2.3 Price(s) submitted must be **exclusive** of Value Added Tax (VAT). The percentage and amount of VAT will be shown on invoices at the current rate at the time of invoicing, if VAT applies.
- 2.2.4 Unless otherwise stated, charges must be fixed (i.e. not subject to variation) for the period of the contract subject.
- 2.2.5 If we find any arithmetical or mathematical errors in your tender, we correct it and inform you of any corrections we make. However, we are not responsible for finding errors. It is your responsibility to make sure your tender is complete, comprehensive and correct.

SECTION 3 – GENERAL INSTRUCTIONS

- 3.1.1 **Amendments to the ITT** - At any time before the Tender Return Date, F&HDC may amend the ITT document(s). All tenderers will be notified of any changes and F&HDC may choose to change the Tender Return Date to extend the deadline, if we consider this necessary.
- 3.1.2 **F&HDC's Right to Reject or Not to Award** – F&HDC reserves the right to reject any tender, or abort the tender process at any time, or to not award the contract to any organisation, without incurring any liability to the affected tenderers.
- 3.1.3 **Confidentiality** - All information supplied in connection with this ITT is confidential and by submitting a tender, you agree to be bound by the obligation to preserve the confidentiality of all such information.

- 3.1.4 **Freedom of Information** – F&HDC is subject to the Freedom of Information Act 2000 and may be required to provide information when requested under the Act. You should identify any information in your tender that you require to remain confidential or consider to be commercially sensitive. We will honour this, if authorised by the provisions of the Act.
- 3.1.5 **General Data Protection Regulations (GDPR)**
F&HDC processes personal information in accordance with Data Protection Legislation namely the General Data Protection Regulations (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680), any applicable national implementing Laws as amended from time to time; the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy.
[Go to F&HDC's Privacy Notice](#) for more information.
- 3.1.6 **Publicity** – Do not advertise or publicise the provision of the goods/services/works or the award of any contract will unless and until F&HDC gives written consent to the advert or article. You must ask permission for each publication and provide a draft of the text for F&HDC's approval.
- 3.1.7 **Transparency** – F&HDC must comply with transparency obligations and publish certain information about this ITT and any resulting contract(s). F&HDC routinely publishes details of our contracts on the Kent Business Portal and our website, including the estimated value of contracts and the identities of its contractors.
- 3.1.8 **Security of Performance** – F&HDC each reserve the right to require the successful tenderer to provide a Parent Company Guarantee (PCG), or a Performance Bond (if a PCG cannot be provided) and /or a Collateral Warranty from any sub-contractor(s) of the successful tenderer.

SECTION 4 – EVALUATION

4.1 Evaluation Criteria

- 4.1.1 We will evaluate the tenders based on **100% 'quality'**.
- 4.1.2 During the evaluation, we may contact you to clarify something in your tender or to check information in your tender which we think could be incorrect. We will send these questions through the 'Messages' function in the Kent Business Portal. You should answer any questions we have promptly by replying to the message in the portal.
- 4.1.3 We are not responsible for finding errors in your tender. It is your responsibility to make sure your tender is complete, comprehensive and correct. We are not obligated to accept corrections to any errors in your tender which result in your tender being rejected or given a particular score.

4.2 QUALITY Evaluation

- 4.2.1 Each Lot will be assessed independently, using the questions in Section 2.3 & 2.4 in the ITT Response Document
- 4.2.2 Suppliers tendering for both Lots are only required to complete and submit ONE Response Document.

- 4.2.3 Suppliers evaluation and award consideration will be dependent on the selection made in Section 3 of the ITT Response Document.
- 4.2.4 Suppliers tendering for one or both Lots, **MUST** select the applicable Lot for which their submissions should be considered. Suppliers who are submitting for both Lots **MUST** also indicate their preference for award in Section 3 of the Invitation to Tender Response Document.
- 4.2.4 You must complete all questions in Section 1 of the **Invitation to Tender Supplier Response document**. Responses to the questionnaire will be evaluated on a pass/fail basis unless the question states otherwise. Any organisation which fails any section of the questionnaire will be disqualified and their tender will be rejected.
- 4.2.5 We will assess the 'quality' part of your tender using your responses to the quality questions set out in Section 2.4 of the **Invitation to Tender Supplier Response document**. These questions are based on the parts of the service (or works or goods) that we consider to be the most important to F&HDC.
- 4.2.6 Any organisation which fails any headline questions (Section 2.3) will be disqualified and their tender will be rejected.
- 4.2.7 The maximum quality score of **100%** is divided across each of the quality questions in Section 2.4. The weighting of each question is shown below.

- Q1: Contract Delivery 20 %
- Q2: Resources 20 %
- Q3: Customer Engagement 15 %
- Q4: Contract Implementation & IT System 15 %
- Q5: Quality Assurance / Accreditation 10 %
- Q6: Risk And Contingencies 10 %
- Q7: Sustainability 5 %
- Q8: Added Value 5 %
- **Total Quality Score 100 %**

4.2.8 Each question will be scored 0-5 based on the following method:

Assessment	Description	Score
Deficient	Response to the question (or an implicit requirement) significantly deficient or no response given.	0
Inadequate	Inadequate detail provided and some of the questions not answered, and/or some of the answers to questions are not directly relevant to the question.	1
Limited	Limited information provided, and/or a response that is inadequate or only partially addresses the question.	2

Acceptable	An acceptable response submitted in terms of the level of detail, accuracy and relevance.	3
Comprehensive	A comprehensive response submitted in terms of detail and relevance to the question.	4
Superior	As Comprehensive, but to a significantly better degree and a response which goes above and beyond to answer the question.	5

4.2.9 We will score your answers to the quality questions out of a maximum of 5 points each (as above), and calculate a weighted score for the question.

EXAMPLE

Criteria	Weighting	Score (out of 5)	Weighted Score
Criteria A	100%	4	80%

If 'Criteria A' was weighted 100% and the suppliers response received a score of 4 out of 5 then the following formula would be applied:

$$= (\text{Weighting} / \text{maximum score}) * \text{score awarded} = \text{Criteria awarded \%}$$

$$= (100/5)*4 = 80\%$$

4.2.10 If more than one person scores the tenders, a consensus scoring mechanism will be used (i.e. the panel will agree a score for each marked element).

4.2.11 The purpose of this ITT is to select the organisation(s) best able to fulfil F&HDC's contract requirements. If your organisation achieves a score of 2 or lower for more than one question in Section 2.4, we may reject your application.

4.3 Notification

4.3.1 Once we have completed the evaluation, we will send all suppliers an 'Intention to Award' letter confirming whether their tender is successful or unsuccessful. This letter will include some feedback on your tender and the details of who to contact for more information about our decision.

4.3.2 If the estimated contract value is greater than applicable EU threshold, F&HDC is required to hold a mandatory standstill period of 10 days. The Intention to Award letter will confirm the date this period will end. We will not enter into contract before the end of the standstill period.

SECTION 5 – TERMS AND CONDITIONS OF CONTRACT

5.1.1 The Terms and Conditions of Contract F&HDC intends to use for this contract are contained in **Appendix B**. We will not accept any alternative terms and conditions submitted as part of your tender.

- 5.1.2 If you have any queries or concerns about the Terms and Conditions of Contract, or require a non-material change to the terms, you **must** ask about this during the clarifications period and before the Tender Return Date.
 - 5.1.3 F&HDC may agree to any non-material changes to the Terms and Conditions of Contract which you consider to be in the interests of F&HDC and the project. However, any agreement will be at the sole and exclusive discretion of F&HDC after the proposed changes have been reviewed by our legal team.
-